Funds for Development
Multilateral Channels of Concessional Financing

This publication examines the concessional windows of the African Development Bank Group, Asian Development Bank, Caribbean Development Bank, International Fund for Agricultural Development, World Bank Group, and other multilateral financial development institutions. It also reviews trust funds, multipurpose vehicles, special facilities, and financial intermediary funds, such as the Global Environment Facility, and the Global Fund to Fight AIDS, Tuberculosis, and Malaria. The book analyzes different paradigms of organizational structures and the close connection between such structures and the institutional frameworks governing matters such as membership, representation in governing bodies, decision-making procedures, and voting rights—all of which play a part in the shaping of the development agenda. It extensively studies the legal frameworks of concessional windows, their modalities of concessional financing, resource structures and replenishment procedures, and analyzes how such replenishment efforts are implemented and impact on the development activities of these institutions.

In navigating the ever-increasingly complex landscape of aid architecture, this book is a valuable guide for all persons interested in concessional financing and the law of international organizations.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region’s many successes, it remains home to two-thirds of the world’s poor: 1.8 billion people who live on less than $2 a day, with 903 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org
ISBN 978-92-9092-278-0
Publication Stock No. BKK090226

Printed in the Philippines
Funds for Development
Multilateral Channels of Concessional Financing

Edited by
Gerd Droesse

Asian Development Bank
Contents

Preface vi
Abbreviations viii

Introductory Remarks and Overview of Publication: Proliferation, Fragmentation,
and Earmarking of Concessional Financing 1
  by Gerd Droesse
  Introduction 1
  Four Generations 6
  Overview 33
  Conclusions 35

1 Concessional Resources and Development Thought 39
  by Peter McCawley
  Introduction 39
  Beginnings 40
  Policies 46
  A New Decade 49
  Conclusion 58

2 Organizational Structures, Institutional Frameworks, and Decision-Making Procedures
   of Multilateral Concessional Financing 59
  by Gerd Droesse
  Introduction 59
  Organizational Structures 60
  Organizations Providing Financing Only on Concessional Terms 61
  Groups with Affiliated Organizations Providing Concessional Financing 62
  Organizations with Built-in Soft Loan Facilities 66
  Special Funds, Ordinary Capital Resources, and Special Programs as Sources
   of Concessional Financing 69
  Trust Funds 79
  Institutional Structures 90
  Governance 117
  Future Perspectives 161
  Appendix 169

3 Modalities of Multilateral Concessional Financing 179
  by Gerd Droesse
  Introduction 179
  Legal Framework of Concessional Financing 180
  Classification, Eligibility, Access, and Allocations 207
  Modalities of Concessional Financing 218
  Replenishment Processes and Bridging Arrangements 270
  Implementation of Replenishments 280
  Financial Management 294
  Conclusions 295
4 Concessional Financing of the Asian Development Bank:
The Asian Development Fund and Other Channels of ADB Concessional Financing
   by Gerd Droese

Channels of Concessional Financing
History
ADB’s Special Funds Resources
Trust Funds and Special Facilities
Organizational Structure
Legal Framework of Asian Development Fund Resources
Resources of the Asian Development Fund
Asian Development Fund Replenishments
Modalities of Concessional Financing
Financial Management of Asian Development Fund Resources
Special Institutional Arrangements
Future Perspectives
Appendices

5 The Concessional Financing Windows of the African Development Bank Group:
Organization, Decision Making, and Modalities
   by Adesegun Akin-Olugbade and Augustin Flory

Abstract
Introduction
History of the Bank Group’s Concessional Financing Windows
Organizational (Governance) Structures of the Bank Group’s
   Concessional Financing Windows
Legal Framework
Resource Mobilization and Replenishment Process
Separation of Resources
Modalities of Concessional Financing
Financial Management
Special Arrangements
Overview of Replenishments of the African Development Fund
Proposed Reforms
Conclusion
Appendices

6 The Unified Special Development Fund of the Caribbean Development Bank
   by Yvette Lemonias Seale, William Warren Smith, and Adrian Debique

Introduction
Historical Background
Organizational Structure
Institutional Arrangements and Decision-Making Procedures
Overview of Various Replenishments
Conclusion
Appendices

7 Multilateral Concessional Financing of the International Fund for
   Agricultural Development
   by Vera P. Weill-Hallé, Cynthia Licul, and Itziar García Villanueva

Introduction
Objectives and Functions
Organizational Structure
Vote Allocation System
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Author</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>The Global Environment Facility: Institutional and Operational Aspects</td>
<td>Maurizio Ragazzi</td>
<td>485</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>485</td>
</tr>
<tr>
<td></td>
<td>Institutional Aspects</td>
<td></td>
<td>488</td>
</tr>
<tr>
<td></td>
<td>Operational Aspects</td>
<td></td>
<td>495</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>501</td>
</tr>
<tr>
<td></td>
<td>Further Fragmentation and Ongoing Developments</td>
<td></td>
<td>544</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>548</td>
</tr>
<tr>
<td>10</td>
<td>Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid</td>
<td>Anna Triponel</td>
<td>549</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>549</td>
</tr>
<tr>
<td></td>
<td>Background</td>
<td></td>
<td>551</td>
</tr>
<tr>
<td></td>
<td>An Innovative Legal Status</td>
<td></td>
<td>553</td>
</tr>
<tr>
<td></td>
<td>Organizational Arrangements</td>
<td></td>
<td>560</td>
</tr>
<tr>
<td></td>
<td>Concessional Financing Modalities</td>
<td></td>
<td>570</td>
</tr>
<tr>
<td></td>
<td>Mobilizing Resources</td>
<td></td>
<td>574</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>582</td>
</tr>
</tbody>
</table>
Preface

The idea for this book came in 1999 when I was head of the Special Practice Group: Administration and Institutional Matters in the Office of the General Counsel of the Asian Development Bank (ADB) and in charge of the legal issues regarding the negotiations for replenishment of the Asian Development Fund (ADF). We noticed at the time that there were many misunderstandings and queries as to why the ADF was different from the concessional arms of the World Bank Group and African Development Bank Group (i.e., the International Development Association (IDA) and the African Development Fund) and from the Fund of Special Operations (FSO) of the Inter-American Development Bank.

Ifzal Ali, the then deputy treasurer and later chief economist of ADB, and I prepared a short paper titled “Burden Sharing and Decision Making,” explaining the difference in legal structures and burden-sharing principles applicable to these funds, which was furnished to ADF donors in December 1999. This paper gave me the idea for a book which would explain in a more comprehensive manner the structural and conceptual differences that exist between various concessional windows and their institutional, legal, and operational frameworks. While ADB supported my idea of coming out with a publication, I conducted the research and writing myself, without aid of any technical consultants. The international organizations and senior experts whom ADB and I contacted to help with this project all volunteered the articles included in this book.

I did much of my writing while my family and I were residing in Tokyo, while I was assigned as legal adviser of the ADB Institute. It was an intellectually stimulating environment, but it was a challenge working on the book in addition to my regular duties as legal adviser for the Institute as I had to do my research outside working hours. While preparing the book, I often asked myself whether I would ever see it printed. It took much longer to prepare than I had initially expected and got much longer than I had initially planned. It is therefore a happy moment to see that the efforts of all the contributors have finally come to fruition.

In addition to the papers that made it to this publication, I had prepared four other papers detailing the history of the ADF, analyzing the IDA and FSO replenishments, and providing a global perspective of concessional financing. However, due to time and space constraints, I had to make the difficult decision not to include them in this publication. I intend these to form part of a future volume on the same theme of Funds for Development: Multilateral Channels of Concessional Financing.

There are many persons to whom I owe thanks. First of all, my gratitude goes to the contributors who accompanied me in the long process of completing the book and provided information and suggestions. I would like to thank Peter McCawley, former executive director of the Board of ADB and former dean of ADBI in Tokyo; former African Development Bank Group (AfDB) general counsel Adesegun Akin-Olugbade and Augustin Flory, also formerly of AfDB; Caribbean Development Bank (CDB) general counsel Yvette Lemonias Seale, and director of finance and corporate planning William Warren Smith, as well as deputy director of corporate planning Adrian Debique, also of CDB; senior advisor for innovative financing and former director of resource mobilization Vera P. Weill-Hallé, former acting general counsel Cynthia Licul and counsel Itziar Garcia Villanueva, all with the International Fund for Agricultural Development (IFAD); Maurizio Ragazzi, senior counsel on international law, who has worked on the Global Environment Facility since 1999, and has been a member of the World Bank’s legal department since 1994; Sophie Smyth, associate professor of law, Temple University, Beasley School of Law, who served as legal advisor to the World Bank in its capacity as trustee of the Global Environment Facility Trust Fund from 1994 to 2006; and Anna Triponel, former governance officer of the Education for All
Fast Track Initiative (EFA FTI), World Bank, who currently directs the New York office of the Public International Law & Policy Group.

I also wish to express my appreciation to my colleagues in ADB for their valuable comments, especially Christopher W. MacCormac. When I discussed with him my proposal for a paradigm shift in the relations of international organizations, I noticed that we had very similar ideas. Our discussions and his suggestions were instrumental in my developing the paradigm of airline alliances which I use in this book to illustrate the proposed relationship between international organizations. Important suggestions also came from Eduard Westreicher, member of the ADB Board of Directors; ADB’s Treasury Department, specifically Tobias C. Hoschka, Sukhumarn Phanachet, and Rajesh Poddar; the Office of the General Counsel; Regional and Sustainable Development Department, specifically, Nessim J. Ahmad; and other departments of ADB.

My thanks also go to senior staff of various other organizations, particularly John S. Scott and Andres Consuegra from the Inter-American Development Bank; Mansur Noibi from the Islamic Development Bank; Sív Hellen and Christina Stenvall-Kekkonen from the Nordic Development Bank; the officials of the Nordic Development Fund; Alessandra J. Iorio from the World Bank, Eduardo Gutiérrez from the Central American Bank for Economic Integration, and all their colleagues who provided information and/or suggestions.

Robert L. T. Dawson, the secretary of ADB, and Ajay Sagar, assistant secretary, ADB, and the staff of the Office of the General Counsel provided invaluable support to this publication.


Maricris Jan Tobias, consultant, provided support for research and production. Caryl L. Benito and Roman Miguel G. De Jesus also assisted in the process.

My thanks too to the Centre for International Law, National University of Singapore, particularly to Prof. Robert C. Beckman, Dr. Navin Rajagobal, and Ng Wee Fern Geraldine, for organizing the book launch in Singapore in April 2011.

The governance structures and legal and operational frameworks of international organizations reflect the evolution of the international development agenda. Taking account of the above, this book views the emergence of new channels of concessional finance from a historical perspective and as a reflection of the evolving strategic objectives and priorities of the international community that shape the aid architecture. Rather than attempting the impossible task of giving a complete overview of various concessional windows, the book seeks to analyze from a holistic perspective different paradigms of organizational structures, institutional frameworks, and governance structures and to show how closely these are connected. It also analyzes the legal frameworks, classification systems, operational frameworks, and modalities of concessional financing of concessional windows, as well as their resource structures, replenishment procedures and practices in the implementation of replenishments. Finally, it seeks to contribute to the discussion on global governance of multilateral financial development institutions (MFDIs).

In addition to persons interested in the modalities of concessional financing and the financial and institutional frameworks of concessional windows, this book is of general relevance for persons interested in the governance of MFDIs and in the law of international organizations.

Gerd Droesse
18 March 2011
# Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>ACA</td>
<td>advance commitment authority</td>
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<td>ACCSF</td>
<td>Asian Currency Crisis Support Facility</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<td>ADF</td>
<td>Asian Development Fund</td>
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<td>AEI</td>
<td>Agreement Establishing the International Fund for Agricultural Development</td>
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<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<td>AfDF</td>
<td>African Development Fund</td>
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<td>AMCOM</td>
<td>African Ministers’ Council on Water and Development</td>
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<td>APDRF</td>
<td>Asia Pacific Disaster Response Fund</td>
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<td>ASF</td>
<td>Agricultural Special Fund</td>
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<td>ATF</td>
<td>Asian Tsunami Fund</td>
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<tr>
<td>b/f</td>
<td>brought forward</td>
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<tr>
<td>BFFS</td>
<td>Belgian Fund for Food Security</td>
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<tr>
<td>BHN</td>
<td>basic human needs</td>
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<td>BMC</td>
<td>borrowing member country</td>
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<td>BNTF</td>
<td>Basic Needs Trust Fund</td>
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<td>BSF</td>
<td>Belgian Survival Fund</td>
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<td>CABEI</td>
<td>Central American Bank for Economic Integration</td>
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<td>CCF</td>
<td>Climate Change Fund</td>
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<tr>
<td>CCM</td>
<td>coordinating country mechanism</td>
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<tr>
<td>CCP</td>
<td>coordinated country proposal</td>
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<tr>
<td>CDB</td>
<td>Caribbean Development Bank</td>
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<tr>
<td>CEB</td>
<td>Council of Europe Development Bank</td>
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<tr>
<td>CEFPF</td>
<td>Clean Energy Financing Partnership Facility</td>
</tr>
<tr>
<td>CEO</td>
<td>chief executive officer</td>
</tr>
<tr>
<td>CGIAR</td>
<td>Consultative Group on International Agricultural Research</td>
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<tr>
<td>CIF</td>
<td>Climate Investment Fund</td>
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<tr>
<td>COP</td>
<td>Conference of the Parties</td>
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<td>CTCS</td>
<td>Caribbean Technological Consultancy Services</td>
</tr>
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<td>CTF</td>
<td>Clean Technology Fund</td>
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<tr>
<td>DAC</td>
<td>Development Assistance Committee</td>
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<tr>
<td>DMC</td>
<td>developing member country</td>
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<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<tr>
<td>DSF</td>
<td>debt sustainability framework</td>
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<td>EACA</td>
<td>expanded advance commitment authority</td>
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<tr>
<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<tr>
<td>ECAFE</td>
<td>Economic Commission for Asia and the Far East</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>EFA FTI</td>
<td>Education for All Fast Track Initiative</td>
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<tr>
<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
</tr>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organization</td>
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<tr>
<td>FETS</td>
<td>Fondo Especial para la Transformación Social de Centroamérica (Special Fund for the Social Transformation of Central America)</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>FFR</td>
<td>Financing Facility for Remittances</td>
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<tr>
<td>FIF</td>
<td>financial intermediary fund</td>
</tr>
<tr>
<td>FONTAGRO</td>
<td>Fondo Regional de Tecnología Agropecuaria (Regional Agricultural Technology Fund)</td>
</tr>
<tr>
<td>FONTEC</td>
<td>Fondo de Cooperación Técnica del Banco Centroamericano de Cooperación Económica (Technical Cooperation Fund)</td>
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<td>FSF</td>
<td>Fragile States Facility</td>
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<tr>
<td>FSO</td>
<td>Fund for Special Operations</td>
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<tr>
<td>FUA</td>
<td>fund unit of account</td>
</tr>
<tr>
<td>FY</td>
<td>fiscal year</td>
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<tr>
<td>G8</td>
<td>Group of Eight</td>
</tr>
<tr>
<td>GCI</td>
<td>general capital increase</td>
</tr>
<tr>
<td>GEF</td>
<td>Global Environment Facility</td>
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<tr>
<td>Global Fund</td>
<td>Global Fund to Fight AIDS, Tuberculosis and Malaria</td>
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<tr>
<td>GNI</td>
<td>gross national income</td>
</tr>
<tr>
<td>GNP</td>
<td>gross national product</td>
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<tr>
<td>GRIPS</td>
<td>National Graduate Institute for Policy Studies</td>
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<tr>
<td>HIPC</td>
<td>heavily indebted poor countries</td>
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<tr>
<td>IADB</td>
<td>Inter-American Development Bank</td>
</tr>
<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<tr>
<td>ICT</td>
<td>information and communication technology</td>
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<tr>
<td>IDA</td>
<td>International Development Association</td>
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<td>IFAD</td>
<td>International Fund for Agricultural Development</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>IFF</td>
<td>Intermediate Financing Facility</td>
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<td>IFS</td>
<td>Integrated Financing Strategy</td>
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<tr>
<td>ILC</td>
<td>International Land Coalition</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IOC</td>
<td>instrument of commitment or contribution</td>
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<tr>
<td>IOS</td>
<td>instrument of subscription</td>
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<tr>
<td>IsDB</td>
<td>Islamic Development Bank</td>
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<td>ISFD</td>
<td>Islamic Solidarity Fund for Development</td>
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<tr>
<td>ISF</td>
<td>Interest Subsidization Fund</td>
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<tr>
<td>ISS</td>
<td>interest subsidy scheme</td>
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<tr>
<td>JFICT</td>
<td>Japan Fund for Information and Communication Technology</td>
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<td>JFPR</td>
<td>Japan Fund for Poverty Reduction</td>
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<td>JSF</td>
<td>Japan Special Fund</td>
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<td>LDMC</td>
<td>least developed member country</td>
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<td>LICUS</td>
<td>Low-Income Countries Under Stress</td>
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<td>MDB</td>
<td>multilateral development bank</td>
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<tr>
<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MDRI</td>
<td>Multilateral Debt Relief Initiative</td>
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<td>MFDI</td>
<td>multilateral financial development institution</td>
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<tr>
<td>MFF</td>
<td>multitranche financing facility</td>
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<td>MIGA</td>
<td>Multilateral Investment Guarantee Agency</td>
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<tr>
<td>MoU</td>
<td>memorandum of understanding</td>
</tr>
<tr>
<td>MOV</td>
<td>maintenance of value</td>
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<td>MPSF</td>
<td>Multi-Purpose Special Fund</td>
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<td>NDF</td>
<td>Nordic Development Fund</td>
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<tr>
<td>NGO</td>
<td>nongovernment organization</td>
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<tr>
<td>NIB</td>
<td>Nordic Investment Bank</td>
</tr>
</tbody>
</table>
NTF – Nigeria Trust Fund
OAS – Organization of American States
OCR – ordinary capital resources
ODA – official development assistance
OECD – Organisation for Economic Co-operation and Development
OFID – Organization of the Petroleum Exporting Countries Fund for International Development
OIC – Organization of the Islamic Conference
OPEC – Organization of the Petroleum Exporting Countries
OSF – other special funds
PBA – performance-based allocation
PBAS – performance-based allocation system
PCC – post-conflict country
PCCF – Post-Conflict Country Facility
PEF – Pakistan Earthquake Fund
PPF – project preparation facility
PRC – People’s Republic of China
PRGF – Poverty Reduction and Growth Facility
PRS – poverty reduction strategy
PRSP – poverty reduction strategy paper
PSM – procurement and supply management
RCI – regional cooperation and integration
RCIF – Regional Cooperation and Integration Fund
RCIFPF – Regional Cooperation and Integration Financing Partnership
RETF – recipient-executed trust fund
SCF – Strategic Climate Fund
SCI – selective capital increase
SDF – Special Development Fund
SDF(O) – other special development fund
SDF(U) – Unified Special Development Fund
SDR – Special Development Fund
SDF – Special Development Fund
SDR – special drawing right
SJF – special joint financing
SLM – sustainable land management
SPA – Special Programme for Sub-Saharan Countries Affected by Drought and Desertification
SRS – Special Resources for Sub-Saharan Africa
STAP – Scientific and Technical Advisory Panel
TAA – technical assistance account
TAF – technical assistance fund
TASF – Technical Assistance Special Fund
TFBH – Trust Fund for Bosnia and Herzegovina
TFGWB – Trust Fund for Gaza and West Bank
TWG – transitional working group
UA – unit of account
UK – United Kingdom
UN – United Nations
UNAIDS – Joint United Nations Programme on HIV/AIDS
UNCCD – United Nations Convention to Combat Desertification
UNDP – United Nations Development Programme
UNEP – United Nations Environment Programme
UNESCAP – United Nations Economic and Social Commission for Asia and the Pacific
Abbreviations xi

UNFCCC – United Nations Framework Convention on Climate Change
UNIDO – United Nations Industrial Development Organization
US – United States
USAID – United States Agency for International Development
WFPF – Water Financing Partnership Facility
WFSF – Water Facility Special Fund
WHO – World Health Organization
Introductory Remarks and Overview of Publication: Proliferation, Fragmentation, and Earmarking of Concessional Financing

Gerd Droesse*

Introduction

The “reluctance to create international organizations came to an end during and immediately after the Second World War.”¹ There “was a true hausse” in the creation of new organizations² which were established by multilateral international agreements and had legal personality under international law. The resulting proliferation of international organizations reflected the increasing awareness that “fundamental problems cannot be dealt with within the board of a single state;”³ it was notably a consequence of the creation of a significant number of new states following decolonization or a response to new and emerging needs, or was triggered by regional concerns or attempts at regional integration. While the United Nations Charter “laid down a rather simple structure” of the UN system consisting of “six principal and a number of subsidiary organs,” and a “halo of specialized agencies” with which it would “maintain defined close relationships … today, this simple scheme has proliferated into a veritable jungle of miscellaneous entities, including numerous quasi-autonomous bodies[,] treaty organs[,] enhanced treaty organs, two categories of specialized agencies and other related organizations[,] and a variety of other entities and arrangements in part designed to coordinate these many new actors.”⁴

Similar phenomena can be noted in the case of many international organizations which “obey the law of complexification [and] show many of the traits of biological systems, including a striving to grow as far as resources allow, a tendency to proliferate and a resistance to annihilation unless survival by successors is assured.”⁵ Thus, even the European Union which was founded for the pursuit of unity was characterized by the “apparently paradoxical simultaneous development of organizational proliferation and unity building, of fragmentation and centralization.”⁶

There was also a proliferation of multilateral financial development institutions (MFDIs) and their associated trust funds and multi-purpose vehicles, and, in general, a dramatic increase in multilateral

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* Gerd Droesse is currently assigned to the Office of The Secretary of the Asian Development Bank (ADB) as Lead Specialist, Institution and Coordination. He joined ADB in 1995 after having worked for the Food and Agriculture Organization (FAO) of the United Nations for about 12 years (in his last position, as legal adviser to the Director of Personnel of FAO). In ADB, Mr. Droesse held the position of Principal Counsel and Head of the Special Practice Group: Administrative and Institutional Matters. From October 2006 to October 2009, Mr. Droesse was Legal Adviser of the ADB Institute in Tokyo.


2 Ibid.


5 Ibid., p. 2.

channels of official development assistance (ODA) since the Second World War, not to mention the thousands of nongovernmental organizations (NGOs) and foundations providing assistance to developing countries. This is underlined by the fact that more than 100 organizations, facilities and programs have been established in the health sector alone. There has also been a marked proliferation of institutions in the field of environment. A 2007 World Bank report lists 233 international development organizations with substantially different legal status, functions and governance structures. This list includes a wide range of institutions and financial intermediary funds (FIFs) – including multi-actor funds involving a variety of stakeholders – that support a wide range of alliances, funds, facilities and partnerships. FIFs have become a substitute for the establishment of intergovernmental organizations.

It can be remembered that after a decline in the 1990s, funding for official development assistance has grown steadily from $58 billion in 1997 to over $100 billion in 2005 (at constant 2004 prices) and has risen further thereafter. And yet, core development programs have actually benefitted to a much lesser extent from increases in ODA as total ODA disbursements include large amounts of money allocated to debt relief on concessional loans (some of which “may never have been expected to be repaid”) and, to a lesser extent, to emergency assistance and administrative costs of donors. Thus, there has been criticism that the amount actually received by developing member countries (DMCs) is much lower than ODA disbursement figures suggest. Taking account of this fact, the Organisation for Economic Co-operation and Development (OECD) has introduced country programmable aid (CPA) measured in disbursement terms as a new measure of aid which is derived from gross ODA but subtracts aid that is unpredictable, entails no cross-border flows, is not country-programmable by the donor, and does not form part of cooperation agreements between governments, as well as very small aid allocations.

Overall shares of bilateral and multilateral ODA have, with some variations, remained relatively constant, with 70% of ODA allocated by donors on a bilateral basis and 30% allocated through multilateral channels. While concerned about certain aspects of multilateral aid (e.g., its institutional complexity, high absolute costs and perceived lack of accountability), donors consider “economies of scale; political neutrality and legitimacy; scale of resources (capital and knowledge); low unit costs; and provision of public goods” as major strengths of multilateral concessional financing. Nevertheless, in a 2010 report, the Development Assistance Committee (DAC) of the OECD has concluded based on its analysis that “[t]his relatively stable 30% share,

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7 The Yearbook of International Organizations provides a listing of more than 30,000 organizations, among which are many NGOs that are providing assistance to developing countries. www.uia.be/yearbook


12 Ibid.


or ‘ceiling’, is shrinking, however, if contributions to EU Institutions … are excluded.”¹⁵ DAC notes that this “flat trend in multilateral ODA is not expected to change significantly over the medium term.”¹⁶

The 2010 DAC Report also notes that there are “inherent tensions and complementarities in providing both core and non-core contributions to multilateral entities.”¹⁷ Non-core funding gives donors increased visibility and may mobilize additional resources as it allows donors to provide direct targeted funding to an organization they may not otherwise have supported.¹⁸ However, it “may incur higher transaction costs for the receiving organisation, given the additional monitoring and reporting requirements that may be imposed [and may] offer less say to partner countries in the decision-making process and/or limit institutional oversight.”¹⁹

Increased non-core funding by some donors could make core funding less appealing for all donors if core funds are perceived as subsidising non-core funds in cases when administrative costs are not fully covered by trust fund overheads. For this reason, it is important for multilateral organisations to maintain a strategic vision and framework that demonstrate the results of core activities in order to attract core funding at the same time as they accept non-core funds.²⁰

In addition to the proliferation of sources of development aid resulting from the creation of many new aid channels, widespread “use proliferation” (division of aid in a wide variety of end uses, i.e. many small projects and programs) and “fragmentation” (characterized by a large number of donors providing a small percentage of total aid to a given country) contribute to the complexity of current aid architecture.²¹ Such fragmentation, which is particularly important in the social sectors characterized by the small average size of aid interventions and activities, is exacerbated by the fact that “it seems to be higher the lower is the institutional capacity of recipient countries.”²² The situation is further complicated by the fact that MDFIs are internally fragmented as well as a result of a marked and increasing proliferation of trust funds, facilities, multipurpose vehicles and other cofinancing arrangements to supplement their regular concessional and nonconcessional windows. Many of these funding arrangements, which provide only a small percentage of the organization’s total concessional financing, have their own governance structures, replenishment procedures and specific implementation arrangements. Often, they lack appropriate coordination with organizations’ regular concessional windows and nonconcessional resources and their other operational activities in the recipient countries of their financing, and there is no coherent conceptual framework covering all types of resources. Overall, the situation has become so complex that it is not easy even for experts to maintain an accurate overview of the situation.

Proliferation and fragmentation of development assistance have adverse effects at various levels as they create substantial overlaps in functions between organizations and result in increased direct and indirect²³ transaction costs, reduce aid effectiveness and constrain the implementation capacity of recipient countries.

¹⁵ Ibid., p. 24.
¹⁶ Ibid.
¹⁷ Ibid., p. 39.
¹⁸ Ibid.
²⁰ Ibid., p. 40.
²² Ibid., p. 22.
²³ A 2007 World Bank Report, referring to A. Acharya, A. De Lima, and M. Moore. 2006. Proliferation and Fragmentation: Transactions Costs and the Value of Aid. Journal of Development Studies, Vol. 42, No. 1, states: “Direct costs refer to the diversion of scarce resources in recipient countries – notably the time and attention of politicians and government officials – away from domestic priorities in order to attend to demands associated with managing aid-related activities. Such costs are especially relevant in situations where aid is subdivided into many small “packets” with their own managerial and reporting requirements. Indirect costs result from the impact of aid proliferation and fragmentation on the incentive systems in recipient countries’ government bureaucracies. An example of such indirect costs is when donor-financed project implementation units lead to “brain drain” from line ministries where managerial skills are in short supply.” IDA. 2007. Aid Architecture: An Overview of the Main Trends in Official Development Assistance Flows, p. 23.
Such proliferation and fragmentation are also accompanied by significant verticalization or earmarking of aid resources by sector or scheme, in particular through the creation of global funds. While thematic funds may serve as a means to mobilize additional resources for specific purposes, “earmarking may lead to a misalignment between donors’ and recipient countries’ priorities. By constraining recipients’ flexibility in allocating resources, earmarking may contribute to underfunding of other investments which are equally important for economic growth and poverty reduction.”

The donor community sought to address these phenomena through enhanced coordination both at the global level and at country levels and an increased focus on country systems. These efforts found expression in the Paris Declaration on Aid Effectiveness of 2005 and the Accra Agenda for Action in 2008.

The Paris Declaration is the result of a 2005 meeting among world leaders committed to taking “far-reaching and monitorable actions” to reform aid delivery mechanisms and aid management, based on “ownership” of developing countries exercising leadership in developing and implementing their national development policies and strategies through a broad consultation process, translating donor alignment with such policies and strategies, and a focus on development results and mutual accountability. They acknowledged “that enhancing the effectiveness of aid is feasible and necessary across all aid modalities” and envisaged the increased use of program-based aid modalities. In conformity with these principles, discussions about changes to current aid delivery systems and proposals for new modalities are based altogether on direct budget support, pooling of funds, and direct aid delivery systems.

The Paris Declaration contains 56 partnership commitments organized around five principles that make aid more effective:

1. Ownership – Developing countries set their own development strategies, improve their institutions and tackle corruption.
2. Alignment – Donor countries and organisations bring their support in line with these strategies and use local systems.
3. Harmonisation – Donor countries and organisations co-ordinate their actions, simplify procedures and share information to avoid duplication.
4. Managing for Results – Developing countries and donors focus on producing—and measuring—results.
5. Mutual Accountability – Donors and developing countries are accountable for development results.

In 2008, developing and donor countries sought to evaluate the progress on achieving the commitments that had been made in the Paris Declaration on Aid Effectiveness. The Third High Level Forum (HLF) on Aid Effectiveness was held in Accra, Ghana on 2–4 September 2008, “at the half-way mark between 2005, when the Paris Declaration on Aid Effectiveness was endorsed by over 100 governments and development agencies, and the 2010 target date for delivering on the commitments they made.”

There was general agreement that reforming aid systems is urgent for two reasons: the global challenges are large, and aid can be much more effective in addressing them. Participants

25 Ibid., pp. 15–16.
27 Ibid., para. 5.
28 Ibid., para. 32.
stressed the scale of the challenges..., the need to take internationally co-ordinated actions to address them, and the shared responsibility of those present at the Forum.\textsuperscript{31}

The discussions during the HLF led to the adoption of the Accra Agenda for Action,\textsuperscript{32} a landmark document that “takes stock of progress on the commitments of the Paris Declaration and sets the agenda for accelerating progress to reach the agreed targets by 2010.”\textsuperscript{33}

The Accra Agenda builds on three major ideas:

- **Strengthening country ownership** through: broadening country-level policy dialogue on development; developing countries strengthening their capacity to lead and manage development; and strengthening and using developing country systems to the maximum extent possible.

- **Building more effective and inclusive partnerships** through: reducing costly fragmentation of aid; increasing aid’s value for money; welcoming and working with all development partners; deepening engagement with civil society organisations; and adapting aid policies for countries in fragile situations.

- **Achieving development results and openly accounting for them** through: focussing on delivering results; being more accountable and transparent to our publics for results; continuing to change the nature of conditionality to support ownership; and increasing the medium-term predictability of aid.\textsuperscript{34}

Participants also undertook to “promote the use of local and regional procurement by ensuring that their procurement procedures are transparent and allow local and regional firms to compete.”\textsuperscript{35}

In addition, the Accra Agenda identified new areas of emphasis, among them:

- Channeling “50% of government-to-government aid through partner country systems; and using country systems to deliver aid as the first option, in preference to donor systems”;\textsuperscript{36}

- A shift in donors’ “reliance on prescriptive conditions to a limited set of harmonised and transparent conditions” based on the partner country’s development objectives;\textsuperscript{37}

- “The use of independent evidence to complement country-level efforts on mutual accountability”;\textsuperscript{38} and

- “Strengthening international accountability mechanisms, including peer reviews”.\textsuperscript{39}

\textsuperscript{31} Ibid.

\textsuperscript{32} The text of the Accra Agenda for Action is available at http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf

\textsuperscript{33} OECD. The Accra Agenda for Action. www.oecd.org/dataoecd/22/2/45827311.pdf


\textsuperscript{37} Ibid.

\textsuperscript{38} Ibid.

\textsuperscript{39} Ibid.
MFDIs and other concessional windows may be seen as “generational in character.”40 J. W. Head refers to three generations of multilateral development banks (MDBs) and identifies IBRD as the first generation, IDA and the regional development banks as the second generation and EBRD as the third generation. In this article, a somewhat wider concept of “generation” is used to refer to a wide range of entities, institutions, alliances, facilities and financial intermediary funds serving as channels of multilateral concessional financing, in addition to MDBs and other multilateral financial development institutions (MFDIs).

The first generation is comprised of organizations created in the wake of the Second World War until the 1950s that provide financing on market-based terms. The second generation MFDIs and affiliated organizations with proper legal personality under international law, created in the 1960s and 1970s, began to provide financing on concessional terms. During the 1980s and 1990s, states generally stopped establishing affiliated organizations with international legal personality and instead put in place ad hoc frameworks through autonomous institutions, facilities and intermediary funds supporting international activities. As these third generation institutions and funds were often deprived of legal personality, their lack of capacity to enter into contractual arrangements and be the subject of rights and obligations was seen as a constraint to their effectiveness. Thus, beginning in 2000, a new class of organizations emerged with legal personality under municipal law. These, together with other facilities, institutions and funds created since then may be seen as the fourth generation.

The MFDIs covered by this study all have substantially expanded – and in certain cases – fundamentally changed their functions as they evolved to full-fledged development institutions and sought to remain relevant to the demands of their members. However, the qualified majorities required for any amendment of their constituent agreements are formidable obstacles for any attempt for institutional reform. Rather than navigating the difficult amendment process, states therefore often prefer to create new concessional windows that are in line with their policy objectives and strategic concerns. This is one of the reasons for the proliferation of alliances, facilities and trust funds, including financial intermediary funds, whose governance structures and operational modalities reflect the evolution of the international development agenda.

First Generation

The first generation of international financial institutions, which emerged after the end of the Second World War and in the 1950s, is led by the two pillars of the new economic system created at Bretton Woods—the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD). The IMF was established to “promote international monetary cooperation and exchange rate stability, assist in the establishment of multilateral system of payments for current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade and provide temporary, i.e., short-term assistance to correct balance of payments imbalances”41 while IBRD was to “focus on longer-term concerns of reconstruction, development and stabilization.”42 However, as both the IMF and the World Bank evolved, the “eloquent distinction

42 Ibid., p. 112.
[between their functions has to a great extent proved to be academic, as each organization developed] a propensity to deal increasingly with issues the other was particularly created to address.43

Also part of the first generation of international organizations were the Council of Europe Development Bank (CEB), then known as “Council of Europe Resettlement Fund for National Refugees” when it was first established in 1956,44 and the European Investment Bank, established two years later in 1958. The original purpose of the CEB, which was to help in solving the social problems which European countries are or may be faced with as a result of the presence of refugees, displaced persons or migrants, is still reflected in Article II(a) of its Statute.45 The origins of the European Investment Bank (EIB)46 were laid in the negotiations which led to signing of the Treaty of Rome in 1957,47 and established by Article 9 of said Treaty. EIB is the financing institution of the European Union, and its membership is composed of 27 subscriber-member states of the European Union.48

None of the four intergovernmental organizations had regular concessional windows upon establishment. However, as these organizations evolved, each of them found a way to engage in concessional financing, whether directly or indirectly, to remain relevant and responsive to the demands of their members.

It was never intended by the drafters of the IMF Articles of Agreement that IMF would provide assistance to low-income countries on concessional terms. Similarly, the drafters of the Articles of Agreement of the IBRD did not want that institution to engage in any type of soft lending, as it was thought that this would weaken the financial standing of the newly established institution. However, both institutions adjusted to changing times—IBRD by sponsoring the establishment of an affiliated organization, the International Development Association (IDA) which, jointly with the IBRD is referred to as “the World Bank”; IMF by drastically changing its assigned functions and assuming additional new functions when it engaged in the 1970s in lending on concessional terms through trust funds.49

CEB does not have a concessional financing window as such and the pricing of its loans reflects the costs of CEB’s borrowings. However, the administrative council of CEB may decide to grant through the Selective Trust Account (a special account fed from CEB’s profits set up in 1995) interest rate subsidies for projects concerned with CEB’s priority objectives and having a high social content (e.g., loans for priority target groups, namely refugees, displaced populations, migrants and populations affected by natural or ecological disasters in selected member countries).50 The EIB, while constrained to provide concessional

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43 Ibid.
45 Article II (a) of the CEB Articles of Agreement states that the primary purpose of the Bank is to help in solving the social problems which European countries are or may be faced with as a result of the presence of refugees, displaced persons or migrants consequent upon movements of refugees or other forced movements of populations and as a result of the presence of victims of natural or ecological disasters.” CEB. 1993. Articles of Agreement of the Council of Europe Development Bank. http://conventions.coe.int/treaty/en/partialag/html/bankstatute.htm
48 For details see the EIB website at www.eib.org/
financing from its own resources,\textsuperscript{51} does so under mandates from the European Community and from trust funds.\textsuperscript{52}

**Second Generation**

During the early 1960s, discussion on development issues started to focus on aid flows, links between aid and trade and on human capital instead of physical capital, and, in the context of this changed policy environment, on the establishment of soft loan facilities.\textsuperscript{53} As the “idea of development became inextricably linked with poverty reduction”,\textsuperscript{54} it was during this and the next decade that a large number of intergovernmental organizations and affiliated organizations were established by multilateral intergovernmental agreement. Some of these MFDIs, such as the Nordic Investment Bank (NIB) which was modeled after the EIB in 1976,\textsuperscript{55} provide financing only on market-based terms. However, many of these MFDIs that form part of the second generation provide financing partially or exclusively on concessional terms.

The “activism that led to the establishment of many donor agencies or ministries on the bilateral front was matched by the creation of an international development ‘framework’.”\textsuperscript{56} The new multilateral arrangements reflected a general sense that “consortia” of donors would overcome the coordination, and other problems of a multitude of individual aid programs.\textsuperscript{57}

The establishment of IDA in 1960 as the concessional arm of the World Bank Group transformed the World Bank from a financial into a development institution. IDA became the institutional paradigm of an affiliated organization established to provide concessional financing, while the Fund for Special Operations (FSO) of the Inter-American Development Bank (IADB) became the paradigm of a special fund administered by an organization under the same institutional roof and under one legal personality. The Articles of Agreement of IDA were drafted by IBRD staff and executive directors rather than by the drafting committee of an international conference, but said articles were still adopted by intergovernmental

\textsuperscript{51} Paragraph 1 of Article 17 (ex Article 19) of the Statute of the European Investment Bank expressly provides that “Interest rates on loans to be granted by the Bank and commission and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 22.” Paragraph 2 of the same Article prohibits the EIB from granting any reduction in interest rates. Where such a reduction appears desirable in view of the nature of the investment to be financed, “the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article 107 of the Treaty on the Functioning of the European Union.” Statute of the European Investment Bank (EIB), as amended. www.eib.org/attachments/general/statute/eib_statute_2009_en.pdf

\textsuperscript{52} An example of concessional financing carried out by EIB under a mandate from the European Community is the ACP-EU Water Facility which was established by the ACP-EU Council of Ministers in May 2004 and aims at achieving the Millennium Development Goal and World Summit for Sustainable Development targets in water and sanitation. See http://ec.europa.eu/europeaid/projects/water/details_en.htm. Another example is the new EU-Africa Infrastructure Trust Fund which will provide EU financial support for trans-border infrastructure projects in the energy, water, transport and communications sectors to link African countries and regions and close gaps in regional infrastructure networks. Such fund, which was launched in 2007, aims at a wider selection of sectors and is expected to operate primarily through interest subsidies on long-term loans for trans-national infrastructure projects supported by the African authorities and the EU. www.eu-africa-infrastructure-tf.net/

\textsuperscript{53} See Chapter 2 (P. McCawley, Concessional Resources and Development Thought).


\textsuperscript{55} The NIB was created for the purpose of carrying into effect “investment projects” of interest for the member countries of the NIB and countries which receive NIB financing. The original Agreement Establishing the Nordic Investment Bank was signed in Copenhagen on 4 December 1975 and entered into force on 1 June 1976. It was superseded by an Agreement signed on 23 October 1998 and replaced by an Agreement signed on 11 February 2004, which entered into force on 1 January 2005. Neither the NIB Agreement nor the Statutes of the NIB contain provisions regarding concessional financing. Rather, Section 10 (b) of the NIB Statute expressly provides that in “its operations, the Bank [NIB] shall aim for a profit allowing the formation of reserves and reasonable return on the paid-in capital.”

\textsuperscript{56} IDA. 2007. Aid Architecture: An Overview of the Main Trends in Official Development Assistance Flows, p. 29, with additional references.

\textsuperscript{57} Ibid., citing Rosenstein-Rodan (1968), with additional references.
agreement that was ratified by member countries. The agreement provided IDA with international legal personality separate from that of the IBRD. The Fund for Special Operations of the IADB, on the other hand, is provided for by the IADB Charter and does not have legal personality under either international or municipal law.58

Even though its constituent agreement allowed it to establish special funds, the African Development Bank (AfDB) instead followed the example of the World Bank by establishing its own affiliated organization, the African Development Fund (AfDF), in 1972.59 However, AfDB eventually also established a number of Special Funds, such as the Nigeria Trust Fund (NTF) in 1976.

On the other hand, the drafters of the ADB Charter opted to administer special funds under one legal personality together, but separate, from ADB’s ordinary capital resources (OCR) based on the assumption that in its initial years of operations, ADB would conduct special operations only to a very limited extent. Unlike the Agreement Establishing the Inter-American Development Bank (hereinafter, IADB Charter), which specifically provided for the establishment of the FSO,60 the ADB Charter did not incorporate a provision for a specific special fund. The implication is that ADB’s Charter (i) did not allocate resources to a special fund but only provided the basis for future resource mobilization and (ii) did not regulate special funds in any detail, leaving it to ADB’s Board of Governors and Board of Directors to decide on the operational modalities and other relevant matters. ADB’s main concessional window is the Asian Development Fund (ADF). ADB’s situation is unique as its Charter authorized it to allocate amounts from its unimpaired paid-in capital to special funds (which ADB only did in the initial years of its operations) and to fund during the first five years of its operations technical assistance from its unimpaired paid-in capital (which it never did).61

The creation of regional and subregional institutions was substantially predicated on the concept of the additionality of the financing provided by these institutions, which give regional and subregional countries a greater say in regional organizations than in global ones.62

As the concessional arms of organizational groups are intergovernmental organizations in their own right, the affiliate’s membership may vary from that of other organizations in the group, their governing bodies may be structured differently, and decision-making procedures and voting rights may differ as well, depending on how their respective constituent instruments define relationships between group organizations. Moreover, such relationships may range from total dependence to virtual independence. Generally, coordinated governance structures that ensure close coordination of activities between the various organizations of the group are considered desirable. Such coordination is achieved in the case of the World Bank by the fact that the same governors and executive directors act for the IBRD and IDA even though their boards of governors and boards of directors are distinct as a matter of law, and in the case of the AfDF through the AfDB membership in the AfDF.63 IBRD and IDA, and AfDB and AfDF have the same president.

In addition to the regional development banks and other development institutions mentioned above, a number of subregional development banks were also created during this period in Latin America and

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58 See Chapter 2 (G. Droesse, Organizational Structures).
59 See Chapter 2 (G. Droesse, Organizational Structures) and Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
60 Agreement Establishing the Inter-American Development Bank, Article IV.
61 See ADB Charter, Articles 19.1 (i) and 21 (vi) and Chapter 4 (G. Droesse, Concessional Financing of the Asian Development Bank: The Asian Development Fund and other Channels of ADB Concessional Financing, hereinafter ADB Concessional Financing).
the Caribbean, as well as in African and Arab countries, and in Europe. Three of these are in Central America, the Andean region, and the Caribbean, all of which provide concessional financing to different extents.

The Central American Bank for Economic Integration (CABEI) is the oldest of these institutions. It was constituted with a “futuristic outlook” in 1960 by four Central American nations: Guatemala, El Salvador, Honduras, and Nicaragua and commenced operations in 1961. The CABEI was created as a financing mechanism within the framework of the Central American Common Market which was Central America’s first attempt at market integration and its purpose is to promote economic integration and a balanced economic and social development of the founding countries. CABEI has made an important contribution in transforming Central America into a dynamic region.

CABEI does not have a concessional loan window and initially only provided concessional financing on preferential market-based terms. However, in the context of CABEI’s participation in the Heavily Indebted Poor Countries (HIPC) Initiative and to enable CABEI to provide financing to Honduras and Guatemala which were eligible and willing to participate in that initiative, on 29 October 1999, CABEI established a concessional financing window—the Special Fund for the Social Transformation of Central America (FETS)—to make loans on concessionary terms.

The other two subregional development banks emerged some years later. On 7 February 1968, the governments of six countries (Bolivia, Colombia, Ecuador, Chile, Peru, and Venezuela) signed the Agreement Establishing Corporación Andina de Fomento (CAF). Following the Cartagena Agreement which, in 1969, provided the political framework for the Andean subregional group, CAF began operations in June 1970 to “promote sustainable development and regional integration, by providing multiple financial services to its clients in the public and private sectors” of its shareholder countries. CAF prioritizes social and environmental challenges common to all Latin American countries to reduce poverty and social exclusion, promote a more equitable income distribution, and protect natural resources for future generations by transferring the benefit to the final user, the client. CAF regularly distributes a portion of retained earnings to special funds, created to promote technical cooperation, sustainable human development and management of poverty relief funds in the shareholder countries. In addition, CAF provides concessional financing through grants and intermediation of subsidized funding provided by third parties (OECD governments, agencies, or institutions). Cooperation Funds are an integral part of CAF’s financial assistance. Financing from such funds is generally provided on non-reimbursable terms to fund programs agreed with donors which are consistent with CAF’s policies and strategies.

The Caribbean Development Bank (CDB) is a subregional financial institution established in 1969 to promote economic cooperation and integration. Its constituent agreement was substantially

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68 The CABEI Board of Directors approved the Statute of the FETS on 21 March 2000. (Resolution No. DI–2812000).
71 CAF Agreement, Art. 3.
73 Article 1 of the Agreement Establishing the Caribbean Development Bank (CDB Charter) provides that the purpose of the CDB is to “contribute to the harmonious economic growth and development of the member countries in the Caribbean... and to promote economic co-operation and integration among them, having special and urgent regard to the needs of the less
influenced by those of regional development banks, in particular ADB and IADB, and its purpose and functions in many ways resemble those of regional development banks. Like the IADB, the CDB Charter contains a built-in soft-loan window through its Special Development Fund (SDF). However, while IADB endowed its FSO with resources, the CDB Charter only provided the SDF with a basis for future resource mobilization. It expressly mentions guarantees as a modality of SDF concessional financing and does not preclude modalities other than loans, such as financing projects or programs on a grant basis. Unlike IADB, the CDB Charter also provides for other special funds in addition to the SDF.  

The subregional development banks which have been created in Africa for the purpose of promoting subregional integration vary greatly regarding membership, functions and international outlook. All three institutions emerged in the context of regional cooperation initiatives. Established in 1973, the West African Development Bank (WADB), known as the Banque Ouest Africaine de Développement (BOAD), is an autonomous institution of the West African Economic and Monetary Union and works closely with the Central Bank of the West African States in implementing the regional economic program of the Union. The East African Development Bank (EADB) was initially established in 1967 as the financial arm of the East African Community by the Treaty of the East African Cooperation and was reestablished in 1980, after the break-up of the East African Cooperation by treaty under its own Charter (Amended EADB Treaty) which enlarged the operational scope of the bank. The Central African States Development Bank or Banque de Développement des Etats de l'Afrique Centrales (CASDB) was founded in 1975 as the development institution of the Central African Economic and Monetary Community (CEMAC). All three subregional banks seek to mobilize external resources to leverage their activities.

The WADB counts among its shareholder six members of the West African Economic and Monetary Union and seven nonregional shareholders (among which are MFDIs, states, and an export finance institution). While the main shareholders of the EADB are three East African states (Kenya, Uganda and Tanzania), under the Amended EADB Treaty, bodies corporate, enterprises or institutions, in addition to states and the African Development Bank, may be admitted to membership in the EADB. Thus, development corporations of nonregional countries and commercial banks also hold EADB shares. Shareholders of the Central African States Development Bank are divided into two categories: Category A...
12 Funds for Development: Multilateral Channels of Concessional Financing

The CASDB is particularly interesting in the context of this study as one of its basic instruments, the 1989 Resolution adopted by the Council of Heads of State of the Central African Economic Union, established the Special Fund for Basic Rural Development (FSDRB) “for the anticipatory management of the CASDB operations in the sector under consideration in which it exclusively intervenes.” The interventions, according to Article 4 of the Fund are in the form of loans, setting up credit lines, equity participation or any other form appropriate to basic rural development. The FSDRB may be funded by the initial endowment and annual endowments set by the CASDB, and various other resources at its disposal.

The establishment of a number of Arab-related development institutions followed the sharp increase of oil prices in the 1970 which enabled Arab countries to increase substantially their development assistance. In order to enhance their relevance and impact, Arab states decided to pool their resources. Most of Arab development aid was provided through bilateral channels on the basis of bilateral agreements or through national development funds (e.g., the Kuwait Fund, a Kuwaiti public corporation established right after Kuwait’s independence, which “assumed the role of a kind of role model and pioneer for other Arab aid agencies to follow”). Unlike national funds, multilateral development institutions were established by international agreement and enjoy juridical autonomy under public international law. The two most important institutions that serve as channels of concessional financing among the Arab-related financial institutions are the Arab Fund for Economic and Social Development (AFESD) and the Arab Bank for Development in Africa (BADEA).

The principal purpose of AFESD is to “contribute to the financing of economic and social development projects in the Arab countries,” while the objective of BADEA is “to foster economic, financial and technical cooperation between African countries and Arab World countries.” Both funds provide concessional financing in the form of loans and technical assistance. In this regard, the function of these two differ from that of the Arab Gulf Programme for UN Development Organizations (AGFUND)

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86 Cameroon, Central African Republic, Republic of Congo, Gabon, Equatorial Guinea and Chad.
89 CASDB. Special Fund for Basic Rural Development (FSDRB). Article 2. www.bdeac.org/docs/FUNDAMENTAL%20TEXTS%20STATUTES%20CASDB.pdf
90 CASDB. Special Fund for Basic Rural Development (FSDRB). Article 5. Fund Resources. The Fund has assigned resources at its disposal that may be composed of: an initial endowment, whose amount is set by the Council of Heads of State; annual endowments whose amount is set by the Council of Heads of State; annual endowment owned by the CASDB; grants; long-term, low interest-rate borrowing contracted by the CASDB in behalf of the Fund from foreign countries or national, multinational or international institutions; exceptionally and under the conditions defined in Article 7 of this Act, loans subscribed to at market rates; interest and loan recovery; financial yields from investing its liquid assets; advantages (particularly in the form of advances and discounts) granted by the BEAC through the CASDB. www.bdeac.org/docs/FUNDAMENTAL%20TEXTS%20STATUTES%20CASDB.pdf
92 Arab Fund for Economic and Social Development. About AFESD. www.arabfund.org/Default.aspx?pagId=198&mid=122
established in 1981, which is a regional developmental institution which channels assistance from Arab Gulf states to a number of UN organizations and to Arab nongovernmental organizations in the form of grants, mostly for education, nutrition, water, sanitation, disability and environment projects.\footnote{For more information about AGFUND and further references, see www.agfund.org/en/Pages/default.aspx}

There are also a number of international financial institutions that emerged during the 1960s and 1970s which are not directly related to a specific region, such as the Islamic Development Bank (IsDB), the OPEC Fund for International Development (OFID), and the International Fund for Agricultural Development (IFAD).

The creation of IsDB has to be seen within the context of a worldwide resurgence of Islam and the rapid increase in oil prices in 1970 which brought prosperity to many Islamic countries. The governance structure of IsDB follows broadly that of the IMF and World Bank and its Articles of Agreement are notably influenced by the constituent agreements of other organizations such as ADB. Nevertheless, IsDB has a number of unique features and operational modalities that differ from those of other MFDIs due to the principles of Islamic law which govern its operations. This is due in particular to the fact that loan financing which traditionally has been the most important financing instrument for MFDIs “was not given pride of place”\footnote{S. A. Meenai. 1989. \textit{The Islamic Development Bank: A Study of Islamic Co-operation.} London: Kegan Paul International. p. 6.} in IsDB and the ISDB Group.\footnote{The Islamic Development Bank Group (IsDB Group) is a multilateral development financing institution comprising five entities: IsDB, the Islamic Research and Training Institute, the Islamic Corporation for the Development of the Private Sector, the Islamic Corporation for the Insurance of Investment and Export Credit, and the International Islamic Trade Finance Corporation. However, the affiliates of IsDB were not established for the provision of concessional financing. Special grants are extended to populations suffering from natural calamities through the World Waqf Foundation established by IsDB in 2001 in collaboration with Waqf organizations, government organizations, nongovernment organizations (NGOs) and philanthropists from the private sector.} In accordance with the principles of Islamic law that guide all IsDB operations, a loan does not generate revenue, because charging interest is prohibited.\footnote{M. Hamid, and F. El. 2001. \textit{Development Financing in Conformity with the Shari'ah Instruments and Limitations}. In S. Schlemmer-Schulte and K.-Y. Tung, eds. \textit{Liber Amicorum Ibrahim F.I. Shihata}. The Hague: Kluwer Law International. pp. 387–400.} Thus, any loan financing by IsDB is, by definition, concessional. Until 2008, IsDB did not have a dedicated concessional financing window, but funded concessional loans through annual allocations from its ordinary capital resources and the Special Account for the least developed member countries. The Islamic Solidarity Fund for Development (IsFD), which began its operations on 10 January 2008, is currently a major source of funding for loan financing, but it can also provide financing in the form of grants.\footnote{See Chapter 2 (G. Droesse, Organizational Structure).}

The immediate predecessor of OFID was the OPEC Special Fund, which was established on 28 January 1976 as “an international special account, directly and collectively owned by the parties to the Agreement [Establishing the OPEC Special Fund].”\footnote{I. F. I. Shihata and A. Parra. 1983. The Establishment and Evolution of the OPEC Fund. In I. F. I. Shihata et al. \textit{The OPEC Fund for International Development: The Formative Years}. London: Croon Helm. p. 26.} The legal characterization of the Special Fund as a special account made it possible for “loan agreements to be concluded in the names of the contributing parties by the Chairman of the Governing Committee [of the Special Fund], acting in this respect as their agent.”\footnote{Ibid., p. 26.} The OPEC Special Fund had an innovative character, \textit{inter alia}, because assistance could be extended through the Fund in a variety of ways, none given any particular precedence over the others by the Agreement. They included loans for balance of payment support, loans for development projects and programs, and contributions to other international agencies benefiting the Third World.\footnote{Ibid., p. 29.} While envisioned to be a “one-shot exercise” by OPEC member countries at providing consolidated concessional
funding to developing nations, the continuing replenishment of the Special Fund’s resources meant that the exercise had become a going concern. Amendments were made to its Agreement on 27 May 1980 transforming the Fund into “[a]n international agency for financial cooperation and assistance … endowed with an international legal personality,” which made it possible for the Fund to provide loans in its own name.

The same amendment also renamed the Special Fund as the OPEC Fund for International Development. OFID started its work with a “fresh outlook,” as it was “the first international institution of its kind to combine balance of payments (BOP) support with project lending.”

OFID resources consist of voluntary contributions of its member countries and accumulated reserves. One of the characteristic of OFID is that it extends financing only to nonmember DMCs and international development agencies serving such DMCs. Financing modalities include public sector loans for development projects and programs, grants for technical assistance, food aid, research and humanitarian relief work; balance of payments support and debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative; trade financing; support to private enterprises; and contributions to other development organizations whose activities benefit developing countries.

IFAD was established in 1977 as one of the major outcomes of the 1974 World Food Conference held after the food crises of the early 1970s that primarily affected the Saharan countries of Africa. As one of the most important insights emerging from the conference was that the causes of food insecurity and famine were not so much failures in food production, but structural problems relating to poverty and to the fact that the majority of the developing world’s poor populations were concentrated in rural areas, IFAD was given the task of addressing these problems. Under the Agreement Establishing IFAD (AEI), IFAD’s objectives are to mobilize additional resources to be made available on concessional terms for agricultural development in developing Member States and to provide financing primarily for projects and programmes specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies, taking into consideration: the need to increase food production in the poorest food deficit countries; the potential for increasing food production in other developing countries; and the importance of improving the nutritional level of the poorest populations in developing countries and the conditions of their lives.

When IFAD was established, its clear focus on rural poverty distinguished it from other MFDIs. While poverty reduction is the overarching purpose of all MFDIs studied here, IFAD still has a special focus on the rural poor populations. Unlike the regional and subregional development banks, IFAD is a specialized UN agency and thus covered by the Convention on the Privileges and Immunities of the Specialized Agencies (CPISA). Its members fall into three categories—state members of the OECD, state members of OPEC, and DMCs—and its voting structure “allowed equal representation for the

103 Ibid., pp. 13, 33.
104 Ibid., p. 34, citing Article 1.01 of the Agreement Establishing the OPEC Fund for International Development, as revised on 27 May 1980.
105 Ibid., pp. 34–35, citing Article 1.01 of the Agreement Establishing the OPEC Fund for International Development, as revised on 27 May 1980.
108 For details, see OFID. Operations Overview. www.ofid.org/projects_operations/overview.aspx
109 IFAD. About IFAD. www.ifad.org/governance/index.htm
110 Agreement Establishing IFAD (AEI), Article 2. www.ifad.org/pub/basic/agree/e/01agree.pdf
interests of contributing countries and developing countries, creating a unique partnership.”111 As all IFAD financing are covered by the same mandate, IFAD does not have special funds, even though it may administer special programs.

The widespread concerns about food security in the 1950s, 1960s, and early 1970s led some experts to predict a “widespread and devastating famine between 1970 and 1985, with hundreds of millions starving to death.”112 The Consultative Group on International Agricultural Research (CGIAR) grew out of this concern. Its origins go back to the Bellagio Conferences held between 1969–1971, which were a series of policy consultations on the goals and harmonization of agricultural research and funding mechanisms for such research. The World Bank accepted an invitation from the Bellagio participants to set up a consultative group for international agricultural research. It set up CGIAR together with the Food and Agriculture Organization (FAO) and the United Nations Development Programme, and eventually, IFAD. Annual grants of CGIAR members who may contribute to the CGIAR system in general or specific centers of their choice were the main source of funding of the research centers which were also able to avail of miscellaneous income including ad hoc contributions from non-CGIAR member organizations. While the CGIAR research centers do possess legal personality, the CGIAR was not instilled with legal personality when it was founded in 1971. Rather it was designed to be a “relatively informal structure with a permanent secretariat [but without a constitution, by-laws and rules of procedure and as] a precursor of other systems established by treaty, particularly in the environment area.”113

The Onchocerciasis Control Program was created in 1974 “as one of the early structures of collaboration among United Nations agencies, the private profit and non-profit sector and governmental agencies”114 to protect 30 million people in 11 in West African countries from the debilitating effects of river blindness.115 The above program was formally set up with its own independent structure involving the World Health Organization (WHO) as executing agency, the World Bank as fiscal agent responsible for all fundraising, the Joint Program Committee comprising of representatives from the Participating Countries, the Sponsoring Agencies (WHO, UNDP, FAO, and World Bank) and the Committee of Sponsoring Agencies, and two statutory review bodies (the Expert Advisory Committee and Ecological Group).116 The functional independence of the Joint Program Committee from the WHO’s governing bodies was “a critical feature” as it prevented the Committee from being “distracted or influenced by the political priorities of WHO.”117 The Joint Program Committee delegated the day-to-day steering and coordination to the Committee of Sponsoring Agencies, in which the principal actors were the World Bank and WHO “because of the critical roles they [played] in the program’s implementation as fiscal and executing agencies, respectively.”118 The Onchocerciasis Control Program was officially closed in December 2002 after the disease had been successfully stopped in all participating countries “except Sierra Leone where operations were interrupted by a decade-long civil war.”119

112 Consultative Group on International Agricultural Research. Who We Are: History of the CGIAR. www.cgiar.org/who/history/index.html#1
114 Ibid., p. 171.
117 Ibid., p. 5.
118 Ibid.
Third Generation

The third generation includes a few MFDIs established in the 1980s and 1990s for the provision of concessional financing. In such cases, states still concluded intergovernmental agreements to establish MFDIs. However, it was also during this period that the trend of establishing new international organizations and affiliates began to subside. While in the past, “an organization was established almost automatically as soon as a new international problem and the need to cooperate were identified[,] [States instead] almost instinctively express[ed] their wish not to create a new organization if a new international problem and the need to cooperate present[ed] themselves.”\(^\text{120}\) Rather, states established “autonomous institutional arrangements” (e.g., in the context of multilateral environmental conventions) and/or set up ad hoc financing frameworks, notably through trust funds.

Development debates in donor countries during the 1980s were dominated by three themes: the international debt crisis; the need for structural adjustment;\(^\text{121}\) and a further broadening of the international development agenda.\(^\text{122}\) There was also a “continuing tendency for the international development debate to widen its embrace of an ever-growing ‘Christmas tree’ of priorities.”\(^\text{123}\) After the 1980s which were characterized by financial crisis and depression, the 1990s brought new developments with an increased emphasis on aid effectiveness and a renewed concern on poverty.\(^\text{124}\)

This section discusses four organizations with diverse organizational structures, backgrounds and operational modalities established during the 1980s and 1990s by member-ratified intergovernmental agreement (the Nordic Development Bank [NDF], the European Bank for Reconstruction and Development [EBRD], the Black Sea Trade and Development Bank [BSTDB], and the North American Development Bank [NADB]), as well as autonomous institutional arrangements and financial intermediary funds that evolved during this period with distinct governance structures but generally without international legal personality.

From the time of its creation, the NDF belongs to the third generation even though it shares many similarities with the second generation organizations, given the modalities of its financing, which were initially dedicated exclusively to concessional loans. Established by intergovernmental agreement as an international organization with proper legal personality under international law, the NDF commenced its operations in February 1989. While it is part of the Nordic Investment Bank (NIB) Group, it is virtually an independent organization with its own President and a Board of Directors which is composed in a different manner than that of the NIB. Established as a “link in Nordic aid cooperation with the purpose of promoting social and economic development in developing countries through concessionary project financing,”\(^\text{125}\) the NDF was set up to provide concessional loans and was later authorized to conduct equity investments. It was initially not quite clear whether NDF was a “Nordic IDA, pursuing development objectives in poor countries [or] a support agency for Nordic project export, linked to project lending”\(^\text{126}\) by the NIB. The NDF eventually came to resemble IDA more, but an intrinsic ambiguity continued to be reflected in particular in its procurement arrangements. While most of the bilateral aid of Nordic countries was provided on untied terms, under the Nordic competitive procurement arrangements applicable to the NDF, the bulk of NDF procurement was used for procurement in the five Nordic countries (Denmark,
Finland, Iceland, Norway, and Sweden). While such arrangements were initially seen as a strength, they were increasingly perceived as a weakness, which fact contributed substantially to the decision taken in 2005 by the Nordic Ministers for Development Cooperation to terminate NDF operations after they failed to reach agreement on the NDF’s fifth capital replenishment.\textsuperscript{127} However, that decision was never actually implemented. In 2009, the Nordic Cooperation Ministers decided that rather than provide soft loans, henceforth the NDF would finance grants for projects related to climate change.\textsuperscript{128} Thus, the NDF substantially changed its functions, modalities of financing and implementation arrangements. In that sense, it may be seen as the epitome of the ability of organizations to transform themselves to be more responsive to the demands of their shareholders.

EBRD was established following the fall of the wall of Berlin some 14 years after ADB, on the proposal of then French President François Mitterrand and began its operations in April 1991.\textsuperscript{129} It was originally proposed that EBRD serve as a regional investment bank for countries in Europe, in the same way that AfDB, ADB, and IADB were established to assist the developing countries in Africa, Asia, and Latin America, respectively. Instead, the EBRD emerged as a new type of organization with a strong focus on private sector operations and limited lending to the public sector. Established in the aftermath of the collapse of the Soviet empire, its primary objective was to facilitate “the transition of Central and Eastern Europe from centrally planned economic systems to a capitalist variant.”\textsuperscript{130} As reflected in Article I of its Charter, its role was more “ambitious” than those of other development banks.\textsuperscript{131} Although a financial institution, it was established “to foster the strategic objective of transforming the overall systems in certain countries from a command economy to a market-oriented one which also enjoys multiparty democracy.”\textsuperscript{132} Thus, unlike other development banks, the EBRD Charter is based on political conditionality. EBRD’s “overt political nature” is a “radical departure”\textsuperscript{133} from the traditional approach which prohibits development banks from being influenced in their decisions by the political character of the member concerned.

The example of EBRD shows that a provision for special funds in constituent instruments does not automatically translate into the existence of a financing window for concessional loans. In accordance with the first paragraph of Article 18 of the EBRD Agreement, EBRD “may accept the administration of Special Funds which are designed to serve the purpose and come within the functions of the Bank.” Thus, like ADB, EBRD was given a wide discretion for creating a Special Funds facility, including a facility for soft loans. However, as matter of policy, no such facility was initially created as the organization could not reach agreement on a proposal by Jacques Attali, its first president, to create a special restructuring facility for providing “soft loans” and high-risk equity for the restructuring of heavy industry, such as the defense sector.\textsuperscript{134}

The establishment of the EBRD Shareholders Special Fund is an important recent development. The purpose of the fund, which was launched in May 2008 with an initial allocation of €112.5 million\textsuperscript{135}


\textsuperscript{130} A. Brostone. 1999. \textit{The European Bank for Reconstruction and Development}. Manchester: Manchester Univ. Press. p. 3.


\textsuperscript{132} A. Brostone. 1999. \textit{The European Bank for Reconstruction and Development}.


\textsuperscript{134} Brostone, \textit{The European Bank for Reconstruction and Development}, p. 49.

\textsuperscript{135} An additional allocation of €30 million was approved in May 2009 from the EBRD Strategic Reserve. See EBRD. EBRD Shareholder Special Fund. www.ebrd.com/pages/about/workwith/donors/countries.shtml#Shareholders
approved by EBRD’s Board of Governors, “is to assist the Bank to achieve its mandate of promoting transition towards open market-oriented economies by preparing the way for future Bank financed projects and improving the investment climate in the Bank’s countries of operations.” The resources of the Fund may be used to finance:

- technical assistance (or cooperation) which involves the provision of services, usually those of consultants, to provide expertise to the Bank’s countries of operations;
- non-technical assistance initiatives which are principally used to provide working capital, incentive fees or to pay for goods and works contracts in support of Bank investment operations; and
- investment activities which may include guarantees, equity or debt financing.¹³⁷

As indicated by the President of EBRD, this fund became a “core funding instrument” of EBRD in 2009. It is expected to “play a vital role in enabling the EBRD to address the transition challenges in its countries of operations.” EBRD also increasingly relies on grant funding from the European Community ($104 million in 2009) and other donors to provide support in the form of technical assistance and other types of concessional finance (investment grants, incentive payments made to financial institutions under finance facilities supported by the EU and other donors, and risk sharing facilities).¹⁴⁰

BSTDB was established in 1999 “to effectively contribute to the transition process of the Member States towards the economic prosperity of the people of the region and to finance and promote regional projects and provide other banking services to projects of the public and private sectors in the Member States and trade activities among the Member States.” BSTDB Special Funds have also been established to finance or cofinance projects relative to the improvement of access to information and “contributing to the development of greater managerial, technical and financial capacity in the region.” Nevertheless, unlike various other development banks, the BSTDB did not provide for a concessional loan window. Instead, it provides concessional financing in the form of grants for technical assistance.¹⁴⁴

The NADB, along with its sister institution, the Board Environment Cooperation Commission, was created under the auspices of the North American Free Trade Agreement (NAFTA). It initiated its operations under a 1993 agreement between the governments of the United States (US) and Mexico in order to “preserve, protect and enhance the environment of the border region in order to advance the well-being of the people of the United States and Mexico.” The NADB is a closed binational institution and governed equally by the United States and Mexico for the purpose of financing projects that enhance

¹³⁷ Ibid.
¹⁴⁰ EBRD. Donors and the EBRD. www.ebrd.com/pages/about/workwith/donors/about.shtml
¹⁴⁶ NADB Agreement, Art. 1, Sec. 1(a).
the environmental condition of the US-Mexico border region. Thus, its functions and responsibilities are very different from those of the Latin American and Caribbean institutions previously established in the 1970s and 1980s.

While, as the four examples above show, states still established intergovernmental organizations by member-ratified intergovernmental agreement during the 1980s and 1990s, they have increasingly sought to avoid the time-consuming process of establishing intergovernmental organizations. Instead, in a number of cases, states have opted to establish autonomous institutional arrangements in the form of Conference of the Parties (COP) for emerging new tasks or have set up ad hoc frameworks for special purposes, generally without legal personality, notably through trust funds.

The proliferation of institutional arrangements in the field of environment is partially due to the creation of autonomous institutional arrangements. In addition to the United Nations Environment Programme (UNEP) and the UN Commission on Sustainable Development (CSD) (a functional commission of the UN Economic and Social Council) which have specific mandates relating to environment, many other UN bodies and other intergovernmental organizations deal with environmental matters. Nevertheless, it became the “fashion that States having participated in one of the world-wide conferences dealing with world-wide problems like the protection of the environment [felt] compelled to crown their meeting by the establishment of one or several organs to further promote the efforts achieved and to settle disputes concerning the interpretation of the commitments assumed[, thus contributing] to the proliferation of organizations.” The autonomous institutional arrangements, which are common in the case of a number of multilateral environmental agreements, reflect this trend.

Unlike plenary bodies of MFDIs, the COP do not have a specific seat but meet at various locations. They have a variety of functions relating to organizational matters, make contributions to developing new substantive obligations and have a role in ensuring implementation and compliance with multilateral environmental conventions. They have also added “to the thickness and depth of states parties' international legal obligations with resolutions and decisions that interpret, offer guidance, and monitor effectiveness and compliance” and have, in many cases, through their activities “substantially enhanced the substance of the core obligations of parties to the underlying treaty.”

In a number of cases, multilateral environmental conventions make provision for a permanent secretariat and/or subsidiary organs. While some autonomous institutional arrangements were already created in the 1970s, such arrangements were commonly used for multilateral environmental conventions in the 1980s and 1990s. These arrangements are of particular interest in the context of this study as they contain provisions on financial instruments.

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152 Ibid.
The Montreal Protocol on Substances that Deplete the Ozone Layer, a treaty adopted in 1987 following the discovery of the Antarctic ozone hole for the protection of the ozone layer, became effective in 1989. The London amendment of 1990 prompted by the dissatisfaction expressed by developing countries gave birth to the Multilateral Fund for the Implementation of the Montreal Protocol (Multilateral Fund) which became the first financial mechanism established for implementation of a multilateral environmental agreement. It assists developing country parties to the Montreal Protocol whose annual per capita consumption and production of ozone depleting substances (ODS) is less than 0.3 kg (147 of the 196 Parties to the Montreal Protocol meet these criteria) to comply with the control measures of the Protocol. The Ozone Secretariat is the Secretariat for the Montreal Protocol and the Vienna Convention for the Protection of the Ozone Layer.

Two other very important autonomous institutional arrangements are the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to the UNFCCC. In addition to the COP, the UNFCCC provides for a permanent Secretariat and two subsidiary bodies for scientific and technological advice. The Global Environment Facility is the financial mechanism for the UNFCCC and three other conventions. The Kyoto Protocol, a treaty linked to the UNFCCC setting binding targets for the reduction of greenhouse gas emissions is another well-known example of an autonomous institutional arrangement. The Parties to the Kyoto Protocol have also assigned to the GEF the operation of the financial mechanism of the Protocol channeling resources from parties with more resources to those which are less endowed and more vulnerable.

The question has been raised whether autonomous institutional arrangements may possess international legal personality. Churchill and Ulfstein contend that this is the case and that “self-governing, treaty-based autonomous institutional arrangements of multilateral environmental agreements may be considered intergovernmental organizations (IGOs), albeit of a less formal, more ad hoc nature than traditional IGOs,” considering that they were established by international agreement and have at least one organ with its own will. Although conceding that “in principle the elements for an international organization would be fulfilled[, others argue that the above conclusion does not appear] to reflect political or legal reality.” An important argument in their view is that “Parties determined during the negotiations not
to grant international legal personality to the ‘organization’ or Secretariat in the Convention itself.”\textsuperscript{165} As matter of practice, states generally treat such autonomous institutional arrangements differently from intergovernmental organizations in various respects. Churchill and Ulfstein recognize this to a certain extent. While contending that autonomous institutional arrangements have a wide range of both explicit and implied powers at the internal level and on the external plane, they recognize that, in view of the special characteristics of autonomous institutional arrangements, the body of institutional law developed for intergovernmental organizations may not necessarily apply in all respects in this regard.\textsuperscript{166} While there is no agreement on the international legal personality of autonomous institutional arrangements, it is clear, however, that they may have legal personality under municipal law.

Article 12, paragraph 8 of the Kyoto Protocol mandates the COP serving as the meeting of the Parties to this Protocol to “ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.” Pursuant to this provision, the Adaptation Fund was established in 2007, which is funded by a share of the proceeds of the Clean Development Mechanism, one of three market-based mechanisms under the Kyoto Protocol. It “represents an interesting experiment in the creation of a new institution, in that it is a global body channeling funds generated globally.”\textsuperscript{167} The Adaptation Fund also has operationalized direct access of agencies in developing countries to its financing by accrediting agencies in developing countries that will be able to propose adaptation projects directly to its board.\textsuperscript{168}

While the GEF is the financial mechanism of the Kyoto Protocol, it does not manage the Adaptation Fund, which is mandated “to finance concrete adaptation projects and programmes that are country driven and are based on the needs, views and priorities of eligible Parties.”\textsuperscript{169} The operating mechanism of the Adaptation Fund is the Adaptation Fund Board, which comprises 16 members of the parties serving as the meeting of the parties to the Kyoto Protocol linked to the UNFCCC.\textsuperscript{170} Upon invitation of the parties, the GEF provides secretariat services and the World Bank performs the functions of trustee.\textsuperscript{171} In Copenhagen, in December 2009, the parties accepted an offer of Germany to confer legal capacity to the Adaptation Fund Board, which was implemented a year later on the sidelines of the climate change conference in Cancun by the signature of an MOU between Germany and the Adaptation Fund Board.\textsuperscript{172} Thus the Board is able to enter into contracts with recipients and perform duties under German law.

\textsuperscript{165} Ibid.

\textsuperscript{166} Ibid.


The UNFCCC Secretariat is increasingly starting to look like a traditional intergovernmental organization. Headed by an Executive Secretary appointed by the Secretary-General of the United Nations in consultation with the COP (with the rank of Assistant Secretary General), the Secretariat has grown to substantial size and “now employs some 400 staff, including staff on temporary appointments, from all over the world.”

Under the tripartite Agreement between the UN, Germany, and the UNFCCC Secretariat of 20 June 1996, the Convention secretariat in Germany has the legal capacity to contract, acquire and dispose of movable and immovable property and institute legal proceedings. Thus, the UNFCCC Secretariat has been given legal personality under German law. All persons invited to participate in official business of the Convention enjoy functional immunity “in respect of words spoken and written and all acts performed by them in their official capacity [and are] accorded inviolability for all papers and documents.”

Trust funds have traditionally been a way for MFDIs to leverage their activities and support implementation of their work programs. Financial intermediary funds, i.e. trust funds supporting international activities, have become a substitute for the establishment of international organizations. It was during the third generation that states increasingly started to channel concessional financing through such funds. In this context, funds created in the 1990s—the Global Environment Facility (GEF), the HIPC Trust Fund, and the Prototype Carbon Fund (PCF)—are particularly important as they stand for new developments in trust law and have innovative governance structures. The establishment of the latter two followed the traditional tenets of World Bank trust funds for which the World Bank acts as trustee and administrator but both are characterized by certain unique features.

The GEF was initially created in 1991 by resolution of the IBRD executive directors as a pilot program with collaborative arrangements involving IBRD, UNDP, and the United Nations Environment Programme (UNEP) as implementing agencies and the IBRD playing the two additional roles of trustee and administrator. The role of the World Bank was among the main points of discussion when the GEF was restructured in 1994 and transformed into a permanent program that provides grants or concessional loans to developing countries to help them implement programs that protect the global environment. The participants rather than the trustee were henceforth taking decisions on allocation of resources and the World Bank’s role was confined to resource mobilization and financial management. The new GEF has several innovative features, particularly due to the fact that it was established by separate resolutions of the three implementing agencies as a sui generis financial mechanism, representing a “unique blend of United Nations and Bretton Woods practices.”

The new GEF structure created in 1994 consists of an assembly, a council, and a secretariat. The composition and powers of these three bodies differ substantially from those of the organizations following the Bretton Woods model as OECD countries did not want that the main decision-making of the restructured GEF—as the G-77 had proposed—should take place in the Participants Assembly, but in a smaller governing council. Thus, the powers of the GEF Assembly which meets every four years are very limited and the GEF Council consisting of government representatives representing constituency groupings is the main decision-making body of the GEF. GEF governing bodies generally take decisions by consensus, but where such a consensus is not possible, decisions are made by an affirmative vote representing a 60% majority of both the total number of participants and the total voting power. This system reflects a change to softer decision making procedures giving additional power to developing countries and is considered for wider application in other international financial institutions. Half of the 32 members of the GEF Council represent developing countries; developed countries appoint

173 See the UNFCCC Secretariat website at http://unfccc.int/secretariat/history_of_the_secretariat/items/1218.php
176 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).
14 members, and economies in transition, 2 members. Thus, the GEF’s governance structure is giving DMCs a voice and considerable weight in decision-making.177

Implementation of GEF projects involves the three implementing agencies (United Nations Development Programme, United Nations Environment Programme (UNEP) and the World Bank) and seven executing agencies (AfDB, ADB, EBRD, IADB, IFAD, Food and Agriculture Organization of the United Nations [FAO] and United Nations Industrial Development Organization [UNIDO]). “The evolution of engagement of GEF Agencies in the partnership has gone through three phases: (i) from inception of the GEF to 1999, when only the three Implementing Agencies had direct access to GEF resources; (ii) from 1999 to 2006 when seven additional Executing Agencies were brought in a phased approach, and progressively had direct access to GEF resources; and (iii) the post 2006 period when a level playing field was established for all 10 GEF Agencies with the abolishment of the corporate budget for the Implementing Agencies.”178 As each of the GEF agencies uses its own rules and procedures for the implementation of GEF projects, it has been deemed necessary to define minimum fiduciary standards for the implementation of GEF projects.179

The GEF manages other multi-donor trust funds that complement the GEF Trust Fund under umbrella institutional arrangements, the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF) to fund activities that complement the GEF’s focus on certain areas (adaptation, transfer of technologies, energy, transport, industry, agriculture, forestry, and waste management).

The HIPC Trust Fund was established by joint resolutions of the boards of executive directors of IBRD and IDA,180 and adopted on 7 November 1996 as an IDA trust fund giving donors flexibility in making contributions to the trust fund to any or all of its three accounts as unrestricted core contributions for payment to any creditor, or as creditor-specific or country-specific contributions while allowing IDA, as administrator, to merge “funds from various components in order to provide the concerted debt relief for the borrowing country.”181 IDA has to consult closely with the IMF (e.g., when preparing debt sustainability analyses) and its actions were “qualified in many ways by the actions of other parties,”182 including (potential) donors, the debtor country, and, at various levels, its creditors.183 Special decision-making procedures were put in place for any amendment to the resolution establishing the HIPC Trust Fund.

The PCF emerged under the auspices of the Kyoto Protocol and within the framework of two of the mechanisms of the Kyoto Protocol (i.e. the clean development mechanism and joint implementation)184 to pilot emissions reductions through investment of contributions made by the private sector and governments in projects serving that purpose.185 The Executive Directors of the World Bank approved the establishment of the PCF on 20 July 1999186 with the operational objective of combating climate change as an IBRD trust fund, the IBRD being the administrator of the PCF and as trustee the legal owner of

177 See Chapter 2 (G. Droesse, Organizational Structures).
182 Ibid., pp. 128–129.
183 For further details and references, see UNFCCC. Kyoto Protocol. http://unfccc.int/kyoto_protocol/items/2830.php
the fund property for the benefit of the participants providing finance for projects. The PCF, with the operational objective of combating climate change, aspires to promote the Bank’s tenet of sustainable development, demonstrate the possibilities of public–private partnerships, and offer a “learning-by-doing” opportunity to its stakeholders.

**Fourth Generation**

The institutions which emerged in the last decade since the year 2000 may be seen as a fourth generation of concessional windows. While many of the third generation institutions mentioned above were intentionally not endowed with their own legal personality when they were established, legal personality has been and still is at the forefront of discussions since the beginning of the last decade. In some cases, this resulted in decisions to establish new intergovernmental organizations or endow existing institutions or concessional windows with international legal personality (e.g., CGIAR). Generally, however, states continued to be reluctant to create new intergovernmental organizations. Rather, they opted for the establishment of organizations under municipal law but endowed such organizations with privileges and immunities in their host country similar to those enjoyed by intergovernmental organizations. In some cases, the enjoyment of such privileges and immunities was not limited to the host country but was extended by other countries as well. This created a new class of hybrid organizations.

From a policy perspective, the last decade brought an increased emphasis of donors on aid effectiveness and an expansion of aid priorities. Grants became a regular, and in certain cases, the only modality of concessional financing. Moreover, organizations sought to coordinate their activities at the country level, consistent with the Paris Declaration and Accra Agenda for Action. Finally, climate change became a topic of utmost importance on the development agenda.

CGIAR is currently adopting fundamental changes to its business model to be able to respond to new challenges resulting from turmoil in food, energy and financial markets and constraints in crop productivity resulting from climate-change induced changes in temperature, rainfall patterns and pest and disease pressures. While CGIAR was previously deprived of legal personality, under the new Consortium Constitution drafted in 2010 the Consortium of International Agricultural Research Centers will be an “autonomous international organization under international law, with full international legal personality.” The Consortium will comprise all research centers currently supported by the CGIAR, which will continue to be legally independent, and will provide a single contact point for donors. The governance structure of the Consortium will comprise a Consortium Board of 10 members selected and appointed by the member centers for a period of 3 years (with possibility for renewal for further three years) and a Chief Executive Officer. According to the draft constitution, the Consortium Board will be responsible for providing “policy direction and leadership to the Consortium” and will have a range of functions relating to strategy development, resource mobilisation and funds allocation, research programs, Consortium member centers’ performance and efficiency, administrative matters, and financial and operational accountability and other governance matters. The Chief Executive Officer who is elected by and is an ex officio member of the Consortium Board, is the “public face of the Consortium” and

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188 For details, see Chapter 2 (P. McCawley, Concessional Resources and Development Thought).


191 See CGIAR. A New CGIAR. www.cgiar.org/changemanagement/index.html. See also http://cgiarconsortium.cgiar.org/home

responsible for day-to-day operations and the management of the Consortium office. It is planned to provide the Consortium the status of international organization “through an international agreement among a few sovereign states” for which the Government of France has offered to act a depository.\textsuperscript{193} The second pillar of the new business model will be the CGIAR Fund which is being set up as a multi-donor trust fund for which the World Bank is acting as trustee, with a Fund Council as a representative body of fund donors and other stakeholders and the decision-making body of the CGIAR Fund.\textsuperscript{194}

The establishment of the Banco del Sur proposed by President Chavez of Venezuela as an alternative to the IMF and World Bank in Latin America was a rare attempt during the last decade at creating a new intergovernmental organization by a treaty ratified by states. While the agreement establishing the Banco del Sur was signed in September 2009\textsuperscript{195} by seven countries,\textsuperscript{196} the new Bank has yet to commence its operations. In Asia, no subregional bank has yet been established despite the consideration of a Northeast Asian Development Bank and the 2005 suggestion\textsuperscript{197} of the Executive Secretary of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) to establish an Asian Investment Bank. Nor has any subregional development for the Pacific been established even though several studies regarding the need of subregional development bank for the Pacific had already been conducted in the 1990s.\textsuperscript{198}

However, in the last decade there was an explosive growth of financial intermediary funds supporting a wide range of alliance, partnership and facilities. The legal frameworks and governance structures of such facilities demonstrate the evolution of the aid architecture. While most of the third-generation facilities discussed above do not have legal personality, the fact that they are unable to enter into contracts and be the subject of rights and obligations is increasingly seen as a constraint to their development effectiveness. This is underlined by proposals to instill the GEF with legal personality made during the third GEF replenishment and, recently in 2009, in the context of the fifth GEF replenishment. While the GEF Secretariat “believes that, both on the basis of the relevant terms of the GEF Instrument and the rules of international law and international practice, the GEF and the GEF Secretariat already possess all of the key elements of legal personality, including the legal capacity to sign agreements and contracts,”\textsuperscript{199} the World Bank considers that “the only way for the GEF to acquire legal personality is through the restructuring of the GEF to become a separate international organization or an organization constituted under national law.”\textsuperscript{200}

While the quest of the GEF for legal independence has not yet been successful, the issue of legal personality was foremost in the mind of the transitional working group in charge of setting up the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund).\textsuperscript{201} The Global Fund was established as a nongovernmental organization under Swiss law, but endowed under Swiss and US law with privileges and immunities.

\textsuperscript{194} CFIAR Fund. www.cgiarfund.org/cgiarfund/node/37
\textsuperscript{196} Argentina, Bolivia, Brazil, Ecuador, Paraguay, Uruguay, and Venezuela.
\textsuperscript{200} Ibid.
The Global Fund is one of the “multi-actor” global funds that have emerged as “powerful instruments for globally coordinated action representing a departure from traditional forms of multilateral governance because non-state actors share decision-making powers and financing responsibilities with national governments.”

The Global Fund is characterized by the fact that, unlike in MFDIs, membership is no longer of paramount importance when it comes to representation in governing bodies and allocation of resources. In addition, the Global Fund has governance structures both at the global and country levels. The Global Fund does not have a plenary body composed of government representatives at the global level as its Partnership Forum is a discussion forum which meets every two years but makes no decisions. The main decision-making body is the Global Fund Board which consists of representatives from developing countries, donors, civil society and the private sector, including one representative of communities living with disease. In addition, the Global Fund Board includes representatives of the WHO, the Joint United Nations Programme on HIV/AIDS, the World Bank as trustee, and one Swiss citizen who lives in Switzerland and is authorized to act on behalf of the Global Fund to the extent required by Swiss law. Designed to “enhance local ownership and participatory decision-making,” the Global Fund relies at the country level on a country coordinating mechanism, which evaluates country proposals and channels one coordinated proposal to the fund, principal recipients or legally constituted agencies (generally, local stakeholders) that enter into a grant agreement with the fund; and local fund agents (i.e., in-country experts selected by the fund through a competitive bidding process).

The Global Fund became the new business model for establishing new organizations in the health sector and the predecessor of a new hybrid class of organizations established under local law, but with privileges and immunities similar to those enjoyed by intergovernmental organizations. Such new class of organizations includes the Global Alliance of Vaccines and Immunisation (GAVI Alliance), an innovative partnership comprising public and private sector stakeholder in immunization programs, and the International Finance Facility for Immunization (IFFIm) established to provide funding for the GAVI Alliance. These two institutions may be seen as organizational paradigms of fourth-generation organizations.

Like the Global Fund, the GAVI Alliance was established under Swiss law as “a non-profit foundation” with its seat in Geneva, Switzerland, but with privileges and immunities allocated under a Headquarters Agreement concluded with Switzerland in 2009. The GAVI Alliance underwent substantial institutional reform and transformation to replace its dual governance structure with a vertically integrated one. Under its current governance structure, the GAVI Alliance Board consisting of 30 members of key GAVI Alliance partner institutions is “the supreme governing body of the GAVI Alliance” which brings together representatives from the public and private sectors, multilateral development agencies, donors, developing country governments, civil society representatives, and the academic community “who help to shape GAVI’s strategic vision and provide critical support in programme implementation.” Decision-making in the GAVI Alliance Board is by consensus.

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203 “[O]ne representative of a non-governmental organization (‘NGO’) from a developing country, one representative of an NGO from a developed country, one representative of the private sector, one representative of a private foundation, and one representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria.” Global Fund Bylaws, Article 7.1. www.theglobalfund.org/documents/TGF_Bylaws_en.pdf.

204 For details, see Chapter 10 (A. Triponel, *Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid*).


210 See also GAVI Alliance. The GAVI Alliance Board. www.gavialliance.org/about/governance/boards/index.php
no consensus can be reached despite reasonable efforts, a decision of the GAVI Alliance Board can be taken by a two-thirds majority of members present and voting, but such decision is not binding on any organization providing members to serve on the Board.211

IFFIm, which was “established as a charity registered with the Charity Commission for England and Wales,”212 has legal personality under municipal law. One peculiarity of IFFIm is that it is managed by its board of directors (the IFFIm Board), but has no employees, but has outsourced all administrative support functions to GAVI and all treasury functions and related accounting services to the IBRD which is IFFIm’s Treasury Manager.213 The GAVI Secretariat support the IFFIm Board and in addition also the Board of the GAVI Fund Affiliate which was registered in England and Wales both as a company limited by guarantee with and as a charity to enter into pledge agreements with sovereign IFFIm donors.214 The Board of the GAVI Fund Affiliate and the IFFIm Board jointly administer IFFIm, which was designed to pioneer innovative financing by accelerating the availability of funds for health and immunization programs through the GAVI Alliance through the frontloading of resources. For that purpose, IFFIm converts long-term government pledges under grant and guarantee agreements into immediately available cash resources by issuing IFFIm bonds, using the proceeds of the assigned grant payments to repay the principal and interest of the bonds issued by the IFFIm.215

A different innovative funding approach was chosen by Brazil, Chile, France, Norway, and the United Kingdom when they established UNITAID216 in 2006. UNITAID’s mission “is to contribute to scale up access to treatment for HIV/AIDS, malaria and tuberculosis for the people in developing countries by leveraging price reductions of quality drugs and diagnostics, which currently are unaffordable for most developing countries, and to accelerate the pace at which they are made available.”217 UNITAID derives the bulk of its funding from an airline tax which ranges from $1 for economy class to a maximum of $40 for business and first class.218 Such funding enables UNITAID to purchase existing medicines and to encourage industry to invest in research and development. UNITAID seeks to create viable markets for new medicines or attract the entry of more suppliers by guaranteeing sustainable, predictable funding for the purchase of drugs and diagnostics.219

UNITAID is supported by a small secretariat. The Executive Board consists of 11 members and comprises representatives of the five founding countries, African and Asian countries, WHO, nongovernment organizations, communities living with the diseases, and foundations, and makes all decisions regarding UNITAID. While the Executive Board generally makes decisions by consensus, any member can call for a vote (the WHO representative cannot participate in the vote.) The Consultative Forum serves as a platform for debate, advocacy, fund raising and inclusion of new partners.220 So far, UNITAID has not been endowed with legal personality. It is hosted and administered by the WHO. It remains to be seen whether UNITAID will follow the process of progressive institutionalization of other FIFs and eventually be endowed with legal personality.

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211 GAVI Alliance Statutes. Article 15.
213 IFFIm. About IFFIm. www.iff-immunisation.org/01_governance.html
214 GAVI Alliance. IFFIm Governance. www.gavialliance.org/about/governance/iffim/index.php
215 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
216 For details, see the UNITAID website, www.unitaid.eu/
220 The UNITAID governance model is set forth in Section 4 of the UNITAID Constitution.
The health sector has the highest proliferation of new channels of aid and development programs. In addition to intergovernmental organizations such as the WHO and a range of partnerships and alliances, nongovernmental organizations, foundations and philanthropies are also major sources of development financing. Such proliferation of aid channels serves to mobilize additional funding for health programs but entails substantial problems and transaction costs for recipients. The predictability and sustainability of the high funding currently allocated to the health sector are important issues and “a key part of the development effectiveness debate.”

The experience of MFDIs such as ADB and CDB shows that ad hoc replenishment procedures do not meet the above requirements as they do not allow proper planning. Therefore MFDIs have moved to regular replenishments. The Global Fund did so for the same reasons. Unlike for MFDIs where replenishments are generally conducted according to burden-sharing principles, contributions to the Global Fund continue to be made on voluntary basis.

A range of new alliances, facilities and FIFs have also been created in other areas. The Education for All Fast Track Initiative (EFA FTI) may serve as an example. The FTI, which is rooted in Paris Declaration principles and supporting the use of country systems through a single country-led education program, is one such instrument. The cornerstone of the financing framework for the FTI Catalytic Fund is the education sector plan which is developed by each DMC which wishes to be part of the FTI partnership. Such plan needs to be agreed by the DMC with donors who in turn undertake to align their support with this plan: “The particular implementation arrangements and choices on using budget support, ear-marking, pooling funds, use of country systems, conditionalities, mitigating measures, flow of funds etc., need to support the sector-wide approach while taking the particular country and sector circumstances into consideration.”

The drastic increase in food prices in 2008 placed agriculture and food security at the core of the international development agenda and triggered at the G-8 meeting in L’Aquila, Italy in 2009 a new food security initiative. In response to the pledges made by donor countries at Aquila and confirmed at the G-20 summit in Pittsburgh, Pennsylvania, USA in September 2009, the G-20 leaders called on the World Bank to “work with interested donors and organizations to develop a multilateral trust fund to scale up agricultural assistance to low income countries.” In response to that call, the World Bank established in 2009 the Global Agriculture and Food Security Program (GAFSP) for which the “World Bank will serve as trustee and host of a coordination unit for the fund, and if requested, as a supervising entity.” Funded jointly by donor countries and foundations, it has “two major components – one for countries and the other aimed at increasing private investment in agriculture – to boost food security.” As trustee, the World Bank is accountable to a steering committee composed of the three initial donors (Canada, Spain, and the United States) and an equal number of representatives from recipient countries, with a senior manager of the World Bank and the UN Secretary General’s Special Representative on Food Security and Nutrition attending as nonmembers.

The fields of environmental protection and climate change mitigation and adaptation are other areas which have seen the substantial proliferation of concessional windows. Following the creation of many

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222 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing) and Chapter 10 (A. Tripolou, Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid).
227 “The United States, Canada, Spain, the Republic of Korea and the Bill and Melinda Gates Foundation will together provide about $900 million in support to the Global Agriculture and Food Security Program (GAFSP).” Ibid.
third-generation autonomous institutional arrangements, funds and facilities in the 1980s and 1990s, in recent years there has been a further proliferation of new climate change funds.\(^\text{229}\)

One important new element was the two Climate Investment Funds (CIFs)—the Clean Technology Fund (CTF) and Strategic Climate Fund (SCF)\(^\text{230}\)—which were established in 2008 with surprising speed consistent with Article 11 of the UNFCCC which stipulates that “developed country parties may also provide and developing country Parties avail themselves of financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.” CIF funding should be transformational and additional, both (1) “as a source of finance, so that CIF contributions are new and additional in the context of donor country funding flows; and (2) in the way funds are used, so that CIF funding does not simply displace other sources in financing projects that would have proceeded anyway (business as usual), but rather actually influences investment decisions.”\(^\text{233}\) The coordination framework of the CIF is different from that applicable to the GEF, which is the financial mechanism of the convention. The CIF is implemented by the MDBs working separately but within a special structure and by introducing new mechanisms that enhance MDB cooperation. However, the governance structure of the CIF draws on certain elements of the GEF governance structure (both before and after the GEF restructuring). It also reflects “a considerable amount of learning from the GEF, including the delineation of the functions of the trustee of an international trust fund that occurred in the evolution of the World Bank’s role as Trustee to the GEF Trust Fund [and] lessons learned from the interaction of the World Bank in its role as Trustee of the GEF Trust Fund with the multilateral development banks as Executing Agencies and the World Bank as Implementing Agency, and with the Secretariat.”\(^\text{232}\)

The increasing trend to softer decision-making procedures with greater involvement of developing member countries and civil society also manifested itself in relation to the CIFs that were established in 2008 and have also adopted a consensus procedure for the CTF and SCF trust fund committees. As consensus does not imply unanimity, “a dissenting decision maker, who does not wish to block a decision, may state an objection by attaching a statement or note to the decision.”\(^\text{233}\) However, unlike the GEF and Global Fund, no votes are cast and, consequently, the requested decision must be postponed or withdrawn if consensus is not attainable.

This distinguishes the decision-making procedures of the CIF\(^\text{234}\) from those of the GEF\(^\text{235}\) and the Global Fund\(^\text{236}\) where decisions are also taken by consensus but a vote may be called in the exceptional cases where such consensus is not obtained.

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\(^\text{230}\) The three targeted programs under the Strategic Climate Fund (SCF) are the Forest Investment Program (FIP), the Pilot Program for Climate Resilience (PPCR), and the Program for Scaling-Up Renewable Energy in Low Income Countries (SREP). For more information, see www.climateinvestmentfunds.org/cif/node/3


\(^\text{235}\) GEF Instrument, para. 25(b).

The CTF includes the following sunset clause:

Recognizing that the establishment of the trust fund is not to prejudice the on-going UNFCCC deliberations regarding the future of the climate change regime, including its financial architecture, the CTF will take necessary steps to conclude its operations once a new financial architecture is effective. Specifically, the Trustee will not enter into any new agreement with donors for contributions to the trust fund once the agreement is effective. The Trust Fund Committee will decide the date on which it will cease making allocations from the outstanding balance of the Trust Fund.237

The SCF contains an equivalent provision.238

Thus, the future of these funds and the question whether they may continue their operations is directly linked to the future of the climate change regime and the decision how such regime will be funded. One of the basic questions to be addressed is whether the many billions required for climate change adaptation and/or mitigation shall be provided through ODA allocations and/or through public funding mechanisms which might comprise national budgetary allocations (as currently applicable used for the GEF, LDCF and SCCF), national market-based levies (e.g., airline and shipping levies or emission trading schemes), or global levies (such as the Kyoto Protocol levy on the Clean Development Mechanism).239 Closely related to the above is the question of how climate change and development can be linked.240

As indicated by the High-Level Advisory Group on Climate Change appointed by the Secretary General of the United Nations in 2010,

Funding will need to come from a wide variety of sources, public and private, bilateral and multilateral, including alternative sources of finance, the scaling up of existing sources and increased private flows. Grants and highly concessional loans are crucial for adaptation in the most vulnerable developing countries, such as the least developed countries, small island developing States and Africa.241

Thus, a combination of various funding mechanisms will be required to mobilize the vast resources that in future will be allocated to climate change mitigation and adaptation. The High Level Advisory Group concluded that,

The multilateral development banks, in close collaboration with the United Nations system, can play a significant multiplier role and leverage additional green investments. For every US$10 billion in additional resources, multilateral development banks could deliver US$30 billion to US$40 billion in gross capital flows and significantly more by fostering private flows.242

At Copenhagen, in 2009, developed countries made a collective commitment “to provide new and additional resources, including forestry and investments through international institutions, approaching

242 Ibid., p. 6.
$30 billion for the period 2010–2012 with balanced allocation between adaptation and mitigation.” 243 Developed countries also committed “to a goal of mobilizing jointly $100 billion dollars a year by 2020 to address the needs of developing countries.” 244 It was then envisaged that “[n]ew multilateral funding for adaptation will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries. A significant portion of such funding should flow through the Copenhagen Green Climate Fund.” 245

While the future climate change regime still needs definition, some traces of the future climate change architecture, with the new Green Climate Fund (GCF) as main source of developed country public financing at its core, have begun to appear. At Cancún, in December 2010, the COP confirmed their resolve to mobilize $100 billion a year by 2020 to address the mitigation and adaptation needs of developing countries. 246

One major outcome of the conference was the decision, 247 taken based on the work of the Ad-Hoc Working Group on long-term cooperative action under the Convention, to create the GCF, the mere size of which will dwarf all other climate-change-related funds. The COP decided that a “significant share of new multilateral funding for adaptation should flow through the Green Climate Fund” (possibly up to 10%). 248 The legal and institutional arrangements and the governance structure of the new fund will be elaborated by a Transitional Committee 249 composed of 15 members from developed country Parties and 25 members from developing country Parties 250 which was scheduled to convene in March 2011 but postponed that meeting to the latter part of April. This Committee is given the crucial task to design the new fund. It is to develop operational documents regarding the legal and institutional arrangements for the establishment and operationalization of the Green Climate Fund, the governance structure of the Fund (including rules of procedure of its Board and the role of and the procedure for establishing the secretariat), and regarding the financial resources and instruments, modalities and methods to enhance complementarity between the Fund’s activities and those of other bilateral, regional and multilateral funding mechanisms and institutions. While the detailed design of the new fund still needs definition, certain fundamental features were already determined at Cancún, in particular as regards the relations of the future executive board of the Green Climate Fund and the COP, the governance structure of the fund, and fund mobilization and disbursement.

It was discussed at Cancún “whether the Fund should be ‘accountable to and under the guidance’ or whether it should also be under the authority of the COP.” 251 This distinction is important as it relates to the question of whether the COP has the power to select the members of the executive board and approve general rules and guidelines. The majority of developed countries argued at Cancún that the

244 Ibid.
248 Ibid., p. 15.
249 Ibid., p. 16.
250 The composition of the Transitional Committee is set out in the report of the Ad Hoc Working Group on long-term Cooperative Action under the Convention (Ibid., p. 16) while Annex III of the same defines the Terms of Reference for the design of the Green Climate Fund. Ibid., p. 27.
The relationship between the future executive board of the Fund and the COP should be modeled on the COP’s relationship with the Global Environmental Facility (GEF), which is one in which the GEF is accountable to and under the guidance of the COP. The COP resolved that the Green Climate Fund be designated as an operating entity of the financial mechanism of the UNFCCC under Article 11, with arrangements to be concluded between the Conference of the Parties and the Green Climate Fund to ensure that it is accountable to and functions under the guidance of the Conference of the Parties, to support projects, programmes, policies and other activities in developing country Parties using thematic funding windows.

Management of the Fund is by a “board of 24 members comprising an equal number of members from developing and developed country Parties.” Members shall include representatives “from relevant United Nations regional groupings and representatives from small island developing States and the least developed countries.” A Standing Committee will be established to improve “coherence and coordination in the delivery of climate change financing, rationalization of the financial mechanism, mobilization of financial resources and measurement, reporting and verification of support provided to developing country Parties.”

A trustee will be appointed for the Green Climate Fund, and given “the administrative competence to manage the financial assets of the Green Climate Fund, maintain appropriate financial records and prepare financial statements and other reports required by the Board of the Green Climate Fund, in accordance with internationally accepted fiduciary standards.” The World Bank was invited to serve as the “interim trustee of the GCF, subject to a review three years after operationalization of the fund.” As interim trustee, the World Bank shall administer the assets of the Green Climate Fund only for the purpose of, and in accordance with, the relevant decisions of the Green Climate Fund Board. The trustee shall hold the assets of the Green Climate Fund separate and apart from the assets of the trustee, but may commingle them for administrative and investment purposes with other assets maintained by the trustee. The trustee shall establish and maintain separate records and accounts to identify the assets of the Green Climate Fund:

[The trustee shall be accountable to the Green Climate Fund Board for the performance of its fiduciary responsibilities;]

The Transitional Committee will need to determine the “balance” which needs to be struck between “funding for mitigation and adaptation” and between “public and private finance.” In particular, the latter “remains a contentious and highly political issue that Cancun left unresolved.” A major design issue will be “how to create the right incentives to encourage countries to participate in the new fund [considering that the GCF] is being created within an already extensive – and many would argue,
over-populated – international architecture of bilateral and multilateral funding initiatives [which will] become ever more complex.”262

“In response to a key demand from developing countries,”263 national institutions may be given “direct access” to GCF financing without the involvement of MFDIs. The Transitional Committee was given the mandate to include a provision to that effect in the modalities of GCF financing.264 Direct access, which has already been operationalized by the Adaptation Fund, “has become a prominent, new arrangement in climate finance delivery, whereby the recipient country is able to access financial resources directly from a fund, or can assign an implementing entity of its own choosing. This is in contrast to where funding is channelled through a third party implementing agency, usually a multilateral organization that is selected by the fund administrators.”265 Such arrangements give developing countries additional choices to determine implementation arrangements of financing under the GCF.

The GCF will at least initially supplement and function along with other climate change funds and facilities. While requesting the GEF to further streamline and simplify its procedures and enhance its support to developing countries, the COP decided that the Global Environment Facility “should continue to provide and enhance support for the implementation of adaptation activities, including the implementation of national adaptation programmes of action, through the Least Developed Countries Fund and the Special Climate Change Fund.”266 The Adaptation Fund and CIF will probably continue to exist; however, at a later stage, a consolidation of the various climate-change related funds may become necessary as the establishment of the GCF further adds complexity to the architecture of climate change funds and to the existing overlap of functions of such funds.

Overview

The current situation, which is characterized by proliferation and fragmentation of channels of concessional financing and earmarking of development aid is likely to continue for a long period, possibly several decades. Thus, in parallel with the attempts to reform the current aid architecture, discussion should focus on matters that can be achieved within a medium-term range, based on the current legal frameworks of concessional windows.

This book traces the evolution of concepts of the development agenda through a study of the concessional windows of major financing institutions. The aim of this publication is not to give a complete overview of concessional windows (which clearly is impossible), but to analyze paradigms of organizational structures and the close connection between such structures and the institutional frameworks and governance structure of concessional windows. Through this study, this author seeks to establish that institutional frameworks are a corollary to and intrinsically linked to organizational structure, and thus, matters such as representation in governing bodies, decision-making procedures and voting rights are often regulated by organizations in a substantially different manner even though they serve very similar purposes. This book, with contributions from senior experts of major MDFIs,
elaborates on such linkages using a holistic approach in order to contribute to a better understanding of the various concessional windows.

The first chapter by Peter McCawley “discusses how developing thinking in Organisation for Economic Co-operation and Development (OECD) donor countries over the last 50 years has influenced donor approaches to replenishments in the international concessional resources system [and how] the various replenishments of the concessional resources system have tended to reflect the international development thinking of the day, especially in donor countries.”

The next two chapters, as prepared by this author, provides an overview of the organizational structures of channels of concessional financing of major MFDIs and their legal and operational frameworks. In Chapter 2, the author focuses on four MDBs—the World Bank, AfDB, ADB, and IADB, which are among the main channels through which the international community provides concessional financing; two subregional development banks—CDB and CABEI; and three other MFDIs—IFAD, IsDB, and NDF. Also examined are trust funds, multipurpose vehicles, special facilities and financial intermediary funds associated with these organizations and supporting international activities. Chapter 3 discusses the characteristics, specific requirements, and constraints which result from the varying legal frameworks of concessional windows for the provision of various modalities of concessional financing, as well as the funding structures, replenishment mechanisms and the implementation arrangements for replenishments of different concessional windows.

Chapter 4, also by this author, gives a comprehensive overview of the concessional financing of ADB, including the ADF, as ADB’s main concessional window, and other special funds and trust funds and facilities.

In Chapter 5, Adesegun Akin-Olugbade and Augustin Flory provide an overview of the concessional financing windows of the AfDB Group focusing on the AfDF, the concessional arm of the group, and the Nigeria Trust Fund, one of the special funds of AfDB, and their replenishments, modalities of concessional fiscal, and financial management and related facilities.

Chapter 6, by Yvette Lemonias Seale, William Warren Smith, and Adrian Debique, focuses on the Unified Special Development Fund (SDF[U]) of CDB, which is CDB’s main concessional window.

Chapter 7, written by Vera P. Weill-Hallé, Cynthia Licul, and Itziar García Villanueva, looks at the multilateral concessional financing of IFAD. The paper discusses the organizational structure of IFAD, including its vote allocation system, the legal framework of IFAD resources, modalities of its financing activities, financial management and replenishment of IFAD resources, and special programs.

Chapters 8 and 9 are both about the Global Environment Facility. Maurizio Ragazzi focuses on the institutional and operational aspects of this facility while Sophie Smyth discusses the experience of the GEF in developing a new strategy for its collective financing efforts. Together, they present a picture of the “paradigm-altering, collective financing effort that clearly demonstrates the hard choices that must be confronted in creating such a vehicle if the effort is to succeed.”

The last chapter by Anna Triponei takes a look at how the Global Fund created a new legal and conceptual framework for providing international development aid. She notes how

the Global Fund’s unique legal structure demonstrates that the international arena can respond to urgent global issues with flexibility and innovative thinking. Although many of these novel elements are in response to the Global Fund’s specific needs, they have a

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267 Chapter 2 (P. McCawley, Concessional Resources and Development Thought).

wide-reaching impact, not only on other partnerships, but more broadly on emerging good practice concerning the management of development aid.269

Conclusions

While some organizations provide financing exclusively on concessional terms, groups of organizations generally provide financing through a hard-window on market-based terms and through “soft” windows on concessional terms through their affiliated organizations that have their own legal personality. It is increasingly questioned whether affiliated organizations are still an appropriate paradigm of organizational structure. On the other hand, while establishing affiliated organizations with separate legal structures is no longer necessary to isolate the risk of concessional operations, the distinct legal personality of affiliated organizations might be a potential advantage if organizations were to change their funding structures by commencing to leverage financing on capital markets through the issuance of bonds. Organizations which administer special funds resources and ordinary capital resources under one legal personality might face greater difficulties than affiliated organizations in issuing bonds for their special funds as their constituent instruments often do not contemplate such mode of financing.

One of the reasons for the proliferation of MFDIs is that donors often do not want to channel ODA through an existing organization due to dissatisfaction with its track record in implementing projects and/or its decision-making procedures. Rather than navigating the difficult and time-consuming process of amending the constituent agreements of existing organizations, donors prefer to channel their financing through new thematic funds for which they can establish new governance structures, decision-making procedures and/or modalities of financing which serve their strategic objectives and purposes. Thus, the governance structures and operational modalities of FIFs reflect the evolution of the international development agenda and general trends. There is a general trend towards softer decision-making procedures which give increased weight and voice to developing member countries and other stakeholders.

The MFDIs’ funding modalities have not changed substantially since they were established during the 1960s and 1970s. Thus far, the MFDIs and other channels of concessional financing studied here still rely on donor grants from their members as their main source of funding. However, such funding structures are no longer in accord with the fact that private sector flows to developing member countries have increased dramatically since the establishment of the MFDIs studied here and that philanthropy has become a major source of development financing. MFDIs have yet to explore the full potential of mobilizing resources from the private sector and of new and innovative financing mechanisms to enhance resource flows to developing member countries and help them meet the MDGs. The question may also be asked as to whether the current funding modalities of concessional windows, which do not allow MFDIs to leverage resources on capital markets (e.g., through the issuance of bonds against donors’ long-term commitments) are still adequate. The benefits of front-loading donor resources may, in certain cases, outweigh the additional costs which are not negligible.

Alternative uses of concessional resources should also be considered. Rather than subsidizing the cost of loans, guarantees or equity investments, concessional resources may instead be used as risk buffers to cover first losses in waterfall payment mechanisms that assign the payment of revenues to senior risk tranches held by development finance institutions and private investors. Such waterfall mechanisms allow organizations to leverage resources on capital markets for a variety of purposes such as agricultural value chain and trade financing, micro-finance, and assistance to small business, development of long-term hedging products, and fostering economic development in Sub-Saharan Africa.270


270 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
Allocations of net income or surplus from organizations’ hard windows have become important sources of funding for MFDIs. Such allocations are generally not problematic if they are without prejudice to the organization’s financial strength and in cases where ample resources of hard windows are available. However, they may entail certain problems where such resources are constrained. By maintaining net income or surplus within hard windows, organizations may have the opportunity to leverage their capital (through the issuance of bonds) to do more developmental lending. The level of leverage (loan to equity ratio) depends on the risk bearing capacity of each institution and in 2008 the actual leverage was about 2.7 times (an average for IBRD, IADB and AfDB) with a possibility to enhance such leverage ratio in the near future while maintaining financial prudence. MDBs forgo such leverage opportunity if they transfer amounts to special funds or trust funds which do not use a capital base to mobilize resources from financial markets and pass the amounts received from donors to beneficiaries at a rate of 1:1.

Current MFDI systems emphasize the separation of resource allocation processes for concessional and nonconcessional windows, except for a few blend countries that are eligible to borrow from both windows. This separation leaves a large middle ground that lacks adequate coverage and needs to be further addressed. Close cooperation between concessional and nonconcessional windows, not separation, is warranted. Attempts should be made to enhance synergies and find solutions tailored to the needs of member countries, involving both types of resources and involve increased use of blending arrangements.

Thus far, MFDIs can offer only limited modalities of concessional financing. In a number of cases, the legal frameworks of organizations contain restraints, or even preclude, modalities of concessional financing other than loans and technical assistance. Notwithstanding such constraints, and even though a final assessment has yet to be made in which circumstances grants for projects and programs are more beneficial than concessional loans, based on the joint IMF-World Bank debt sustainability framework, grants are now an integral part of organizations’ concessional financing. Other modalities such as risk management products, trade financing and equity investments and programmatic modalities such as budget support, sector support or fund pooling arrangements generally do not form part of organizations’ concessional financing. One solution for expanding the modalities of concessional financing involves enhancing cooperation and aligning organizations’ terms and conditions for regular concessional windows (e.g., ADF, AfDF, IDA) as well as trust funds and other cofinancing arrangements. By covering all concessional resources—including trust funds and other cofinancing arrangements—under umbrella operational arrangements and administered on the same or similar terms and conditions, organizations would be able to offer a coherent concept covering all their concessional windows under umbrella operational arrangements that apply to their own resources and trust funds alike. Replenishment procedures of the various concessional windows could be linked and/or coordinated. The same templates could be used for both types of resources. Organizations should also consider further diversifying their existing products, e.g. by offering concessional local currency loans, concessional loans with fluctuating interest rates and/or interest subsidy schemes which defray part of the cost of loans from organizations’ hard windows.

Organizations have already taken action to align their procedures and practices and coordinate their activities at the country level consistent with the Paris Declaration and Accra Agenda for Action, and seek to develop and strengthen their cooperation to reduce the transaction costs. However, cooperation and harmonization do not imply—and should not lead to—uniformity. Competition between different providers of concessional financing may enhance their development impact as long as it is focused on innovation and development outcomes. While proliferation and fragmentation of the current aid architecture entails problems at various levels, they are also an expression of the vitality of the international financial architecture.

271 It is necessary to maximize the advantages of the current situation while minimizing its negative effects. In this context, similar considerations apply as for the fragmentation of international law. In his article on Fragmentation of International Law (September 2006), Joost Pauwelyn states,

“Other, more recent, reactions to fragmentation of international law have been more positive. The [International Law Commission] itself, when it established the ILC Study Group, insisted on changing its title from ‘Risks Ensuing from Fragmentation of International Law’ to ‘Fragmentation of International Law: Difficulties Arising from the Diversification
development of the current aid architecture. One potential advantage of polycentric aid architecture is the opportunity to experiment with new and innovative solutions and find new and better ways to respond to the needs of their clients. Thus far, that potential advantage has not been sufficiently exploited.

It may be advisable to adopt a paradigm shift regarding the relationship of MFDIs and other development institutions to the extent that their relationship should be governed by decentralization rather than by centralized decision-making and by cooption, i.e., cooperative competition rather than by consensus. As concessional windows are still largely channels of ODA, they should not compete with each other over the terms and conditions of their financing or over administrative arrangements, but rather should cooperate wherever feasible in minimizing costs and increasing the efficiency of their services. However, they should compete, and be encouraged to do so, in offering the best business model and the most effective operations. An independent evaluation of how well they achieve these objectives gives donors a good basis to decide on the allocation of resources to different organizations.

Airline alliances may represent a possible paradigm for the relationship of international organizations and other concessional windows in the (possibly extended) interim phase until substantial institutional reforms can be implemented. Airlines that have joined an alliance have largely harmonized their administrative procedures in order to transport passengers and freight effectively to all destinations. Moreover, by cooperating in certain areas (check-in, lounges, etc.), they have not only reduced cost but also streamlined and aligned their operational procedures. However, each airline maintains its own character and competes in providing the best standards of service.

In the same way, MDFIs should try to find new and innovative solutions in responding to the needs of their targets and continue to enhance their development impact, develop new instruments, and provide excellent service while keeping faithful to the purpose for which they were established. The proposed streamlining and simplification of organizations’ concessional windows and a relationship between organizations that is based on cooption would substantially facilitate more far-reaching projects aiming at institutional reforms and could be combined with such efforts in a third phase. Returning to the airline paradigm, the airline industry has been going through mergers, major restructuring, and reorganization recently. The same could apply in a later phase to organizations providing concessional financing.

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*and Expansion of International Law*. It made this change because, in the ILC’s view, the original title neglected the positive aspects of fragmentation, in particular, fragmentation as a sign of the vitality of international law—in that the proliferation of rules, regimes and institutions might strengthen international law—and the advantages linked to increased diversity of voices and a polycentric system of international law.” *Max Planck Encyclopedia of Public International Law*. www.mpepil.com/subscriber_article?script=yes&id=epil/entries/law-9780199231690-e1406&recno=41&subject=Sources,%20foundations%20and%20principles%20of%20international%20law
Chapter 1

Concessional Resources and Development Thought

Peter McCawley*

Introduction

This paper discusses how development thinking in Organisation for Economic Co-operation and Development (OECD) donor countries over the last 50 years has influenced donor approaches to replenishments in the international concessional resources system. Just as development thinking has changed over the period, so have the priorities of donors as they approach successive replenishment negotiations. In this sense, the various replenishments of the concessional resources system have tended to reflect the international development thinking of the day, especially in donor countries.

It is useful in this context to remember that changes in both development thinking and international aid architecture have passed through various phases (Box 1). The following discussion will focus on these different phases.

Over the decades, the debates in OECD donor countries about assistance to developing countries since World War II have taken up many themes. At the broadest level, two trends stand out: continuity and change. Continuity stands out because despite the frequent assertion that “[w]e now understand more about development and poverty than previously,” it seems clear that many recent ideas about the challenges of development are not really new. In his detailed survey of the idea of economic development, H. W. Arndt argued, “So quickly did the literature on economic development proliferate that there are

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few points of any substance about economic development which cannot be found, persuasively argued, in books, articles, or reports written in the first ten years after the end of World War II.”1 Although there has been continuity, there has been continual change as well. In summarizing his survey of development thought, Arndt observed: "If there is a central theme, it is . . . one of increasing complexity and divergence.”2 As discussed below, complexity and divergence are indeed trends that have increasingly intruded themselves into the various discussions about the arrangements for concessional resources in recent decades.

**Beginnings**

Early thinking about international development priorities in the 1950s was relatively straightforward. Following the successful launching of the Marshall Plan in 1947 to aid economic recovery in Europe, there was soon an international recognition that assistance programs to promote development in Third World countries were also needed.3 These programs were needed, not least for political reasons, to counter the suspicion in newly emerging developing countries that the United States (US) did not support their aspirations for independence. Responding to these concerns in Point Four of his inaugural address (20 January 1949), President Truman announced that the US would embark on a fresh approach to newly independent countries across the world.

During the immediate post-war period and in the early 1950s, economic concerns in Europe and most other developed nations focused mainly on post-war recovery. While Truman’s bold Point Four announcement seemingly prioritized international aid to developing countries, public opinion did not initially support the establishment of aid programs to help struggling (but unfamiliar) populations. Consequently, US leadership was more symbolic than effective.

**Aid for Economic Growth (1950s)**

During the 1950s, most OECD nations began to develop foreign aid programs. In practice, these programs generally tended to reflect the foreign policy priorities of the donor countries. Thus, the programs often reflected both the interests and ideologies of the donor countries. In this, an “In Our Image”4 pattern of aid delivery developed that came to underpin the approach of most donor countries and is still evident in many aid policies today.

Reflecting US thinking, early ideas about the provision of foreign aid in the post-war period mainly emphasized technical and financial assistance. As the World Bank noted, early post-war aid focused initially on reconstruction and later, on security. “An important feature of aid in the 1950s was the optimism generated by the success of the Marshall Plan leading to a widespread belief that ‘the combination of capital and technical assistance could transform economies in a very short time.’”5

During this period, there were early discussions about the relative advantages of multilateral and bilateral aid. The Special United Nations Fund for Economic Development (SUNFED), discussed initially during the 1950s, represented an early attempt at soft loans. The US and other donor countries were reluctant to support the fund. After prolonged discussion and much multilateral wrangling that

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2 Ibid., p. 6.
stretched over almost 10 years, the idea of establishing SUNFED was eventually abandoned. In the context of Cold War priorities, the US tended to favor bilateral aid because of the increased influence that this provided. It was not until 1960 that the first major international soft loan facility, the International Development Association (IDA), was established in the World Bank.

More broadly, the closely interrelated ideas of growth, capital accumulation, and the provision of capital assistance to developing countries were key concepts underpinning development thought during the 1950s. Economic growth took center stage. Arthur Lewis, the leading development economist in that era, said that “[t]he central problem in the theory of economic growth is to understand the process by which a community is converted from being a 5 per cent to a 12 per cent saver.”6 Emphasizing the importance of growth, and anticipating similar points made by Amartya Sen several decades later, Lewis argued that

[t]he advantage of economic growth is not that wealth increases happiness, but that it increases the range of human choice… The case for economic growth is that it gives man greater control over his environment, and thereby increases his freedom.7

Nevertheless, even at this early stage in development thought, most comments supporting economic growth were accompanied by cautionary observations that the quality of growth needed attention as well, especially in terms of income distribution and the benefits flowing to the poor. Among the economists in rich countries as well as radical critics in developing countries, some were highly skeptical about the emphasis on growth in the development economics literature.

The emphasis on growth naturally encouraged attention to the need to increase levels of capital accumulation. As Arndt observed, “[f]rom this perspective, the most elementary fact about the less developed countries was that they were ‘capital hungry.’ A shortage of capital is almost by definition a characteristic of underdeveloped areas.”8 The need for capital, in turn, encouraged policy makers to consider the role that international development banks might play in assisting developing countries to gain access to capital. These thoughts led to discussions about the need to create new concessional resource windows as part of the evolving international foreign aid system. Toward the end of the decade, the emphasis on capital accumulation began to recede into the background. Because of the costs involved, policy makers in donor countries were reluctant to support the provision of capital from bilateral donor budgets, and they were increasingly comfortable in emphasizing other and less expensive factors that might affect growth prospects in developing countries.

Looking back over the decade, it is notable that various key ideas about progress that emerged during this period continued to reappear in discussions about development thought in later decades. Two of these ideas were the capital needs of developing countries and the desirability of designing aid programs that mutually helped both donor and beneficiary countries.

From Economics to Human Capital (1960s)

It was around 1960 that the emphasis began to change perceptibly.9 During the early 1960s, discussions about growth and development began to broaden into new areas of interest. One important change was an increased emphasis on the size of aid flows. In the early 1960s, the United Nations (UN) General Assembly declared the 1960s as the “First UN Development Decade.” Industrialized countries were urged to set aside 1% of their national income for development aid. The official targets set at that time—even though only honored in the breach in a number of donor countries—soon became a major benchmark for comparing the international aid effort across donor countries.

8 H. W. Arndt, p. 55.
9 Ibid., p. 60.
At the same time, a second important change was the growing interest in trade issues and in the link between trade and aid. During the first post-war decade, trade pessimism dominated much of the literature about the economic development of less developed countries (as they were called at the time). Many commentators argued that, for a range of reasons, it was not possible for developing countries to compete effectively in most international markets and that it was unrealistic to rely on trade as an engine of growth.\(^{10}\)

The change began as mounting evidence from numerous research studies indicated that the protectionist import-substitution policies pursued in Latin America and other parts of the developing world had not been effective in promoting growth. By the early 1960s, developing countries increasingly favored the idea of supporting the growth of export-oriented manufactures. This was reflected in the calls for a “New International Economic Order” in the early part of the 1960s and the idea that “trade not aid” was needed to support development.

The third major change was the shift in emphasis from physical to human capital. H. W. Singer, a leading scholar of development studies, observed that “[t]he fundamental problem is no longer considered to be the creation of wealth, but rather the capacity to create wealth . . . . It consists of brain power.”\(^{11}\) This change was notable for several reasons:

(i) It foreshadowed the emphasis on information and knowledge, widely regarded as a breakthrough in development thinking in the mid-1990s that emerged following the information and communication technology revolution in the 1980s.

(ii) It also shifted the focus away from provision of capital aid and toward technical assistance, and encouraged interest in new directions such as investment in education and health, personnel planning, and “brain drain” issues.

(iii) The new focus on human capital, combined with increased attention on trade issues, represented a significant broadening of the international development agenda.

As the decades passed, the range of issues included in the international development agenda steadily increased so that by the end of the century, the international development agenda had grown into a veritable “Christmas tree”.

Finally, there was a broadening of policy interest away from individual projects in developing countries to the wider policy environment. It was increasingly believed that there was limited value in supporting the implementation of good projects within a poor overall policy environment. Therefore, the attention of aid donors widened and became more ambitious. Donors began to focus less on the performance of particular projects and more on the overall economic performance of recipient countries as a whole. The thinking was that it was reasonable for industrialized countries to assist with technical and financial assistance, but the governments of developing countries had the responsibility of using policies to promote development.

**Soft Loans**

It was within this international policy environment that the soft loan facilities for the World Bank and the Asian Development Bank (ADB) were established. In 1967, US President Lyndon Baines Johnson summarized the general view across the international donor community in his statement to the US Congress in support of the establishment of ADB soft loans:

> Experience in the World Bank and with regional development banks suggests that development finance requires two different and separate funds:

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\(^{10}\) Well-known economists who pointed to the problems of relying on trade to promote growth included Ragnar Nurkse (1962), Raul Prebisch (UN Economic Commission for Latin America 1949), and Myrdal (1957).

Ordinary capital, largely to finance the foreign exchange costs of projects which have a relatively rapid and direct return on investments, and

Special Funds, for longer-term loans and lower interest rates, to finance the foreign exchange costs of projects such as schools and roads which do not yield immediate financial returns, but which add powerfully to economic growth . . . .

Today’s need is for Special Funds to complement the ordinary capital. Development cannot be limited to projects which can be financed at commercial interest rates. Where there are factories and power plants there must also be dependable all-weather roads, farm equipment, and clean water supplies. The Bank must be able to lend for these long-term, as well as for short-term, necessities.\(^\text{12}\)

In the early years of IDA’s operations, donors generally provided support without requiring detailed discussions about the use of the funds. It was only later—when issues of “aid effectiveness” began to attract increasing attention among donors—that more attention was paid to broader policy issues. Discussions about the first replenishment of IDA resources began in 1962, with the US leading the negotiations. Because the international donor community agreed broadly about the need to establish a concessional loan facility within the World Bank group, the negotiations proceeded with little disagreement.\(^\text{13}\)

Nevertheless, the establishment of these facilities changed some important political influences within the banks. One World Bank report notes how IDA “radically changed the nature of the World Bank.”\(^\text{14}\)

At first, the volume of soft loans was small. During the 1960s, for example, the average level of total net disbursements of funding through IDA was a relatively small amount of around $1.4 billion per year (in 2004 US dollars). As a result, the leverage that donors exerted through soft loans was also small. But by the 1990s, the volumes had risen significantly. During the 1990s and past the turn of the century, average net disbursements (2004 US dollars) had risen markedly to around $5 billion per year. Thus, the influence of donors was increasingly felt within the international soft loan facilities.

Donor Fatigue

Nevertheless, signs of donor fatigue appeared within a few years, despite the hope among those in the early 1960s who saw poverty in developing countries as a major issue that aid flows would increase. In 1968, new World Bank President Robert S. McNamara was sufficiently concerned to invite former


\(^\text{15}\) Ibid., footnote 79, citing World Bank, profile of its 3rd President, Eugene R. Black (from website).
Canadian Prime Minister Lester B. Pearson to head a commission to review the record of development experience and make recommendations for the future.

In September 1969, the Pearson Commission presented its report, *Partners in Development*, which urged a much-increased flow of aid to the developing world, an increasing proportion of which should be provided through multilateral channels. The Commission suggested that the flow of total and official aid should amount to 1% and 0.75% of gross national product (GNP). The report also supported an increased role for the World Bank in aid coordination through the establishment of new consultative groups and increased monitoring of the external debt of developing countries. Notably, the report also highlighted the burden imposed by rapid population growth. The Commission's report served to encourage increased donor support and facilitated the third IDA replenishment at the end of the decade, doubling IDA resources.16

**Second Development Decade (1970s)**

In the early 1970s, the decade was ambitiously dubbed the “Second Development Decade.” Behind the rhetoric, further significant changes in developing thinking were occurring. During the 1960s, there had still been considerable support for state-supported and government-led approaches such as national planning in many developing countries. Indeed, Gerald Meier offered a pithy summary of development thinking during the two decades after World War II:

> The early thinking about development in the 1950s and 1960s can be summarized as being structural, shaped by trade pessimism, emphasizing planned investment in new physical capital, utilizing reserves of surplus labor in a dual economy, adopting import-substituting industrialization policies, embracing central planning, and relying on foreign aid.17

But then, as the World Bank noted, “the 1970s witnessed a crisis of this model.”18

For one thing, the earlier trend toward broadening the range of topics addressed in the international development dialogue persisted. Support continued to grow for the idea of an emphasis on the wider idea of “development” rather than just economic growth. There were numerous calls for increased attention to “broad-based growth” that appropriately emphasized the social aspects of development (e.g., health, population, education, and nutrition). At the same time, the Green Revolution in agriculture was spreading throughout Asia, generating much discussion about the impact of modern technologies in rural areas in developing countries.

Within Asia, these views were reflected in a major study prepared by Professor Hla Myint, supported by ADB, issued early in the decade.19 The study took an optimistic view of the region's growth opportunities in the 1970s and focused on two main themes: the importance of exports (especially from export-oriented manufacturing sectors) to help promote growth and create jobs in Southeast Asia, and the importance of appropriate domestic economic policies in supporting an export-oriented pro-employment strategy.

These trends were reinforced in 1972 when World Bank President McNamara made the theme of social equity and economic growth the central point of his annual address to the World Bank. McNamara questioned whether rapid economic growth by itself would guarantee improvements in the standard of living for the majority of people in poor countries. To address this problem, he suggested establishing specific targets for income growth among the poorest 40% of the population. During the next few years, McNamara emphasized the need to address inequalities within—rather than between—developing countries and put forward various proposals for doing so. Addressing the World Bank's 1973 annual

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18 World Bank, Aid Architecture, p. 37.
meeting in Nairobi, he announced that the World Bank would put primary emphasis on activities designed to increase the productivity of the poor to encourage a more equitable sharing of the benefits of growth.

These changes were reflected in various developments during the 1970s. Hollis Chenery’s much-quoted book, *Redistribution with Growth* (1974), discussed strategies for promoting economic growth designed to provide benefits for the poor. A year later, the central theme of the conference document at the World Employment Conference of the International Labour Organization was “basic needs,” and the document was published in 1976 under the title *Employment, Growth and Basic Needs*. Soon, a large literature had been produced about issues concerning basic human needs (BHN), and the abbreviation quickly became well-known in the development literature of the day.

Among other things, the discussions about BHN tended to broaden the concept of basic needs and introduced the idea that appropriate performance goals should be set for aid-recipient countries. This idea was increasingly taken up in donor discussions in hundreds of meetings and conferences during the following decades as the international development community wrestled with such tasks as deciding precisely which performance criteria might be appropriate, how the criteria might be measured, and what the donor response should be when aid-beneficiary countries failed to meet the performance goals that had been set for them. The establishment of the Millennium Development Goals (MDGs) in 2000 resulted from the consensus that recognized the need for comprehensive development goals.
A third development toward the end of the decade was the establishment of the Brandt Commission in 1977 on the suggestion of World Bank President McNamara, who was concerned about an impasse that had developed in discussions between rich and poor nations on a range of issues related to development and felt that an international forum was needed to encourage dialogue. The commission’s chairman, Willy Brandt, noted that the commission undertook its work at a difficult time. “We are aware,” he wrote, “that this Report is being published at a time when rich countries are deeply worried by the prospects of prolonged ‘recession’ and the diminishing stability of international relations.”

The goals of the report were ambitious: “to study the grave global issues arising from the economic and social disparities of the world community [and] to suggest ways of promoting adequate solutions to the problems involved in development and in attacking absolute poverty.” The report also noted, presciently, that “there is a real danger that in the year 2000 a large part of the world’s population will still be living in poverty.”

Released in 1980, the commission’s recommendations covered wide ground. Aside from focusing on traditional development issues such as hunger and food, population, the environment, industrialization, trade, and energy, the report also discussed the role of development countries themselves, the international monetary system, and the need to mobilize additional funds for development, including increased foreign aid. In addition, special emphasis was given to the impact of the international arms race, described as “the greatest challenge to mankind for the remainder of this century.”

Even as the ever-widening debate about broad-based growth was taking place between development scholars in First World countries in the 1970s, the policy environment was changing as well. The first oil shock (1973–1974) had triggered stagflationary pressures across the world economy. Policy makers in donor countries became increasingly concerned with the economic challenges that they were facing at home. The end of the Viet Nam war in 1975 also encouraged a period of introspection in the developed world. McNamara himself began to speak of the need to recapture the momentum of economic growth. It was indeed partly these trends that led McNamara to support the establishment of the Brandt Commission.

Looking back at the 1970s, it is notable that much of the debate reported in both the academic and official development literature largely reflected views from donor countries. There was little to indicate that these debates attracted much attention from within developing countries, which mainly were focused on their own internal concerns. Much of the shift toward social objectives discussed in policy debates in developed countries had a “generally cool reception… in the Third World itself.” In this context, while commenting on the attention given in rich countries to environmental issues early in the decade, leading Indian policy maker and economic planner Pitambar Pant tartly noted that “[t]he worst pollution is poverty.”

**Policies**

The changing mood of the 1970s naturally had implications for the foreign aid policies of donors. The debate about the rationale for foreign aid, begun in the mid-1960s, broadened. The volume of aid declined and policies tightened among some of the largest donors (e.g., France, the United Kingdom, and the US). At the same time, other donors with smaller programs (e.g., Denmark, Finland, Japan, Norway, and Sweden) substantially increased their aid programs in response to a growing awareness of development

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21 Ibid.
22 Ibid.
23 Ibid.
issues within their countries. The US undertook a major review of its Foreign Assistance Act, and the aid structure has remained largely unaltered since that time.26

Despite these changes in aid policies, there was sufficient support for the work of the multilateral banks to allow several replenishments of IDA and the establishment of the Asian Development Fund (ADF) in ADB. Discussions about the ADF began in 1972 and led to a 1973 agreement to establish the ADF. Donors met in Bonn in October 1973 and agreed to contribute approximately $486 million toward an initial mobilization of $525 million.

From the very beginning, it was necessary to address two key issues of principle: (i) arrangements for equitable burden sharing between donors, and (ii) principles to guide the allocation of ADF monies to ADB developing member countries. Both issues required frequent discussion and led to much disagreement in ADF negotiations.

On the first issue, to encourage an element of self-enforcing discipline across the donors themselves, it was agreed that the ADF would only become effective when an appropriate trigger level had been reached. The simple principle that underpinned the idea of the trigger was to ensure that none of the major donors would, for whatever reason, fail to meet their promises to contribute. Thus, it was agreed that the trigger for the first stage of the first ADF would be $260 million; the donors expected to reach that goal by mid-1974. Quite soon, however, several donors indicated that difficulties with official domestic approval procedures would delay their initial contributions. When it became apparent that the US would be able to contribute only half of the initial contribution expected, the donors established a reduced trigger ($225 million). That figure was attained in late June 1974, and the ADF was formally established on 28 June 1974.

The second key issue involved arrangements for the allocation of ADF monies to recipient countries. At that stage, the allocation of the ADF was relatively simple: it was allocated among ADB’s 17 developing member countries on the basis of their relative shares in ADB capital. Later, as the donors became increasingly concerned about monitoring the development effectiveness of international aid programs, it became necessary to agree to rather more complicated arrangements in later replenishments.

**Broadening the International Development Agenda (1980s)**

Development debates in donor countries during the 1980s were dominated by three themes: the international debt crisis; the need for structural adjustment;27 and a further broadening of the international development agenda.

**International Debt Crisis**

The international debt crisis of the 1980s was first acknowledged as a major crisis when the Mexican government declared that it would not be able to service international debts. The debt crisis closely followed the second oil crisis at the end of the 1970s. The Mexican government’s announcement sent shockwaves through international financial markets. Following Mexico’s default, many international banks reduced or halted new lending to Latin America. Since a high proportion of the region’s borrowings were short-term, the pressure on financial markets quickly spread to nearby countries. Billions of dollars that normally would have been refinanced became due immediately. Although the main impact of the crisis was felt in Latin America, discussions about development policy for the rest of the decade focused

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26 See www.usaid.gov/about_usaid/usaid.hist.html
attention on the need to monitor borrowing practices more carefully and the risks attached to building up large debts in developing countries.

**Structural Adjustment**

One result of the debt crisis was that more attention was paid to overall policy issues than had previously been the case. Attention tended to move away from debates about redistribution and BHN and back toward traditional questions of aggregate growth and development. In his 1987 survey of foreign aid thinking, Roger Riddell noted that

> whereas, in the 1970s, slow growth and continued widespread poverty in Third World countries had led to the question “How can the poor be assisted more rapidly?” In the 1980s, an even more fundamental question was asked: “How can the pre-conditions be altered so that economic development can get started again?”

Released in 1985, a major OECD study, *Twenty-Five Years of Development Co-operation: A Review*, reflected this heightened emphasis on policy when it observed that “one of the compelling lessons of experience is that aid can only be as effective as the policy, economic and administrative environment in which it operates.” The World Bank noted the major consequence: the financial crises of the 1980s “moved the attention beyond capital accumulation and BHN of developing countries to their policies, starting the lending for ‘structural adjustment.’”

The emphasis on outward-looking industrialization policies increased as many countries finally abandoned the import-substitution industrialization policies that they had followed during the 1960s and 1970s. A 1970 study by Little, Scitovsky, and Scott, published as *Industry and Trade in Some Developing Countries*, examined in detail the high costs of import-substitution industrialization policies. However, the main messages from this study were not fully appreciated in many countries until the debt crisis of the 1980s laid bare the costs of protecting inefficient manufacturing industries at home.

At the same time that developing countries were adopting new market-oriented policies in response to the debt crisis, pro-market liberal economic policies were beginning to receive strong support in developed countries. Leaders such as US President Ronald Reagan and UK Prime Minister Margaret Thatcher began talking about the need for supply-side economic reforms. The supply-side idea soon became very influential. The result of these changes in both developed and developing countries was that, by the mid-1980s, it had become the conventional wisdom in development circles that structural adjustment was generally desirable in developing countries. In Asia, for example, Indonesia introduced a series of pro-market liberalization policy packages in the 1980s, and the international financial institutions encouraged other developing Asian countries to adopt pro-market policies as well.

The belief grew... that the successes and failures of most developing countries were due to policies executed (or not executed) within developing economies which had responded to (or not responded to) market changes and price signals domestically and in the international economy... Whereas in the 1960s the basic question addressed by aid theory was how aid could assist in the development process, in the 1980s it is in furthering the adjustment process that is perceived as central.

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30 Ibid.

31 R. C. Riddell, p. 95.
Broadening of the Aid Agenda

A third theme of the 1980s—and an overarching trend throughout the decade—was the continuing tendency for the international development debate to widen its embrace of an ever-growing “Christmas tree” of priorities (Box 3). The role of women in the development process began to receive increased attention, along with a range of other priorities. The 1989 report of the chairman of the OECD Development Assistance Committee (DAC) set out three main sets of issues seen as priorities for the coming decade: (a) population and the environment; (b) the relationship between society and the individual; and (c) poverty, malnutrition, and agriculture.

The DAC chairman noted an emerging consensus on population and environment that emphasized the need for a new balance between population pressures and the way resources such as water, energy, and air were used. The response was seen to require a broad-based approach designed to reach the whole population. The emphasis in the second set of issues—a new relationship between society and the individual—referred to a wide range of topics, including more democratic institutions, expanded public participation, reduced monopolistic power of government, greater security of tenure and contract, due process of law, better accountability, open systems of criticism and correction, and more attention to corruption. In explaining donor views on these issues, the DAC chairman observed:

> With the now more general recognition and acceptance of the importance of accountability in the making and implementing of rules and regulations and of the need for public participation, donors are offering more help in these areas. We hear of projects for land titling, for helping build judicial systems, the legal training, for help with electoral systems, for strengthening legal rights for women, and for strengthening parliamentary institutions…. We seem to be in a period when democratic processes are advancing. This phenomenon is reflected in donor thinking about development co-operation in the 1990s.32

The DAC chairman’s personal observations on malnutrition and agriculture covered a range of major issues that generally were not seen as high-priority items by donors during the 1990s:

> In the 1990s we need a strategy to reduce significantly the number of hungry people. Since most hungry people live in rural areas and are hungry because they lack the income to buy food, the strategy should focus on agricultural growth and employment creation…. In most developing countries a large proportion of national income is generated by agriculture-related employment. Any strategy to increase growth rates must be supported by accelerated growth in agriculture. Thus, at bottom, the most important single action donors could take to reduce hunger would be to support developing-country strategies to increase agricultural production…. This means faster agricultural development. More money needs to be spent on rural infrastructure.33

However, donors during the 1990s tended to give higher priority to other matters. It was not until after the turn of the century that the issues outlined by the DAC chairman began to receive increased attention.

A New Decade

As the 1980s came to close, the donor community hoped that the coming decade would see improvements in the international climate for growth and development. The 1980s had come to be seen as a “lost decade,”

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33 Ibid., p. 18.
### Box 3 Growth of the Christmas Tree

<table>
<thead>
<tr>
<th>Aid Priorities</th>
<th>Thinking</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1950s</strong></td>
<td></td>
</tr>
<tr>
<td>Technical assistance, financial assistance, specific projects (infrastructure)</td>
<td>Capital formation; technical assistance (Point Four), two-gap analysis, an inclination toward planning, trade pessimism with support for import-substitution industrialization</td>
</tr>
<tr>
<td>Promotion of economic growth</td>
<td></td>
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<tr>
<td><strong>1960s</strong></td>
<td></td>
</tr>
<tr>
<td>An early broadening of the emphasis away from individual projects to overall macroeconomic policies and management of development (program loans, policy dialogue); and social issues (human rights, gender)</td>
<td>Physical capital is not enough; improved social capital of human beings (education, health) is important to raise productivity</td>
</tr>
<tr>
<td>Trade issues</td>
<td>Increasing attention to the microeconomics of development, including the idea of &quot;getting prices right&quot;</td>
</tr>
<tr>
<td>Human capital</td>
<td></td>
</tr>
<tr>
<td>Capital accumulation still seen as important</td>
<td></td>
</tr>
<tr>
<td><strong>1970s</strong></td>
<td></td>
</tr>
<tr>
<td>A further broadening of emphasis toward wider issues of management of development inside developing countries themselves, growing pressure on human rights, also, basic human needs (which attracted much attention in late 1970s)</td>
<td>Recognition of the importance of trade, and export-oriented industrialization</td>
</tr>
<tr>
<td>McNamara and the World Bank began to emphasize poverty (early 1970s)</td>
<td>Good projects (and capital) alone are not enough; broader aspects of management of a country are important as well</td>
</tr>
<tr>
<td>More attention on the private sector, but this also led to discussion of how to promote the private sector and the use of export credits (Aid and Trade Provision scheme in the United Kingdom, 1977)</td>
<td>Emphasis on links between growth and income distribution, and a need to reach the poor</td>
</tr>
<tr>
<td>More attention to social sectors</td>
<td>Increasing attention to specific microeconomic issues in development such as factor markets (land, labor, credit)</td>
</tr>
<tr>
<td>Family planning (early in the decade)</td>
<td></td>
</tr>
<tr>
<td>Green revolution</td>
<td></td>
</tr>
<tr>
<td><strong>1980s</strong></td>
<td></td>
</tr>
<tr>
<td>Structural adjustment, increasing emphasis on “broad-based” economic growth and reform programs</td>
<td>A major focus on structural adjustment, reflecting the debt crisis</td>
</tr>
<tr>
<td>Debt problems seen as a key priority</td>
<td>The effective disappearance of emphasis on poverty for a period as an issue (reappeared in the 1990s)</td>
</tr>
<tr>
<td>Growing emphasis on environmental issues</td>
<td></td>
</tr>
<tr>
<td>Women in development</td>
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</tbody>
</table>

*continued on next page*
and the 1989 DAC report referred to the period as “a decade of crisis and depression for many developing countries.”

A distinguished international panel chaired by Saburo Okita reviewed the operations of ADB, including the ADF, at the end of the 1980s. Its report concluded that

[...] the Panel supports the view that [the] ADF resources should continue to be made available to DMCs [developing member countries] on the basis of country considerations involving per capita incomes. At the same time, resources on a reduced degree of concessionality should also be extended to middle-income DMCs for projects in the areas of poverty alleviation and the environment, as well as for certain projects of a productive nature with long gestation periods and comparatively low financial rates of return, such

### Box 3 continued

<table>
<thead>
<tr>
<th>Aid Priorities</th>
<th>Thinking</th>
</tr>
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<tbody>
<tr>
<td><strong>1990s</strong></td>
<td></td>
</tr>
<tr>
<td>A sharp expansion in the range of issues on the donor international agenda: growing concern for human rights, democracy, gender, environment (“sustainable development”)</td>
<td>“New Development Economics” with emphasis on information, incentives, and institutions</td>
</tr>
<tr>
<td>Good governance, rule of law, democracy, and corruption all seen as new areas of priority</td>
<td>Fall of Berlin Wall and accompanying emphasis on OECD donor ideas. Early concerns for ownership from developing countries</td>
</tr>
<tr>
<td>Shift to policies emphasizing environment and sustainable development, broader participation and ownership by beneficiaries (both beneficiary countries and social groups), institutions within developing countries, “cross-cutting” issues, and capacity building</td>
<td>Concern about policy consistency and coherence across donor policies</td>
</tr>
<tr>
<td>Modes of debt forgiveness</td>
<td></td>
</tr>
<tr>
<td>Growing interest in the effectiveness of aid and results</td>
<td></td>
</tr>
<tr>
<td><strong>2000s</strong></td>
<td></td>
</tr>
<tr>
<td>Millennium Development Goals in 2001</td>
<td>New public sector management</td>
</tr>
<tr>
<td>Donor coordination, Paris (2005 Declaration), harmonization, more emphasis on effectiveness and results (partly flowing from New Public Sector Management in Anglo-Saxon countries)</td>
<td>Concern about management, duplication, and excessive duplication in developing countries</td>
</tr>
<tr>
<td>Terrorism and security</td>
<td>Grants introduced into the international concessional resources system</td>
</tr>
<tr>
<td>Increased emphasis on soft security such as human security</td>
<td></td>
</tr>
<tr>
<td>Fragile states</td>
<td></td>
</tr>
</tbody>
</table>

OECD = Organisation for Economic Co-operation and Development.
Source: Compiled by the author.

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34 Ibid., p. 45.
as reforestation or rural electrification. A blending of [the] ADF and ordinary capital resources (OCR) funds would provide an appropriate basis for such financing.\textsuperscript{35}

The panel also referred to the issue of access to concessional resources through the ADB system for the People’s Republic of China (PRC) and India. This was a difficult matter. On one hand, a significant number of donors supported the proposal that the PRC and India should have access to the ADF. On the other hand, other donors were concerned about the consequences of allowing these two very large countries to draw on limited ADF concessional resources. In attempting to find a balance, the panel proposed a diplomatic recommendation that allowed ADB management room to maneuver:

In view of their eligibility, the Bank should provide [the People’s Republic of] China and India with access to ADF resources. Under the next replenishment (ADF VI), such concessional financing should appropriately support projects in these two DMCs for physical and social infrastructure, for protection and improvement of the environment, and for projects designed directly to improve the living standards of the poorer groups. If funds are available under the present replenishment (ADF V), these should be offered to [the People’s Republic of] China and India on the same basis. The Panel understands, however, that these new borrowers will wish to ensure that the majority of both the Bank’s OCR and ADF resources remain available to traditional DMC borrowers.\textsuperscript{36}

In its early years during the 1970s, ADB had understandably focused on planning individual projects at the country level. However, over time, as ADB’s programs in developing countries became more complex and as thinking about development policy changed, a more formal approach to country programming was adopted. In 1974, a 3-year rolling format was introduced that based country programs on a review of past performance and prospects of the economy, priorities for ADB assistance, and the need to collaborate with other lending agencies and bilateral donors. This reflected a trend, which became more pronounced during the 1980s and especially during the 1990s, for the donor community to place increasing emphasis on issues such as policies, development performance, conditions attached to lending, measurement of progress toward specified goals, and harmonization across the donor community.

At the end of the decade, Stern summarized the trends in thinking as follows:

The ability of governments to plan comprehensively and effectively is now viewed with much greater scepticism than in the years following the Second World War. Thus many would now place equal or greater emphasis on government failure relative to market failure in the balance of the argument than was previously the case with earlier writers, who concentrated heavily on market failure. The scepticism is born of experience but one must be careful not to be too sweeping. We have learned much about what governments can do effectively as well as where they are likely to perform badly.\textsuperscript{37}

In a similar vein, Irma Adelman observed in a survey entitled Fifty Years of Development: What Have We Learned? (2000) that “[i]t is only during the eighties that greater emphasis started being placed upon institutional modernization in the direction of marketization and trade liberalisation.”\textsuperscript{38}


\textsuperscript{36} Ibid., p. 11.


New Developments (1990s)

Political Upheaval

The new decade began with a big bang—or perhaps, more correctly, a great political crash (i.e., the end of communism as a major factor in global politics)—that transformed the strategic environment for foreign aid. The Berlin Wall collapsed at the end of 1989, and within a year or so, the Cold War, which had dominated global strategic politics for over 40 years, ended. Although many policy makers in the global development assistance industry only dimly realized it at the time, an era had ended. Consequently, the World Bank began to distinguish between the Cold War period and the post–Cold War period in aid policy issues. Many other commentators have also emphasized the implications of the change in the environment for aid policy:

The political and economic revolution that had taken place in the Eastern bloc since the “fall of the Berlin Wall” in December 1989 also had far-reaching consequences for traditional development cooperation. It implied the total bankruptcy of a growth model which had been popular in numerous Third World countries such as India: the state-run planned economy. The liberal capitalist methods of Asia and Latin America, which development experts had denounced for so many years, appeared to have triumphed. Eventually, however, the revolution in the Eastern Bloc and the end of the Cold War were to have another effect. For countries such as the United States, Britain and West Germany, the Cold War had always provided a major incentive to provide aid. Once this incentive vanished, the amount of aid provided by those countries fell substantially.

In the new international strategic environment, there was much more room to propound liberal values. As just one example, the pre–Cold War constraints on criticisms of undemocratic but pro-Western leaders in developing countries (such as President Soeharto in Indonesia) were loosened. Soon, the international development agenda shifted and became broader.

In 1990, Jan Pronk, Minister for Development Cooperation in the Netherlands, concluded in a major document on Dutch aid policy that “development must be accompanied by freedom, democracy and respect for human rights, along the lines of the Western European welfare state” (emphasis added). This tendency to widen the framework within which development policy was approached soon led to renewed discussions within the international donor community about a wide range of topics. Issues such as the environment and sustainable development, participation by beneficiaries, various cross-cutting issues, the idea of “good governance,” and the need for greater capacity building within poor countries all received much attention. The idea of broader participation included the involvement of the private sector and civil society organizations (there was increasing emphasis on their involvement during the 1990s).

Democracy and Market-Oriented Approaches

There was also increasing attention on democracy and market-oriented approaches to policy. Significantly, these changes were sometimes said to reflect Anglo–Saxon values, which emphasize competition over cooperation and adversarial relationships over inclusive social arrangements. It is clear, however, that many European donors and some Asian donors also favored many of the changes (e.g., the International

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39 World Bank, Aid Architecture, p. 27.
41 Ibid., p. 50.
42 Ibid., p. 50.
Institute for Democracy and Electoral Assistance [International IDEA] was established in Sweden in 2005). The expansion of democratic space also brought new challenges. During the early part of the decade, the international donor community was drawn into relief and peacekeeping efforts following local and regional conflicts within developing countries. It became sadly evident that greater democracy sometimes allowed hidden social tensions to emerge, and racial, religious, and sectarian disagreements within poor countries grew more pronounced. Dreadful conflicts in Africa—in the Congo, Ethiopia and Eritrea, Nigeria, and Rwanda—attracted global attention.

Focus on Poverty

Another marked change in developing thinking was a renewed concern with poverty. Curiously, as a priority topic of attention, poverty had tended to be neglected by the donor community during the 1980s. However, the *World Development Report 1990* brought the topic of poverty squarely back onto the global agenda. The report focused on global poverty as the theme topic, emphasizing that “no task should command a higher priority for the world’s policymakers than that of reducing global poverty.” World Bank support for an increased focus on problems arising from corruption in developing countries, especially following the appointment of James Wolfensohn as President of the Bank in 1995, marked another shift in development thinking. Wolfensohn’s high-profile campaign against corruption reflected the increased willingness of the donor community in the post–Cold War period to take up issues previously regarded as likely to clash with political and strategic objectives underpinning aid programs.

European countries changed their approach on a range of development issues during the 1990s partly because of the fall of the Berlin Wall, but also because of changes within Europe itself. As the World Bank observed:

One of the most important developments after the fall of the Berlin wall was in fact the Treaty of Maastricht putting development cooperation on equal footing with other community policies, establishing a strong co-ordination obligation for the Member States and the Commission, and setting clear objectives for EC [European Commission]-managed aid. Over the following 15 years, a process has led to a series of common EU [European Union] positions at international fora, and a common EU development policy framework.

As has often been the case since the establishment of foreign aid policies since World War II, donor aid policies were significantly “supply-driven” (i.e., strongly influenced by changes inside donor countries) rather than “demand-driven” by the needs of poor countries. A further change following the end of the Cold War was that humanitarian aid and specialized UN agencies in the field began competing for official development assistance funds. This blurred the distinction between humanitarian and development aid and brought a security dimension to aid. Within a few years, the security dimension of global aid policies became much more pronounced after the threats to the US and other OECD countries increased sharply following the 9/11 attacks in the US.

New Development Economics

Along with the marked changes in the realpolitik of aid that occurred during the 1990s following the end of the Cold War were changes in thinking about the economics of development. During the previous two decades, a set of ideas—known as “new development economics”—had been evolving. Perhaps the most important idea in this approach was the move away from an emphasis on capital accumulation toward a
new focus on the other factors that influence development. As Meier noted, “[d]evelopment is no longer
seen primarily as a process of capital accumulation but rather as a process of organizational change…
These changes make institutions and incentives more prominent in the subject of development.”47 Just
as the end of the Cold War marked a watershed, so did new development thinking:

The new development economics is the most important change in thinking about
development that has taken place during the past 50 years. It strengthens the microeconomics
of development through its emphasis on the economics of information, institutions, and
incentives.48

Each of these three aspects—information, institutions, and incentives—gained increasing importance
and prompted sweeping changes in both development policy circles and soft loan negotiations during the
1990s. Under President Wolfensohn, the World Bank became the “knowledge bank” in the mid-1990s.49
Soon, most international institutions were discussing the importance of information and communication
technologies, knowledge, and information. The role of institutions was also discussed increasingly during
the 1990s and became a central part of development policy dialogue.50 Toward the end of the decade,
the emphasis on incentives was reflected in soft loan negotiations (i.e., allocating aid funds to reward
good development performance in borrowing countries). Donors soon required the implementation of
this approach in the lending policies of agencies such as the World Bank and ADB. For example, a new
“performance-based allocation” (PBA) system was introduced for the distribution of concessional funds.

Aid Delivery

During the 1990s, donor countries were increasingly concerned about the “effectiveness” of aid and,
more generally, about the overall operations of the international aid system. This soon began to influence
negotiations within the global concessional funds system. Complexity and the dangers of duplication
were attracting comment. There was also a good deal of discussion about the “coherence” of policies
within developed countries toward developing nations.

One main concern for many bilateral donors was not so much the level of aid, but rather their
confidence in the ability of multilateral agencies to achieve results. Indeed, an emphasis on results became
increasingly important in international soft loan and concessional negotiations during the 1990s and
into the new century. This approach reflected the “new public management” philosophy that increasingly
influenced public sector management in certain OECD countries, especially the Anglo-Saxon countries,
during this period.51 The new approach to public management emphasized outputs, outcomes, and impacts
rather than inputs. There was also a strong emphasis on measurement and the efficiency of public sector
activities. Public sector agencies were increasingly asked to work to measurable performance indicators.
“Why not outsource this activity to the private sector?” became a frequent question. The implicit
assumption was that the private sector might provide more efficient delivery than the public sector.

Reflecting all of these influences, there was a marked change in the approach that the international
donor community took toward negotiations over soft loan replenishments in the early 1990s. Indeed, a
heightened donor interest in policy issues had already become evident during negotiations over the ninth
replenishment of IDA (IDA 9) during 1989. During the IDA 9 negotiations, donors showed increased

48 G. M. Meier, p. 127.
49 S. Mallaby, p. 160.
50 G. M. Meier, p. 135.
interest in reviewing IDA's role and functions and in setting out policy directions for IDA activities. This approach was soon reflected in replenishment negotiations for funding for other international organizations. Replenishment discussions for ADB’s ADF VI, which began in mid-1990, proved more involved, and focused much more on detailed policy issues than any earlier ADF negotiations.

One problem that emerged in replenishment negotiations during the 1990s—partly as a result of the ever-widening scope of the international development agenda—was a growing complexity in delivery arrangements for aid. These included the proliferation of bilateral and multilateral agencies providing assistance, the emergence of new private and public donors, a growing earmarking of aid resources for specific uses through global programs, and aid fragmentation (reflecting a growing number of donor-funded activities, often with decreasing financial size). These trends reflected events on the donor (supply side) of aid arrangements. However, the trends often (i) increased the transaction costs of delivery to both donors (who were generally able to handle the increased transaction costs) and recipients (who found the costs hard to handle), and (ii) did not meet recipients’ (demand side) needs.

**Expansion of Aid Priorities (2000s)**

Just as the “Christmas tree” of items attached to the international development agenda grew throughout each of the previous five decades, so did the list of policy and operational matters seen as priorities by donors continue to expand during the first decade of the new century. Much donor concern focused on topics such as the role that institutions (however defined) play in the development process, the need to find a balance between the state and the market, and how weak states could manage issues of governance. Collier et al. summed up the lessons of the 1990s as follows:

> Our reading of the 1990s is that the reform process too often neglected the institutional foundations necessary if markets are to be effective for poverty reduction. It is not enough to focus attention on ‘getting prices right’; public action is needed to ‘get the markets right’...

The challenges of improving governance and the provision of public services, and their focus on the poor, highlight the importance of institutions, norms and behaviors for development. If we had to single out one key idea that has risen to prominence in development thinking in the 1990s, that would be it.52

Reflecting the ideas of the new development economics, Meier emphasized the importance of institutions:

> Development economists in the 1970s advised developing countries to “get prices right.” Then in the 1980s and 1990s, they said “get macro policies right.” Now they say “get institutions right.”

Many of the well-known policy priorities, and especially the gamut of items included as cross-cutting issues, remained attached to the Christmas tree that donors discussed in concessional resource replenishments after 2000. Among numerous additional items that donors have focused upon since the turn of the century, four stand out:

(i) the emphasis on aid effectiveness reflected both in support for the new PBA systems for distributing aid and the introduction of grants,

(ii) support for the MDGs,


(iii) the greatly increased priority given to security-related issues, and
(iv) the marked heightening in concern about global environmental issues.

The first of these issues—the emphasis on effectiveness—has been a central theme in negotiations about concessional resource replenishments since the early 1990s. In fact, policy makers have often debated the effectiveness of aid since the late 1940s. In a sense, therefore, recent discussions about aid effectiveness have retraced a well-trodden path. Many of the key issues were surveyed in a widely discussed 1998 World Bank study, *Assessing Aid*, which argued that effective aid requires both the “right timing . . . and the right mix of money and ideas.” The debate centered on the question, “Do donors reward good performance?”

In the ADF VIII negotiations that began in 1999, ADF donors began to discuss the idea of allocating aid to reward good development performance. A detailed PBA system to guide the allocation of ADF monies was devised and then closely reviewed in subsequent negotiations for the ADF IX (2004) and the ADF X (2008). After considerable debate among donors, grants were introduced to supplement soft loan resources in both IDA and the ADF. After introduction on an exceptional basis in IDA in the mid-1990s, grants became a regular part of the IDA and ADF concessional loan systems by the early 2000s. The supporters of grants argued that for some of the poorest countries, certain high-priority activities needed donor support through grants rather than loans because even soft loans imposed obligations that could prove onerous.

The second key focus of the international development community since the turn of the century has been the MDGs, which were set out in the Millennium Declaration and signed by 189 countries in 2000. The MDGs include 8 specific goals and 18 concrete targets for development that hopefully will be achieved by 2015. Although several goals are ambitious, donor countries have accepted them as important benchmarks that should help guide both aid policy and aid programs. A high-level meeting convened to agree on the Paris Declaration on Aid Effectiveness in 2005 reconfirmed support for the MDGs. In recent IDA and ADF replenishment discussions, donors accepted both the MDGs and the principles as setting out broad principles that the soft loan and grants programs should be designed to support.

The third area of focus is the link between aid and security. Especially since the aftermath of 9/11, other terrorist attacks in developing countries, and the commitment of Western troops in Iraq and Afghanistan, some donors have allocated significant amounts of foreign aid to security and anti-terrorism programs. Others have paid closer attention to softer “human security” activities and the need to develop improved social safety nets to protect the poor in developing countries. Moreover, the donor community has begun to focus on the challenges involved in supporting “fragile states” in the developing world.

The fourth high-priority area involves global environment issues, especially climate change. Some commentators have taken the view that donors are inclined to promote supply-side programs (sometimes referred to as “the blue and green environment agenda”) in this area of international development policy rather than respond to the demand-side needs emphasized by poor countries, which focus on a “brown agenda.” Certainly, since current energy-use levels differ so greatly between rich and poor countries, there are significant differences in priorities between donor and aid-recipient nations. Nevertheless, despite these differences, there is now a general agreement across the international community that policies designed to alleviate the impact of climate change on global development will require far greater attention.

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55 OECD DAC, *supra*.
56 Available at www.un.org/millennium/declaration/ares552e.htm
Conclusion

This discussion began by noting that both continuity and change are trends that have marked the thinking about global development issues in OECD donor nations since World War II. These trends have also been reflected in the evolution of the multilateral concessional resource system. Thinking about both global development issues and administrative systems for delivering aid have now become quite complex. The Christmas tree of issues that are included in the international development agenda now risks becoming overloaded, especially when the ambitious goals of the agenda are compared with the relatively modest resources provided across the international development assistance system.

A great deal is now asked of the international concessional resources systems. One World Bank review of IDA noted the need to align resources with priorities and observed that “the replenishment undertakings have been to some extent both over-loaded and over-determined….Too much has sometimes been asked of IDA and too much sometimes promised.”57 Looking to the future, one main challenge will involve matching goals with resources more effectively than is done at present. Only if this is accomplished will the international concessional resources systems be able to make a meaningful contribution to the huge task of eliminating the mass poverty that still blights the lives of several billion people in developing countries.

Chapter 2

Organizational Structures, Institutional Frameworks, and Decision-Making Procedures of Multilateral Concessional Financing

Gerd Droesse*

Introduction

This chapter examines the organizational structures of channels of concessional financing, focusing on four multilateral development banks (MDBs), two subregional development banks, and three other multilateral financial development institutions (MFDIs).1 It also analyzes trust funds, including multipurpose vehicles, facilities, and financial intermediary funds (including multi-actor funds) associated with these organizations and supporting international activities.

The World Bank, African Development Bank (AfDB), Asian Development Bank (ADB), and Inter-American Development Bank (IADB) are the main channels through which the international community provides concessional financing. The World Bank Group and the AfDB Group provide concessional financing mainly through their respective concessional arms: the International Development Association (IDA) and the African Development Fund (AfDF). ADB and IADB provide concessional financing through special funds administered by them.

Other channels for concessional financing include the Caribbean Development Bank (CDB), Central American Bank for Economic Integration (CABEI), International Fund for Agricultural Development (IFAD), Islamic Development Bank (IsDB), and Nordic Development Fund (NDF). Each of these organizations has very interesting features. CDB was influenced substantially by the MDBs mentioned above and shares many of their characteristics in terms of governance structure, modalities of concessional financing, replenishment processes, and replenishment themes. It performs, among other things, through financing from its special funds, a catalytic function for the development of the Caribbean region. CABEI created a technical cooperation fund in 1988, and in 2000 it created a window for concessional loans and grants that allowed it to continue its operations in two member countries with unsustainable levels of debt, even though its constituent agreement did not foresee such windows. IFAD focuses on poor rural people, and IsDB’s concessional operations are governed by the principles of Islamic law.

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1 The term “multilateral development bank” refers to institutions that "provide financial support and professional advice for economic and social activities in developing countries" and is typically used for the World Bank and four regional development banks: the African Development Bank (AfDB), Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD) and Inter-American Development Bank (IADB). (See World Bank. 2003. Multilateral Development Banks. http://web.worldbank.org/WEBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040614--menuPK:41699--pagePK:439122-piPK:440357-theSitePK:29708,00.html)MDBs have a broad membership, including developing countries, and are not limited to certain sectors. This distinguishes them from institutions such as the International Fund for Agricultural Development (IFAD), the Islamic Development Bank (IsDB) and the Nordic Development Fund (NDF). Subregional banks are also multilateral banks and typically owned by borrowing countries. For the organizations listed in the second paragraph of the introduction section, collectively the name MFDIs is used.
The NDF was established to channel Nordic development aid to projects of Nordic interest, but its functions have changed recently to provide financing for climate change mitigation and adaptation.

**Organizational Structures**

The introductory remarks for this publication illustrate the fragmentation of aid architecture and the proliferation of channels of concessional financing. The substantial differences between organizational structures of concessional financing windows emphasize the complexity of the current aid architecture.

Some international organizations, such as IFAD, were established specifically to provide concessional financing. In most cases, however, organizations or organizational groups provide financing through “hard” windows on preferential market-based terms and through “soft” windows on concessional terms. Under hard windows, development banks perform functions of financial intermediaries that resemble those of commercial banks in certain aspects. They borrow on capital markets against a capital base comprising paid-in capital as well as callable capital subscribed by their member countries. On the other hand, soft windows are structured as “multilateral clubs of donors who collaborate in providing permanent grant resources” to recipients on concessional terms (e.g., concessional loans or grants). A basic distinction involves whether concessional and nonconcessional resources are administered within one organization under one legal personality, or affiliated organizations were created by intergovernmental agreement and with proper legal personality for the provision of concessional financing to supplement the hard financing provided by an organizational group. These different organizational structures have multiple implications for the institutional frameworks and governance structures of international organizations.

In international organizations that administer both concessional and nonconcessional resources, generally the same governing bodies make decisions on operational and policy matters regarding both ordinary and special operations. Generally, the same voting rights also apply. For crucial matters (e.g., admitting new members) and certain decisions regarding concessional resources, however, the constituent documents may provide for qualified majorities that give major contributors or groups of contributors a veto right and, thus, additional policy leverage.

Circumstances are different in organizational groups that provide concessional financing through affiliated organizations. Because such affiliates are international organizations in their own right, the affiliate’s membership may vary from that of other organizations in the group. Their governing bodies may be structured differently, and decision-making procedures and voting rights may differ as well, depending on how their respective constituent instruments define relationships between group organizations. Moreover, such relationships may range from total dependence to virtual independence. Generally, coordinated governance structures that ensure close coordination of activities between the affiliate and the establishing organization are considered desirable, but this approach was not adopted in all cases.

Enabling international organizations or organizational groups to undertake financial transactions in capital markets requires a strict separation of concessional and nonconcessional resources, liabilities, expenses, and operations. This principle of separation applies to organizations providing financing through concessional and nonconcessional windows under one legal personality and also to the relationship

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2 See Introductory Remarks.
4 Ibid., p. 18.
5 This study uses the term “affiliated organization” or “affiliate” for all organizations with proper legal personality that are part of an organizational group and that provide concessional financing.
between affiliated organizations and the other organizations in the group. Nevertheless, such a separation is not absolute and does not preclude the possibility of allocating resources, to a certain extent and in a transparent manner from hard windows to concessional financing windows.

To reduce recipients’ borrowing costs, some organizations that provide financing from their hard windows have established subsidy schemes that may be the only source—or an additional source—of concessional financing, funded by

(i) concessional resources,
(ii) (net) income and/or surplus from hard windows, or
(iii) trust funds or other external resources.

The governing bodies of MFDIs determine which operational activities to fund through the hard windows and the terms and conditions of the subsidy. When a trust fund is to provide resources for a subsidy scheme, the governing bodies of MFDIs also set the terms and conditions that govern the establishment of such funds and the acceptance of contributions.

Trust funds are extremely versatile instruments for providing development assistance. They can be established within a limited time frame, and they can support a wide range of initiatives falling within any of the statutory purposes of an organization. Moreover, the funding mechanisms, governance structures, and decision-making procedures of trust funds may differ from the governance structures of the organization administering the trust fund and/or acting as trustee.

Although in certain cases trust funds may possess legal personality, they do not require and often do not have a distinct legal personality.\(^6\) Due to this constraint, they generally cannot enter into contracts or be the subject of privileges and immunities. For that purpose, the international organization acting as trustee, or another organization or entity having legal personality under international or local law, must act on contractual matters. In addition, trust funds and the staff administering such funds require special arrangements to ensure that they are covered by privileges and immunities. Since this hinders the effectiveness of trust funds, alternative paradigms of organizational structure were put in place to allow financial instruments such as the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) to enter into legal commitments and enjoy privileges and immunities but still avoid the establishment of an international organization by intergovernmental agreement.

### Organizations Providing Financing Only on Concessional Terms

As stipulated in Article 2 of the Agreement Establishing the International Fund for Agricultural Development (AEI), IFAD was founded specifically for the purpose of mobilizing “additional resources to be made available on concessional terms for agricultural development [in IFAD’s] developing Member States,” and therefore lacks a hard window for financing on market-based terms. IFAD emerged in the aftermath of food scarcities and famines that struck throughout Africa, Asia, and Latin America during the early 1970s and the 1973 oil crisis, as a partnership between members of the Organisation for Economic Co-operation and Development (OECD), the Organization of the Petroleum Exporting Countries (OPEC), and developing countries.\(^7\) At the 1974 World Food Conference,\(^8\) the developed countries joined in the Development Assistance Committee (DAC) of the OECD and OPEC countries,

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\(^8\) IFAD. 2007. The Beginning November 1974—A World Conference with a Concrete Outcome. www.ifad.org/events/past/anniv/mile74.htm
“challeng[ing] each other to put up matching amounts of 500 million SDRs each (totaling approximately $1.2 billion) for urgently needed development in poor countries.”9 IFAD’s origin is reflected in its institutional structure, which is founded on “three pillars of membership”10: OECD states, OPEC states, and developing member states. On this basis, IFAD was established in 1977 as a specialized agency of the United Nations (UN) and “organized as a fund into which donor member countries pool grant contributions to achieve the objective of the organization.”11

At the time of its establishment, IFAD’s clear focus on poverty reduction distinguished it from other international organizations. While the other organizations studied here subsequently also espoused poverty reduction as their overarching purpose, IFAD continues to play a special role as an advocate for poor rural people.12

Groups with Affiliated Organizations Providing Concessional Financing

The legal status of the AfDF, IDA, and NDF is similar in that each is part of an organizational group and each was established with proper legal personality under international law.13 However, their institutional frameworks differ in many respects and the drafters of their constituent agreements had different reasons for choosing that organizational structure. Therefore, caution is required in drawing generalized conclusions based on their organizational structure, which increasingly is questioned as an appropriate paradigm for windows providing concessional financing.

World Bank Group

In addition to IDA and the International Bank for Reconstruction and Development (IBRD), jointly referred to as the World Bank, three other institutions make up the World Bank Group: the International Finance Corporation (IFC), the International Centre for Settlement of Investment Disputes, and the Multilateral Investment Guarantee Agency.

The IBRD was established in 1945, not as a development agency but rather as an agency for the reconstruction of Europe. Because its lending capacity was limited entirely to what it could raise by bonds on capital markets, there “was simply no conception of the vast needs of the developing countries and of the role the Bank should play in meeting them.”14 However, “[i]t did not take long for the World Bank

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13 Although IADB and IsDB have sponsored the establishment of affiliated institutions, resulting in their evolution into organizational groups, their affiliates were not created for the purpose of providing concessional financing.

and its shareholders to realize that the structure of the World Bank was not suitable for all the needs of its members.” Many countries lacked an adequate repayment capacity to allow them to access IBRD loans, and the IBRD Articles of Agreement (IBRD Articles) did not foresee a concessional financing window. Thus, IDA marked “the as yet incomplete transformation of an institution that at first resembled a bank into something that by mid-1971 more nearly reflected an institution for financing and promoting development.”

One of the peculiarities of the IDA Articles of Agreement (IDA Articles) is that it was drafted by the staff of the World Bank and its executive directors, and not by the drafting committee of an international conference. IDA’s establishment as an entity separate from IBRD was “a political rather than a legal necessity.” Although amendment of its articles of agreement would have enabled IBRD to make soft loans, doing so was just “too hazardous a procedure,” because it might have opened discussions on the IBRD Articles and invited more amendments. Moreover, there was “the fear of contagion expressed by IBRD at the time of the creation of IDA to be associated with a ‘soft lender’ in a single institution.” Thus, IBRD and IDA were established as legally separate organizations under separate intergovernment agreements “to keep some distance between the two.” In practical terms, however, IDA is administered in a manner similar to a special fund or a trust fund administered by IBRD, and for that reason it has been called “an elaborate fiction.” In hindsight, some have questioned whether “perhaps more rational approaches could have also been considered” than establishing an affiliated organization with proper legal personality. The process of establishing such an organization is very time consuming, one no longer considered necessary to isolate the risk resulting from organizations’ concessional operations.

In the last decades, the international community essentially stopped establishing new affiliated organizations for concessional financing, giving preference instead to more flexible frameworks, notably trust funds. Current emphasis is on close collaboration and strengthened synergies between concessional and nonconcessional windows. Given these objectives, it may be questioned whether affiliated organizations are still an appropriate organizational paradigm for the provision of concessional financing. Shihata reflected on a possible “merger of IBRD, IFC, and the [Multilateral Investment Guarantee Agency], while restructuring IDA as an international trust fund administered by the resulting mega institution.”

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20 Ibid.
26 Ibid.
However, that solution appears rather remote, and thus has not even been considered for implementation by the governing bodies of the World Bank Group.

**African Development Bank Group**

Like all other MDBs, AfDB had its “financial edifices constructed on a figment of confidence originally incorporated in the financial architecture of [its] progenitor;” IBRD.27 However, Article 8(1) of the Agreement Establishing the African Development Bank (the AfDB Agreement) expressly granted AfDB authority to “establish, or be entrusted with the administration of, Special Funds which are designed to serve its purpose and come within its functions.”28 It likewise authorized AfDB to “receive, hold, use, commit or otherwise dispose of resources appertaining to such Special Funds.” AfDB did not need to amend its charter to enable it to administer Special Funds resources within the organization. From the outset, AfDB had proper authority to establish special funds and it has used that authority effectively in the case of the Nigeria Trust Fund (NTF) and other special funds.

While administering the AfDF as a special fund on the same basis would have been possible, AfDB’s efforts in 1966 “to work out a scheme for a multilateral soft fund, the resources of which would come from developed countries,”29 met with a very limited response. Thus, interest shifted from the original invitation (i.e., to simply provide “soft money for hard projects”)30 to establishing a separate institution for concessional financing. In 1971, the AfDB Board of Governors “approved the principle of establishing a concessional affiliate in co-operation with donors.”31 Established in 1972, the AfDF became operational in 1974.32 Thus, its establishment did not result from a fear of “contagion.”

In providing financing through two distinct but affiliated organizations, the AfDB Group currently “faces a fundamental mismatch in its financing capacity and its clients’ needs.”33 Since only a limited number of countries are eligible to receive AfDB financing, AfDB has “excess capacity” and the AfDF has “excess demand”34 because the overwhelming majority of African countries has to share its limited pool of concessional money. In addition, the governance structure of the AfDF, which is headed by the president of AfDB and has its own board of governors and board of directors, has been the subject of review. The High Level Panel convened by the AfDB president in 2006 recommended eliminating the division between AfDB and the AfDF in its January 2008 report, suggesting a merger of the two institutions and their boards.35 However, the voting rules of AfDB and the AfDF (particularly the

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30 Ibid.
34 Ibid., p. 27. See also Box 2, p. 28.
35 Ibid., p. 4. “The [AfDB] must better integrate its operations and develop an appropriate array of instruments. And to be more responsive to the needs of the diverse clients, the [AfDB] and the [AfDF] should be brought together to tailor lending accordingly, operating as a single bank with a single board.” Also, Ibid., p. 37. “In line with our belief that there should be a single bank, we also believe there should be a single board. Currently, the [AfDF] is the point of reference for the majority of the continent, but its board is dominated by the non-African members that give most to the Fund. The Bank needs one board where all shareholders are represented and important decisions are made together. This would reinforce African representation and avoid marginalization of the African voice of the Bank.”
provisions for qualified majorities required for any amendment of their constituent instruments, discussed below) present formidable obstacles to any attempt at a merger, which also appears to have little to no chance of success.

**Nordic Finance Group**

In connection with discussions on a common Nordic customs union, the Nordic countries launched the idea of a common financial institution in the late 1950s. Only after the plan to create a Nordic common market had failed and the Nordic countries realized, in the aftermath of the 1973 oil crisis, the need for a highly creditworthy financial institution to channel financial resources for investment projects to the Nordic countries did a Nordic investment bank become a serious topic of discussion. The Nordic Investment Bank (NIB) Statutes were modeled on the European Investment Bank. Similar to the European Investment Bank, the Agreement Establishing the Nordic Investment Bank (NIB Agreement) and its statutes, which instituted the NIB in 1976, did not provide for concessional financing. On 1 February 1989, the NDF was formally established for that purpose, as a “link in Nordic aid cooperation with the purpose of promoting social and economic development in developing countries through concessional project financing.”

Although the NIB and the NDF (which both belong to the Nordic Finance Group) were intended to collaborate closely with each other, the NDF turned out to be a very separate entity. The initial proposals for its establishment envisaged “close cooperation between NIB and NDF, and sought to establish a Nordic fund as a necessary auxiliary to and for the support of NIB project investment lending.” However, such proposals were not accepted, and the constituent documents of the NDF do not provide for joint or coordinated governance structures and contain no specific framework of cooperation.

Cooperation between the NIB and the NDF was to be regulated by an agreement between the organizations. A proposed agreement according “NIB a very large role and authority in NDF operations” had already been presented at the second meeting of the NDF’s interim board (May 1988), but was not approved because “the Danish representative insisted that NDF should obtain an independent structure which permitted it to work with a number of co-financing agencies.” The agreement that was eventually concluded “explicitly gave NDF itself the responsibility for outside relations and for lending policies, including the selection of client countries, priorities of sectors, choice of co-financing partners, and project appraisal.” Thus, the status of the NDF is very different from that of the organizations mentioned above, in that it acquired through the agreement “the profile of a separate agency, maintaining its own outside

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37 Ibid., p. 403.

38 The original agreement establishing the NIB was signed in Copenhagen on 4 December 1975 and entered into force on 1 June 1976. It was superseded by an agreement signed on 23 October 1998 and replaced by an agreement signed on 11 February 2004 (*Agreement Establishing the Nordic Investment Bank* [hereinafter, NIB Agreement]), which entered into force on 1 January 2005 (NIB. 2005. *Agreement Statutes* [hereinafter, NIB Statutes], www.nib.int/filebank/45-Agreement_and_Statutes.pdf). Neither the NIB Agreement nor the NIB Statutes contain provisions regarding concessional financing. Rather, section 10(c) of the NIB Statutes expressly provides that “In its operations, the Bank [NIB] shall aim for a profit allowing the formation of reserves and reasonable return on the paid-in capital.”


40 In addition to the NIB and NDF, the Nordic Finance Group comprises two other organizations: the Nordic Environment Finance Corporation (www.nefco.org/) and the Nordic Project Fund (www.nopef.com/pages/eng/front.php?lang=EN).

41 Proposals to that effect were contained in a memorandum of 30 October 1979 and in a report of Ambassador Kryger initiated in 1985. Haralz, *The Nordic Development Fund: Ten Years of History*, pp. 7–8.

42 Ibid., p. 16.

43 Ibid., pp. 16–17.

44 Ibid., p. 17.
relations and conducting its own operations.”45 While the NDF had a potential strength in its co-location with the NIB, such “potential has not materialized to any significant degree,” largely due to the difference in scope and focus of the two institutions.46

On 14 September 2005, the Nordic Ministers for Development Cooperation decided to cancel negotiations for NDF replenishment and focused instead on concluding the fund’s operations.47 However, this decision was not effectively implemented because the Nordic cooperation ministers decided in May 2009 to fundamentally change the purpose, functions, and modalities of the NDF. Rather than providing soft loans for projects, in the future the NDF will use repayments of 190 credits which it granted during 1989–2005 for funding grant aid for climate change adaptation and mitigation in low income countries.48 Under the strategy adopted in December 2009, the objectives of the NDF grant operations are

A. to facilitate greater investments in developing countries in order to address the causes and consequences of climate change alongside and in cooperation with other multilateral and bilateral financiers;
B. to mirror the Nordic countries’ priorities in the area of climate change and poverty reduction focused development;
C. to maximize additionality and complementarity in relation to other available financing.49

**Organizations with Built-in Soft Loan Facilities**

IADB and CDB are two international organizations with built-in concessional windows. They are similar in the sense that their constituent agreements explicitly provide for a concessional window: the Fund for Special Operations (FSO) for IADB and the Special Development Fund (SDF) for CDB. Both funds lack any separate governance structures, and each is administered by each organization’s staff, respectively, under one legal personality and under the same institutional roof. Despite their apparent similarities, there are important differences between them in terms of funding structures and modalities of concessional financing.

**Inter-American Development Bank**

The idea of establishing an inter-American financial institution first emerged in 1890, when participants at the First International Conference of the American States proposed the creation of an international American bank with branches or agencies in several countries. Although this proposal was not implemented due to opposition from the United States (US) Congress, the Latin American countries continued their efforts for establishing a regional financial institution throughout the following decades.50 In May 1940, nine countries, including the US, signed a convention embodying the charter of an institution that combined functions of a central bank and a commercial bank.51 While ratified by only one country

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45 Ibid.
51 Ibid.
and then abandoned due to the Second World War, the convention influenced the nature and shape of the World Bank, which took form at Bretton Woods. The Bogota Conference in 1948 creating the Organization of American States (OAS) gave the Inter-American Economic and Social Council (CIES) of the OAS the responsibility of examining the many proposals made by OAS members regarding the creation of a regional development bank. In an inter-American economic conference held from 22 November to 2 December 1954 in Brazil, “the proposals [of] the Chilean delegation were of particular significance [as they] included the provision that the resources of the newly created institution should be comprised mostly of contributions of the Latin American countries, which would transfer to it nearly $3.5 billion of their international reserves . . . .”52 Things moved quickly after 12 August 1958, when the American representative announced at a special session of the Inter-American Economic and Social Council that the US government was ready to consider the establishment of an inter-American bank.53 Following this “radical departure”54 from the previous US position, an intergovernment committee was formed in early 1959 and in December 1959, the Agreement Establishing the Inter-American Development Bank (IADB Charter) came into effect.55

The organization that was eventually established was very different from that proposed by the Latin American countries some 50 years earlier. One peculiarity of IADB was that it initially limited membership to OAS members. Another characteristic involved the IADB’s “unequivocal character as an instrument of Latin American regional politics.”56 Indeed, the initiative for creating IADB came from “politicians who were aspiring toward corporation and various regional fora such as integration in the [OAS].”57

From the outset, the drafters of the IADB Charter anticipated that both hard and soft loans would figure importantly in IADB’s operations, reflecting views, expressed among other things by the US in 1959, regarding the nature of the proposed IADB, which firmly supported inclusion of a special fund in the original financial assets of that institution.58 For this reason, IADB “—unique among the multinational ranks—was created with a built-in-soft loan facility.”59 Article IV of the IADB Charter provides for the FSO, which became the model for the concessional financing windows of other international organizations. Under the IADB Charter, ordinary capital resources (OCR) and Special Funds resources are administered within one organization and under one legal personality.

The FSO was established to make “loans on terms and conditions appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects”60 and endowed with initial resources of $150 million.61 This “built-in concessional window [which] is an integral part of its judicial personality”62 enabled IADB to commence concessional financing operations immediately.63

53 White, Regional Development Banks, p. 147.
56 White, Regional Development Banks, p. 151.
59 Culpeper, Titans or Behemoths, p. 32.
60 IADB Charter, Article IV, section 1.
61 IADB Charter, Article IV, section 3(c).
63 The Special Fund for Basic Rural Development is another example of a concessional financing window incorporated in the fundamental texts of the Central African States Development Bank. Further to the Treaty Establishing the Central African Economic and Customs Union and the Agreement founding a Central African States Development Bank, among other
Caribbean Development Bank

The CDB was established to “contribute to the harmonious economic growth and development of the member countries in the Caribbean . . . and to promote economic co-operation and integration among them, having special and urgent regard to the needs of the less developed members of the region.”\(^{64}\) Its “purpose and functions are similar to those of the larger multilateral development banks.”\(^{65}\) The draft Agreement Establishing the Caribbean Development Bank was reviewed at three ministerial-level meetings, the last of which initiated a preparatory committee that subsequently received assistance from the IADB, the United Nations Development Programme (UNDP), and the World Bank.\(^{66}\) The report of the UNDP, which was requested to conduct a detailed examination, recommended, inter alia, “the creation of a financial institution similar to [ADB] with equity capital plus a concessional special fund of sufficient size to begin to meet, from the outset, the priority needs for soft financing, especially in the smaller territories.”\(^{67}\) Thus, the Agreement Establishing the Asian Development Bank (the ADB Charter),\(^{68}\) which drew on the constituent instruments of AfDB, IADB, and IDA, was itself one of the models for the Agreement Establishing the Caribbean Development Bank (CDB Charter), which was signed on 18 October 1969 and entered into force on 26 January 1970. As with ADB, not less than 60% of CDB’s authorized capital stock shall at all times be held or be available for subscription by its regional members.\(^{69}\)

The CDB Charter provides for a built-in concessional window in the form of the SDF.\(^{70}\) This window differs from the FSO in three respects. First, the CDB Charter did not endow the SDF with resources, providing only that it “may receive contributions or loans.”\(^{71}\) Thus, rather than immediately allocating resources for the provision of concessional financing, the CDB Charter provided only a basis for future resource mobilization. Second, while the IADB Charter stipulates that the FSO may fund only concessional loans and technical assistance, the CDB Charter expressly mentions guarantees as a modality of concessional financing and does not preclude other modalities, such as financing projects or programs on a grant basis.\(^{72}\) Third, unlike the FSO, the SDF is not the only special fund of CDB.

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\(^{69}\) CDB Charter, Article 6 (2).


\(^{71}\) CDB Charter, Article 8 (1).

\(^{72}\) See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
The CDB Charter authorized CDB to establish, or accept the administration, of other special funds (OSF) “which are designed to serve its purpose and fall within its functions.”

The SDF became CDB’s principal source of concessional financing. It was established to address the structural economic difficulties of CDB’s regional members, particularly its least developed countries, which were “characterized by being very small, externally dependent, essentially monoculture economies prone to natural disasters and historically dependent on external grants . . . .”

Donors contributed grants or loans to the SDF and CDB’s OSF on varying terms and conditions. Problems with this approach included

(i) variations in resource eligibility not only among the different contributions but even between different tranches of contributions,

(ii) differences in procurement conditions,

(iii) need to obtain prior approval from some donors before their contributions could be used for certain projects,

(iv) the administrative and financial challenges of administering the 82 different accounts in which CDB’s Special Funds resources were distributed, and

(v) restrictions per sector on different funds.

To address these difficulties, the Unified Special Development Fund (SDF[U]) was established in 1983. Thus, the SDF now consists of the SDF(U), which is governed by rules adopted in 1983, and the old or “other” SDF (SDF[O]), which is governed by the 1970 rules.

Special Funds, Ordinary Capital Resources, and Special Programs as Sources of Concessional Financing

The constituent instruments of several international organizations have provided for the acceptance or administration of special funds, but such provision does not automatically translate into a financing window for concessional loans, as demonstrated by the European Bank for Reconstruction and Development (EBRD). Although the Agreement Establishing the European Bank for Reconstruction and Development (EBRD Charter) gives wide discretion to create special funds, including funds for soft loans, the organization could not reach agreement on a proposal by Jacques Attali, its first president, to create a special restructuring facility for providing “soft loans” and high-risk equity for the restructuring of
heavy industry, such as the defense sector.” Thus, while the creation of a soft loan facility for the EBRD was possible as a matter of law, it was not implemented as a matter of policy.

However, the establishment of the EBRD Shareholders Special Fund in 2008 in accordance with Article 18 of the Agreement establishing the EBRD is an important recent development. This fund is to assist EBRD in achieving “its mandate of fostering transition towards market economies in countries from central Europe to central Asia.” One of the main functions of this fund is to complement technical assistance from donor countries. In addition to financing technical assistance (or cooperation), the resources of the fund may also be used “for non-technical assistance initiatives which are principally used to provide working capital, incentive fees or to pay for goods and works contracts in support of [EBRD] investment operations; and [for] investment activities which may include guarantees, equity or debt financing.” In 2009, it became a core instrument of EBRD technical cooperation and non-technical cooperation funding supplementing existing external donor-financed support.

Similarly, the Black Sea Trade and Development Bank uses special funds to provide financing for its technical assistance operations but not for concessional loans, even though the wording of its charter is similar to the AfDB Agreement and the charters of ADB and the EBRD.

Special funds can also be established for purposes that may not be related at all to concessional financing (e.g., for isolating risk resulting from equity investments as in case of CDB’s Private Sector Fund, and/or for providing loans and other financing on market-based terms). However, special funds may and have been used effectively on several occasions to establish windows for concessional loans, based on the concept of “multilateral clubs of donors who collaborate in providing permanent grant resources” to such funds.

Special funds normally lack separate governance structures and are administered by the staff of international organizations. However, the situation is different for the AfDB’s Water Facility Special Fund (WFSF) and the Islamic Solidarity Fund for Development (ISFD), where each has its own governing structures.

IFAD has no special funds in the sense that “all of its ‘core resources’ and additional funds (e.g., complementary contributions) are used under the same mandate and for the same operations.” However, IFAD may administer special programs, such as the Special Programme for Sub-Saharan Africa (SPA), the Belgian Fund for Food Security (BFFS), and the Financing Facility for Remittances and the Indigenous Peoples Assistance Facility. These programs have become an integral part of IFAD’s

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81 Ibid. p. 7.


86 The Belgian Fund for Food Security (BFFS) in the successor to the Belgian Survival Fund (BSF), which was created in 1983 by the Government of Belgium in response to drought and famine in sub-Saharan Africa. For more information about the IFAD/Belgian Fund for Food Security Joint Programme, see http://www.ifad.org/bffs/

87 As set out in Chapter 7, (V. Weill-Hallé, C. Licul, and I. Villanueva, *Multilateral Concessional Financing of the International Fund for Agricultural Development*) the features and operational and procurement arrangements of these three programs are distinct from each other. Contributions to the Special Programme for Sub-Saharan Africa are made outside of Article 4 of the Agreement Establishing the International Fund for Agricultural Development (AEI) and are reported under separate financial statements, and, therefore, are not considered regular or core resources. BSF funds are mobilized through IFAD replenishments. While “included within the consolidated financial statements of IFAD, the separate BSF financial statements are subject to an
concessional financing. Some (e.g., BSF) have a direct link to IFAD’s core activities and are substantially controlled by IFAD and, for reasons of completeness and clarity, are accordingly “reflected in IFAD’s consolidated financial statements, including both the total contribution received and the balance unspent by the donor” while others (e.g., SPA) do not form part of its core activities and are for that reason included in separate financial statements.

**African Development Bank Group**

The most important of AfDB’s special funds is the NTF, which was established in 1976 by agreement between AfDB and the Government of Nigeria. The NTF became operational in April 1976, after the AfDB Board of Governors approved the Agreement Establishing the Nigeria Trust Fund (NTF Agreement). The objective of the NTF is to make an increasingly effective contribution to the economic development and social progress of Africa, especially of those member countries of [AfDB] which are relatively less developed or are most seriously affected by unpredictable catastrophes, including adverse international economic events, through the financing of projects which will further economic and social development in their territories.

By creating the NTF, Nigeria sought to help African countries that were less well placed and encourage “other relatively advantaged African States to make similar provision in the hope that this would avert the need for non-African participation in the Bank’s [AfDB’s] capital stock.” AfDB manages the NTF through its own organization and staff and in accordance with its own legal framework. Established pursuant to Article 8 of the AfDB Agreement, the legal status of the NTF is that of a special fund. By virtue of Article IV section 4.1 of the NTF Agreement, AfDB applies to the NTF “the same principles and criteria that are applicable to loans and investments made from its own ordinary resources,” particularly the operational principles contained in Article 17 of the AfDB Agreement. The terms of NTF loans are stipulated in Article VI of the NTF Agreement.

To enhance the operational effectiveness of the NTF, a protocol agreement between AfDB and the government of Nigeria amended the terms of the NTF Agreement on 22 September 2003, adjusting the interest rate of NTF loans and allowing allocation of NTF net income to the Heavily Indebted Poor Countries (HIPC) Trust Fund. This amendment further authorized AfDB “to appropriate the sum of $25 million from the corpus of the NTF to finance activities under the Technical Cooperation Agreement
between the Government of the Federal Republic of Nigeria and the African Development Bank and the African Development Fund.\textsuperscript{96}

The NTF Agreement provided that the NTF remain in effect for 30 years from the date of the agreement and that the fund’s resources will transfer to Nigeria upon its termination.\textsuperscript{97} AfDB and the Nigerian authorities agreed to two 1-year extensions of the NTF from its original expiration date, but no loans or grants were approved during that period. Based on an evaluation exercise commissioned in 2006 and meetings between AfDB and Nigeria in 2007, AfDB and the Government of Nigeria mutually agreed in 2008 to extend the NTF Agreement for another 10 years, beginning 26 April 2008.\textsuperscript{98}

AfDB has other special funds in addition to the NTF, including the Special Relief Fund created in 1974 to assist countries affected by disasters.\textsuperscript{99} Its purpose was expanded in 1991 to include grant assistance to research institutions whose objectives facilitate meeting AfDB objectives.\textsuperscript{100}

The African Water Facility\textsuperscript{101} is an initiative of the African Ministers’ Council on Water (AMCOW) to pool resources mobilized from donors to finance water infrastructure and water investment facilitating activities in Africa. AMCOW asked AfDB to establish and administer the WFSF for that purpose. The AfDB Board of Directors sought and received approval from the board of governors regarding the instrument establishing the WFSF, which defines the fund’s management.\textsuperscript{102} The use of grants from donors, such as those received by AfDB for the WFSF, is restricted; they are “placed in trust and are not included in the assets of the [AfDB].”\textsuperscript{103} The WFSF instrument provides that AfDB “shall be the Trustee for the [WFSF] and shall keep the resources of the Water Fund separate and apart from all other accounts and assets of, or administered” by AfDB.\textsuperscript{104} The WFSF has a governing council, which is responsible for approving the general policy direction; a director who also serves as the administrative head within the organizational structure of AfDB;\textsuperscript{105} and other staff members considered necessary to carry out the fund’s objectives.\textsuperscript{106} Any member country or country eligible for membership and organizations acceptable to AfDB may contribute to the fund by depositing an instrument of commitment stating the specific amount of the contribution and the agreed-upon payment schedule.\textsuperscript{107} The African Water Facility’s operational program


\textsuperscript{97} NTF Agreement, Article XIII, sections 1 and 4.


\textsuperscript{100} AfDB, \textit{Annual Report 2008}, p. 185.

\textsuperscript{101} The establishment of another similar fund was proposed in 2009 as the result of a joint initiative of AfDB, the Commission of the African Union and the United Nations Economic Commission for Africa to seek ways of overcoming the lack of necessary climate information, analysis, and options required by policy and decision makers at all levels. AfDB. 2009, \textit{Framework Document for the Establishment of the CLIM-DEV Africa Special Fund (CSDF)}, Tunis: AfDB.


\textsuperscript{103} AfDB, \textit{Annual Report 2008}, Part II, Chapter 005, Note W-5: Grants.

\textsuperscript{104} WFSF Instrument, section 2.1.

\textsuperscript{105} In accordance with the WFSF Instrument, section 3.10, the Director is appointed by, and accountable to, the AfDB President.

\textsuperscript{106} Ibid., section 3.1.

\textsuperscript{107} Ibid., section 4.2.
for 2009–2011 requires UA125.6 million\textsuperscript{108} to implement. As of the end of December 2008, the African Water Facility had secured pledges totaling UA48.8 million, leaving a shortfall of UA76.8 million.\textsuperscript{109}

**Asian Development Fund**

While ADB’s ancestry “trace[s] to historical trends in the evolution of Asian regionalism,”\textsuperscript{110} two other factors figured importantly in its establishment. First, Japan played a crucial role during discussions on the establishment of ADB. These talks, which began in October 1962, were led by a study group comprising bankers and officials from Japan’s Ministry of Finance. The UN Economic Commission for Asia and the Far East (ECAFE) adopted in March 1963 a resolution and the report of a working group appointed pursuant to that resolution recommending the establishment of a regional development bank.\textsuperscript{111} The resolution was approved in principle at the December 1963 ministerial conference in Manila that considered the recommendation to establish a regional development bank.\textsuperscript{112} In this sense, the proposal for ADB “originated in an institutional framework, rather than in direct discussions between sovereign states” as was the case with AfDB and IADB.\textsuperscript{113} This framework “gave entrée to the developed countries from the start.”\textsuperscript{114}

Notably, three of ADB’s initial regional members (Australia, Japan, and New Zealand) were developed countries.\textsuperscript{115} This point clearly distinguishes ADB from AfDB, where none of the regional countries were developed countries.

Unlike AfDB and IADB, which only allowed membership of nonregional countries at a later stage, ADB was “conceived from the outset as an international partnership.”\textsuperscript{116} Therefore, membership was open to nonregional developed countries. This notwithstanding, the ADB Charter emphasized the Asian character of ADB by providing among others that the capital stock of regional countries cannot fall below 60% of subscribed capital stock.\textsuperscript{117}

Shortly after its establishment, ADB started using Special Funds resources to provide concessional loans and technical assistance. Established in 1968, the Consolidated Special Funds paved the way for ADB’s concessional lending operations. ADB encountered considerable problems in the administration of these funds, because contributors were given “maximum flexibility in structuring the terms of their


\textsuperscript{109} AfDB, *Annual Report 2008*, p. 25. The funding structure of the African Water Facility differs from the two other AfDB water initiatives, the Rural Water Supply and Sanitation Initiative and the Multi-Donor Water Partnership Program. The water supply and sanitation initiative is funded by AfDF resources, the initiative’s trust fund, and contributions levered from other donors, governments, and beneficiaries. The Multi-Donor Water Partnership Program was jointly established by AfDB and three member governments to operationalize AfDB’s integrated water resources management policy.


\textsuperscript{111} Chapter 4 (G. Droesse, Concessional Financing of the Asian Development Bank: The Asian Development Fund and Other Channels of Concessional Financing hereinafter, ADB Concessional Financing); White, *Regional Development Banks*, pp. 41–42.

\textsuperscript{112} White, *Regional Development Banks*, p. 42.

\textsuperscript{113} Ibid., p. 40. White clarifies: “In contrast, the notion of an Inter-American bank evolved from a long series of attempts, on the part of the Latin American nations, and was made a practical possibility by a political initiative of the USA. In Africa, a regional development bank was first proposed at a political conference, and only subsequently was the proposal taken over by the Economic Commission for Africa.” (Internal citations omitted).

\textsuperscript{114} Ibid.

\textsuperscript{115} Ibid., p. 55.


\textsuperscript{117} For details see Chapter 4 (G. Droesse, ADB Concessional Financing).
contributions,"\(^\text{118}\) including contributions made on a tied basis or earmarked for special purposes. In addition, the amount and timing of donor contributions were inconsistent, and ADB had no assurance that resources would be available at the required scale. The Asian Development Fund (ADF) was established in 1974 in response to the deficiencies of the Consolidated Special Funds. Since then, the ADF has been the main vehicle of ADB's concessional financing.\(^\text{119}\)

Other ADB special funds include

- the Technical Assistance Special Fund, ADB's main channel for funding technical assistance operations;
- the Japan Special Fund, another major source of ADB grant financing for technical assistance;
- the Asian Tsunami Fund and Pakistan Earthquake Fund, which were created in response to the natural catastrophes that affected ADB members in 2004 and 2005;\(^\text{120}\) assistance under these funds was provided exclusively in the form of grants; and
- the Asia Pacific Disaster Response Fund, which was established in 2009 to provide, "in a timely fashion, incremental grant resources to DMCs [developing member countries] affected by a natural disaster."\(^\text{121}\)

ADB's partnership facilities "represent strategic, long-term, multi-partner cooperation platforms that tie together various forms of assistance in a coordinated manner for a well-defined purpose."\(^\text{122}\) They may consist of special funds as well as pooled grants and bilateral grants under trust funds administered by ADB and other forms of cooperation. ADB has allocated amounts from its OCR net income or surplus to special funds under partnership facilities (e.g., the Regional Cooperation and Integration Fund and the Climate Change Fund).\(^\text{123}\)

Caribbean Development Bank

Provisions in the CDB Charter for OSF were partially modeled on the ADB Charter.\(^\text{124}\) Similar to ADB, CDB was conceived as a "partnership between countries in the Caribbean, both borrowing and nonborrowing, and countries from outside the Caribbean" region.\(^\text{125}\) CDB has established several OSF over the years, including resources for technical assistance and other grant resources contributed on a nonreimbursable basis.\(^\text{126}\) Each OSF is governed by arrangements agreed upon by CDB and contributors or lenders. OSF "may be used in any manner and on any terms and conditions not inconsistent with [CDB's] purpose and functions or with any agreement relating to those funds."\(^\text{127}\) Among the OSF, the Basic Needs Trust Fund (BNTF), the Microfinance Guarantee Fund, and the Interest Subsidization Fund (ISF) are particularly interesting.

\(^\text{118}\) Ibid.
\(^\text{119}\) Ibid.
\(^\text{120}\) Ibid.
\(^\text{121}\) Ibid.
\(^\text{123}\) See Chapter 4 (G. Droesse, ADB Concessional Financing).
\(^\text{124}\) CDB Charter, Article 8 (2) provides that the CDB "may establish, or be entrusted with the administration of, other special funds which are designed to serve its purpose and fall within its functions." It is further stipulated therein that CDB "shall adopt such special rules and regulations as may be required for the establishment, administration and use of the resources of each special fund." This article substantially corresponds to Articles 19.3 and 19.4 of the ADB Charter.
\(^\text{127}\) CDB Charter, Article 8(3).
The BNTF is not actually a trust fund, as the name suggests, but rather is one of CDB's OSF. Thus, BNTF resources are part of CDB's resources.128 Aimed at improving conditions in rural communities, CDB launched the BNTF in 1979 with assistance from the US Agency for International Development (USAID). It was established in the aftermath of the mid-1970s oil crisis and influenced by the “basic needs” approach prevalent at the time, which sought to mitigate short-term unemployment through public works projects.129

In the 1990s, CDB increased its emphasis on basic human needs and poverty reduction, recognizing that many small social infrastructure solutions that could make a big difference in the lives of disadvantaged persons needed funding. Therefore, CDB introduced the small-community-based subproject (which cost a maximum of $20,000), establishing a local project steering committee and emphasizing the involvement of beneficiaries from the earliest stage of community priority needs assessment and then through all phases of the project cycle. Moreover, CDB introduced a new component to fund skills training activities in all participating countries, so that individuals could obtain work skills and potentially increase their incomes on a permanent basis. Now in its fifth cycle, the BNTF program has been further enhanced, among other things, by introducing country poverty reduction action plans to integrate BNTF activities with the development goals and poverty reduction strategies of CDB's borrowing member countries.130

The CDB Board of Directors established the Microfinance Guarantee Fund at its 9 December 1999 meeting. The facility was designed to be funded by allocations from the SDF to provide CDB with guarantees to cover 80% of the loan from a commercial lender to a specialized microfinance institution and match the duration of that loan. The guarantee agreement between institution, commercial lender, and CDB is the guarantee mechanism.131 It contains the terms and conditions under which payments are made, including the duration of loan delinquency, and the trigger mechanisms that detail the circumstances under which the guarantor must make good payments in default or repay the entire loan. In case of default, which triggers a payment under the guarantee, the entire loan or the relevant portion is transferred to CDB and the borrower. Even though the above fund has been in existence for over 10 years and still exists, it never effectively has been used.132

The CDB Board of Directors established the ISF on a pilot basis as one of CDB's OSF. Initial funding for ISF of $21 million was provided from CDB surplus and SDF 6 resources. The Interest Subsidization Fund (ISF) was to invest in capital markets (including equity) with a target return of 4% and subsidize the OCR lending rate by 2%,133 thereby assisting eligible countries “in addressing adverse debt and fiscal dynamics.”134

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128 Under Article 9 of the CDB Charter, CDB's resources consist of ordinary capital resources and special funds resources.

129 CDB. 2005. Poverty, People and Potential, the BNTF and the Caribbean. Saint Michael, Barbados: CDB.

130 See with detailed further references CDB's Basic Needs Trust Fund website: www.caribank.org/titanweb/cdb/webcms.nsf/AllDoc/266C09B5B3B9532A872572D500548049?OpenDocument


132 See CDB. 2007. Special Development Fund Sixth Replenishment. SDF Mid-Term Review. p. 45: “Contributors welcomed CDB’s intention to re-examine guidelines for the micro-finance guarantee programme. The Microfinance Guarantee Fund was created in 1999 to provide a guarantee for lines of credit to specialised microfinance institutions. The initial funding was $5 mn. However, commercial banks have been reluctant to take on even the subsidised risk that is involved. This is explained in part at least by the poor financial performance of many financial intermediaries. The unused portion of the fund is now $6.4 mn. CDB has scheduled a review of its private sector strategy for 2007 that will include a review of the guarantee programme.” www.caribank.org/titanweb/cdb/webcms.nsf/AllDocSearch/8DEBAC9AE969383D04257772000432864/$File/SDF%206_Mid_Term%20Review%20Report.pdf?OpenElement

133 CDB. 2007. Rules and Regulations for the Establishment, Administration and Use of the Resources of the ISF. Saint Michael, Barbados: CDB.

Funds for Development: Multilateral Channels of Concessional Financing

The ISF is used to subsidize the OCR interest rates in both Policy Based Loans (PBLs) and Investment Loans. Parallel technical assistance loans financed from OCR and associated with PBLs are also eligible for the ISF subsidy. In the case of investment loans, eligibility for ISF support is limited to social sector projects that focus on poverty reduction, address the millennium development goals (MDGs) or strengthen development effectiveness.135

Unlike the Micro Finance Guarantee Fund, which so far has not been effectively used, CDB has provided interest subsidies under the ISF.136

Islamic Development Bank

Most of the institutions studied here provide concessional loans both from their hard windows on preferential market-based terms (reflecting their high credit rating and covering the cost of their borrowings and administrative expenses) and from their soft windows on concessional terms. Although loans traditionally have been the most important financing instrument for MFDIs, this mode of financing “was not given pride of place”137 in IsDB and its group.138 In accordance with the principles of Islamic law that guide all IsDB operations, a loan does not generate revenue, because charging interest is prohibited.139 Thus, any loan financing by IsDB is, by definition, concessional.

Until 2008, IsDB did not have a dedicated concessional financing window. There were two sources of concessional loans, “(a) the annual allocation from the ordinary capital resources (OCR) of the Bank and (b) a special facility created by the Bank called the Special Account for the LDMCs.”140 Because the major part of its concessional loans was sourced from IsDB’s OCR, the concessional resource base of IsDB was very limited. In addition, IsDB was providing grants (e.g., for technical assistance) through the Waqf Fund, which was established in 1979 as a special fund under Article 22(iii) of the Agreement Establishing the Islamic Development Bank (IsDB Agreement) to provide special assistance to Muslim communities in nonmember countries and IsDB’s least developed member countries.

In its 2002 Ouagadougou Declaration,141 IsDB made a commitment to provide $2 billion of development assistance to its least developed member countries in Africa over a 5-year period beginning in 2003. In accordance with that commitment and in keeping with IsDB’s vision statement, which called

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135 Ibid.
136 Ibid.
138 The Islamic Development Bank Group (IsDB Group) is a multilateral development financing institution comprising five entities: IsDB, the Islamic Research and Training Institute, the Islamic Corporation for the Development of the Private Sector, the Islamic Corporation for the Insurance of Investment and Export Credit, and the International Islamic Trade Finance Corporation. However, the affiliates of IsDB were not established for the provision of concessional financing. Special grants are extended to populations suffering from natural calamities through the World Waqf Foundation established by IsDB in 2001 in collaboration with Waqf organizations, government organizations, nongovernment organizations (NGOs) and philanthropists from the private sector.
140 LDMCs are the least developed member countries. IsDB. 2000. Annual Report 1420H (1999–2000). Jeddah. p. 126. www.isdb.org/irj/go/km/docs/documents/IDBDvelopments/Internet/English/IDB/CM/Publications/Annual_Reports/25th/25th_Annual%20Report2000.pdf?bcsi_scan_D4A612CF62FE9576=8c425M1GvU0wn8ih7zh1hMMAAA DAgZsN&bcsi_scan_filename=25th_Annual%20Report2000.pdf. In May 1997, the balance of the special account for least developed member countries was transferred to the Waqf Fund. While these resources do not form part of the principal amount of the Waqf Fund, all resources of that fund are comingled. Thus, no distinction is made between the principal amount of the Waqf Fund and the other committed resources of that fund. Ibid., Special Account Resources Waqf Fund. Note 1 to Financial Statements.
for a “dramatic increase in the priority, thinking and resources devoted to poverty alleviation,” the Third Extraordinary Session of the Islamic Summit Conference that convened in Makkah on 7–8 December 2005 marked a new area of joint Islamic action. IsDB adopted a Ten-Year Program of Action to address the challenges that confront the Muslim community in the 21st century.

At its 31st annual meeting in Kuwait in May 2006, the IsDB Board of Governors adopted a resolution instructing the board of executive directors and management to take steps to establish a special fund for reducing poverty in member countries, with the additional objectives of

(i) eliminating illiteracy;
(ii) eradicating major communicable diseases such as malaria, tuberculosis, and AIDS; and
(iii) building human and productive capacities, particularly in the least developed countries of the Organization of the Islamic Conference (OIC).

In this context, IsDB had to decide whether to establish an affiliate with its own constituent agreement (e.g., IDA) or a special fund without proper legal personality that it would administer. In concordance with the overall trend during recent decades not to establish new affiliates of international organizations, IsDB chose the special fund.

The ISFD was established as a special fund in accordance with Article 10 and Article 22(iii) of the IsDB Agreement. Unlike the other special funds mentioned above, which rely on regular replenishments of their resources, the ISFD was established as a charitable endowment fund (“conditional Waqf”) with an initial target capital of $10 billion. After the ISFD is fully funded, operations will be financed from the return generated by investing its core resources, but until then IsDB has agreed to “meet financing requirements of projects approved under the ISFD from its own capital resources.” Fund regulations became effective on 30 May 2007 and the ISFD commenced operations on 10 January 2008. Although the ISFD lacks legal personality under both international and municipal law, it has governance structures separate from IsDB, and participation in the ISFD is open to member countries and institutions of member countries alike. Certain powers regarding the ISFD are vested in the IsDB Board of Governors, which may be composed differently in such a case than when making decisions on IsDB matters. Subject to the powers reserved for the IsDB Board of Governors, the ISFD is administered by a board of directors that “shall manage and administer the business and affairs of the Fund; and to this end, it shall develop and administer the Fund resources in such a manner as will preserve the Principal Amount and ensure continued uninterrupted income to be used for the purpose of the Fund....” While provision was made that the IsDB board of executive directors shall also be the ISFD Board of Directors, different procedures and voting rights apply.

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146 Ibid.
147 Ibid.
149 Ibid., Article 9.03.
147 Ibid., section 9.02.
While the ISFD mainly provides financing in the form of loans and grants, in principle its resources can be used for all other Shariah-compliant modes of IsDB financing (e.g., Ijara, Istisna’a, and installment sales).

Central American Bank for Economic Integration

The CABEI was created in 1960 as a financing mechanism within the framework of the Central American Common Market, which was “Central America’s first attempt at market integration.” The CABEI commenced operations in May 1961.

Unlike the constituent instruments of ADB, AfDB, CDB, and IsDB, which expressly authorize the establishment of special funds, the Constitutive Agreement of the Central American Bank for Economic Integration (CABEI Agreement) contains no similar provision. However, the establishment of a special fund for the provision of concessional financing was considered compatible with Articles 2 and 7 of the CABEI Agreement and deemed part of the CABEI’s implied powers. On that basis, the CABEI Board of Governors authorized the creation of the Special Fund for the Social Transformation of Central America (FETS) in 1999. CABEI staff members administer the FETS, which has no legal personality under international and municipal law. The establishment of the FETS was particularly prompted by the fact that Honduras and Nicaragua had become eligible for partial debt relief under the HIPC Initiative and thus no longer qualified for loans from the CABEI’s OCR. FETS resources are available to finance projects and programs and any other operations consistent with its purpose. The FETS provides financing in the form of loans and grants for projects. Assets, revenues, and expenses belonging to the FETS are not included in the CABEI’s financial statements and are held and administered separately from all CABEI resources.

The FETS has the same legal status as the Technical Cooperation Fund (FONTEC), which was created as a special fund of the CABEI in 1988 by resolution of the CABEI Board of Governors approving the statutes of that fund. FONTEC was conceived as a mechanism for integrating the programming, procurement, and administration of the CABEI’s resources for technical cooperation, thereby strengthening the CABEI’s ability to prepare and implement projects promoting Central American development.

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150 “Ijara” or leasing is “a medium-term mode of financing, which involves purchasing and subsequently transferring of the right of use of equipment, and machinery, to the beneficiary for a specific period of time, during which the [IsDB] retains ownership of the asset.” Glossary, p. 14. For this reason it also defined as a “lease that concludes with the legal title in a leased asset passing to the lessee.” IsDB. Ijara Muntahia Bitam leek. Glossary, p. 11.

151 “Istisna’a” is “a medium-term mode of financing. It is a contract for manufacturing (or construction) whereby the manufacturer (seller) agrees to provide the buyer with goods and civil works identified by description after they have been manufactured/constructed in conformity with that description within a predetermined time-frame and price.” See IsDB Glossary, p. 13.

152 “Installment sales” are “a mode of financing whereby the IsDB purchases machinery and equipment, then sells them to the beneficiary at a higher price, repayment being in installments. The ownership of the asset is transferred to the purchaser upon delivery.” IsDB. Glossary, p. 12.


155 Fondo Especial para la Transformación Social de Centroamérica.

156 CABEI. 1999. Resolution No. AG-9/99 of 29 October 1999. The CABEI Board of Governors created the FETS as a special window to finance on concessional terms programs and projects that support the social transformation efforts in the region (“ventanilla especial para financiar, en términos concesionales, programas y proyectos que se enmarquen dentro de los esfuerzos de transformación social de la región”), in countries declared eligible by CABEI.

157 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).


159 Fondo de Cooperación Técnica del Banco Centroamericano de Cooperación Económica.

integration and development.\textsuperscript{161} It is the main channel of the CABEI for funding technical assistance, particularly for feasibility studies for both private and public sector projects. For all project-preparatory technical assistance, financing is only provided on a reimbursable basis. The cost of technical assistance is deducted from the first disbursements of the concessional or nonconcessional loan. Nonreimbursable technical assistance is limited to contingency operations that do not turn into a lending operation.

**Trust Funds**

**The Use and Establishment of Trust Funds**

Some organizations (e.g., CDB and IFAD) do not use trust funds as channels of concessional financing, or use them only to a very limited extent. CDB mobilizes concessional funds to leverage its activities mainly through the OSF, which provides resources on concessional terms to borrowers for poverty reduction. IFAD has established a few multilateral trust funds (see below) but mainly seeks to mobilize from donor countries supplementary resources to enhance its operations and build strategic linkages and partnerships with donors, based on supplementary fund agreements that set forth conditions for the use of the proceeds in question.\textsuperscript{162} Some of these resources are said to be held in “trust” by IFAD on behalf of donors until such time that they are used for the purpose specified.\textsuperscript{163}

Most international organizations studied here have established bilateral and multilateral trust funds and use such funds to support their work programs and provide funding for special purposes, and they have become an integral part of concessional financing to member countries.

Because they enable international organizations to react quickly to emerging needs, trust funds are very attractive to donors. International organizations can create trust funds within a relatively short time frame and for a wide range of purposes, without requiring member countries to go through the time-consuming process of ratifying the multilateral international agreement necessary for establishing a new intergovernmental organization or affiliate. Moreover, channeling contributions through trust funds allows donors to create governance structures, decision-making procedures, and voting rules that differ from those of the organizations acting as trustee, and also provide financing targeted for specific thematic areas or purposes. Therefore, the volume of official development assistance channeled through trust funds increased dramatically, in particular, during the last decade.

**Types of Trust Funds and Responsibilities of the Trustee**

The MFDIs use three main types of trust funds for concessional financing to support development-related activities at the regional or country level or to finance global public goods.\textsuperscript{164} The first category relates to


\textsuperscript{162} For operational purposes, IFAD’s supplementary funds are generally categorized as cofinancing resources, programmatic and technical assistance resources, associate professional officer resources, and funds administered by IFAD on behalf of other partner organizations hosted by IFAD (e.g., the Global Mechanism and the International Land Coalition).

\textsuperscript{163} V. Weill-Hallé states that the Basic Framework on Special Resources for Sub-Saharan Africa "could be considered a trust fund to which more than one member contributed." See Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development).

trust funds administered and executed by international organizations. Traditionally, such organizations use trust funds to leverage their activities and support their work programs, including advisory and project-related activities. In the World Bank alone, since its establishment, thousands of trust funds have been established for that purpose.\textsuperscript{165}

In addition, a wide range of recipient-executed trust funds (RETFs) support country-based efforts. RETFs may be single-donor or multidonor funds that broadly support organizations’ lending patterns or operate on a stand-alone basis.\textsuperscript{166} Multidonor funds in the World Bank account for “the bulk of the growth in RETF transaction volume.”\textsuperscript{167} Trust funds are very important instruments during post-conflict situations and natural catastrophes.

Finally, a wide spectrum of trust funds does not fit into the categories mentioned above. These fast-growing funds, which support international initiatives, comprise a range of alliances and partnerships,\textsuperscript{168} facilities,\textsuperscript{169} and innovative financing instruments\textsuperscript{170} with substantially different legal statuses, governance structures, financial schemes, and trustee arrangements.\textsuperscript{171} They are known as financial intermediary funds (FIFs).\textsuperscript{172} Some FIFs are administered by international organizations, while others have elaborate governance structures, decision-making procedures, and voting rules. MFDIs may perform the functions of administrator and/or trustee or fiscal agent. The term “multi-actor funds”\textsuperscript{173} is used for some funds (e.g., the Global Fund), and denotes the fact that such governance structures sometimes involve multiple stakeholders.

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\textsuperscript{167} Ibid.


\textsuperscript{170} For example, the International Finance Facility for Immunisation. www.iff-immunisation.org/

\textsuperscript{171} See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).

\textsuperscript{172} World Bank, Memorandum to the Executive Directors. A Management Framework for World Bank.

Trust Funds Administered and Executed by International Organizations

Trust funds may provide an additional source—or in certain cases, the only source—of concessional financing. For example, the entire concessional financing of the International Monetary Fund (IMF) is provided through trust funds in accordance with Article V, section 2(b) of the IMF Articles,174 which authorizes the IMF, if requested, “to perform financial and technical services, including the administration of resources contributed by members.”175 Based on the above provision, the IMF has supplemented for more than 3 decades financing from its general resources account, which is available to all members, with financing for low-income countries through trust funds. Since the IMF Trust Fund was established in 1976 to provide balance of payments support to developing countries affected by the 1974–1975 recession, the legal procedures followed for creating trust funds did not take the form of an agreement between the IMF and any of its members. Rather, the constitutive act was a decision of the IMF executive directors, who adopted the instrument establishing the fund.176 The same procedure was followed for the Structural Adjustment Facility and the Enhanced Structural Adjustment Facility, which succeeded the IMF Trust Fund,177 and for the Poverty Reduction and Growth Facility (PRGF),178 which replaced the Enhanced Structural Adjustment Facility in 1999 and was the focus of the IMF’s engagement with low-income countries.179 The PRGF was established to make poverty reduction and growth more central to the IMF’s lending operations in its poorest member countries.180 Adoption of the PRGF entailed enhanced cooperation and coordination between the IMF and the World Bank, as the basis of providing concessional financing by both institutions is country-owned poverty reduction strategy papers (PRSPs),181 which are prepared by governments in consultation with a participating civil society and other development partners. PRSPs, which are considered by the executive board of the IMF and World Bank, form the basis for concessional lending from each institution and debt relief under the HIPC Initiative. As of August 2008, 78 countries were eligible for PRGF concessional loans. The IMF assisted low-income countries through the Exogenous Shocks Facility in events such as commodity price changes, natural disasters, and conflicts in neighboring countries that negatively impacted the economy and were beyond the control of the government.182

An external review of the IMF–World Bank collaboration conducted in 2007 had concluded that the IMF “financing activities in low-income countries [were] an area where it ha[d] moved beyond its core responsibilities and moved into activities that increase its overlap with the work of the [World] Bank.”183 It observed that, to allow the IMF to focus on areas where it had a comparative advantage, the introduction

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Funds for Development: Multilateral Channels of Concessional Financing

of a nonfinancial Policy Support Instrument could facilitate “the gradual withdrawal [of the IMF] from [providing] long-term financing in the absence of a present balance of payments need.”184

In response to the global financial crisis, which seriously affected the poorest and most vulnerable countries in particular, the IMF approved (effective 7 January 2010) a Poverty Reduction and Growth Trust (PRGT) to replace the PRGF–Exogenous Shocks Facility trust and wide-ranging modifications to its concessional facilities.185 Under the new architecture, a separate loan and subsidy accounts have been established to enable the PRGT to provide financing to low-income countries. Most of the subsidy resources will come from the IMF’s internal resources, including resources from a limited sale of gold and additional bilateral contributions.186 The IMF will maintain its engagement with countries facing medium-term balance of payments needs through the Extended Credit Facility, which replaces the PRGF. In addition, in future the IMF will provide assistance through a Standby Credit Facility to support low-income countries with short-term financing and adjustment needs and a Rapid Credit Facility for low-income countries facing urgent financial needs through an up-front single payout.187 The Policy Support Instrument,188 which supplements the above facilities, is designed to promote a close policy dialogue between the IMF and a member country that does not require IMF financial assistance by providing, in addition to annual surveillance, more frequent assessments of a member’s economic and financial policies. This instrument is available to all low-income (PRGT-eligible countries) whose policies focus on both economic stability and debt sustainability189 and “have broadly achieved and maintained a stable and sustainable macroeconomic position . . . .”190

The establishment of these new facilities is part of the “reactivation” of the IMF that “has come on the heels of a period in which the IMF had become substantially less active”191 and is characterized by massive lending from the IMF’s General Resources Account and increased assistance to low-income countries.192 The IMF is currently a major source of loans and subsidies, but the IMF facilities are distinguishable from MFDI concessional windows in that the former are designed to meet balance of payments needs of low-income countries.

For most MFDIs studied here, trust funds are additional resources administered and executed by them to leverage their activities and work program, often based on an agreement between the MFDI and the donor. Such trust funds are an important source of concessional financing and supplement the financing of their regular concessional financing windows; they may be single-donor or multidonor funds.193 Many single-donor trust funds are used to provide grants, mostly for technical assistance. However, single-donor trust funds can be, and have been, used to provide concessional loans (e.g., the Social Progress Trust Fund contributed by the US, which was the major source of concessional operations of IADB for

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184 Ibid., p. 11, emphasis in the original.
190 Ibid.
192 Regarding the new IMF facilities established in 2009, see ibid. pp. 70–72.
Single-donor trust funds may also involve an ongoing work program, rather than a specific program defined at the establishment of the fund. Multidonor funds may support certain thematic areas, such as poverty reduction or governance. In some cases, multidonor funds have special features and more involved structures, while in other cases they are relatively simple funding mechanisms that allow several donors to support specific purposes.

The independent trust accounts of IADB (financed predominantly by accrued FSO income) are particularly interesting, as the main reason for their creation was that the IADB Charter neither allows the use of FSO resources for purposes other than concessional loans and technical assistance nor provides for establishment of special funds other than the FSO. For that reason, the IADB Board of Governors created independent trust accounts to enable the organization to respond to the needs of its members by subsidizing the interest of loans from its OCR and providing grants for projects and programs.

The board of governors’ resolutions establishing the Intermediate Financing Facility (IFF) and the grant facility for Haiti specify that the resources of such accounts shall not be deemed part of and shall be administered separately from IADB’s OCR and FSO resources. However, such resources are

(i) reflected in IADB’s financial statements,
(ii) substantially funded by transfers from the general reserve of the FSO, and
(iii) fully subject to determination by IADB’s governing bodies.

In addition, the IFF was established in the context of IADB’s general increases in resources.

The World Bank and other international organizations have created several special facilities and multipurpose vehicles that are partially or fully funded by allocations from net income or surplus of the organizations’ hard windows and administered by the World Bank. Such allocations may be used to

(i) provide assistance to nonmembers,
(ii) supplement the financing of international organizations’ regular windows for special purposes or specific sectors,
(iii) provide interest subsidies on hard windows’ loans,

194 A single-donor trust fund made available by the US was one of the pillars of IADB’s concessional lending operations when the bank was established. Following the invitation of President Kennedy on 13 March 1961 for the countries of the Latin American region to join in an Alliance of Progress, the Social Progress Trust Fund was created pursuant to an agreement entered into between the US and IADB on 19 June 1961, with initial resources of $394 million as a first step in supporting the 10-year program of the alliance. The agreement authorized IADB to make loans for land settlement and improved land use, housing for low-income groups, community water supply and sanitation facilities, and supplementary financing of facilities for advanced education and training relating to economic and social development. In February 1964, the US contributed an additional $131 million to the Social Progress Trust Fund. In view of the social nature of the projects funded by the alliance, loans were generally repayable in local currency. The establishment of the trust fund contributed substantially to the fact that IADB could provide concessional financing in substantial amounts to its members shortly after its establishment. Almost all these resources were committed by the end of 1964 for the indicated purposes. In 1965, the IADB Board of Governors decided that no resources should be sought for the trust fund and that the purposes of the trust fund should in future be included in operations of the FSO. IADB. 1979. Proposal for an Increase in the Resources of the Inter-American Development Bank (AB-462, 26 June). Washington, DC: IADB. pp. 16–17.

195 The Policy and Human Resources Development Fund established in 1990 may serve as an example. It is financed by semiannual contributions from Japan, which approves the work program semiannually as well. World Bank Group. 2005. Trust Funds Annual Report. Washington, DC. Annex E.

196 An example of a multidonor fund with special features and a complex structure is the Information for Development Program, a partnership of international development agencies that is coordinated and served by an expert secretariat housed at the Global ICT Department of the World Bank. Information for Development Program. 2009. www.infodev.org/en/Index.html

197 Article IV, section 1 of the IADB Charter states that the FSO “is established for the making of loans on terms and conditions appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects.” Article VI, section 3(b) allows the use of FSO net income to fund the expenses of providing technical assistance. Other modalities of concessional financing from FSO resources are not authorized by the IADB Charter.

198 See Chapter 4 (G. Droesse, ADB Concessional Financing).

199 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
(iv) assist countries in post-conflict situations,
(v) serve as bridging arrangements when continuity of financing from established concessional windows is threatened,
(vi) serve as arrears clearance mechanisms,
(vii) provide debt relief,
(viii) support the development of remittance services, and
(ix) fulfill a variety of other purposes.200

Trust funds increasingly joined the mainstream of concessional financing. This is emphasized among other things by the innovative features of ADB’s partnership facilities. The facilities are multidonor platforms—umbrella operational arrangements without legal personality, comprising various types of resources administered in accordance with the same terms and conditions.201

In 2009, a joint flagship study of ADB and the ADB Institute proposed the creation of a Pan-Asian Infrastructure Forum and an Asian Infrastructure Fund for coordinating and integrating subregional infrastructure initiatives and mobilizing Asian and international funds from a variety of sources (governments, sovereign wealth funds, MDBs, and bilateral agencies). While the exact status of this fund still needs definition, it is proposed that (as a trust fund) it “should have its own legal identity, so as to enable it to help finance projects through its own resources, as well as by issuing bonds or through cofinancing with other entities.”202 According to the proposal, ADB should seek to mobilize capital from national governments and institutions (e.g., national development banks and export–import banks) and investors (e.g., pension funds, private investors, and Islamic financial institutions). In addition to providing financing on market-based terms, it is envisaged that the proposed fund would also have a facility for project preparation and a facility for concessional loans and grants “to make the projects financially viable and bankable and to give countries the necessary incentives to prioritize regional projects in their own development programs.”203 It might also provide guarantees against major (operational, financial, country, and political) risks.

Recipient-Executed Trust Funds

RETFs are funds given by an organization to third-party recipients to enable them to carry out development activities. Such funds are of particular relevance in the case of the World Bank, where they are typically used to finance service delivery, capacity building, and technical assistance. They have become very important sources of concessional financing, as underlined by the fact that disbursements of such funds doubled from $730 billion in FY2002 to $1.53 billion in FY2006 and further increased in FY2007 and thereafter. While financing under RETFs is often linked with specific IDA or IBRD projects and combined with other World Bank financing, such funds are increasingly established on a stand-alone basis. Of particular relevance is the emergence of multidonor funds, especially in post-conflict and post-disaster settings. In the case of the Afghanistan Reconstruction Trust Fund,204 a recipient-administered multidonor fund has been used as a coordinated financing mechanism for the government’s recurrent budget and priority reconstruction programs. The Multi-Donor Fund for Aceh

200 Ibid.
201 See Chapter 4 (G. Droese, ADB Concessional Financing).
203 Ibid., p. 195.
Financial Intermediary Funds

In this category, the establishment of trust funds has become the substitute for the establishment of new international organizations. This study analyzes in some detail three FIFs that represent different types of governance structures and trustee arrangements. The HIPC Trust Fund represents the more traditional case of a trust fund administered by an international organization, while the Global Environment Facility (GEF) and Global Fund each have complex governance structures. There are fundamental differences in legal status and governance structure between the GEF and the Global Fund.

HIPC Trust Fund

The HIPC Trust Fund was established by joint resolutions of the boards of executive directors of IBRD and IDA, and adopted on 7 November 1996 as an IDA trust fund to facilitate the commitment of multilateral creditors to provide relief on debt owed by eligible HIPCs. IDA performs the functions of administrator and trustee. The privileges and immunities accorded to IDA apply to “the property, assets, archives, income, operations and transactions” of the HIPC Trust Fund.

The resolution establishing the HIPC Trust Fund gave donors the option of making contributions to the trust fund to any or all of its three accounts as unrestricted core contributions for payment to any creditor, or as creditor-specific or country-specific contributions. In the latter cases, payment could be made at the option of the donor either to an identified creditor or with respect to debts owed by a specifically identified eligible HIPC. Such arrangements give “donors and creditors the flexibility they need according to their respective priorities and concerns” and allow IDA, as administrator, to “merge at the decision point, funds from various components in order to provide the concerted debt relief needed for the borrowing country.”

During the IDA15 negotiations, the deputies agreed that IDA should adopt a systematic approach in allowing the World Bank to reengage and deal with the problems of fragile countries in arrears with IDA and/or the World Bank. In this context, World Bank management proposed to widen the scope of the HIPC Trust Fund and allow donor contributions for arrears clearance, as well as possible contributions from IBRD net income. Amending the resolutions of the executive directors of IBRD and IDA required the agreement of concerned donors, and “donors whose contributions to the Trust Fund represent at least

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208 HIPC Resolutions, para. 3(b).

209 HIPC Resolutions, para. 3(a). See I. F. I. Shihata, Introductory Note.


a majority of all contributions of such affected donors must have agreed to such amendment” for it to take effect. Such amendment took effect in 2008.

**Global Environment Facility**

The GEF was created in 1991 by resolution of the IBRD executive directors. The GEF was initially a pilot program to assist in protecting the global environment and promoting environmentally sound and sustainable economic development. To avoid the creation of a new organization with its own bureaucracy, collaborative arrangements involving the World Bank, the UNDP, and the United Nations Environment Programme (UNEP) were put in place; IBRD played the central roles of trustee, administrator, and implementing agency.

The role of the World Bank was among the main points of discussion when the GEF was restructured in 1994 and transformed into a permanent program that provides grants or concessional loans to developing countries to help them implement programs that protect the global environment. As contributors sought to increase their control regarding the allocation of funds by creating new governance structures and implementation arrangements, the World Bank no longer performed the functions of administrator of the restructured GEF, functioning only as a trustee in matters related to resource mobilization and financial management. The GEF has innovative features and introduced a new concept that

1. did not give the Trustee (the World Bank) discretion over the allocation of the fund’s resources but, instead, reserved the right to allocate the fund’s resources to the participants acting as a collective body; and

2. drew a clear distinction between the financial management of the fund (a role it assigned to the World Bank as Trustee) and the task of identifying, appraising, monitoring, and supervising projects to be financed by the trust fund (a role which it assigned to three intermediaries, called “Implementing Agencies,” one of which was the World Bank).

The new GEF also has innovative features at several other levels, relating to the process of diplomatic negotiation as a “collaborative mechanism between UN entities and a Bretton Woods institution that…is also highly novel” and as “an interesting example of treaty making among international organizations and institution creation.” Unlike international organizations, which are usually established by international agreement, the GEF was established by separate resolutions of the three implementing agencies. The UN’s legal office viewed the restructured GEF as a “joint subsidiary body, in the form of a financial mechanism created by the World Bank and UNDP and UNEP, acting on behalf of the United Nations.” While the World Bank has not recognized that view, “both legal offices agree on the

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213 Ibid., p. 25.
218 Sureda, The Law Applicable to the Activities of International Development Banks, p. 171.
lack of legal personality in the GEF, which may be described as a unique finance mechanism, representing a ‘unique blend of United Nations and Bretton Woods practices.’”

Following termination of the pilot phase of the Global Environment Trust Fund, the World Bank was invited to act as trustee of the new GEF Trust Fund. The negotiations for restructuring the GEF considered its legal status and agreed not to create a new intergovernmental organization. However, “although deprived of a juridical personality, it is expected to maintain a separate operational existence from the three agencies which have created it (by three individual acts), i.e., the Bank, UNDP and UNEP [and, in particular,] continue to have a special relationship with the [World] Bank as its ‘Trustee’ and its main ‘Implementing Agency’ and with the seven executing agencies.”

Thus, the GEF is endowed with neither international legal personality nor legal personality under national law. For that reason it cannot enter into legally binding contracts or agreements. As such limitations were seen as constraining the effectiveness of the GEF, its chief executive officer (CEO) and chairperson made a claim for the GEF’s legal independence during the third replenishment. He sought increased autonomy in GEF policies and strategies, authorization to enter into agreements with third parties on behalf of the GEF, and the right to determine the terms and conditions of employment of GEF staff members. The proposal for the full legal independence of the GEF did not gain approval and the issue “was resolved at the time by a number of band-aid arrangements [the shelf life of which] has now expired.” Thus, the issue resurfaced during the negotiations for the fifth GEF replenishment, when the GEF Secretariat made far-reaching proposals to confer legal personality to the GEF. However, implementation of such proposals may require reconstitution of the GEF as a legal entity under international or municipal law.

Adding further to the complexity and fragmentation of the current aid architecture, the GEF is the financial mechanism for the United Nations Framework Convention on Climate Change (UNFCCC) and three other international conventions, and manages two other multidonor trust funds that complement the GEF Trust Fund under umbrella institutional arrangements. Both funds were established under the UNFCCC, the Least Developed Countries Fund (LDCF) to address the special needs of 48 least developed countries that are particularly vulnerable to the adverse impacts of climate change, and the Special Climate Change Fund (SCCF) to fund activities that complement the GEF’s focus on certain areas (adaptation, transfer of technologies, energy, transport, industry, agriculture, forestry, and waste management). The GEF encountered some challenges in managing these funds, which are separate

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222 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).

223 GEF. 2002. The First Decade of the GEF. Second Overall Performance Study. p. 100. www.gefweb.org/uploadedFiles/OPS2.pdf. “It is our view, based on the GEF Secretariat’s experience and results so far, that the GEF would increase its effectiveness and visibility and carry out its challenging strategic tasks more successfully if the institutional status of the GEF was better recognized. Giving it some form of legal recognition or autonomy without undermining the key partnerships formed with the implementing agencies warrants consideration.”


225 Ibid.


227 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).

228 For more information about these two funds see Freestone, The Establishment, Role and Evolution of the Global Environment Facility, pp. 1102–1105, Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects), and Chapter 9 (S. Smyth, A Practical Guide to Creating a Collective Financing Effort to Save the World: The Global Environment Facility Experience).

and distinct from the GEF and have their own governance structures and funding mechanisms. The 2007 joint evaluation report warned that, in view of the complexities in operationalizing these windows, “the GEF should exercise caution in assuming additional responsibilities for the GEF Secretariat and Agencies." The Adaptation Fund (another funding opportunity for financing concrete adaptation projects and programs in developing countries) has yet again a different governance structure; the GEF performs the services of secretariat and the World Bank serves as trustee. However, the Adaptation Fund is managed by the Adaptation Fund Board, which comprises 16 members of the parties serving as the meeting of the parties to the Kyoto Protocol linked to the UNFCCC. The Adaptation Fund is financed by a share of the proceeds of the Clean Development Mechanism, one of the three mechanisms under the Kyoto Protocol. It “represents an interesting experiment in the creation of a new institution, in that it is a global body channelling funds generated globally.”

Although Article 11 of the UNFCCC designates the GEF as the financial mechanism of the convention, Article 11(5) stipulates that “the developed country Parties may also provide and developing country Parties avail themselves of financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.” On that basis, a range of multilateral and bilateral funding mechanisms for climate change has been created, the most important being the two Climate Investment Funds (CIFs)—the Clean Technology Fund (CTF) and Strategic Climate Fund (SCF)—which were established in 2008 by decision of the executive directors of the World Bank. As of October 2009, 13 countries had pledged $6.3 billion to the CIFs. The funds are managed by the World Bank and implemented jointly with the regional development banks (ADB, AfDB, EBRD, and IADB). While the objectives of the CTF and the three targeted programs under the SCF are global, such programs are implemented under national policy frameworks at the country and community levels, aiming “to act as catalysts,” to mobilize substantial additional resources from the public and private sectors and “leverage knowledge and engagement of a wide range of players in climate finance including bilateral and multilateral development partners, civil society, and indigenous people and other affected communities.” CIF funding should be transformational and additional, both (1) “as a source of finance,

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230 In August 2006, at its last Council Meeting, the Council “agreed that with respect to decision making for the LDCF and the SCCF, the Council will meet as the Council for the LDCF and SCCF” (LDCF/SCCF Council) and to delegate decisions or actions directly affecting only those two funds to the LDCF/SCCF Council as appropriate. GEF. 2006. Rules of Procedure for the LDCF/SCCF Council (GEF/LDCF/SCCF.1/3/Rev.1, 8 November). www.gefweb.org/files/documents/LDCF.SCCF.1.3%20Rules%20of%20Procedure%20for%20the%20LDCF.SCCF%20Council.pdf


236 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).


so that CIF contributions are new and additional in the context of donor country funding flows; and (2) in the way funds are used, so that CIF funding does not simply displace other sources in financing projects that would have proceeded anyway (business as usual), but rather actually influences investment decisions. The coordination framework of the CIF is inspired by but different from that applicable to the GEF. The CIF is implemented by the MDBs working separately but within a special structure and by introducing new mechanisms that enhance MDB cooperation.

**Global Fund to Fight AIDS, Tuberculosis and Malaria**

While the GEF’s quest for legal independence thus far had not succeeded, the issue was crucial during the establishment of the Global Fund, and discussions about the legal status of the Global Fund were central to the Transitional Working Group discussions in 2001. Some members of that group preferred creating the Global Fund “as an informal alliance using an existing international organization for its legal status.” Ultimately, however, the argument prevailed that the Global Fund “needed ‘autonomy’ and an ‘ability to enter into robust collaborations with national and international partners.’” Therefore, the Global Fund was incorporated under Swiss law as a nonprofit organization and it lacks legal personality under international law under the instruments establishing it. Nevertheless, privileges and immunities were extended to the Global Fund not only in Switzerland but also in the US, which recognized the fund as a public international organization, even though it does not satisfy the requirements of an intergovernment organization.

Effective 1 January 2009, the Global Fund became an administratively independent organization, assuming responsibility for managing a range of administrative services (human resources, finance, administration, procurement, and information technology services) that previously had been provided by the World Health Organization (WHO) under an administrative services agreement.

It appears that the Global Fund has become a new business model for establishing concessional windows. While the complex coordination framework of the GEF has not inspired much imitation, various new concessional windows (e.g., in the health sector) have been established as charities or companies under national law. It is likely that these entities will seek to follow the same process of increasing institutionalization and enhancement of their legal status as the Global Fund.

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239 Ibid., p. 43.
241 Ibid.
242 Ibid.
243 Ibid.
245 Examples include entities associated with the GAVI Alliance, an unincorporated multidimensional partnership of public and private sector institutions that was launched in 2000 to improve access to immunization for children in impoverished countries. The GAVI Fund (the financial arm of the GAVI Alliance) was created as a US-based nonprofit organization. The International Finance Facility for Immunisation (IFFIm), which was designed to accelerate the availability of funds for health and immunization programs through the GAVI Alliance by “frontloading” donor pledges through the sale of AAA-rated bonds, was established as a charity with the Charity Commission for England and Wales and also as a company in England and Wales. For GAVI: GAVI Alliance. 2010. GAVI—The Global Alliance for Vaccines and Immunisation www.gavialliance.org/ and for IFFIm: IFFIm. 2010 (accessed). Financial Background. www.iff-immunisation.org/02_financial_background.html A study presented in November 2007 proposes far-reaching reforms regarding the governance structure of the GAVI Alliance. GAVI. 2007. GAVI Governance Study. www.gavialliance.org/resources/GAVI_Governance_study.pdf
246 For further details regarding the Global Fund, see Chapter 10 (A. Triponel, Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid).
Organizational and institutional structures are closely interlinked. The following section elaborates such linkages in relation to membership and separation of concessional and nonconcessional windows that apply to the international organizations studied here and the varying trustee arrangements that have been implemented for the GEF, the Global Fund, and the HIPC Trust Fund.

### Membership and Participation

Membership is a core element of the institutional structure of international organizations. In the organizations studied here, membership is a prerequisite for obtaining representation in governing bodies that enables members to participate in decision making and policy formulation. Thus, membership is directly related to representation in the governing bodies of international organizations and voting rights. Membership may also be related to a variety of other matters (e.g., eligibility to receive concessional financing, procurement eligibility and access to organizations’ knowledge products). Although the GEF lacks legal personality, the Instrument for the Establishment of the Restructured Global Environment Facility (GEF Instrument) considers participation in the GEF a prerequisite for representation in the GEF’s governing bodies, the GEF Assembly and the GEF Council, which are composed of representatives of participating countries. In this regard, the thrust of the GEF Instrument is similar to the constituent instruments of IDA and other MFDIs studied here. While the GEF closely liaises and cooperates with nongovernmental organizations and other stakeholders, this is not part of its formal decision-making procedures. However, the Global Fund no longer gives membership the paramount importance it has in MDBs and other MFDIs. Because “the Global Fund was intended to be a new financing instrument with particular focus on including the private sector and civil society,” the fund does not require in all cases participation for representation in its governing bodies and for decisions regarding allocation of resources. This reflects a shift from the old order of global values that focused on nation–states and national power politics, and promoted singular economic models and political values “to the new order of global values that focus on global society and new multilateralism and accept the coexistence of diverse models of market economy and political systems.”

Each organization must define its own criteria for membership eligibility. Traditionally, states were seen as the only, or the most important, subjects of membership in international organizations. Thus, the constituent instruments of various international organizations (e.g., the AfDF, CABEI, and IFAD) specify eligibility requirements for states wishing to join the organization. In certain cases, membership eligibility is linked to membership in another organization that only states can join. Thus, ISDB makes membership eligibility dependent on membership in the OIC, which is open only to states. However,
partially due to the absence of agreement on the definition of a state,\textsuperscript{254} the constituent instruments of the IMF,\textsuperscript{255} the World Bank, and several development banks adopted a different approach, defining “countries” rather than “states” as subjects of membership. In some international organizations, the term “country” includes dependent territories of members. Moreover, international organizations and, in certain cases, even commercial companies may be admitted to membership in intergovernmental organizations.\textsuperscript{256}

Particular issues arise for organizational groups that have concessional arms with proper legal personality. In those cases, membership in the organization of the group providing financing on market-based terms may be required for membership in the organization providing concessional financing or vice versa. In some cases, the organization sponsoring the establishment of an affiliate may also become its member.

Member countries of international organizations play both “an internal and an external role [as] constituent parts of organs [and as] counterparts of the international organization.”\textsuperscript{257} An internal role relates, in particular, to representation of the member country in governing bodies (the board of governors or board of directors) of international organizations, while the external role may be associated with representation of member countries through delegations in international conferences or meetings conducted by an international organization in the overall context of their economic diplomacy.\textsuperscript{258}

These two different roles cannot be associated directly with the type of resources administered by an international organization, or whether an organization has been established as an affiliate for the provision of concessional financing or administers concessional and nonconcessional resources. This is emphasized by the fact that negotiations regarding the replenishment of international organizations’ concessional resources may be conducted either through the organization’s governing bodies (i.e., internal mechanisms, as in IADB and IFAD) or through external mechanisms conducted by senior representatives of donor governments outside the established institutional framework. On the other hand, trust funds increasingly are administered on the same or similar terms as regular concessional windows and are subject to terms and conditions established by organizations’ governing bodies. Thus, in practice, members may play external as well as internal roles when making decisions on trust funds.

**Forms of Membership or Participation**

Membership may be global, regional, or closed.\textsuperscript{259} Closed organizations are not open to membership by participants other than the founding members.


\textsuperscript{255} In accordance with Article II, section 1 of the IMF Articles, the original members of the IMF were the countries represented at the UN Monetary and Financial Conference whose governments accepted membership before 31 December 1945. Under section 2, membership in the IMF is open “to other countries at such times and in accordance which such terms as may be prescribed by the Board of Governors.”


Global Membership or Participation

Unlike the UN, which can deal with a wide range of issues, the “other global organizations are sectoral, each of them having a limited, specialized field of action.” This is the case for the IMF and the World Bank, which have the status of UN specialized organizations.

Eligibility for IBRD membership depends on membership in the IMF, emphasizing the close relationship between those two organizations. As the concessional arm of the World Bank group, IDA also requires membership in IBRD and consequently the IMF as a prerequisite for membership. IDA members fall into one of two categories based on relative economic position: Part I (industrial countries) and Part II (all other members). While assigning countries to Part I and Part II followed largely per capita income criteria, it essentially “was a political exercise: a civilized understanding among sovereign countries on how to label each other.” While all Part I countries are expected to contribute to IDA, not all Part II countries are able to avail of IDA financing. However, this classification allows Part II members to contribute to IDA, thus entitling them to the same voting power in IDA as in IBRD, even though they would not make the same contributions in usable resources as the Part I members.

Of the 186 member countries of IBRD, 169 are members of IDA, with only 17 that are not IDA members. Seven of the aforementioned 17 IBRD member countries have been classified by the DAC as upper middle income countries and territories. There are four countries that are members of IBRD and IADB but not IDA (see Appendix: Country Membership in International Organizations).

IFAD qualifies as a universal organization and most states are members. IFAD membership is open to “any State member of the United Nations or any of its specialized agencies, or of the International Atomic Energy Agency [and to] any grouping of States whose members have delegated to it powers in fields falling within the competence [of IFAD], and which is able to fulfill all the obligations of a Member of [IFAD].” Currently, no IFAD member is in the latter category. As a unique partnership between

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260 Ibid., p. 68. Emphasis in the original.
261 When the IDA Articles of Agreement were drafted, the Nordic nations “wanted an IDA open to a broader membership than just the members of the World Bank” (Mason and Asher, The World Bank since Bretton Woods, p. 394). However, this view did not prevail. Article II, section 1 of the IDA Articles now provides as follows:
   “(a) The original members of the Association shall be those members of the Bank listed in Schedule A hereto which, on or before the date specified in Article XI, Section 2(c), accept membership in the Association.
   (b) Membership shall be open to other members of the Bank at such times and in accordance with such terms as the Association may determine.”
264 Ibid.
265 All OECD countries are members of both IBRD and IDA. 139 countries are classified by IDA as Part II countries. Except for Tuvalu, all countries classified by the Development Assistance Committee (DAC) in its 2009 list of ODA recipients as least developed countries are members of both IBRD and IDA.
266 The 17 countries that are members of IBRD but not of IDA are Antigua and Barbuda, Bahrain, Belarus, Brunei Darussalam, Bulgaria, Jamaica, Lithuania, Malta, Namibia, Qatar, Romania, San Marino, Seychelles, Suriname, Turkmenistan, Uruguay, and Republica Bolivariana de Venezuela.
267 Upper middle income countries and territories are defined by the DAC as those countries with a per capita GNI of $3,706 to $11,455 in 2007. Per the 2009 DAC list of ODA recipients, the seven IBRD member countries classified as such are Antigua and Barbuda, Belarus, Jamaica, Suriname, Seychelles, Uruguay, and Republica Bolivariana de Venezuela. www.oecd.org/dataoecd/32/40/43540882.pdf
268 Jamaica, Suriname, Uruguay, and Venezuela.
269 AEI, Article 3, section 1(a) and (b).
OECD countries, Organization of the Exporting Countries (OPEC) countries, and other developing countries, IFAD’s tripartite structure is a special feature because members belong not only to IFAD but also to one of the three different groups of states, classified as lists A, B, and C, of which List C is further divided into Sublist C1 (countries in Africa), Sublist C2 (countries in Europe, Asia and the Pacific), and Sublist C3 (countries in Latin America and the Caribbean). Such classification is important for a variety of matters, such as representation in the bureau presiding over the governing council, composition of the executive board, chairmanship and composition of committees of the executive board, voting rights and burden-sharing during IFAD replenishments. After consultation with the members of the list, new members joining IFAD notify the President of their list of choice.

IFAD has 165 members, or 21 less than IBRD and four less than IDA. Twenty-six of the OECD countries are members of both IFAD and IDA.

The GEF and the Global Fund both operate on a global scale. While the GEF does not have legal personality, participation is defined on terms similar to those of international organizations. Unlike MFDIs, however, the GEF does not require membership approval by its governing bodies. GEF participation is open to “any State member of the United Nations or of any of its specialized agencies” depositing an instrument of participation. Thus, states that meet these eligibility criteria can join the GEF by unilateral act. The GEF Secretariat only performs a very limited review of formal requirements for participation.

Except for six participants, all GEF participants are also IBRD members, which means that there is a substantial overlap between its members and the members of IDA and IFAD. The number of GEF participants exceeds that of IFAD members, as GEF has 181 participants compared to IFAD’s 165 members. In addition, members of either ADB or AfDB are also generally GEF participants.

Due to a variety of factors, the Global Fund defines neither membership nor participation in its framework document or its bylaws. In view of its functions, the Global Fund must be able to operate

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273 Ibid.

274 IFAD member countries that are not members of IDA are Antigua and Barbuda, Cook Islands, Cuba, Jamaica, Democratic People’s Republic of Korea, Malta, Namibia, Niue, Qatar, Romania, Seychelles, Suriname, Uruguay, and Republica Bolivariana de Venezuela, while IDA member countries that are not members of IFAD are Australia, Czech Republic, Estonia, Hungary, Kosovo, Latvia, Federated States of Micronesia, Montenegro, Palau, Poland, Russian Federation, Serbia, Singapore, Slovak Republic, Slovenia, Ukraine, Uzbekistan, and Vanuatu.

275 There are 10 IBRD members that are also IFAD members, but not IDA members. Eight of these countries—Antigua and Barbuda, Jamaica, Malta, Namibia, Romania, Seychelles, Suriname, and Uruguay—fall under IFAD’s List C (former Category III countries), while two—Qatar and Venezuela—fall under IFAD’s List B (former Category II countries). The remaining five OECD countries—Australia, the Czech Republic, Hungary, Poland, and the Slovak Republic—are not members of IFAD but are IDA members. Of the OECD countries, 22 are classified by IFAD as List A countries, with Chile, the Republic of Korea, Mexico, and Turkey classified as List C countries.

276 GEF Instrument, para. 7.

277 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).

278 Cook Islands, Cuba, the Democratic People’s Republic of Korea, Nauru, Niue, and Tuvalu.

279 In addition to membership in the GEF, Cuba, the Democratic People’s Republic of Korea, and Niue are members of IFAD, Belarus and Bulgaria are members of IBRD, while Nauru and Tuvalu are members of ADB. The only IBRD members that are not GEF participants are Bahrain, Brunei Darussalam, Cyprus, Iceland, Kuwait, Oman, Qatar, San Marino, Saudi Arabia, Singapore, and United Arab Emirates.

280 The only exceptions are ADB member Brunei Darussalam; Hong Kong, China; Singapore; and Taipei, China; and AfDB member Saudi Arabia.

in all countries affected by HIV/AIDS, tuberculosis, or malaria, and must not be restricted to extending financing only to its members. In addition, the Global Fund has adopted new concepts of representation that do not rely on membership and include representatives from nongovernment organizations (NGOs), the private sector, and communities living with the diseases. Moreover, the Global Fund does not use membership as a criterion for the allocation of resources. Since the fund has no country presence, it relies on existing in-country processes and contracts independent experts for advice.

Membership in Regional and Subregional Development Banks and the Islamic Development Bank

Regional development banks were established to mobilize additional resources beyond those provided at the global level, “based on the desire of developing countries to have a larger say in the regional institutions than they have in the global financial institutions and to ensure additional resources for their regions beyond those provided at the global level.” To ensure control of the institution by regional countries, some regional development banks (e.g., AfDB and IADB) initially restricted or precluded membership of nonregional countries. On the other hand, ADB was “conceived from the outset as an international partnership” and provided for the admission of nonregional members. The same concept was adopted by CDB, which was substantially influenced by the ADB Charter.

Because the creation of IADB sought to “strengthen the Pan American alliance,” membership initially was open only to members of OAS, thus making the US eligible for membership as the only nonborrowing country. As IADB’s most important subscriber, the US initially held 40.2% of IADB’s voting power. Canada, which was not an OAS member, was not eligible for membership, even though it had provided substantial financial support for technical and educational assistance to IADB member countries in Latin America. On the recommendation of the Committee of the Board of Governors, the board amended the IADB Charter and opened membership to Canada and nonregional members. On 17 December 1974, a group of 12 nonregional countries and 298 affirmed their intention to apply for membership in IADB and were admitted in 1976. Currently, 16 of the

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282 See Chapter 3 (G. Droese, Modalities of Multilateral Concessional Financing).

283 A regional institution “is one in which the demand to serve particular interests is expressed in the form of a restriction which explicitly confines operations or eligibility for membership, or which attributes a special status within the membership to countries within a limited and defined geographical area.” White, Regional Development Banks, p. 19.

284 Sureda, The Law Applicable to the Activities of International Development Banks.

285 Wilson, A Bank for Half the World, p. 9 (quoting ADB President Masao Fujiooka).


287 IADB. 1972. Resolution AG-4/72 of 23 March 1972: “Membership shall be open to other members of the Organization of American States and to Canada, at such times and in accordance with such terms as the Bank may determine. For the purpose of increasing the resources of the Bank, nonregional countries which are members of the International Monetary Fund, and Switzerland, may also be admitted to the Bank, at such times, in accordance with such terms and, under such general rules as the Board of Governors shall have established, subject to such limitations on their rights and obligations, relative to those applicable to regional members, as the Bank may determine.” On 24 April 1970, the IADB Board of Governors appointed a committee mandated to examine various alternatives for assuring “an increased flow of resources” from developed nonmember countries (Resolution AG/5/70 of 24 April 1970). The committee recommended the admission of Canada to membership considering among other things the “unique importance” of Canada’s contribution “in furtherance of the economic and social progress” of IADB’s developing member countries (IADB. 1971. Report on Membership of Canada and the Possible Admission of other Developed Countries to the Inter-American Development Bank. Washington, DC. p. 2).

288 Austria, Belgium, Denmark, Germany, Israel, Italy, Japan, The Netherlands, Spain, Switzerland, United Kingdom, and Yugoslavia. Current list of member countries available at: www.iadb.org/aboutus/whoweare/index.cfm?language=EN&id=6291


290 IADB’s capital initially consisted of OCR and special funds. When nonregional countries were admitted to membership, restrictions on outstanding bond issues made it necessary to create an interregional capital stock through another amendment to the IADB Charter (IADB. 1976. Resolution AG-9/76 of the Board of Governors, Amendments to the Agreement Establishing the Bank with
22 nonregional countries of IADB are OECD countries, all of which are also nonregional members of AfDB.

AfDB membership initially was confined to independent states on the African continent and its adjacent islands. In 1979, regional members amended the AfDB Agreement to admit nonregional members, provided that they were or would become members of the AfDF. In contrast to the World Bank Group, where IBRD membership is a prerequisite for IDA membership, membership in the AfDF is a prerequisite for AfDB membership. Currently, membership in AfDB includes 21 members of ADB and 22 members of IADB.

On the other hand, the AfDF Agreement provides that AfDB itself is a party and signatory to the agreement. Participation in the AfDF is open to all members of UN (or any of its specialized agencies or parties to the Statute of the International Court of Justice) upon “a unanimous resolution adopted by the affirmative vote of the total voting power of the participants.” Thus, all states that meet these requirements, whether part of the region or not, are eligible to join the AfDF; membership in AfDB is not a prerequisite. With the exception of South Africa, which joined the AfDF in 1998, all state participants in the AfDF are nonregional countries. Thus, while most African countries depend on the AfDF for financial assistance, they are not state participants of the AfDF. This membership structure has

Respect to the Creation of the Inter-Regional Capital Stock of the Bank and to Related Matters, approved on 1 June 1976). The charter was also amended in this context to admit Bahamas and Guyana, Caribbean countries that were not initially included in the list of IADB regional developing member countries. IADB’s interregional capital stock was later merged with its ordinary capital.

OECD member countries that are also nonregional member countries of IADB, AfDB, and ADB are Austria, Belgium, Denmark, Finland, France, Germany, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and United Kingdom. Japan and the Republic of Korea are also nonregional member countries of IADB and AfDB; however, they are classified as regional member countries before ADB.

Note that aside from Japan and the Republic of Korea, these countries are also nonregional members of ADB. In addition to the aforesaid 16 OECD countries, IADB also counts among its nonregional members the People’s Republic of China (PRC), Croatia, Israel, and Slovenia. While the People’s Republic of China is a regional member of ADB and a nonregional member of AfDB, and CDB, the other three countries are not affiliated with any other regional bank other than IADB.

AfDB Board of Governors Resolution 05–179 concerning the Amendments of the Agreement Establishing the African Development Bank to enable non-African Countries to become members thereof (adopted on 17 May 1979).

AfDB Agreement, Article 3(3).

The 19 countries that are members of ADB, AfDB, and IADB, are Austria, Belgium, Canada, People’s Republic of China, Denmark, Finland, France, Germany, Italy, Japan, Republic of Korea, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and the United States. All, except the PRC, are OECD countries.

In addition to PRC, AfDB also counts among its members two other ADB member countries: India, which is regional member country, and Turkey, which is a nonregional member country. Argentina, Brazil, and Uruguay, which are IADB Group 1 borrowing member countries, are also members of AfDB.

AfDF Agreement, Article 3(3).

Following the participation of South Africa, stakeholders called for a revision of the AfDF’s governance structures for the inclusion of better and more direct participation of regional member countries. This was given consideration in a 2002 governance study and in the Report on the Tenth General Replenishment of the Resources of the African Development Fund (AfDF X), where deputies urged the management of the AfDB Group “to continue discussions with countries that had previously expressed an interest in joining the Bank Group as well as others, to enlarge membership in the Fund.” During the negotiations on the 11th Resource Replenishment of the AfDF (AfDF XI), fundamental changes to the institutional and membership structure of the AfDF were discussed. Three options were considered: (i) revise AfDF structures to open participation to all regional member countries, regardless of whether they are donors or not; (ii) open participation to nonstate entities, including other international financial organizations, private foundations, global funds, and other such agencies involved in development activities in Africa; and (iii) create a new concessional window. All three proposals raise fundamental issues. One of the major matters discussed in relation to the first proposal was whether AfDB should remain a member of the AfDF, and under what terms and conditions. Opening the AfDF to nonstate entities as contemplated in relation to the second proposal would substantially alter the character of the AfDF. Finally, the third proposal to create a new concessional window in addition to the AfDF warrants careful consideration as the tendency in most MDBs has been to avoid creating new institutions but rather to consolidate existing ones.” The discussions regarding these matters are ongoing. See Chapter 5 (A. Akin-Olugbade and A. Flory, Concessional Financing Windows of the African Development Bank Group: Organization, Decision Making, and Modalities); AfDE 2004. Report on the 10th General Replenishment of the Resources of the African Development Fund (AfDF-X), www.afdb.org; AfDE 2007. ADF-11 Deputies Report, www.afdb.org
been questioned by the High Level Panel, which recommended the merger of AfDB and AfDF and encouraged regional countries to augment the financial resources of AfDB.

ADB membership is open to

(i) members and associate members of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), and

(ii) other regional countries and non-regional developed countries which are members of the United Nations or any of its specialized agencies.

One distinguishing feature of ADB is that membership is open to dependent territories that are associate members of UNESCAP. Such a territory may join ADB if the member country responsible for the international relations of the applicant presents its membership and assumes responsibility for all obligations incurred by the applicant as a member of ADB. However, not all associate members of UNESCAP are dependent territories as some of them (e.g., Cook Islands) assumed over time responsibility for the conduct of their international relations.

All but five ADB members are members of IBRD, and all but seven ADB members are members of IDA. The situation of ADB is special as, in addition to the PRC, it counts among its members Taipei, China and Hong Kong, China, both of which are not members of the other MDFIs.

In ADB, admission as a nonregional member is only open to developed countries. However, ADB is not bound in this regard by the classification that countries are given in other organizations. Thus, even though Turkey was a borrowing country of the World Bank Group, it was classified as a developed country by ADB and admitted as such as a nonregional member of ADB. As may be seen from the above, countries that are members of IBRD and IDA are, in all or most cases, also members of GEF, IFAD, the three regional development banks (IADB, ADB, and AfDB), and the two subregional development banks (CDB and BCIE) analyzed in this paper. There is also an increasing overlap of membership in regional development banks.

ADB’s group of nonregional member countries so far consists exclusively of OECD countries. However, nonregional membership in regional development banks is not necessarily limited to DAC member countries or OECD countries.

In addition to traditional OECD DAC donors, IADB counts among its members Asian countries such as the PRC, India and the Republic of Korea. This has created interesting new opportunities for cooperation between Africa and Asia. Currently, membership in IADB does not include any African

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298 AfDB, Investing in Africa’s Future.
299 Formerly, the UN Economic Commission for Asia and the Far East (ECAFE). For more information: UNESCAP. www.unescap.org
300 ADB Charter, Article 3.1.
301 ADB Charter, Article 3.3.
302 ADB members that are not members of IBRD are Cook Islands; Hong Kong, China; Nauru; Taipei, China; and Tuvalu.
303 ADB members that are not members of IDA are Brunei Darussalam, Cook Islands; Hong Kong, China; Nauru; Taipei, China; Tuvalu; and Turkmenistan.
304 ADB also has Nauru and Tuvalu as its members, which are not members of either IBRD, IDA, or IFAD, although they participate in GEF. ADB member country Cook Islands is also not a member of IBRD or IDA, although it is a member of IFAD and participates in the GEF. ADB member country Brunei Darussalam is a member of IBRD and IsDB, but is not a member of any other MDFI.
305 See Chapter 4 (G. Droesse, ADB Concessional Financing).
307 For example, AfDB counts Argentina, Brazil, the PRC, India, Kuwait, and Saudi Arabia among its nonregional member countries. See African Development Bank Group Member Countries. www.afdb.org/en/about-us/members/
country and membership in ADB does not include any country from Africa or Latin America. However, this might change in future in the context of increasing globalization, as there appear to be tendencies toward enhanced representation of G-20 countries in all regional development banks.

While states do not necessarily adopt the same position on similar matters in all organizations to which they are a party, the overlap in the constituencies of the organizations mentioned above frequently had the result that, in replenishment negotiations, similar issues were raised. Thus, the themes of replenishment negotiations tend to be very similar in most cases as donors are members of the same MDFIs as shown above.

CDB, which comprises former dependent Caribbean territories of the United Kingdom, follows a similar broad approach to membership. Consistent with its character as a subregional bank, CDB counts as part of its membership territories that are not members in any other MDFI, such as Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands.

The CDB Charter provides that membership shall be open to states and territories of the region, non-regional states which are members of the UN or of any of its specialized agencies or of the International Atomic Energy Agency, and institutions. It also mandates CDB to “encourage and facilitate the fullest co-operation and participation in its activities of other regional or non-regional states” that meet the above requirement. All nonregional members of CDB are also members of ADB, AfDF, IADB, and IDA. CDB also counts the PRC among its nonregional members. The CDB Charter was amended in 2007 to provide the membership basis for institutions, although no institution has been admitted to membership thus far.

While both the ADB and CDB charters allow membership of dependent territories, there are certain differences regarding their procedures for admitting dependent territories to membership. Both organizations require the presentation of an application for membership by the member responsible for the international relations of the applicant. While ADB requires that member to assume responsibility for all obligations of the applicant until such time that the applicant itself assumes such responsibility, CDB requires confirmation from said member that the dependent territory has authority to enter into a membership agreement with CDB and to assume the rights and obligations of the agreement. Thus, the state responsible for conducting the international relations of the dependent territory generally does not assume a legal obligation to CDB for the borrowings and other financial obligations of the dependent territory.

In CABEI, countries other than its founding members as well as “public organizations with an international scope of action and having juridical personality” may be accepted as nonregional members in accordance with the regulations established by the board of governors. In addition, CABEI may accept other countries as beneficiary members.

308 CDB Charter, Article 3.
309 CDB Charter, Article 4.
310 The nonregional members of CDB are Canada, the PRC, Germany, Italy, and the United Kingdom.
311 CDB Member Countries. www.caribank.org/titanweb/cdb/webcms.nsf/e9f00d4a47929ecc87256b0a005c4e8b/8b168e9c694934eb872572bf007adfd3?OpenDocument
312 Syz, International Development Banks, pp. 4–6.
313 ADB Charter, Article 3.3.
314 CDB Charter, Article 62(2).
315 Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.
316 CABEI Agreement, Article 4.
317 Ibid. As of 1 September 2008, the Banco Centroamericano de Integración Económica has seven nonregional members and one beneficiary member.
IsDB membership is open only to members of the OIC. Most members of IsDB are also members of IDA. Moreover, there is some overlap between membership in IsDB and membership in regional development banks. However, there is a substantial difference between IsDB and the other organizations mentioned here regarding major donor countries, and the special focus of IsDB on Muslim countries also distinguishes it from other MDBs. These differences contribute to the fact that IsDB has developed policies and practices that are somewhat different from those of the MDBs and other MFDIs mentioned here.

While the ISFD is a special fund of IsDB without proper legal personality, the Regulations of the Islamic Solidarity Fund for Development (ISFD Regulations) define participation in the ISFD in a different manner than participation in IsDB. In addition to IsDB member states, “any institution of a member country” may be authorized to participate in the ISFD “upon such terms as may be decided by a vote of the majority of the total number of Governors representing a majority of the vote of the Governors.” This distinguishing feature of the ISFD may have implications for representation in governing bodies.

**Closed Organizations**

Some organizations are considered “closed” because their constituent instruments lack provision for admitting new members. In those cases, admission of new members requires an amendment to the constituent instrument.

The NDF and NIB are organizations with closed membership. NDF membership differs from that of the NIB, in that the NIB has admitted the Baltic States (Estonia, Latvia, and Lithuania) as it wished to pave the way “towards the development of a still more integrated Nordic-Baltic economy” and further consolidate NIB’s standing. However, the NDF has not expanded its membership beyond its original member states (Denmark, Finland, Iceland, Norway, and Sweden).

**Withdrawal, Suspension, and Termination**

Membership in an international organization may terminate due to withdrawal, expulsion, or termination of operations.

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318 IsDB Agreement, Article 3.

319 IsDB members within the Asian region are also members of ADB. These are Afghanistan, Azerbaijan, Bangladesh, Brunei Darussalam, Indonesia, Kazakhstan, the Kyrgyz Republic, Malaysia, Maldives, Pakistan, Tajikistan, Turkmenistan, and Turkey.

On the other hand, IsDB countries located in the African region are also regional members of AfDB. These countries are Algeria, Benin, Burkina Faso, Cameroon, Chad, Comoros, Cote d’Ivoire, Djibouti, Arab Republic of Egypt, Gabon, The Gambia, Guinea, Guinea-Bissau, Libyan Arab Jamahiriya, Mali, Mauritania, Morocco, Mozambique, Niger, Federal Republic of Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Togo, and Tunisia. Kuwait, Turkey, and Saudi Arabia are both members of IsDB and nonregional members of AfDB.

Except for Bahrain, Brunei Darussalam, Palestine, Turkmenistan, and Uzbekistan, IsDB member countries are also members of IFAD. Of the 56 member countries of IsDB, 11 are classified as List B countries by IFAD. These are Algeria, Gabon, Indonesia, Islamic Republic of Iran, Iraq, Kuwait, Libyan Arab Jamahiriya, Federal Republic of Nigeria, Qatar, Saudi Arabia, and United Arab Emirates. All of these, except for Gabon and Indonesia, are OPEC members.

None of the DAC countries, nor any of the OECD countries, except for Turkey, are members of IsDB.

320 ISFD Regulations, Article 6.02.

321 In accordance with ISFD Regulations, Article 6.02, this power may be delegated to the board of directors.

322 The original agreement establishing the NIB signed on 4 September 1975 was superseded by an agreement signed on 23 October 1998. This agreement was replaced by the Agreement between Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, and Sweden concerning the Nordic Investment Bank, signed on 11 February 2004 (NIB Agreement) which entered into force on 1 January 2005. The statutes of the NIB were amended on various occasions and replaced on 11 February 2004 by new statutes (NIB Statutes) which entered into force on 1 January 2005. NDF. 2005. Agreement. Statutes. www.nib.int/filebank/45-Agreement_and_Statutes.pdf

323 NIB. NIB and the Baltic Countries. www.nib.int/news_publications/press_releases/baltic_membership_background

324 The fourth case is that the member ceases to exist. Schermers and Blokker, *International Institutional Law*, §118.
Withdrawal

The constituent instruments of most organizations studied here expressly recognize the right of members to withdraw.\textsuperscript{325} In certain cases, withdrawal is effective on the date of notification.\textsuperscript{326} However, to allow organizations to take necessary action, provision generally has been made that a member's withdrawal shall only become effective after a period of 6 months or longer.\textsuperscript{327} In certain cases, members can withdraw from organizations only after they have been members for a defined period.\textsuperscript{328}

A member may withdraw from an organization even in the absence of an express provision to that effect. However, the question particularly relevant in this study is whether and to what extent membership in an organization and participation in its concessional windows are linked (i.e., whether members may withdraw from the organization's concessional windows and recover part or all of their contributions to such windows while remaining a member of the organization). This issue is particularly important in organizations that administer both concessional and nonconcessional resources.

A comparison of legal frameworks shows that organizations have adopted different approaches. While in some cases (e.g., the ADF) members may withdraw from a special fund at any time and recover, over time, a proportionate part of their contributions,\textsuperscript{329} they do not have that right in other organizations as long as they remain members of the organization,\textsuperscript{330} or only under certain terms and conditions.\textsuperscript{331}


\textsuperscript{326} IDA Articles, Article VII, section 1 provides: “Any member may withdraw from membership in the Association [IDA] at any time by transmitting a notice in writing to the Association at its principal office. Withdrawal shall become effective upon the date such notice is received.” A similar formulation is contained in Article 37 of the AfDF Agreement: “Any participant may withdraw from participation in the Fund at any time by transmitting a notice in writing to the Fund, at its principal office. Withdrawal shall become effective upon the date such notice is received or upon such date, not more than six months thereafter, as may be specified in such notice.” GEF participants may also withdraw from the GEF at any time by depositing with the GEF Secretariat an instrument of termination of participation. See GEF Instrument, para. 7 and Annex A.

\textsuperscript{327} Article 43(2) of the AfDB Agreement is worded in a different manner from the AfDF Agreement (see above). It provides that such withdrawal from membership shall take effect on the date specified in such notice “but in no event less than six months after the date that notice has been received by the Bank.” Similar withdrawal provisions are contained in the ADB Charter, Article 41.2; IADB Charter, Article IX, section 1; and AEL, Article 9, section 1. The IADB and ADB Charters contain a provision that the member may notify at any time before the withdrawal becomes effective of the cancellation of the notice to withdraw. Article 17 of the Agreement between Denmark, Finland, Iceland, Norway, and Sweden concerning the Nordic Development Fund of 1998 (hereinafter referred to as NDF Agreement, which superseded a previous agreement signed in 1988), provides that the earliest date on which a withdrawal shall become effective is the end of the financial year following the year in which the notice was transmitted. NDF 2009. Agreement Statutes. www.ndf.fi/docs/NDF-agreement-statutes.pdf

\textsuperscript{328} Article 43(1) of the IsDB Agreement provides that members do not have the right of withdrawal before the expiry of 5 years from the date of membership.

\textsuperscript{329} ADB contributing members may withdraw any time from the ADF, with the right to recover a proportionate share of their contributions. Resolution No. 62 of the ADB Board of Governors, para. 7(a).

\textsuperscript{330} Express provision to that effect is contained in Article IV, section 11 of the IADB Charter. Section 11(a) states: “No country may withdraw its contribution and terminate its relations with the [FSO] while it is still a member of the Bank.” Section 11(b) provides that in case of termination of membership, the provisions regarding settlement of accounts in Article IX, section 3 also apply to the FSO. Thus, members may not withdraw their contributions to the FSO as long as they are members of IADB.

\textsuperscript{331} In the case of the SDF, it is possible for contributors to withdraw their contributions only if provision to that effect has been made in the relevant contribution agreement with CDB. 1983. Rules for the Special Development Fund, par. 6.3.1. In that case, CDB shall within a reasonable period “transfer to the Contributor such of the said contribution as is in the possession of CDB and is not required for the purpose of settlement of obligations.” Ibid. The balance is transferred in such a case when it is received by CDB. Thus, there is provision, in principle, for members to withdraw their contributions. However, the resolutions
Also, members do not have the right in all cases to recover, over time, a proportionate share of their contributions to special funds.\textsuperscript{332}

**Suspension and Termination of Membership**

If a member fails to fulfill any of its obligations, the IDA Articles provides for suspension of membership by a majority of the governors exercising a majority of the total voting power. The suspended member automatically ceases membership 1 year from the date of its suspension unless the same majority decides to restore the member in good standing.\textsuperscript{333} The constituent instruments of ADB, IADB, and IFAD\textsuperscript{334} contain provisions regarding suspension and consequent termination if the member is not restored to good standing; such provisions are modeled on those of IBRD and IDA.\textsuperscript{335} The NDF Agreement does not include a provision regarding suspension or termination of membership. The IMF Articles, on the other hand, gives the board of governors the power to require a member to withdraw from membership if such member persists, after having been declared ineligible to use the general resources of the IMF, in fulfilling its obligations under the IMF Articles.\textsuperscript{336} Since suspension, termination, and compulsory withdrawal are measures of last resort, and in view of their “political character and severity,”\textsuperscript{337} any such decisions require a qualified majority of the board of governors. The provisions of constituent agreements generally have not been applied in practice.\textsuperscript{338}

The ISFD Regulations authorize the IsDB Board of Governors to suspend by qualified majority participants that do not fulfill their obligations to the ISFD from exercising their rights in the fund.\textsuperscript{339} This provision may be viewed as a corollary of the special decision-making procedures and voting rights that apply to the ISFD, which are different from those established under the IsDB Agreement.

**Suspension or Termination of Operations and Settlement of Accounts**

Constituent instruments of the financial institutions studied here provide for either permanent suspension (IDA)\textsuperscript{340} or termination of operations (ADB, CDB, and IADB).\textsuperscript{341} Article 15 of the NDF Agreement grants the Nordic council of ministers power to liquidate the NDF. In such a case, the council shall appoint, in accordance with section 10 of the NDF Statutes, “the persons to be in charge of the liquidation.”\textsuperscript{342}

\textsuperscript{332} The experience of FETS and the ISFD show that it is not always possible for contributors to recover over time on a pro rata basis a share of their contributions. Article 16.8 of the ISFD Regulations of the IsDB provides that no distribution of resources of the fund to contributors shall be made, except in the case where the operations of the fund are terminated and until all liabilities to creditors have been discharged. The FETS Statute does not provide for payments to members in the event that a member withdraws from the organization or ceases to contribute to the fund. Article 17 thereof only provides for the dissolution and liquidation of the FETS in the event that the CABI itself is dissolved, in which case the principles set forth in Article 36 of the CABI Agreement for dissolution and liquidation shall apply. CABI. 2001. Resolution No. DI-28/2000 of the Board of Directors. Tegucigalpa, Honduras.

\textsuperscript{333} IDA Articles, Article VII, section 2(a).

\textsuperscript{334} IADB Charter, Article IX, section 2; AEI, Article 9, section 2; ADB Charter, Article 42.

\textsuperscript{335} See IBRD Articles, Article VI, section 2; IDA Articles, Article VII, section 2.

\textsuperscript{336} IMF Articles, Article XXVI, section 2.


\textsuperscript{338} Schermers and Blokker, *International Institutional Law*, §137.

\textsuperscript{339} ISFD Regulations, Article 16.01 requires a vote of two-thirds of the total number of the Board of Governors representing not less than three-fourths of the total voting power of the IsDB Board of Governors.

\textsuperscript{340} IDA Articles, Article VIII, section 5(a).

\textsuperscript{341} AfDF Agreement, Article 40; IADB Charter, Article X, Section 2; ADB Charter, Article 45; CDB Charter, Article 44.

On 14 September 2005, the Nordic ministers of development cooperation cancelled negotiations for the fifth capital replenishment of the NDF proposed to finance operations during 2006–2010, concluding that the NDF should focus on “winding up” its operations. Because of this, the case of the NDF is particularly relevant. Rather than liquidating the NDF pursuant to Article 15 of the NDF Agreement, the ministers then chose an interim management option that entailed bringing NDF operations to a close within 4–5 years, thus enabling the NDF to complete its remaining tasks, including portfolio management, procurement, and project implementation. It was then envisaged that after the interim phase, the NDF would no longer have personnel but would remain a legal entity with its own books of account so that repayments could be received and recorded. Various solutions were considered regarding the use of NDF assets. In 2007, two studies examined (i) the channeling of reflows through the World Bank, and (ii) an alternative based on a Nordic administration of the refunds. However, these proposals were not implemented. Instead, in 2009 the Nordic ministers for cooperation decided that the NDF should continue operating, but in the future should provide “grant aid to climate change projects through cofinancing with multilateral development banks and other institutions,” rather than concessional loans for projects of interest to the Nordic countries. These fundamental changes to the NDF’s purpose, functions, and modalities of concessional financing are the ultimate confirmation of international organizations’ ability to adapt to changed circumstances and transform themselves to remain relevant to the demands of their shareholders. Due to that ability they are, if not immortal, very long-lived.

Overall, the principles regarding settlement of accounts are similar to those that apply when a country ceases membership in an organization that provides concessional financing, or ceases to participate in a special fund administered by such an organization. In both cases, a country generally remains liable for the financial obligations of the organization, but is relieved from any future liability. Also in both cases, countries generally may recover, over time, in full or in part and on a pro rata basis a proportionate share of their subscriptions and/or contributions. However, the requirements for amendments to member entitlements may vary substantially, as exemplified by a comparison of ADB’s and IDA’s legal frameworks.

In the case of affiliated organizations such as IDA, the terms of settlement regarding withdrawal, termination of membership, and/or termination of operations generally are defined in the constituent instrument. Any amendments to the constituent instrument regarding the right to withdraw from IDA require acceptance by all members. However, unanimity is required only in relation to the right to withdraw, and not regarding the terms of such withdrawal. The same applies to IADB, which has a built-in concessional window with FSO. In the case of organizations administering Special Funds

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343 This decision was notably due to the fact that Denmark decided to “phase out its support for the [NDF] … due to the fact that NDF’s policy of linking purchases to the Nordic Region [was] no longer in line with the Danish attitude to what it calls the non-linkage of aid, i.e., that it should be possible to spend development aid on goods from any country.” Norden. 2005. Nordic Development Aid. www.norden.org/en/news-and-events/news/nordic-development-aid/?searchterm=meeting%20September%202005
348 IDA Articles, Article IX(b)(i).
349 The situation is similar in the AfDF. See Article 51(2)(iii) of the AfDF Agreement.
350 Article IV, section 12 of the IADB Charter stipulates that the provision regarding the suspension or termination of IADB’s operations in Article X of the IADB Charter shall also apply to the FSO. Under Article XII(b) (i) thereof, amendments to the IADB Charter which require the right to withdraw from IADB require the “unanimous agreement” of the board of governors. However, unanimity is not required by Article XII(b)(i) thereof regarding amendments to Article X, section 4, which sets out the principles for distribution of assets.
resources, however, the decision on the terms of settlement mentioned above generally is left to the organization’s governing bodies, which may define unanimity requirements and/or special majorities for amendments to the terms of settlement. The ADF Regulations expressly require “prior consent in writing of every Contributor” for amendments to come into effect that modify the rights of a contributor upon withdrawal from the ADF and upon termination of the ADF.\textsuperscript{351} Thus, all contributors current or past must agree to changes regarding their rights and the terms of settlement upon withdrawing from the ADF or upon termination of the ADF.

The termination provisions governing IADB’s independent trust account reflect the hybrid and rather ambiguous nature of these funds (see above). Section 6 of the resolution of the board of governors regarding the “Creation of the Intermediate Financing Facility” specifies that upon termination of the account, the amounts allocated from the general reserve of the FSO “will be reallocated to the Fund for Special Operations or distributed to members.”\textsuperscript{352} The resolution regarding the grant facility states that all remaining assets of the accounts, including amounts allocated from the general reserve of the FSO, shall be distributed to the member countries as determined by the board of governors.\textsuperscript{353}

The HIPC Resolutions provide that the HIPC Trust Fund may be terminated upon a decision by the executive directors of IBRD and IDA, “based on their finding that the Trust Fund has fulfilled its purpose, or can no longer do so.”\textsuperscript{354} In such a case, contributors are entitled to receive a proportionate share of their contributions.

In some cases (e.g., GEF and the Global Fund), the constituent agreement contains no detailed provisions regarding settlement of accounts.

Termination of the GEF Instrument “may be approved by consensus by the Assembly upon the recommendation of the Council, after taking into account the views of the Implementing Agencies and the Trustee, and shall become effective after adoption by the Implementing Agencies and the Trustee in accordance with their respective rules and procedural requirements.”\textsuperscript{355} In such case, the trustee must take the necessary action to complete the activities of the GEF “in an expeditious manner” by providing for “meeting the commitments of the Facility already made for grants and transfers, and for the disposition of any remaining funds, receipts, assets or liabilities of the Fund upon termination.”\textsuperscript{356} Regarding such disposition on a subsidiary basis and to the extent that the GEF Instrument is silent on this matter, general principles of trust law apply to the GEF. While the assets of the trust are during the duration of the trust in the ownership of the trustee, such ownership is only a formal one, not a real one. “It is a \textit{sui generis} trust ownership that is enforcible against third parties, but as between the donors and the trustee it remains in the real ownership of the donors.”\textsuperscript{357} Thus, even in the absence of an express provision, contributors are entitled to recover, over time, any part of their contributions to a trust fund that are not required to cover outstanding liabilities.

In case of the CTF, the trustee, on behalf of donors, will endeavor “to transfer donors’ pro-rata shares to another fund which has a similar objective as the CTF as determined by the Trust Fund Committee.”\textsuperscript{358} Similar provision has also been made for the SCF.\textsuperscript{359}

\textsuperscript{351} ADB. 2009. Regulations of the Asian Development Fund as amended (hereinafter, ADF Regulations) Section 6.01 (d).


\textsuperscript{354} IBRD Resolution No. 96–9 and IDA Resolution No. 96–5, para. 13.

\textsuperscript{355} GEF Instrument, para. 34.


\textsuperscript{358} CIF. The Clean Technology Fund. para. 53.

\textsuperscript{359} CIF. Strategic Climate Fund. para. 54.
In accordance with Articles 88 and 89 of the Swiss Civil Code, the Global Fund may be dissolved only with the consent of the supervisory authority (i.e., the Swiss Federal Supervisory Board for Foundations). The relevant provisions are contained in the Global Fund’s bylaws, which were subject to approval by the Swiss supervisory authority. In accordance with the bylaws, the Global Fund board may conduct the liquidation unless the board designates another party to act as a liquidator. In such an event, “the assets of the Foundation shall be returned to the donors to be applied to similar objectives to those of the Foundation.”360 Since the Global Fund is incorporated as an NGO under Swiss law, any dissolution of the Global Fund requires the consent of the Swiss supervisory authority.361 Thus, Swiss law would apply at least subsidiarily to the settlement of accounts.362

The Basic Principle of Separation between Hard and Soft Windows

When an organization or organization group provides financing through a hard window at close-to-market terms and through a soft window on concessional terms, it is essential to clearly distinguish between these two windows in terms of resources, allocation of administrative expenses, operations, and liabilities. Doing so is warranted to ensure that an organization’s concessional operations will not prejudice its credit rating and ability to conduct business through its hard windows financial transactions in capital markets. Thus, such a distinction goes to the core of the different functions performed by an organization as a financial intermediary and channel of concessional financing.

Since the financial structure of hard windows largely “approximates that of any commercial long-term lending institution,”363 capital markets require assurance that an organization will use the proceeds of its borrowings for its hard window transactions rather than its concessional financing. Soft windows of financial institutions, on the other hand, were conceived as revolving funds rather than as “banking entities with a limited capital structure on which borrowing leverage can be exercised as such.”364 They are structured as either (affiliated) organizations with proper legal personality under international law or special funds or trust funds administered by organizations, and are funded predominantly or exclusively by donors’ grant resources, which are passed on to eligible recipients on concessional terms at a rate of 1:1. In either case and irrespective of the legal structure of soft windows, there is a need for their clear functional separation from hard windows. However, such a separation does not preclude that, in a transparent manner and with the approval of the governing bodies, allocations from hard windows are made to soft windows to a limited extent.

Resources, Operations, and Liabilities

Established in 1944 as the original institution of the World Bank Group, IBRD provides financing through guarantees, loans, and risk management products. IDA was established in 1960 as “an entity separate and distinct from IBRD,”365 and its funds are kept “separate and apart” as well. Provision was also made to ensure that IDA “shall not borrow from or lend to the Bank,”366 although IDA is not precluded

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360 Global Fund Bylaws, Article 13.
361 Ibid.
362 For the status of the Global Fund under Swiss law, see: Memorandum from Edmond Tavernier to Dominique Hempel. 25 March 2003. www.theglobalfund.org/documents/board/05/gfb57annex63.pdf
363 Mistry, Multilateral Development Banks, p. 18.
364 Ibid.
365 IDA Articles, Article VI, section 6(a).
366 Ibid.
from “investing funds not needed in its financing operations in obligations of the Bank.” 367 IDA is not liable for the acts or obligations of IBRD, nor is IBRD liable for the acts or obligations of IDA. 368

The situation is similar for the AfDF, although its articles of agreement do not expressly preclude it from borrowing from AfDB. In accordance with the agreement, the AfDF is “an entity juridically separate and distinct” from AfDB; its assets shall also be kept “separate and apart” from those of AfDB. 369 The NDF Agreement and statutes, on the other hand, did not contain provisions regarding the relations between the NIB and NDF, and they were later defined by subsequent agreement.

Article III, section 3(a) of the IADB Charter highlights the basic principle of separation of such resources and operations, providing that ordinary capital resources and FSO resources “shall at all times and in all respects be held, used, obligated, invested, or otherwise disposed of entirely separate from each other.” Section 3(b) thereof further specifies that “ordinary capital resources shall under no circumstances be charged with, or used to discharge, obligations, liabilities or losses arising out of operations for which the resources of the Fund [for Special Operations] were originally used or committed.” These provisions and the similar ones contained in Article 11 of the AfDB Agreement370 were the model for the ADB Charter.371 Equivalent provisions are also contained in the charter of CDB372 and the IsDB Agreement,373 which in turn were influenced to a certain extent by the ADB Charter, and in the ISFD Regulations and the resolutions of the CABEI Board of Governors and Board of Directors establishing FETS and FONTEC. 374

The separation principle applies not only to OCR and Special Funds resources but also to the various special funds of an organization. The CDB Charter explicitly provides that “[e]ach special fund, its resources and accounts shall be kept entirely separate from other special funds, their resources and accounts.” Thus, the OSF, SDF(O), and SDF(U) of CDB must all be administered separately. In the absence of an express stipulation in the constituent instrument, the same also applies to other international organizations that administer more than one special fund. The rationale of such a separation is that each special fund must be administered in accordance with the agreements reached with contributors when it was established, and the rules and regulations applicable to the fund at that time. Thus, ADB’s Multi-Purpose Special Fund continued to exist until 1980 in spite of the fact that the ADF had been created in 1974 to replace it, because not all contributors had agreed to transfer their contributions to the ADF. 376

In many cases, Special Funds resources are deemed part of organizations’ own resources and are reflected as such in organizations’ financial statements. This applies not only in cases with incorporated concessional windows (e.g., CDB and IADB), but also in organizations where the constituent instrument contains only a general authorization for the establishment of special funds (e.g., ADB and IsDB).

367 Ibid.
368 Ibid., Article VI, section 6(c); see I. F. I. Shihata, 2000. World Bank Legal Papers. The Hague: Martinus Nijhoff. pp. 569–570. Shihata explains that at “the time of discussions on the [IBRD’s] headroom under its general lending limit, a proposal related to IDA purchasing outstanding Bank [IBRD] loans was considered, [which] envisaged the investment of IDA’s liquid funds in securities (participation certificates) representing IBRD loans.” As this proposal did not address the use of IDA reflows in credits to enable borrowers to repay IBRD, this proposal was considered permissible, “provided it was done on an arm’s length basis (as a sound investment of IDA funds) and approved by the Board.” Ibid. p. 577.
369 AfDF Agreement, Article 31 (2).
370 See also NTF Agreement, Article VII and WTSF Instrument, section 4.4.
371 ADB Charter, Article 10.
372 CDB Charter, Article 12.
373 IsDB Agreement, Article 14.
374 Resolution No. DI-103/2000 of the Board of Directors of CABEI provides that the FETS is a financial instrument that is separate from CABEI’s assets: “Que el FETS se constituye como un instrumento financiero independiente y separado del patrimonio del Banco Centroamericano de Integración Económica.” A similar provision is contained in Article 1 of Resolution No. AG-2/88.
375 CDB Charter, Article 12.
376 See Chapter 4 (G. Droesse, ADB Concessional Financing).
However, the same does not apply in all cases (e.g., CABEI’s FETS and FONTEC and AfDB’s WFSF). The financial statements of the CABEI exclusively cover assets, liabilities, and operations of the CABEI, but not FONTEC and FETS, which are independent and separate from the CABEI and governed by their own bylaws. Because the resources of both funds are not part of the CABEI’s own resources and thus are not reflected as such in the CABEI’s financial statements, all conditions have been met in recording these funds as independent from the CABEI’s equity. Likewise, the WFSF was created in response to an initiative by AMCOW. AfDB serves as trustee of the WFSF, the assets of which are separate from all other AfDB accounts and assets.

**Staffing Arrangements and Administrative Expenses**

In organizational groups, the staff of the principal organization generally provides services for other organizations of the group as well. The IDA Articles provide that IBRD officers and staff shall, to the extent practicable, “be appointed to serve concurrently as officers and staff of [IDA].” When IDA was organized, it was contemplated that at least initially it would have no separate officers and staff, although it had the flexibility to permit such appointments at a later stage. Only a few staff members, such as those in the Financial Resource Mobilization Department, are devoted specifically to work on IDA replenishments. However, IDA is managed separately from IBRD in certain areas. For example, the IDA vice president of concessional finance and global partnerships bears the overall responsibility for IDA’s financial and risk management, while its central finance and risk managing units monitor compliance with financial management standards. The World Bank’s finance complex is responsible for executing most of IDA’s financial transactions.

Similarly, the AfDF shares facilities, personnel, and services with AfDB. In that sense, the AfDF and IDA are administered similarly as special funds.

The NDF has its own staff and structure and independently conducts the employer’s entire work management and supervision responsibilities in relation to its staff, and consequently bears all the costs for its staff. NDF staff members report only to the NDF president and do not provide services to the NIB. While NDF staff are formally and secondarily employed by the NIB, this approach was originally adopted merely to ensure that the privileges and immunities applying to the NIB extend to NDF staff as well. However, this concern is no longer an important consideration, because the NDF Agreement (as revised on 9 October 1998) provides the same privileges and immunities to the NDF and NIB staff. Also, the NDF has concluded its own host country agreement with Finland, specifying privileges and immunities.

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377 CABEI. 2000. Resolution of the Board of Directors No. DI-28–2000. Article 2 states that the FETS had been established as a financial instrument separate from the assets of the CABEI, to help finance on concessional terms programs and projects that fall within the efforts for social transformation and poverty reduction strategies of the founding countries, for which this special window had been created: “El Fondo se constituye como un instrumento financiero independiente y separado del patrimonio del Banco Centroamericano de Integración Económica, en adelante denominado ‘BCIE’ [Banco Centroamericano de Integración Económica] o ‘Banco,’ con el objeto de contribuir al financiamiento en términos concesionales, de programas y proyectos que se enmarquen dentro de los esfuerzos de transformación social y estrategias de reducción de pobreza de los países fundadores, para lo cual se creó esta ventanilla especial.”


379 Ibid.

380 WFSF Instrument, section 2.1.

381 IDA Articles, Article VI, section 5(b).


384 NDF Agreement, Articles 10 and 11.
that apply to the NDF.\textsuperscript{385} Thus, the only current reason for maintaining “double” employment is a national Finnish tax law that provides special taxation treatment only for expatriate NIB employees.

From the outset, the NDF was intended as a “lean organization” with no more than four employees, and meant to outsource auxiliary matters such as loan administration, procurement, liquidity management, and legal services.\textsuperscript{386} However, the NDF “soon developed its own personality, found new financial partners” and increasingly took responsibility for all operational matters, including procurement and loan administration, while continuing to use NIB’s accounting and legal, information technology, and liquidity management services.\textsuperscript{387} Under the proposed “interim management option” for concluding NDF operations, the NDF would have continued to exist as a legal entity, but without assigned staff. Following the recent decision of the Nordic ministers of cooperation to give the NDF a new purpose and new functions relating to climate change adaptation and mitigation, the NDF has recruited new staff. Thus, it will continue operations for the foreseeable future.

Generally, concessional and nonconcessional resources are administered by the organization’s staff and in accordance with the same procedures. The ADF and SDF Regulations provide explicitly for the management of these funds by ADB and CDB, respectively\textsuperscript{388} and the Nigeria Trust Fund (NTF) provide explicitly for the management of this fund by AfDB.\textsuperscript{389} However, it is not intrinsically incompatible with the establishment of a special fund that an organization specifically appoints staff to provide service to that fund. This is demonstrated again by the WFSF Instrument,\textsuperscript{390} which provides that the WFSF, while administered by AfDB through its “own organisation, services, facilities, officers, staff and such other experts and consultants as may be necessary,” may have in addition to a director “other staff considered necessary to carry out the objectives of the Fund.”\textsuperscript{391}

Institutions have developed their respective allocation formulas for determining the allocation of administrative expenses.\textsuperscript{392} In affiliated organizations, distribution [allocation] of administration expenses is a corollary of their separate legal and financial structures. In organizations jointly administering concessional and nonconcessional resources, it is a corollary of the separation principle. Organizations may allocate resources based on input-based systems that use specific cost data or output-based allocation systems that use specific outputs (e.g., the number of loans approved during a given year) as a proxy for allocation of administrative expenses. While input-based systems afford greater accuracy, they are more difficult to manage than output-based systems, which require very sophisticated information systems, specific data on project activities, and a time-recording system.

Over time, the World Bank Group has implemented various systems. During the past decade, the World Bank introduced an input-based system that attributes country-specific costs directly to IBRD and IDA country programs while allocating noncountry operational expenses in the same proportion as country-specific costs. The formula which has been agreed reflects the administrative costs of service delivery to countries that are eligible for IBRD and IDA lending.\textsuperscript{393}


\textsuperscript{387} Ibid.

\textsuperscript{388} ADF Regulations, Article I, section 1.3. CDB. 1983. Regulations of the Special Development Fund, para. 2.1.4.

\textsuperscript{389} NTF Agreement, Article III, section 3.1.

\textsuperscript{390} WFSF Instrument, section 2.2. www.africanwaterfacility.org/fileadmin/uploads/awf/publications-reports/AWF_INSTRUMENT_EN.PDF

\textsuperscript{391} WFSF Instrument, section 3.1.

\textsuperscript{392} ADB. 2003. Review of Allocation of Administrative Expenses between Ordinary Capital Resources and Asian Development Fund. Manila (R195–03). This review provides an overview of the various formulas used by the organization; Mistry, Multilateral Development Banks, pp. 107–108.


The AfDF reimburses AfDB for the “fair value of its use of the latter’s offices, staff, organization, services, and facilities,” largely on the basis of a “predetermined cost-sharing formula” driven by the relative share of the number of AfDF programs and projects executed by the AfDB Group during the period. The agreement between AfDB and the Federal Republic of Nigeria stipulates that the NTF shall pay to AfDB “separately identifiable costs incurred by the Bank for the Fund” and “indirect costs incurred by the Bank in the management of the fund,” subject to the provision that the annual payment for expenses “shall not exceed the total of 20% of the gross income of the Fund during the course of each year.” In the case of the CABEI’s FETS, there are no set criteria for charging administrative expenses. However, for FONTEC, the recipient pays 7% to 10% of the cost of the technical assistance.

In CDB, the cost of technical assistance operations is charged directly to the SDF(O) or SDF(U). Otherwise, CDB has adopted an output-based system that allocates administrative expenses to the OSF, SDF(O), and SDF(U), based on the number of concessional and nonconcessional loans.

ADB previously divided nonidentifiable administrative expenses between OCR and the ADF in proportion to the number of loans and equity investments approved in each category. When this formula was refined in 2003, the interim allocation system for administrative expenses considered direct costs, to the extent possible, with the remaining nonidentifiable administrative expenditures that were allocated based on a 3-year cumulative number of OCR and ADF-approved projects. Thus, ADB’s current system combines certain features of input- and output-based allocation systems. ADB’s current system combines certain features of input- and output-based allocation systems. IADB is currently in a transition phase during which the board of governors determines allocations of administrative expenses to the FSO without a specific formula.

In the NIB Group, splitting common costs between the NIB and NDF has been the subject of negotiation and was complicated by the fact that NIB membership includes the Baltic States. The NDF does not adhere strictly to either an input- or output-based system. Rather, it allocates its administrative expenditures primarily on a pro rata basis in relation to the ratio of the NIB and NDF staff in those areas where the NIB provides services to the NDF.

**Permitted Use of Hard Windows’ Resources for Concessional Financing**

Despite the importance of the separation principle, separation between hard and soft windows is not absolute. There are three cases where hard windows’ resources may be used to provide concessional financing:

(i) when subscribed capital is set aside for concessional financing,

(ii) when net income or surplus is allocated for concessional resources, and

(iii) when administrative expenses or current income is used to fund technical assistance grants.

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394 AfDF Agreement, Article 31(1).


396 NTF Agreement, Article IX, section 9.1. The cost-sharing formula agreed upon for allocating administrative expenses to the NTF is “driven by certain selected indicators of operational activity for operational expenses and relative balance sheet sizes for non-operational expenses.” AfDB, Annual Report 2008, Note Q to Financial Statements, p. 175.

397 Under CDB’s Financial Rules, the director of finance and corporate planning, or in his absence, such person or persons as designated by the president, would decide on an appropriate ratio of apportionment of expenditures where expenditure incurred relates jointly to special and ordinary operations as well as the method of allocation of overheads between special and ordinary operations.

398 ADB, Review of Allocation of Administrative Expenses.

399 See Chapter 4 (G. Droesse, ADB Concessional Financing).


401 A new service agreement was concluded between the NIB and the NDF in June 2008, which partly contains other pricing principles (e.g., for NIB expert services).
Setting Aside Subscribed Capital for Concessional Financing

The separation principle does not rule out allocating part of the subscribed capital of organizations’ hard windows to concessional financing. While the constituent instruments of most international financial institutions do not allow, or expressly forbid, such allocations, they are expressly permitted by the ADB Charter, depending on certain conditions. Subject to a vote of two-thirds of the total number of governors, representing at least three-fourths of the total voting power of the members, the ADB Board of Governors is allowed to set aside a portion of ADB’s unimpaired paid-in capital in convertible currency for the purpose of establishing special funds. While this provision does not specify a time frame for such action, it aimed mainly to enable ADB to provide concessional financing in the form of loans and technical assistance immediately after ADB’s establishment. The ADB Board of Governors used this power only in the initial years of ADB’s concessional operations, when it set aside resources for ADB’s Multi-Purpose Special Fund. Such funds were subsequently transferred to the ADF in 1975. During the first 5 years of its operations, ADB was also authorized to use up to 2% of its paid-in capital for furnishing technical assistance on a nonreimbursable basis as a service to member countries pursuant to Article 21 (vi) of the ADB Charter. However, ADB did not avail of that authority.

Allocations of Hard Windows’ Net Income or Surplus to Concessional Resources

The separation principle also does not preclude the transfer of net income or surplus from hard windows to special funds or trust funds. This has become a widely recognized feature of international organizations. While the income from OCR primarily is to be used for allocation to reserves and/or surplus, and net income transfers can be made only on an annual basis after deciding the allocations to reserves and surplus, such transfers have become an important and integral part of the funding packages for concessional financing operations.

Such transfers have a long tradition in the case of the World Bank Group, where on many occasions IBRD’s net income or surplus has been transferred to IDA or trust funds and have been approved annually in recent years. The permissibility of a grant from IBRD to IDA was first considered in 1963, when the general counsel of the World Bank rendered a legal opinion that section 14 of Article V of the IBRD Articles does not bar such grants. Thus, IBRD can apply its net income to a range of uses beyond the specific uses stipulated by the provision. The IBRD Articles does not explicitly authorize such other uses, which are considered acceptable as long as they are consistent with the purposes and functions of IBRD.
The wording of Article 40.1 of the ADB Charter closely follows that of Article V, section 14 of the IBRD Articles, stating that

The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to Special Funds, shall be allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the members.

Article 40.1 should be read in relation to Article 10.1, which requires the separation of ADB's OCR and special funds operations. Because Article 40.1 only contains reference to “distribution to members,” the ADB Board of Directors adopted a formal interpretation of the ADB Charter in 1997 in accordance with Article 60 and based on a legal opinion of the general counsel, to confirm that

pursuant to Article 40.1 of the Charter, allocation to ADF by the Board of Governors of current year OCR net income in excess of such reserves as the Governors shall consider necessary or appropriate and which would otherwise be available for distribution to members is justified within the context of the Bank's purpose and functions and is consistent with the Charter; and (b) a reasonable basis exists for concluding that such net income transfers to ADF may be made consistently with the provisions of Article 10.1 of the Charter, which require the separation of the Bank's OCR and Special Funds operations....

Thus, ADB is authorized to allocate OCR net income and surplus (which otherwise would be available for distribution to members) to the ADF or other special funds. On several occasions since 1997, the ADB Board of Governors has approved the allocation of net income and/or surplus to the ADF, the Technical Assistance Special Fund and other special funds. The largest such allocation ($600 million) was authorized by the ADB Board of Governors in 2005 to the Asian Tsunami Fund. So far, ADB has not transferred OCR net income or surplus to any ADB trust fund. Rather, in case of ADB's partnership facilities, which may comprise various different types of resources, ADB has established special funds in those cases where it intended to make allocations of OCR net income or surplus to a facility. While the authentic interpretation of the ADB Charter by ADB's board of directors does not address the possibility of a transfer of OCR net income or surplus to a trust fund given the fact that such a transfer would be in lieu of a distribution to member countries, there is no reason to assume that ADB's board of governors should be precluded from approving it.

In accordance with express provisions in their respective charters, the CDB and IsDB are authorized to make similar transfers from their hard windows to soft windows. While no transfers to the SDF have ever been approved in the past, the CDB Board of Governors has authorized the allocation of net income from OCR to surplus for other purposes, as determined by its board of directors, such as allocations to

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410 Ibid.
411 See Chapter 4 (G. Droese, ADB Concessional Financing).
413 IsDB Agreement. Article 42.1 provides that “The Board of Governors shall determine annually what part of the net income or surplus of the Bank from ordinary capital operations shall be allocated to reserves, depositors, Special Funds, and members.” (Emphasis added). Article 10(ii) therein expressly states that Special Funds resources include “funds allocated by the Bank to any Special Fund from net income arising out of its ordinary operations.” In Article 39, the CDB Charter expressly mentions transfers to “any special fund, including the Special Development Fund” as possible allocations of net income by the CDB Board of Governors.
CDB’s Private Sector Fund. During the negotiations of the seventh SDF cycle, donors discussed for the first time proposals for a transfer of OCR net income to the SDF.\textsuperscript{414}

Prior to the establishment of the ISFD, IsDB had sourced concessional loans from its OCR and the special account for least developed member countries. When establishing the ISFD, the board of governors resolved that IsDB should continue budgeting, within the same limit as it did previously, “amounts from its resources in each financial year for providing concessional financing through the [ISFD].”\textsuperscript{415} It was envisaged that such allocations would decline over time as income from the principal amount contributed by participants increased and became equal to the amount currently contributed by IsDB.

Since AfDF-8, AfDB has allocated UA30 million “from the net income of the Bank to the [AfDF] over each 3-year replenishment period.”\textsuperscript{416} AfDB has also approved allocations of AfDB net income for the HIPC Initiative and the Post-Conflict Countries Arrears Clearance Mechanism and to compensate for the costs of AfDB’s temporary relocation from Abidjan to Tunis.\textsuperscript{417} The High Level Panel recommended that AfDB net income “be deployed more aggressively to support the Bank’s development objectives.”\textsuperscript{418}

In accordance with Article VII, section 4(a) of the IADB Charter, the IADB Board of Governors “may determine periodically what part of the net profits and of the surplus of the ordinary capital resources shall be distributed.” This “includes the right of the Governors to distribute and to allocate, by agreement of the member countries, part of the net profits of the Ordinary Capital of the Bank when net profits have reached a level which the Board of Governors considers adequate.”\textsuperscript{419}

On that basis, in 1992 the IADB Board of Governors allocated $35 million from IADB OCR net income to the IFF for use in the five borrowing countries facing the most severe economic difficulties.\textsuperscript{420} It has also allocated $15 million for an independent account to finance nonreimbursable technical assistance operations.\textsuperscript{421} Thus, while the IFF has been funded mostly by allocations of FSO net income from the FSO general reserve, in principle, the IADB Charter also allows transferring OCR net income to independent trust accounts such as the IFF; the board effectively has approved such allocations.

In the 2010 Cancún Declaration concerning IADB’s Ninth General Capital Increase, IADB’s governors assured IADB’s “continued support for Haiti’s reconstruction and development through a commitment to provide $200 million annually in transfers of OC [ordinary capital] income to the Haiti Grant Facility through 2020.”\textsuperscript{422}

\textsuperscript{414} CDB. 2008. \textit{Unified Special Development Fund Revised Level of Replenishment and Commitment Authority}. (November). \url{www.caribank.org/tranweb/cdb/webcms.nsf/AllDoc/CCA00C8C7C667419A0425754B004E8B91/$File/Revised%20Level%20of%20Replenishment.pdf}


\textsuperscript{416} AfDB management recommended increasing that amount to at least UA60 million during the AfDF-11 period, taking account of the “strengthened financial position of the [AfDB] and the need to increase the resource envelope available for financing development projects in the [38] regional member countries for which only concessional financing through the public sector window is permissible.” AfDF, \textit{ADF–11 Deputies Report}, para. 7.6.


\textsuperscript{418} AfDB, \textit{Investing in Africa’s Future}, p. 29.


\textsuperscript{420} Under IADB’s classification system, the countries were classified as group D, which comprises four groups of countries. For details regarding IADB’s classification system and the countries classified in Group D, see Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).


Article VII, section 4(b) of the IADB Charter contains an express provision authorizing the board of governors to transfer ordinary capital net income to the FSO after receiving a "report from the Board of Executive Directors on the desirability of such a transfer, which shall take into consideration, inter alia, (1) whether the reserves have reached a level that is adequate; (2) whether the transferred funds are needed for the operation of the [FSO]; and (3) the impact, if any, on [IADB’s] ability to borrow." However, the IADB Board of Governors has used that power only rarely.

The CABEI has adopted a policy to capitalize all net income. However, contributions of the CABEI to the FETS and FONTEC are expressly permitted in the statutes regarding these funds and are effectively the main source of funding of these two funds. This differs from the NDF, because the NIB Statutes are viewed as prohibiting any allocations of NIB net income or surplus to the NDF. While NIB regularly distributes dividends to its member countries, it did not make allocations to the NDF in lieu of such distribution for that reason.

**Use of Administrative Expenses or Current Income for Technical Assistance Grants**

The third case relates to the use of current income from organizations’ hard windows or administrative expenses to fund technical assistance grants. Under this funding modality, organizations charge the costs of technical assistance, as administrative expenses or services to member countries, to the current income of organizations’ hard windows.

Some organizations use their administrative budget, which is charged to gross income, to fund technical assistance. IBRD's use of its administrative budget to finance technical assistance operations resulted from an observation by its auditors that IBRD contributions to organizations unaffiliated with IBRD or IDA should be recorded as expenses, rather than capital-related items. Beginning in FY1982, the bank removed specific grants from the amounts allocated to IDA and charged them to the administrative budget. As a result, IBRD had two types of grants:

(i) those “made under the administrative budget, which proliferated over the years as they included some grants for preparation of projects in low-income countries, for technical assistance purposes, and for organizations like the [Consultative Group on International Agricultural Research] CGIAR;” and,

(ii) “at the same time, grants from [IBRD] net income to IDA and [for] such other purposes as the GEF, which are more akin to a distribution of dividends as they presumably benefit all members.”

Currently, the World Bank’s contributions to the CGIAR and other grants are funded by the Development Grant Facility, which was created in 1997 to integrate the World Bank’s overall strategy,
allocations, and management of grant-making activities. The Development Grant Facility is funded from the World Bank’s administrative budget under a single umbrella mechanism.\textsuperscript{429}

IFAD’s Project Development Financing Facility resembles the Development Grant Facility in certain respects, particularly because it is also funded from IFAD’s administrative budget.\textsuperscript{430}

While IFAD and the World Bank fund technical assistance on a regular basis from the administrative budget, other organizations (e.g., ADB, CDB, and IADB) as a matter of policy do not use their administrative budgets, or use them only to a limited extent, for such operations.\textsuperscript{431} However, the constituent instruments of the organizations mentioned above contain an express authorization for financing the cost of technical assistance to the (net) income of their hard windows.

ADB is authorized to charge “technical advice and assistance which serve its purpose and come within its functions and where expenditures incurred in furnishing such services are not reimbursable” to its net income.\textsuperscript{432} Since the IADB Charter was one of the models considered for the ADB Charter, the reference to “net income” may have been influenced by Article VI, section 3(b) of the IADB Charter, which provides that the “expenses of providing technical assistance not paid by the recipients shall be met from the net income of the ordinary capital resources or of the Fund [FSO].” However, ADB does not actually use net income, but rather uses current income from OCR to fund technical assistance operations as a service to member countries.

In a legal opinion, Peter Sullivan, former general counsel for ADB, noted that in referring to technical assistance funding, the drafters of the ADB Charter “might have inadvertently intended a different meaning for the term ‘net income’ when used in Article 21(vi) as compared to the meaning as used in Article 40.1 which refers to allocation of net income by the Board of Governors.”\textsuperscript{433} Article 20(h) of the CDB Charter, which otherwise is identical to Article 21(vi) of the ADB Charter, avoids the inconsistent terminology of the ADB and IADB charters, providing instead that expenditures incurred for technical assistance may be charged to CDB’s “income,” rather than to its “net income.” However, CDB has so far not used that provision for funding technical assistance.\textsuperscript{434}

On the other hand, ADB, on two previous occasions,\textsuperscript{435} has used the authorization provided in Article 21(vi) to fund technical assistance operations as services to ADB members from current OCR income. Such services are funded under a different budget line than administrative expenses, which also are charged to ADB’s gross income. As a matter of policy, ADB can only use internal administrative expenses to a limited extent for funding technical assistance operations.\textsuperscript{436}

There is a fundamental difference between funding technical assistance from OCR current income (under Article 21[vi]) or OCR net income (through allocations under Article 40.1) even though both

\textsuperscript{431} While the FSO was the main source of IADB’s technical assistance operations, a joint board/management working group recommended “consolidation of all mechanisms that provide national technical assistance to governments from the Bank’s own resources into a unified technical assistance program” to be “funded by resources from both FSO and the administrative budget.” IADB. 1999. Institutional Strategy. www.iadb.org/aboutus/howweareorganized/index.cfm?lang=en&cid=6268
\textsuperscript{432} ADB Agreement, Article 21, section vii.
\textsuperscript{434} Yvette Lemonias-Seale, interview by author, June 2010.
\textsuperscript{436} Internal administrative expenses are strictly used for ADB’s internal work only, such as for the cost of staff salaries and other costs related to the processing of (regional) technical assistance projects; direct and identifiable costs of such projects are included in their budgets.
funding modalities essentially serve the same purpose. In the latter case, the distribution of ordinary capital is the disposition of excess income or a dividend. In the former case, the cost of the technical assistance is considered a business expense. Thus, technical assistance funding from current OCR income would be possible in principle, even in the event that there is no net income for disposition. For that reason, and also to safeguard its credit rating and financial strength, ADB discourages and presently does not use this funding modality.

**Trust Fund Arrangements and Roles of International Organizations**

From a legal viewpoint, the distinction between special funds and trust funds is clear in those cases where Special Funds resources are deemed to be part of organizations' resources (e.g., the FSO of IADB, the SDF of ADB and CDB, and the ADF of ADB) and distinguishes these funds from trust funds that are not part of organizations' resources. They are mainly financial and administrative arrangements under which donors entrust funds to an international organization, which finances specific development-related activities. Generally, the international organizations acting as trustee are the legal owner of the resources held in trust, ensuring that the organizations' privileges and immunities under their constituent agreements extend to such funds against third parties but the “real ownership” remains with the donors. Trust fund resources must be administered in the interest of (and can only be used for the benefit of) the designated beneficiaries. In addition, trust funds must be held separately from the trustee's own resources.

Another distinction between special funds and trust funds is that special funds are traditionally administered in accordance with rules or regulations adopted by the MFDI acting as administrator, while trust funds are administered in accordance with the agreement between the MFDI and donors.

However, the above distinctions cannot be made in all cases. Moreover, in practice, the distinction between trust fund resources and Special Funds resources is increasingly blurred in both a funding and an operational perspective, even in those cases where it is clear from a legal point of view.

As shown above, Special Funds resources in some cases (e.g., WFSF, FETS) are not part of the resources of the administering organizations. On the other hand, to finance activities and/or provide seed capital for new facilities or multipurpose vehicles that cannot be funded by regular concessional windows as a matter of law or policy, trust funds may be funded substantially or even exclusively by allocations of net income or surplus from the hard windows of international organizations. In that case, their main purpose is to establish a new channel of concessional financing, rather than holding in trust resources made available by third parties. Also, trust funds and special funds are increasingly administered on the same terms and conditions. For example, ADB’s partnership facilities are multidonor platforms comprising Special Funds and trust fund resources and other types of concessional resources.

The constituent instruments of some international organizations (e.g., IsDB) refer explicitly to trust fund resources and operations. In most cases, however, constituent instruments of international organizations are silent regarding trust funds and do not confer express authority to establish or administer

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437 Bantekas, Trust Funds under International Law, p. 34.
438 Gold, Trust Funds in International Law, pp. 856–866.
439 See Chapter 4 (G. Droesse, ADB Concessional Financing).
440 Article 23 of the IsDB Agreement authorizes IsDB to accept the administration of trust funds whose objectives are not inconsistent with the purpose and functions of the bank. Article 13 refers expressly to trust fund operations. Moreover, Article 11 of the IsDB Agreement state that “Trust Fund Resources shall include the following: (i) resources received by the Bank in accordance with the terms of the Trust; (ii) funds repaid or received in respect of operations financed by Trust Funds; (iii) income derived from operations financed by Trust Funds.”
such funds. Nevertheless, it is widely accepted that the competence to establish trust funds “is inherent in any international organization.”

Traditionally, trust funds governed by international law are established by agreement between the trustee and the owner of the assets administered by the trustee, which set out the terms and conditions applicable to trust fund resources. However, trust funds may also be created by the constitutive act of the organization administering the trust fund. As shown above, the IMF adopted this approach from the outset for trust funds under its administration, and international organizations are increasingly following suit.

The governing bodies make decisions regarding the establishment of trust funds and the acceptance of contributions. IFAD’s case is exceptional as IFAD’s plenary body, the governing council, has established trust funds in a few cases. In the other MFDIs studied here, to the extent that a decision regarding such matters has not been delegated to the president, the board of directors or a similar body having the required quorum and weighted voting rights generally makes decisions by a majority of votes cast. Qualified majorities are generally not required.

The roles international organizations play in the administration and execution of trust funds vary substantially. As trustee, MFDIs are generally responsible for managing and investing funds on behalf of others. In addition, MFDIs may act as administrator and thus have authority to commit trust fund resources in accordance with criteria agreed upon with the fund’s donors; they also may be responsible for project execution. In many cases, MFDIs use trust funds to support their work programs and leverage their activities. In such cases, MFDIs normally have spending authority and decide on the operational commitment of trust fund resources in accordance with terms and conditions agreed upon with donors. They generally play a decisive role regarding trust funds in all aspects of project design, approval, and implementation.

MFDIs may play a variety of different roles for recipient-executed trust funds (RETFs). If appointed as trustee, they perform the functions mentioned above, or they may perform the more limited role of fiscal agent. Unlike the trustee, “a fiscal agent is not responsible for monitoring the use of the fund by the recipient but may provide limited reporting on the holding, investment and transfer of funds.” MFDIs may also be designated to receive funds as a partner agency and may participate in the governance of the RETFs through membership in steering committees or similar bodies and/or perform functions of the secretariat.

Also in the case of FIFs, international organizations may play different roles and perform a wide range of different functions, as demonstrated by a comparison of the HIPC Trust Fund, the GEF, and the Global Fund.

Under the joint resolutions adopted by the executive directors of IBRD and IDA who established the HIPC Trust Fund as an IDA trust fund, IDA is the sole administrator of the fund. As administrator, IDA was authorized to accept and hold contributions to the HIPC Trust Fund, invest funds, and “to perform all acts and enter in all contracts as shall be necessary or desirable for the accomplishment of the purposes of the Trust Fund including, without limitation, agreements with donors regarding their contribution to the Trust Fund.”

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443 See the attached note that lists the different roles of the World Bank as trustee, fiscal agent, partner agency, steering committee member, secretariat, and contributor. World Bank. 2006. *Notes on the Roles of the World Bank within the Multi Donor Fund*. www.multidonorfund.org/documents/ note_on_world_bank_roles.doc

444 Ibid.

445 Ibid.

446 HIPC Resolutions, para. 3.
However, the HIPC Trust Fund has some special features. Since IDA had to consult closely with the IMF (e.g., when preparing debt sustainability analyses), its actions were “qualified in many ways by the actions of other parties”\textsuperscript{447} including (potential) donors, the debtor country, and, at various levels, its creditors.\textsuperscript{448} Special decision-making procedures were put in place because any amendment to the resolution establishing the HIPC Trust Fund required the agreement of donors whose contributions represented a majority of all contributions.\textsuperscript{449} A majority of donors were also required for renewing IDA’s appointment as administrator, or for appointing a successor administrator.\textsuperscript{450}

During the GEF’s initial 3-year exploratory pilot phase (1991–1993), the World Bank was trustee, administrator, and implementing agency. The first two roles assured the World Bank “a virtual monopoly on relations with participants [and] day-to-day control of the GEF.”\textsuperscript{451} The World Bank also had a very important role in its third capacity as implementing agency. It made decisions on the allocation of trust fund resources, entered into grant agreements with trust fund beneficiaries, and prepared an annual financial statement for contributors who, apart from receiving such reports, had no further involvement in the trust fund. Therefore, it is not surprising that much of the criticism against the GEF during its initial phase centered on the “institutional linkages between the GEF and the World Bank.”\textsuperscript{452} These issues and the roles of the World Bank as administrator and trustee were considered in the GEF restructuring process that was completed in 1994.\textsuperscript{453}

Following termination of the pilot phase of the Global Environment Trust Fund, the World Bank was invited to act as trustee of the new Global Environment Facility (GEF) Trust Fund and to serve in both a fiduciary and an administrative capacity.\textsuperscript{454} Based on the work plan and budget approved by the GEF Council, the World Bank determines the administrative costs charged against the resources of the GEF Trust Fund.\textsuperscript{455}

Since trust funds generally do not have legal personality under international law, ensuring that fund assets and the staff that perform activities for the fund are covered by privileges and immunities presents a challenge. Providing such coverage for assets is achieved by giving the trustee legal ownership of the assets. Privileges and immunities for the staff of the secretariat may involve appointing them as staff of the trustee. The GEF has followed this approach. While the GEF’s executive head directs a functionally independent secretariat, the World Bank is the administrative home of the GEF Secretariat. Traditionally, GEF staff members are recruited as World Bank staff and serve under the same terms and conditions as World Bank staff. This may lead to conflicts of interest and tensions between the CEO and the trustee when the agendas of the World Bank and the GEF conflict. While the GEF Secretariat and the World Bank sought to deal with this problem through administrative arrangements and delegation of authority, such solutions “may not be viable indefinitely.”\textsuperscript{456}

While institutions, financial intermediary funds, and other constituted bodies without legal personality cannot be sued, it is possible that legal action may be taken against individuals serving in

\textsuperscript{447} Shihata, Techniques to Avoid Proliferation of International Organizations, p. 128.
\textsuperscript{448} Ibid., pp. 128–129.
\textsuperscript{449} HIPC Resolutions, para. 11.
\textsuperscript{450} Ibid., para. 11. The proposed amendment to the resolution establishing the HIPC Trust Fund will not substantially affect the role of the World Bank as trustee.
\textsuperscript{451} Sjöberg, Restructuring the Global Environment Facility. p. 8.
\textsuperscript{453} Freestone, The Establishment, Role and Evolution of the Global Environment Facility, pp. 1077–1107.
\textsuperscript{454} GEF Instrument, para. 8.
\textsuperscript{455} GEF Instrument, Annex C, para. 8(g).
a personal capacity on their governing bodies. This is increasingly seen as a serious problem that may entail substantial risks, e.g., in the case of the bodies that have been constituted to manage mechanisms constituted under the Kyoto Protocol. Special problems have also arisen in relation to ensuring the grant of privileges and immunities to members of the GEF Council and GEF Assembly. While the constituent agreements of MFDIs provide for privileges and immunities of governors and (executive) directors and their alternates, no privileges or immunities derive to GEF Council and Assembly members under the GEF Instrument or the Articles of the World Bank, even though some may enjoy privileges and immunities in view of other functions held by them. Thus, prior to each Assembly, a MOU is signed by the host country of the Assembly, the GEF Secretariat and the trustee (World Bank) which extends privileges and immunities to all those participating in the Assembly in an official capacity.

The World Bank’s duties and responsibilities as trustee of the new GEF Trust Fund are limited to financial management. It is authorized to make commitments and disbursements for the fund and also administer and manage GEF financing. It is accountable to the GEF Council in the performance of its fiduciary duties. In addition, the World Bank is responsible for mobilizing resources, recording and auditing appropriate records and accounts, and monitoring fund assets.

In the case of the Global Fund, the World Bank plays a role that differs substantially from the role it performed for other funds. As an ex officio member without voting rights, the World Bank has no voice in directing the funds, and it bears no responsibility for monitoring their use or supervising the grant recipients that are directly accountable to the Global Fund. These limited services for the Global Fund may be qualified as “equivalent to those of a fiscal agent.”

While the executive director of the Global Fund selects the Global Fund staff, the terms of an administrative services agreement between the World Health Organization (WHO) and the Global Fund granted the fund staff the same status as the WHO staff. This action ensured that staff members enjoyed privileges and immunities under the Convention on the Privileges and Immunities of the Specialized Agencies (CPISA). However, it created confusion regarding their accountability because they had, as employees of the WHO, a dual duty to serve the WHO and the Global Fund. Thus, the agreement was terminated effective 1 January 2009, when the Global Fund became administratively independent. In the future, the staff of the Global Fund will be employed directly by the fund, which is adopting its own rules and regulations for that purpose. While this change does not affect the privileges and immunities enjoyed by the fund under both US and Swiss law, it had the result that Global Fund staff no longer enjoy privileges and immunities under the CPISA. For this reason, the Global Fund is seeking new ways to enhance its privileges and immunities.

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458 E.g., ADB charter, Article 55.
460 Ibid.
463 Ibid.
Administrative Expenses

The World Bank’s policy is to recover the full costs of providing trustee and administrative services (budget monitoring system, treasury services, legal advice, training support, and other ancillary services).\(^{465}\) It proposes an administrative budget to the GEF. If actual expenses exceed the proposed budget, the World Bank may decide to either recover such expenses or absorb them, as it did in 2007.\(^{466}\) GEF implementing agencies are compensated for their services through project cycle management fees.\(^{467}\) In addition, the World Bank receives a fee for the financial management of the Least Developed Countries Fund and the Special Climate Change Fund.\(^{468}\)

The World Bank receives a fixed trustee fee\(^ {469}\) from the Global Fund. The fee is based on services provided, which are determined during an annual consultation between the fund and the World Bank.

Governance

Since their establishment in the 1960s and 1970s, most of the organizations studied here have seen only minor changes to their institutional and governance structures. During the last few decades, however, international aid architecture has changed dramatically, as have international organizations and their members. As they evolved from agencies for project financing with limited scope and focus into full-fledged development institutions, these organizations have experienced fundamental changes in their policies, outlook, and modalities of concessional financing. Moreover, their members have experienced dramatic changes in demographic structure, weight, and economic fundamentals. Since the governance structures of organizations such as the IMF and the World Bank do not reflect the increased weight of some countries in the global economy, developing member countries complain that these organizations are no longer representative and call for fundamental leadership and governance reforms.\(^{470}\) The nature of development assistance is changing rapidly as concessional financing is increasingly channeled through thematic funds, and a “raft of new players has emerged,” comprising governments of middle-income countries, the private aid sector (e.g., foundations, private philanthropists, religious organizations), and NGOs and nonprofit organizations.\(^ {471}\) Moreover, the proliferation of concessional windows, often with overlapping functions, and the fragmentation of international aid architecture\(^ {472}\) present challenges to the effectiveness of organizations.


\(^{468}\) GEF. 2009. *Administrative Budget for the Least Developed Countries Fund (LDCF) and the Special Climate Change Fund (SCCF)*. 26 May. www.thegef.org/gef/sites/thegef.org/files/documents/LDCF/SCCF_6.5.pdf. The South Center criticizes the high administrative expenses relating to the administration of these funds, as according to its calculations in case of the LDCF and SCCF agency fees and the corporate budgets for the GEF and World Bank amount to respectively 18.49% and 10.52% of the total approved allocations. South Center. 2008. The Administrative Costs of Climate Change Adaptation Financing: The Global Environment Facility as an Operating Entity of the UNFCCC Financial Mechanism. pp. 9 and 6. www.southcentre.org/index2.php?option=com_docman&task=doc_view&gid=922&Itemid=68


\(^{472}\) See Introductory Remarks.
Some have called for a grand redesign of international aid architecture. Others question whether the “conjoined twins” IMF and the World Bank should be merged or separated, or whether the various organizations which comprise the World Bank Group should merge. While such proposals have not yet gained sufficient support to even be considered for implementation by the organizations concerned, the IMF has engaged in wide-ranging governance reform, including

(i) adjusting quota shares to better reflect the relative weight of member countries in the world economy,
(ii) enhancing the voice and participation of low-income members within the institution, and
(iii) amending the IMF articles.

While the scope of the amendment to the IMF Articles that took effect in 2008 was rather limited and still had not taken effect by June 2010, the IMF has engaged in a second phase of accelerated voice and quota reform which is expected to lead to a “major overhaul” of the IMF’s quotas and governance. Among the proposed institutional reforms is “a shift of more than 6 percent of quota shares to dynamic emerging market and developing countries and more than 6 percent from over-represented to under-represented countries, while protecting the quota shares and voting power of the poorest members.” The Executive Board also recommended to the governors “amendment of the Articles of Agreement that would eliminate the category of appointed Executive Directors.” It is also envisaged that “[a]dvanced European countries will reduce their combined Board representation by two chairs at the latest by the time of the first election after the quota reform takes effect.” Following approval by the Board of Governors, “the proposed quota increases and the amendment will have to be accepted by the membership, which in many cases involves parliamentary approval.” Also remaining under consideration are very far-reaching institutional reforms proposed by the IMF’s Independent Evaluation Office in 2008 and the Manuel Report in 2009.

This discussion is echoed in the World Bank Group, the organizations of which have an institutional structure modeled on and decision-making procedures similar to that of the IMF. In 2009 the organizations of the World Bank Group engaged in a first phase of reforms, including amendments to the IBRD Articles, to enhance the influence of developing countries within the World Bank Group. A second phase
The discussion about institutional reform in the IMF and the World Bank Group clearly illustrates the difficulties attached to making fundamental changes to institutional structures. Partially in view of such difficulties, concessional windows with new governance structures and decision-making procedures have proliferated, increasing the fragmentation of official development assistance.

The literature suggests that organizations may be seen as “‘generational’ in character.” In the case of MDBs, the first generation may be associated with IBRD, the second with the creation of IDA and the regional development banks in the 1960s, and the third with the EBRD, which was created about four decades after IDA under a political mandate that sought to facilitate the transition of East European countries to multiparty democracy and pluralism and an economic mandate that required IBRD to foster the transition of such countries to market-oriented economies. In this book, the term “generation” is used in a wider sense to comprise a wide range of institutions, facilities, alliances, and financial intermediary funds. Following this classification, the “fourth generation” which emerged during the last decade, comprises in addition to intergovernmental organizations, many FIFs, including multi-actor funds such as the Global Fund which are intrinsically hybrid, being established under national law, but with privileges and immunities granted to them by headquarters agreements or other bilateral agreements with countries where they have their seat or offices and/or recognized by the municipal law. Such organizations have become a new business model for establishing multilateral concessional windows.

It is true that organizations’ structures, functions, and legal frameworks reflect the specific circumstances that prevailed when they were created; they are rational design choices and “negotiated
responses to the problems international actors face.” Organizations seek to remain relevant to the demands of their members by responding to newly emerging issues and adjusting their policies and strategies to changed circumstances. Thus, they generally have greatly expanded or, in the case of the NDF, even fundamentally changed their mandates and/or functions and espoused objectives (e.g., good governance, poverty reduction, and protection of the environment) not especially reflected in their constituent instruments.

Any amendment to organizational structures, governance structures, and/or legal frameworks of existing financial institutions is a difficult and time-consuming task, especially considering the vested interests in the existing structures. Moreover, amendments to constituent instruments generally require a qualified majority, which are formidable obstacles for any proposition of fundamental institutional change.

The establishment of new facilities and/or financial instruments, notably through trust funds, affords donors the opportunity to create new governance structures without navigating an amendment process. This is one of the reasons that such facilities and instruments, which are new generations of financing frameworks used to provide concessional financing, have proliferated. Johannes Linn emphasized that “the old order global values that focus on nation-states and national power politics and promotes singular economic models and political values should shift to the new order of global values that focus on global society and new multilateralism and accept the coexistence of diverse models of market economy and political systems.”

The new financing frameworks reflect that change in development paradigms, especially regarding the criteria for allocation of resources, composition of governing bodies, and voting rights.

**Governance Structures**

**Financial Institutions**

The institutional structures of most organizations studied here were modeled on the three-tier structure of IBRD and the IMF:

(i) a board of governors or other plenary body in which all, or at least most, members are represented;

(ii) a board of (executive) directors or other body of restricted membership; and

(iii) an executive head.

So far, there have not been any fundamental changes to the governance structure of the MFDIs. However, recently there have been calls for reforms to the current three-tier structure involving the creation of bodies at a ministerial level. In the case of the IMF, proposed changes involve amongst others activating the ministerial-level council provided for by the IMF Articles and changes to the composition of that body and, in the case of the World Bank, reconstituting its board of directors as a World Bank board that includes ministerial membership and the creation of an advisory council of representatives.

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491 Article XII, Section I and Schedule D of the IMF Articles provide for a council. Thus, activation of the council as such requires no amendment to the IMF Articles, but rather a decision of the board of governors voted by an 85% majority of the total voting power. To reflect current economic realities, the Manuel Report proposes substantial changes to the composition of the council already detailed in Schedule D which, however, would require amendment to the IMF Articles. In case of the World Bank, a proposition seeks to reconstitute the executive board of the World Bank with executive directors at the ministerial level and alternates at the vice-ministerial level, further supported by an advisory group organized as a council of representatives. It is envisaged that each constituency would select a council representative through an internally determined process (World Bank, Zedillo Report. pp. 41–42). In 2005, Camdessus had already proposed a link between the ministerial bodies of the IMF and the World Bank as well as reformed heads-of-state summits that might provide strategic guidance to the IMF and the World
In groups of organizations like the AfDB Group and the World Bank Group, which provide concessional financing through affiliated organizations with legal personality under international law, the executive head of the nonconcessional organization generally holds the same position in the affiliated organization. Some organizations have adopted coordinated governance structures for their board of governors and board of (executive) directors. In that case, the composition of governing bodies is either the same or very similar. Alternatively, the nonconcessional organization of the group may be represented in the governing bodies of the affiliate.

In two respects, the NDF represents a departure from the concepts that apply to the AfDF and IDA. First, the NDF has a two-tier governance structure that consists only of the board of directors and the president. Second, the NIB Group has not adopted coordinated governance structures. The composition of its board of directors differs from that of the NIB, and both organizations have their own presidents. The NDF Statutes provide that “[a]ll the powers of the [NDF] shall be vested in the Board [of Directors], which may delegate these powers to the President or the Nordic Investment Bank or both to the extent considered appropriate.” This provision, which allows far-reaching delegation of authority of all the powers of the NDF, distinguishes it from other organizations. In practice, however, the statute has never been invoked—not even after the Nordic Development Cooperation ministers in 2005 recommended ending NDF operations, even though a custodianship of the NIB might then have been an option for the NDF to continue its operations.

There are fundamental differences between organizations regarding the manner in which negotiations for the replenishment of concessional resources are conducted. In some organizations (e.g., IADB and IFAD), members of the plenary body participate in such negotiations; in other cases (e.g., ADB, AfDB, and IDA), negotiations are conducted through meetings of deputies or donors outside the established institutional frameworks, making the integration of these extraconstitutional processes a challenge. As reflected in the appropriate report of deputies or donors, the terms and understandings applicable to replenishments may require approval by the board of governors (ADB, AfDB, and IDA) and/or by the board of directors (CDB).

Global Environment Facility and Global Fund

Characteristically, trust funds can attach governance structures that differ from those of the organizations acting as administrator and trustee. This feature is particularly relevant for FIFs. While not all FIFs have their own governing bodies, elaborate governance structures have been placed in many cases. Two areas with marked proliferation of trust funds are the environment and health, leading to the creation of several facilities, financial instruments, and innovative financing mechanisms in those areas. Notably, the GEF and the Global Fund, which both provide major channels of concessional financing for the environment and health, have instituted innovative governance and decision-making structures that deviate from organizations that follow the Bretton Woods model.

The GEF “paved the way for a new type of trust fund for development finance, a fund which is (a) managed by a trustee (the World Bank) but the resources of which are allocated to beneficiaries, global

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492 Following admission of the three Baltic countries to membership in the NIB, the NIB Board of Directors includes representatives from these countries.

493 As amended, NIB Statutes, section 13 provides that the NIB “shall have a Board of Governors, a Board of Directors, a President, and such other personnel as is necessary to carry out its operations.” For the NDF, see section 5 of the NDF Statutes.

494 NDF Statutes, section 7.

495 For example, no separate governance bodies have been put in place for the HIPC Trust Fund.

not by the trustee but by the contributors to the fund, acting collectively in the GEF Council, and (b) funded through a regular, formalized replenishment process.

During its pilot phase (1991–1993), the World Bank played a very important role as trustee and administrator of the GEF. In addition, the GEF’s governance structure was based on a tripartite arrangement involving the UNDP, the UNEP, and the World Bank as implementing agencies, a participants’ meeting composed of executive heads of the implementing agencies, the GEF Secretariat, and the scientific and technical advisory panel. Although participants convened biannually to discuss and establish programs, resource allocations, and operating costs, they lacked any substantial decision-making capabilities, and their power and role in the decision-making process was vague.

When the GEF was restructured, contributors opted for “reconfiguring the Participant’s Committee into the GEF Council and creating an overseeing body, the GEF Assembly” and interposed a secretariat, led by an executive head, between them and the World Bank as trustee and implementing agency. The new structure consists of an assembly, a council, and a secretariat, “each of which must observe its own rules, and each having a defined set of relationships to the World Bank, the UNDP, and the UNEP [and the seven executing agencies] as well as to the Conference of the Parties to global environmental conventions that decides on the policies, program priorities, and eligibility criteria with which the use of GEF resources must be consistent.” The composition and powers of the GEF’s governing bodies differ substantially from those of the organizations following the Bretton Woods model. Another distinguishing feature of the GEF’s governance structure is that each of its governing bodies has a defined relationship with conferences of parties to the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants, the United Nations Convention to Combat Desertification and the UNFCCC, for which the GEF serves as a financial instrument. In addition, the scientific and technical advisory panel advises the GEF on its strategies and programs. Finally, the GEF pioneered a new kind of collective financing phenomenon and introduced a new concept of trust fund with a governance structure which did not give the World Bank as trustee discretion over the allocation of resources and distinguished financial management and project implementation.

The governance structure of the two Climate Investment Funds (CIFs) established in 2008—the Clean Technology Fund (CTF) and the Strategic Climate Fund (SCF)—draws on certain elements of the GEF governance structure (both before and after the GEF restructuring). They reflect “a considerable amount of learning from the GEF, including the delineation of the functions of the trustee of an international trust fund that occurred in the evolution of the World Bank’s role as Trustee to the GEF Trust Fund [and] lessons learned from the interaction of the World Bank in its role as Trustee of the GEF Trust Fund with the multilateral development banks as Executing Agencies and the World Bank as Implementing Agency, and with the Secretariat.” The CTF’s governance structure includes

(i) a CTF Trust Fund Committee, which oversees the CTF’s operations and activities;
(ii) an MDB Committee, which facilitates coordination and information exchange among MDBs that jointly develop and manage CTF-financed activities;

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503 Ibid.
(iii) a Partnership Forum, a broad-based meeting of stakeholders including contributor and recipient countries, MDBs, UN organizations, and civil society organizations;

(iv) an administrative unit, which supports the work of the CIF; and

(v) a trustee.  

As trustee, IBRD is the legal owner of the CTF and is entitled to receive contributions and commit and transfer CTF resources in accordance with the approvals of the CTF Trust Fund Committee. However, upon the transfer of funds to MDBs, IBRD has no responsibility for the CTF resources transferred.

The governance structure of the SCF is similar, except that it includes SCF sub-committee(s) in addition to the SCF trust fund committee in consideration of the fact that three targeted programs were established under the SCF, i.e., the Forest Investment Program, the Scaling Up Renewable Energy Program and the Pilot Program for Climate Resilience. For the latter program, a subcommittee was created.

The governance structures of the Global Fund were designed to “enhance local ownership and participatory decision making.” At the country level, it relies on three mechanisms:

(i) the country coordinating mechanism, which evaluates country proposals and channels one coordinated proposal to the fund;

(ii) principal recipients or legally constituted agencies (generally, local stakeholders) that enter into a grant agreement with the fund; and

(iii) local fund agents (i.e., in-country experts selected by the fund through a competitive bidding process).

At the global level, the fund’s constituent bodies include the board, a partnership forum, chairpersons, a secretariat, and the Technical Review Panel, comprising impartial, board-appointed scientific and programmatic experts, who review project proposals for technical merits.

**Governing Bodies**

**Plenary Body**

The existence of a plenary body with supreme powers in which all or at least most member states or member countries are represented is a common feature in financial institutions that have adopted the three-tier system of IBRD and the IMF. Such a body is generally called board of governors (as for IFAD, it is the governing council). Composition of the GEF Assembly is limited to state representatives and in this manner is similar to the plenary bodies of MFDIs. However, its powers are very narrowly circumscribed, and it effectively meets only once every 4 years. The Global Fund does not have a plenary body comparable to the GEF. Its Partnership Forum, which meets every 2 years, makes no decisions, but rather is a discussion forum that convenes a large group of stakeholders to discuss issues relating to the general policies of the institution and its strategic direction.

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504 Climate Investment Funds. CTF Governance. www.climateinvestmentfunds.org/cif/CTF_Governance


508 It was originally envisaged that the GEF assembly would meet every 3 years. However, effectively it met only every 4 years.

509 Global Fund Bylaws, Article 6.
Composition

The close relationship between IBRD and IDA is emphasized by the fact that the governors and alternate governors of IBRD are also *ex officio* governors and alternate governors of IDA.\(^{510}\) In addition, the chair of the IBRD Board of Governors is also *ex officio* chair of the IDA Board of Governors, except when representing a non-IDA member state.\(^{511}\) Thus, IBRD and IDA have legally separate but coordinated governance structures. On several occasions, the boards of governors of IBRD and IDA jointly decided certain matters (e.g., establishing and approving the HIPC Trust Fund, and other facilities and/or multipurpose vehicles of the World Bank Group). The role of the IDA Board of Governors is constrained by the fact that each of the 169 IDA members is represented by a governor and alternate governor, making the board too large to assume an effective role in management oversight or policy formulation.

The AfDF’s decision-making structure is closely related to that of AfDB. Similar to IBRD and IDA, the chair of the AfDB Board of Governors is also *ex officio* chair of the AfDF board, and the AfDB governors and alternate governors are *ex officio* governors and alternate governors of the AfDF.\(^{512}\) Unlike the World Bank, however, the AfDF and AfDB boards of governors are not identical. State participants of the AfDF who are not members of AfDB may “appoint one governor or alternate governor who shall serve at the pleasure of the appointing participant.”\(^{513}\) This provision presently applies only to the United Arab Emirates, which is a member of the AfDF but not of AfDB.\(^{514}\) The High Level Panel\(^ {515}\) recommended eliminating the current two-board structure by merging its concessional windows and nonconcessional windows.

Generally, each member has representation in the board of governors or plenary body.\(^ {516}\) In CDB, however, the five territories of Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands are considered to be a single member for the purpose of representation in the CDB Board of Governors.\(^ {517}\)

The composition of the IsDB Board of Governors may differ when making decisions on ISFD matters rather than IsDB matters. In accordance with Article 28(1) of the IsDB Agreement, “[e]ach member shall be represented on the Board of Governors and shall appoint one Governor and one Alternate.” While generally only members (i.e., states) are represented on the IsDB board, representatives of participating institutions may participate alongside member countries for ISFD decision making if they contribute (individually or collectively) $20 million or more to the ISFD.\(^ {518}\) Participating institutions that contribute a lesser amount are invited to attend board meetings as observers. Moreover, different decision-making procedures and provisions on voting rights apply when the IsDB Board of Governors decides ISFD matters.

The GEF Assembly “brings together all the GEF’s member governments with the Implementing Agencies running its projects, and representatives of the various Conventions supposed to guide them, as well as numerous other experts and representatives.”\(^ {519}\) A chair and two vice-chairs, drawn from the

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510 IDA Articles, Article VI, section 2(b).
511 IDA Articles, Article VI, section 2(b) provides that, in such a case, the IDA Board of Governors shall select one of the Governors as chair.
512 AfDF Agreement, Articles 24(1) and 25(2).
513 AfDF Agreement, Article 24(2).
516 IDA Articles, Article VI, section 2; ADB Charter, Article 27; IADB Charter, Article VIII, section 2(a); AEI, Article 6, section 2(a).
517 CDB Charter, Article 3(4) and Secretary’s Note No. 1 thereto in relation to Article 26(1) and Annex A to the CDB Charter.
518 ISFD Regulations, Article 10.
participants, are elected at the commencement of each meeting. Each participant may appoint one representative and one alternate. Representatives of NGOs and civil society are not included in formal decision-making processes of the GEF.

**Plenary Bodies and Policy Formulation**

The plenary bodies of the institutions studied here generally must convene at least once a year at the annual meeting. Additional special meetings of the governors are possible and even required in certain cases, but not common. Between annual meetings, the boards of governors or similar bodies generally decide matters requiring their approval by postal vote.

The situation in the World Bank is unique because the Development Committee it created jointly with the IMF is a forum that "facilitates intergovernmental consensus building on development issues."

There is a fundamental difference between organizations in terms of institutional culture and the extent to which members of the plenary body participate in policy formulation and resource mobilization. While members of the plenary body in some organizations studied here do not participate directly in policy formulation and replenishments, their counterparts in some organizations regularly participate in replenishment negotiations and in establishment of new policies.

**Development Committee of the IMF and the World Bank**

Established by parallel resolutions of the boards of governors of the IMF and the World Bank, the Development Committee advises their boards and offers suggestions on "all aspects of the broad question of the transfer of real resources to developing countries." It consists of 24 members, usually ministers of finance or development, who are appointed by each country or group of countries represented on the boards of executive directors in both institutions. The committee is independent and "not bound by a narrow definition" of the responsibilities of the IMF and the World Bank. The executive boards are used as preparatory bodies of the Development Committee and act as committees of the whole on Development Committee matters to ensure that the views of all executive directors are fully reflected. The committee is

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521 GEF Instrument, para. 13.

522 IDA Articles, Article VI, section 2(d); IBRD Articles, Article V, section 2(c); AfDB Agreement, Article 31, section 1; AfDF Agreement, Article 25, sections 1 and 2; ADB Charter, Article 29(1); CDB Charter, Article 28(1); IADB Charter, Article VIII, section 2(d); and AEI, Article 6, section 2(d). The situation is different in the case of IMF as Article XII, section 2(c) does not contain any specific reference to an annual meeting of the Board of Governors. It provides that the IMF board of governors "shall hold such meetings as may be provided for by the Board of Governors or called by the Executive Board. Meetings of the board of governors shall be called whenever requested by fifteen members or by members having one-quarter of the total voting power." Thus, an annual meeting is not compulsory in the case of the IMF.

523 In the case of the AfDF and IDA, such meetings take place in conjunction with the meeting of the boards of governors of AfDB and IBRD. See AFDF Agreement, Article 25(2) and IDA Articles, Article VI, section 2(e).

524 Certain matters, such as the adoption of financial statements, are considered of paramount importance and can only be taken for that reason at the annual meeting or another meeting of the plenary body. See Chapter 4 (G. Droesse, ADB Concessional Financing).

525 See also AEI, Article 6, sections 2(d) and (f).


an advisory body and makes decisions only on procedural matters. However, its communiqués reflect the views of the governors, and for that reason they have been associated with “decisions,” even though they are not worded as such.\textsuperscript{530}

The Zedillo Report criticizes that the “Development Committee’s role in strategy formulation is constrained by its advisory nature, its limited tools for monitoring implementation of its communiqués, and the pro forma nature of its meetings, which reduces opportunities for frank and open exchanges among the Committee members [and that the] legitimacy of the Committee, like that of the Executive Board, is undermined by imbalances in voice and participation.”\textsuperscript{531} The proposals made in the report would make the Development Committee redundant. It is not clear whether the recommendation in the above report or Camdessus’s proposal aiming at “transforming the Development Committee into a decision-making body” has any chance of realization.\textsuperscript{532} Even without that transformation, the deliberations of the committee are important far beyond the IMF and the World Bank. They have shaped the evolving development agenda and have been instrumental for institutional reform and the adoption of new policies in all MDBs and various other MFDIs.

\textbf{Plenary Bodies and Replenishment Negotiations}

It is one of the characteristics of IADB and IFAD that members of their plenary bodies actively participate in replenishment negotiations conducted by a committee of the IADB Board of Governors and for IFAD by a consultation established by IFAD’s governing council.

In IADB, the committee of the board of governors played a very important role in policy formulation and resource mobilization. This is underlined by the fact that this committee conducted all negotiations regarding general increases of IADB’s OCR and FSO resources and was involved in many other high-profile policy matters.

IADB represents the rare case of an organization that followed, as a matter of principle, the same procedures for negotiating general increases of OCR and FSO resources. In both cases, the committee of the board of governors has been a very important part of IADB’s internal guidance system, and the extent of its involvement in the affairs of IADB between annual meetings distinguishes it from other international organizations. While the IADB Charter does not explicitly empower the board of governors to establish the operational policies as proposed during the preliminary negotiations on the creation of IADB, this attribution was considered “an implicit function, being that all powers of governance of the institution were vested in the [board of governors].”\textsuperscript{533} For all practical purposes, as IADB’s primary governing body, the board of governors established on various occasions fundamental policies concerning IADB operations. Even though obligated to meet only once a year, the IADB board adopted “the practice of convening extraordinary meetings or creating general commissions on specific tasks”\textsuperscript{534} soon after its formation, thus participating significantly in negotiations regarding increases in resources and serving as the organization’s internal guidance mechanism.


\textsuperscript{531} Zedillo Report, p. x.

\textsuperscript{532} In the context of a discussion on global governance reform, Michael Camdessus has suggested formally transforming the Development Committee into a decision-making body to provide it “with more effective control” over the activities of the World Bank. M. Camdessus, 2005. \textit{International Financial Institutions: Dealing with New Challenges in the Global Economy}. p. 16. www.perjacobsen.org/lectures/092505.pdf

\textsuperscript{533} IADB. \textit{40 Years: More Than a Bank}. Washington, DC: ADB. p. 27.

\textsuperscript{534} Ibid.
The establishment of the IADB Committee of the Board of Governors was instrumental in facilitating direct involvement by members of the board of governors in policy formulation.\textsuperscript{535} In accordance with IADB’s current rules of procedure (section 1), the committee is a “Working Group of the Board of Governors and as such performs the work entrusted to it by that Board and submits the pertinent recommendations and reports to it.”\textsuperscript{536} The committee is chaired by the chairman of the board of governors, who maintains this dual status until the next annual meeting of IADB.\textsuperscript{537} The committee of the board of governors played a substantial role in shaping IADB’s response to several high-profile policy matters. In particular, the committee regularly participates in general increases in resources of IADB and also plays a crucial role in other important matters, including making amendments to the IADB Charter and determining IADB participation in debt relief initiatives. During the annual meeting of the board of governors in 2000, a working group was established to make recommendations on participation in the enhanced HIPC Initiative.\textsuperscript{538} Similarly, in 2006 the committee assumed responsibility for leading discussions on the Multilateral Debt Relief Initiative (MDRI).\textsuperscript{539} Generally, the board of executive directors sends matters to the board of governors or its committee through the secretary. The regulations of the board of governors anticipate such transmittals, as do the IADB bylaws.\textsuperscript{540}

Also in the case of IFAD, the governing council plays a very important role in negotiations regarding the replenishment of the Fund’s resources, in which governors or alternate governors of IFAD often participate. To assure continuity in the fund’s operations, the governing council periodically reviews “the adequacy of resources available to the Fund.”\textsuperscript{541} If the governing council deems it necessary or desirable following such a review, it invites members to make additional contributions (replenishments) to IFAD’s resources. This is accomplished through a “consultation” on the replenishment of the resources. The governing council periodically establishes this consultation, normally a year before the conclusion of the existing replenishment period. The consultation consists of all member states from lists A and B; list C selects consultation representatives from its membership. The governing council’s rules of procedure, with necessary modifications, apply to the consultation. Members of the consultation are either IFAD governors, or alternate governors, or members of the executive board. Upon its conclusion, the consultation submits a report on the results of its deliberation and any recommendations to the governing council. The replenishment consultation provides an important forum for member states to discuss and make recommendations on IFAD’s policy direction and consult with IFAD’s management.

\textsuperscript{535} The IADB Committee of the Board of Governors was established in 1970 pursuant to a resolution of the board of governors. On 3 April 1974, the board resolved to extend the committee indefinitely and to broaden its mandate so that it could attend to matters referred to it by the board. Moreover, the committee was authorized “to adopt its own rules of procedure which, among other things, shall provide that all members of the Board of Governors may participate by rotation in the work of the Committee.” IADB. 1974. Resolution AG-4/74, Committee of the Board of Governors Appointed Pursuant to Resolution AG-5/70, Extension and Broadening of its Mandate, 3 April; IADB. 1970. Resolution AG-5/70, Measures to Assure an Increased Flow of Resources to the Bank for Nonmember Countries. 24 April.


\textsuperscript{537} While the number of committee members is equivalent to that of the executive directors, any member of the board of governors can participate in the committee meetings (IADB Rules of Procedure of the Committee of the Board of Governors, Sections 2[a] and 2[c]), which the president of IADB, the executive vice president, the executive directors, and other officials of IADB, as the president deems appropriate, may also attend (IADB Rules of Procedure of the Committee of the Board of Governors, Section 3[c]). The Committee of the Board of Governors “shall meet as often as is necessary to complete its work.” (IADB Rules of Procedure of the Committee of the Board of Governors, Section 3[a]). The quorum for any meeting of the Committee is a two-thirds majority of its members (IADB Rules of Procedure of the Committee of the Board of Governors, Section 3[h]).

\textsuperscript{538} See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).

\textsuperscript{539} Ibid.


\textsuperscript{541} AEI, Article 4, section 3.
Unlike IADB, in other organizations studied here (e.g., ADB), committees of the board of governors deal only with procedural matters and remuneration (of the president, vice presidents and members of board of directors).\textsuperscript{542} In addition, members of the plenary body do not normally participate in replenishment negotiations. In the ADF, AfDB, and IDA, replenishments of concessional windows are negotiated outside the organizations’ established governance structure, through meetings of deputies or donor representatives (i.e., senior officials from members’ capitals).\textsuperscript{543}

\section*{Powers of Plenary Bodies}

The constituent agreements of organizations that have adopted the three-tier structure of the Bretton Woods organizations vest all powers in the plenary body.\textsuperscript{544} As for the IMF and the World Bank, certain decisions cannot be delegated and must be made by the plenary body. Powers reserved for the board of governors involve matters of “a political character” and other fundamentally important matters that may “affect the membership at large.”\textsuperscript{545}

One function performed by plenary bodies relates to amendments to constituent instruments. For such amendments, two different techniques are used and the role of the plenary body varies according to the system that has been adopted. In some organizations, an amendment is decided by “an organ of the institution, usually the senior and plenary organ [and] becomes effective once the decision has been taken [while in other organizations the] procedure for amending the charter calls for action by the organization in their capacity as states.”\textsuperscript{546} IBRD and IDA have followed the IMF in adopting the second approach. While the IBRD Board of Governors needs to approve any proposed amendment to the IBRD Articles, it is not entitled to amend them. Rather, following approval by the Board of Governors, IBRD needs to ask all members by a circular letter to accept the proposed amendment, which enters into force 3 months after IBRD has certified that three-fifths of IBRD members having 85\% of voting power have accepted the amendment.\textsuperscript{547} While the executive directors of IBRD “reproduced these provisions,”\textsuperscript{548} in drafting the IDA Articles, they adopted a different approach for the IFC Articles, which gave the Board of Governors the power to amend the IFC articles by qualified majority.\textsuperscript{549} The boards of governors of the regional and subregional development banks studied here also have that power, which in their case, is among the most important matters—and for the GEF, the only matter—that requires a substantive decision of the plenary body.

\textsuperscript{542} The AfDB Board of Governors established an ad hoc committee for the fifth capital increase, which was later transformed into the Governors Consultative Committee (Resolution B/BG/94/08). This committee was mandated to (i) examine and consider the studies and issues pertaining to the fifth general capital increase, (ii) deliberate on the preliminary proposals arising from the studies, (iii) hold consultations with member states of the bank, and (iv) submit a report containing an appropriate recommendation for the fourth general capital increase of AfDB. In addition, it was required to review the progress made on issues of governance, finances, management and operations of the bank, as well as explore measures to improve decision making within the organs of the bank. The same procedure was not used in the case of AfDF replenishments, which are conducted through senior government officials from members’ capitals.

\textsuperscript{543} See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).

\textsuperscript{544} ADB Charter, Article 28.1; AEI, Article 6, section 2(b); AfDB Agreement, Article 29.1; CDB Charter, Article 27(1); IADB Charter, Article VIII, section 2(a); IDA Articles, Article VI, section 2(a). All the above instruments denominate this governing body “the Board of Governors.” The only exception is IFAD, which refers to the body as “the Governing Council.”


\textsuperscript{547} IBRD Articles (Article VIII[a] and [c]) and IDA Articles (Article IX[a] and [c]); in certain cases, acceptance of all members is required under IBRD Articles (Article VIII[b]) and IDA Articles (Article IX[b]).

\textsuperscript{548} Gold, Amendment and Variation of their Charter by International Organizations, p. 325.

\textsuperscript{549} IFC. 1993. IFC Articles of Agreement (as amended), Article VII. www.ifc.org/ifcext/about.nsf/Content/Article_VII.
Since their establishment, most international institutions (except ADB and IDA) have found it necessary to amend their constituent instruments in response to changing circumstances. Since amendments to constituent agreements are under national law often subject to legislative approval and ratification, organizations seek to limit them to a strict minimum and to those cases where fundamental changes to the constituent agreement are required that cannot be accommodated within the legal framework established by the constituent document through an authentic interpretation of the instrument. To minimize the need for amendments, other techniques have also been developed. Thus, in certain cases, constituent agreements give governing bodies the power to vary provisions of the constituent agreement (e.g., regarding the composition of a governing body) or to waive obligations of members or requirements applicable under the constituent agreement. Such powers may either be vested in the plenary bodies or in bodies of restricted membership.

Plenary bodies also determine the terms and conditions for admitting new members, and decide on their suspension and consequential termination. Because states can participate in the GEF by unilateral act and because the GEF has dispensed with financial requirements for membership, the GEF assembly does not perform a similar role. Rather, its functions are limited to keeping "the membership of the GEF under review." It appears that in 2006, the third assembly limited its role in performing this task to merely considering a report that listed the 176 states that had submitted an instrument of participation. However, at the fourth assembly, there was no consensus on the inclusion of Kosovo as a participant of the GEF. Serbia objected to the inclusion of Kosovo as a GEF member, asserting that the so-called Republic of Kosovo was part of the Republic of Serbia and the act of participation in the GEF of its representatives was "in violation of international law and in particular United Nations Resolution 1244 [and consequently] null and void and without any legal effect." While the delegations of 13 other countries also "opposed the inclusion of Kosovo as a Participant of the GEF," the GEF CEO clarified that Kosovo had been accepted as a member country by the World Bank, which "automatically"

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550 AfDB, AFD, CDB, IADB, IFAD, and NDF have each amended their constituent instruments on one or more occasions. CDB amended its own articles on four occasions, most recently in 2007. The ADF Agreement was amended in 2002 to allocate voting rights to regional countries that have become state participants, while the AEI was amended in relation to the new voting rights system and to introduce a "debt sustainability mechanism." The GEF Instrument was amended three times, most recently in 2010.

551 E.g., in the IMF, the board of governors has the power to increase or decrease the number of executive directors (see IMF Articles, Article VII, section 3 (ii). See also the examples given by Gold, Amendment and Variation of their Charter by International Organizations.


553 In certain cases, the constituent instrument gives governing bodies the express power to waive certain charter provision (e.g., under Article 14[ix] of the ADB charter, ADB’s board of directors may waive the requirement to procure goods and services in ADB member countries). Cases where waivers of charter provisions are approved by the Board of Governors are more rare. The waiver of Article 7, section 1(b) AEI by IFAD’s governing council to enable IFAD to establish a trust fund for lending to the Gaza Strip and West Bank is one such example: *IFAD. 1997. Establishment of an IFAD Fund for Gaza and the West Bank* (GC 21/L.9, 18 December), para. 5. www.ifad.org/gbdocs/gc/21/e/gc2119.pdf. See also Gold, Dispensing and Suspending Powers of International Organizations.

554 ADB Charter, Article 28.2(i); AEI, Article 6, section 2(c)(ii); AFD Agreement, Article 29.2(b) in relation to Article 3(3); CDB Charter, Article 27(2)(a); IADB Charter, Article VIII, section 2(b)(i); IDA Articles, Article VI, section 2(c)(i).

555 ADB Charter, Article 28.2(ii); AEI, Article 6, section 2(c)(iii); AFD Agreement, Article 29.2(h) in relation to Article 44; CDB Charter, Article 27(2)(c); IADB Charter, Article VIII, section 2(b)(iv); IDA Articles, Article VI, sections 2(c)(iii) and 2(c)(iv).

556 GEF Instrument, para 14(c).


559 Ibid.
enabled it to be a member of the GEF.\textsuperscript{560} On that basis, Kosovo was accepted and currently is listed as a GEF participant.\textsuperscript{561}

It is a general feature of constituent instruments of MFDIs that the board of governors cannot delegate certain powers. Consistent with the character of the plenary body as an institution’s supreme organ, the decision on several matters viewed as being of paramount importance are vested in the plenary body. Such matters relate, in particular, to the

(i) adoption of financial statements,
(ii) resolution of appeals from interpretations of the constitutive instruments by the boards of directors,\textsuperscript{562}
(iii) approval of proposed amendments to the constitutive instruments,\textsuperscript{563}
(iv) termination of the institution’s operations, and
(v) distribution of their assets.\textsuperscript{564}

In addition, certain other matters are vested in the board, such as

(i) increasing or decreasing the institution’s authorized capital stock;\textsuperscript{565}
(ii) determining net income and allocations to reserves and/or surplus;\textsuperscript{566}
(iii) authorizing the conclusion of general agreements for cooperation with governments and other international organizations;\textsuperscript{567}
(iv) determining the remuneration of directors and/or the president;\textsuperscript{568}
(v) electing the directors and president of the institution;\textsuperscript{569}
(vi) approving, after reviewing the auditor’s report, the general balance sheet and the statement of profit and loss of the institution;\textsuperscript{570} or
(vii) suspending or removing the president.

With the exception of these powers, the organizational bylaws normally contain a general delegation of authority to the board of directors.

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561 GEF. 2010. Member Countries. www.thegef.org/gef/member_countries
562 ADB Charter, Article 28.2(iv); AEI, Article 6, section 2(c)(v); AfDB Agreement, Article 29.2(h) in relation to Article 61(3); CDB Charter, Article 27(2)(d); IADB Charter, Article VIII, section 2(b)(v); IDA Articles, Article VI, section 2(c)(iv).
563 ADB Charter, Article 28.2(x); AEI, Article 6, section 2(c)(i); AfDB Agreement, Article 29.2(h) in relation to Article 60; CDB Charter, Article 27(2)(i); IADB Charter, Article VIII, section 2(b)(xi); IDA Articles, Article VI, section 2(c)(viii).
564 ADB Charter, Article 28.2(xi); AEI, Article 6, section 2(c)(iv); AfDB Agreement, Article 29.2(h) in relation to Article 60; CDB Charter, Article 27(2)(j); IADB Charter, Article VIII, section 2(b)(xii); IDA Articles, Article VI, section 2(c)(vi).
565 ADB Charter, Article 28.2(ii); AEI, Article 6, section 2(c)(vi); AfDB Agreement, Article 29.2(h) in relation to Article 60; CDB Charter, Article 27(2)(g); IADB Charter, Article VIII, section 2(b)(ii); IDA Articles, Article VI, section 2(c)(vii).
566 ADB Charter, Article 28.2(ix); AEI, Article 6, section 2(c)(vii); AfDB Agreement, Article 29.2(h) in relation to Article 60; CDB Charter, Article 27(2)(l); IADB Charter, Article VIII, section 2(b)(viii); IDA Articles, Article VI, section 2(c)(v).
567 ADB Charter, Article 28.2(v); AEI, Article 6, section 2(c)(v); AfDB Agreement, Article 29.2(h) in relation to Article 60; CDB Charter, Article 27(2)(e); IADB Charter, Article VIII, section 2(b)(v); IDA Articles, Article VI, section 2(c)(v).
568 ADB Charter, Article 28.2(vii); AEI, Article 6, section 2(c)(vi); AfDB Agreement, Article 29.2(e); CDB Charter, Article 27(2)(g); IADB Charter, Article VIII, section 2(b)(vii).
569 ADB Charter, Article 28.2(vii); AfDB Agreement, Article 29.2(d); CDB Charter, Article 27(2)(f); IADB Charter, Article VIII, section 2(b)(iii).
570 ADB Charter, Article 28.2(vii); AfDB Agreement, Article 29.2(g); CDB Charter, Article 27(2)(f); IADB Charter, Article VIII, section 2(b)(viii).

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In comparison, the powers of the GEF assembly are much more limited. Amendments to the GEF Instrument are the only matters that require a substantive decision of the GEF. The other functions of the GEF assembly relate to

(i) reviewing the GEF’s general policies,
(ii) reviewing and evaluating its operations on the basis of reports submitted by the council, and
(iii) reviewing the GEF membership.571

The fourth assembly held in May 2010 approved amendments to the GEF Instrument, which included “eliminating the role of implementing agencies in appointing the GEF CEO; making the GEF available to serve as a financial mechanism of the UNCCD; and GEF CEO appointment and term limits.”572

It is particularly interesting to assess the role of plenary bodies regarding resource allocation to concessional windows, replenishment of concessional windows, and the establishment and replenishments of special funds or trust funds.

In the organizations studied here, allocations of accrued net income or surplus to concessional windows generally fall within the competence of the plenary body because they are made in lieu of a distribution of such income or surplus.

In organizations that provide financing only on concessional terms or have been established as affiliates with proper legal personality, replenishments may involve increases in subscriptions and/or voting rights. This is among the reasons why such matters are vested in the board of governors (the AfDF and IDA)573 or the governing council (IFAD).

However, replenishments in organizations with incorporated concessional windows do not necessarily involve a decision of the board of governors. For example, the CDB Board of Governors is not involved in SDF replenishments, even though an SDF concessional window is incorporated in the CDB Charter. That authority for FSO replenishments vested in the IADB Board of Governors relates mainly to the fact that FSO was to be replenished in conjunction with increases in IADB’s OCR, often in the same proportion.

Where the constituent instruments of organizations contain only general authorization for the administration of Special Funds resources, decisions of governing bodies are required regarding the establishment and replenishment of special funds. Both matters are generally not listed among the powers that cannot be delegated by the board of governors. Nevertheless, in view of the importance of concessional windows, approval of the plenary body has been sought in several cases regarding establishment and/or replenishment of Special Funds resources. In the ADF, such a decision was made in view of the importance of the ADF and the fact that it was to absorb resources set aside by the Board of Governors from ADB’s unimpaired paid-in capital574 and initially allocated to ADB’s Multipurpose Special Fund.575

In view of the foregoing, and “[c]onsidering the authoritative nature of a determination by the Board of Governors [a consensus emerged among ADF donors and other ADB members that an] organized multilateral mobilization of resources for the ADF would be conducted under the overall authority of the

572 GEF. 2010. Chair’s Summary of the Fourth GEF Assembly.
573 In accordance with Article III, section 1(d) of the IDA Articles, IDA’s replenishments require approval by the IDA Board of Governors with a two-thirds majority of IDA’s total voting power. Such approval cannot be delegated to the board of directors. The deputies’ report regarding each AfDF replenishment is “formally approved” by the AfDF board of governors with a qualified majority of 85% of the total voting powers of the participants.
574 See ADB Charter, Article 19.1(ii).
575 See Chapter 4 (G. Droesse, ADB Concessional Financing).
Board of Governors, leaving the Board of Directors to adopt regulations on the administration of ADF resources.

The ISFD was established by a decision of the ISDB Board of Governors. Decisions on operational matters and other matters regarding the ISFD have largely been delegated to its board of directors. However, any increase in the principal amount contributed by members requires approval by the board of governors, as do other decisions of fundamental importance. The CABLE’s FETS and FONTEC were also established by decision of the board of governors. In the case of FONTEC, the resolution of the board of governors establishing that fund also adopted its statute. Thus, any amendment to the FONTEC statute also requires approval of the board of governors. In the case of the FETS, the board of governors left the adoption of necessary regulations to the decision of the board of directors.

The GEF assembly, however, is not substantially involved in replenishment negotiations. While the GEF Council agreed in 2000 that the assembly should be held after replenishment negotiations are concluded, the third GEF assembly rejected a formal amendment of the GEF Instrument in 2006 requiring the Assembly to be convened after replenishment negotiations.

The plenary body generally does not decide matters regarding the establishment or acceptance of trust funds, which fall within the competence of the board of (executive) directors or the executive head. However, the situation is different in IFAD, which had established in the past a few select multidonor trust funds, all of which were approved by the Governing Council.

**Board of Directors and/or Bodies of Restricted Membership**

**Composition**

Because decision making in plenary bodies is often involved and time consuming and also because such bodies generally only meet once a year, all organizations studied here (except the NDF) have created a body of restricted membership (i.e., the board of directors or board of executive directors) to make decisions between annual meetings of the plenary body. While the NDF has a board of directors, this is not a body of restricted membership, as all five NDF members are represented on the board.

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576 Ibid.
577 ISFD Regulations, Article 5.06.
578 Such as approval of accounts of each financial year (ISFD Regulations, Article 9.04(iv)) or suspension or termination of ISFD operations (ISFD Regulations, Article 16), selection of independent external auditors (Article 17) and amendment of ISFD Regulations (Article 19 of the ISFD Regulations).
581 The following amendment to paragraph 13 of the GEF Instrument had been proposed: “The Assembly shall consist of Representatives of all Participants.... The Assembly shall be convened after the conclusion of negotiations on each replenishment of the GEF Trust Fund, or at such other frequency as the Council may decide, at a location agreed by the Council.”

582 Such funds include the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification, the IFAD Trust Fund for the Heavily-Debt-Cursed Countries Debt Initiative, the IFAD Fund for Gaza and the West Bank, and the IFAD Trust Fund for the After-Serf Medical Coverage Scheme. IFAD. 2004. Delegation of Authority to Establish Multidonor Trust Funds (GC 27/L.5, 19 January). www.ifad.org/gbdocs/gc/27/e/GC-27-1-5.pdf
583 Some organizations, such as IADB, IFAD, and IsDB, follow the World Bank Group in referring to this body as “board of executive directors” or “executive board” and to its members as “executive directors” while others (e.g., ADB, AFDE, CDB, and NDF) use the terms “board of directors” and “directors.” In ADB, it was a deliberate decision of the drafters of the ADB Charter to drop the “executive”; it appears that in doing so, they wished to strengthen the position of the president. For ease of reference, the term “board of directors” is used in the following if collectively reference is made to the bodies of restricted membership of organizations under this study.
The AfDB Group and the World Bank Group have adopted different solutions for ensuring coordinated governance structures between IBRD and IDA and also between AfDB and the AfDF. The IDA’s executive board is composed ex officio of each IBRD executive director appointed or elected by a country that is a member of IDA.\(^{584}\) In practice, the composition of the executive boards of IBRD and IDA is identical.\(^{585}\) The executive directors of IBRD (and in their absence, their alternates) are entitled to vote in IDA for the members that appointed or elected them.\(^{586}\)

The composition of AfDB and AfDF boards of directors is different, and their governance structures are coordinated through AfDB’s membership in the AfDF and its representation on the AfDF Board of Directors.\(^{587}\) Since AfDB appoints the directors representing the bank on a rotating basis, regional member countries have no direct representation or voting rights in the AfDF unless they are state participants in their own right. While the AfDF is the point of reference for the majority of the African continent, “its board is dominated by the non-African members that give most to the Fund.”\(^{588}\) For this reason, the High Level Panel recommended the merger of AfDB and the AfDF, stating that the AfDB “needs one board where all shareholders are represented and important decisions are made together.”\(^{589}\)

The situation in the NIB Group differs from that in the AfDB Group and/or World Bank Group in three respects:

(i) the NDF board of directors is not a body of restricted membership, as all five members of the NDF are represented;

(ii) the NDF board has its own directors, who differ from the members of the NIB board of directors; and

(iii) because the NIB is not a member of the NDF, an NIB representative may only attend NDF board meetings and has no voting rights.\(^{590}\)

The composition of the board of directors or other body of limited membership must strike a balance between ensuring effective decision making and maintaining adequate member representation. Several organizations have provided for the election of members of the board of restrictive membership and for the minimum percentage required.\(^{591}\) However, in some cases (e.g., IADB and IBRD) one or more of the largest shareholders each can nominate one member of the (executive) board.\(^{592}\) In that case, an election of

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\(^{584}\) See IDA Articles, Article VI, section 4(b).


\(^{586}\) IDA Articles, Article VI, section 4(c).

\(^{587}\) Until July 1983, the AfDB Board of Directors consisted of nine members from African countries only. However, the board of governors approved an amendment of Article 33 of the AfDB Agreement to the effect that the AfDB Board of Directors shall be composed of 18 members, 12 of whom are elected by regional members and 6 by nonregional members (AfDB. 1979. Resolution 05–79 adopted on 17 May). The Board of Governors further approved on 12 May 1983 by Resolution No. 1–83 changes to the rules for election of directors and on 13 May 1983 modifications to the provisions of Annex B of the AfDB Agreement by Resolution No. 11–83. The appointment of the 18 persons elected to the board of directors took effect on 1 July 1983. In accordance with Article 27(2) of the AfDB Agreement, the state participants in the AfDB elect six of the 12 directors and alternate directors. AfDB appoints the other six directors (and alternate directors) pursuant to Schedule B of the AfDB Agreement. Thus, while AfDB has an 18-member board of directors (12 regional members and 6 nonregional members), the AfDB Board of Directors has only 12 members: 6 directors representing AfDB and selected from the 12 directors who represent the regional members, and 6 directors representing the state participants. See Chapter 5 (A. Akin-Olugbade and A. Flor, Concessional Financing Windows of the African Development Bank Group: Organization, Decision Making, and Modalities).

\(^{588}\) AfDB, Investing in Africa’s Future, p. 37.

\(^{589}\) Ibid.

\(^{590}\) NDF Statutes, section 6.

\(^{591}\) For example, see ADB Charter, Annex B; AfDF Agreement, Schedule B, Part II. See Chapter 4 (G. Droesse, ADB Concessional Financing).

\(^{592}\) In IBRD, the members with the largest number of shares in IBRD appoint five executive directors; the remaining executive directors are elected by the other members (IBRD Articles, Article V, section 4[b]). In IADB, the member country with the largest number of shares appoints one director; the other directors are elected (IADB Charter, Article VIII, section 3 [b] [iii]).
the directors is only required for the directors not covered by this arrangement.\textsuperscript{593} In IsDB, the members with the largest shareholdings appoint 8 of the 16 members of the board of executives, and the other member country governors elect the remaining 8 members.\textsuperscript{594}

The size of the board of directors generally relates to the total membership of an organization and also to whether the organization has a resident board that acts in continuous session at the seat of the organization. As membership increases, so may the size of the board, thus ensuring proper representation of all members. Thus, membership on the IBRD and IDA board of directors increased over time from 12, as specified in the IBRD Articles,\textsuperscript{595} to 24. In the context of the World Bank's institutional reform, the Board of Governors approved in 2009 an amendment creating one additional seat on the board for Sub-Saharan Africa,\textsuperscript{596} giving developing member countries a majority on the IDA board. However, the Zedillo Report proposes a reduction in the size of the executive board involving a consolidation of European chairs.\textsuperscript{597} In addition to such consolidation, the Zedillo Report proposes redrawing the constituencies to reduce overcrowding and create more opportunities for developing countries to participate directly [and to eliminate] the ‘two class system’ of elected and appointed Directors\textsuperscript{598} by transforming the five currently appointed chairs into elected chairs. Any such proposal would require amendment of the IBRD Articles and accordingly approval by IBRD Board of Governors and acceptance by three-fifths of IBRD members having 85\% of the total voting power. Similarly, the creation of a separately-elected IDA board with members and constituencies differing from the IBRD board would require an amendment of IDA’s Articles.

Some organizations require amendments to the constituent instrument to increase the size of the board beyond the limits defined in the constituent instrument.\textsuperscript{599} Due to the cost implications of resident boards, membership tends to be smaller compared with boards that are not in continuous session.\textsuperscript{600} The constituent instruments of regional and subregional organizations generally provide that the majority of (executive) directors shall come from regional countries. In the Manuel and Zedillo Reports mentioned earlier, the question has been raised whether resident boards are still required.

Meeting participation is generally limited to board members and their alternates and may include advisors. Alternates generally can speak only in the absence of the board member. Donors making contributions to concessional windows and representatives of other institutions are normally allowed to speak only in exceptional circumstances, and only if invited by the board. In CDB, however, nonmember contributors are regularly “invited to be present with the right to speak at meetings of CDB’s [Board of Directors] when projects, policies and other matters related to the SDF(u) are being considered."\textsuperscript{601} Attendance at GEF meetings is rather widespread. In addition to members, alternates and the CEO, also representatives of each of the participants as well as from implementing agencies, the trustee, the scientific and technical advisory panel, the evaluation office and conventions and, upon invitation, representatives


\textsuperscript{594} IsDB. 2010. Board of Directors. www.isdb.org/irj/portal/anonymous?NavigationTarget=navurl://4373c2d181ce8033b885eea15a0fbd

\textsuperscript{595} IBRD Articles, Article V, section 4 (b).


\textsuperscript{597} Zedillo Report, p. 37.

\textsuperscript{598} Ibid.

\textsuperscript{599} For example, ADB. See Chapter 4 (G. Droesse, ADB Concessional Financing).

\textsuperscript{600} While the boards of directors of ADB and AfDF each comprise 12 members, the nonresident boards of CDB and IFAD each have 18 members.

of other organization and entities, including nongovernmental organizations may be present during the meeting, and at the invitation of the Chair address the Council.602

During the Fourth Replenishment, the IFAD Board of Governors resolved to substantially amend IFAD’s governance structure by providing for a new election procedure for the executive board, as reflected in the revised Schedule 2 of the AEI. In addition, it also adopted amendments to the rules of procedure of the governing council, which excluded any member state against which “an accounting provision exists with respect to the payment of their contributions” from election to the executive board.603

The ISFD has its own board of directors. Despite a stipulation that the IsDB “board of executive directors shall be the board of directors of the fund,”604 as a matter of law, the ISFD board is separate and distinct from the IsDB board. Unlike the board of governors, ISFD Regulations do not foresee direct representation of participating institutions on the board of executive directors when it decides ISFD matters. Thus, any participating institutions from an IsDB member country would be represented by the executive director appointed or elected by that country. When acting as the ISFD Board of Directors, however the IsDB executive directors are bound to follow different decision-making procedures and different voting rights apply.

Administered by AfDB as one of its special funds, the WFSF has a 13-member governing council that is responsible for determining the general policy direction of the fund;605 a chairperson elected by the council; and a director appointed by AfDB. Participation in the WFSF is a prerequisite for representation in the council.606 The Council is responsible for determining the general policy direction of the WFSF, but all financing and any other form of assistance provided from WFSF resources and the WFSF operational procedures are subject to approval by the AfDB Board of Directors in accordance with its regular voting rules.607 The WFSF provides an interesting example of an elaborate governance structure regarding a special fund established by AfDB under the overall authority of the AfDB Board of Directors.

The composition of the GEF Council and the Global Fund Board reflects changing paradigms of global governance. When the GEF was restructured in 1994, OECD countries stressed that “the main decision-making would not—as the G-77 wanted—take place in the Participants Assembly, but in a smaller governing Council.”608 Thus, the council is the primary decision-making body of the GEF; it is made up of 32 members representing constituency groupings.609 The GEF Council consists of government representatives, but half of its members represent developing countries; developed countries appoint 14 members, and economies in transition, 2 members.610 The council, which generally meets semiannually,


604 ISFD Regulations, Section 9.02.

605 In accordance with Section 3.3 of the Instrument for the Establishment of the African Water Facility Special Fund, the Governing Council comprises five persons appointed by AMCOW on a subregional basis, a member appointed by the African Union, another member appointed by the UN Water for Africa, and five members appointed by donors. www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/00157756-EN-AFRICAN-WATER-FACILITY.PDF

606 Instrument for the Establishment of the African Water Facility Special Fund, Section 3.2.

607 Ibid., Section 5.2.

608 Sjöberg, Restructuring the Global Environment Facility, p. 34.

609 In accordance with applicable constituency arrangements, “major donors to the trust fund (or ‘non-recipients’ as they are termed in the Instrument) hold individual seats (or ‘chairs’) on the Council,” while other constituencies include a mix of countries including both recipients and nonrecipients (GEF Instrument, para. 16; for constituency arrangements, see Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).

elected at each meeting a chairperson from among its members. This position alternates from one meeting to another between recipient and nonrecipient council members.611

The equal representation of developed and developing countries that characterizes the GEF's governance structure has influenced the representational structure of the CTF and SCF trust fund committees. These committees comprise an equal number of representatives (eight) from eligible contributor and recipient countries, as well as a representative of the World Bank and a representative of other MDBs.612 The governance framework of the CTF and SCF trust fund committees provides for consultations among donor and recipient countries regarding the selection of their representatives for these trust fund committees and for the subcommittee for the Pilot Program for Climate Resilience which is composed of up to six donor representatives and a matching number of recipient representatives.613 While in case of contributors, representation was largely determined based on the amount of their contributions, such practice may imply a disincentive for smaller contributors to participate. A way of addressing this problem is to adopt a rotation scheme for appointment to the CTF and SCF trust fund committees, subject to minimum level of contribution to be defined for a country or a group of countries to be eligible for participation.614

The representational structure of the Global Fund is different from the GEF. The Global Fund is one of the main “multi-actor global funds” that have emerged as “powerful instruments for globally co-ordinated action representing a departure from traditional forms of multilateral governance because non-state actors share decision-making powers and financing responsibilities with national governments.”615 The Global Fund board consists of 20 voting members, of which 7 represent developing countries (1 representative for each of the 6 WHO regions and one additional representative for Africa), 8 represent donors, and 5 represent civil society and the private sector.616 Unlike the GEF, membership in the Global Fund board comprises, in addition to donor and recipient governments and representatives of NGOs, the private sector and communities living with disease. This structure is strikingly different from the governance structures of the MFDIs studied here and also different from the GEF. Others who attend board meetings include representatives of the WHO, the Joint United Nations Programme on HIV/AIDS, the World Bank as trustee, and one Swiss citizen who lives in Switzerland and is authorized to act on behalf of the Global Fund to the extent required by Swiss law.617

In most MFDIs, the president chairs the meetings of the board of directors or a similar body of restricted membership, although other arrangements are possible.618 The chairmanship and deputy chairmanship of the NDF Board of Directors have 1-year terms and rotate among member country representatives.619 The GEF Council, which meets semiannually, elects a chairperson from among its members.
members for the duration of each meeting, although certain matters are chaired by the GEF’s executive head or jointly by the chairperson and the executive head. The chair and vice-chair of the Global Fund Board are elected for 2-year terms from among the members of the board.

Committees of the Board of Directors

In most MFDIs, committees assist the board of directors in discharging its oversight responsibility through in-depth examination of policies and practices. Most organizations have an audit committee and committees that deal with budgetary and operational matters (development effectiveness). In addition, competences of board committees may extend to several other matters, such as human resources and administrative matters and ethics issues involving boards of directors. In addition, in some organizations the board meets as a committee of the whole.

The executive boards of the IMF and the World Bank Group function as preparatory bodies of the Development Committee and act as committees of the whole on Development Committee matters to ensure that the views of all executive directors are fully reflected. In the World Bank, the role of such a committee is limited to making recommendations or exchanging views on matters of interest to the board. On the other hand, IADB’s committee of the whole is a core element of the institution’s internal guidance mechanism. All matters within the competence of IADB’s executive directors are discussed in the committee of the whole prior to going to the board of executive directors for decision.

Powers of the Board of Directors

General Functions. The responsibilities of the board of directors are stipulated in the constituent agreement of the concerned institutions. In the NDF, all powers are vested in the board of directors. However, the NDF board does not perform all of the functions vested in the plenary bodies of the organizations discussed above, because some decisions are vested in the Nordic Council of Ministers, which is not an organ of the NDF. In IDA and IFAD, the (executive) board is responsible for the “conduct of the
general operations." The charters of ADB and CDB and AfDF, on the other hand, state that the board of directors is responsible for "the direction of the general operations." In the case of ADB, this is viewed as a substantive difference, not just a difference in terminology.

In the World Bank as well as other MFDIs, executive directors have two sets of duties—their representational duties to their governments and their fiduciary duties to the membership as a whole.

The GEF Council is the primary decision-making body and is responsible "for developing, adopting and evaluating the operational policies and programs for GEF-financed activities...." The powers of the council are distinct from those of the boards of directors of international organizations studied here in two respects. First, the decision-making authority of the council is limited in scope, because certain matters fall within the authority of the trustee (i.e., the World Bank) or within the responsibility of the implementing or executing agencies. Second, the council has a defined relationship with the conferences of parties to environmental conventions. As the financial mechanism of these conventions, the council is required to conform to the policies, program priorities, and eligibility criteria determined by the Conference of the Parties for the purposes of the convention concerned. The most important function of the council is the allocation of GEF resources.

Since the World Bank's role in the Global Fund is limited to that of fiscal agent, the Global Fund board has powers that extend beyond those of the GEF Council. The board is responsible for operational guidelines, work plans, budgets, and funding decisions, and exercises all other powers required to carry out the purposes of the Global Fund.

In MFDIs, the general delegation of authority to boards of directors under organizations' bylaws may apply to the establishment of special funds. While in certain cases special funds have been established and are replenished under the authority of resolutions of the plenary body, the board of directors has taken such action on several occasions.

The IsDB Agreement expressly provides that the bank "may accept the administration of Trust Funds, whose objectives are not inconsistent with the purpose, and functions of the Bank, in accordance with the terms of the Trust and such Rules and Regulations as may be made by the Bank." In the other organizations analyzed here, the constituent agreement is silent on that matter. While in view of increased interest in thematic funds, the governing council of IFAD has delegated authority to the day-to-day work of official political Nordic cooperation. There are several individual councils of ministers, as most of the Nordic ministers for specific policy areas meet in a council of ministers a couple of times a year. Section 5 of the NDF Statutes does not refer to the Nordic council of ministers, but states that the NDF "shall have a Board of Directors, a President and such other personnel as may be necessary to carry out its functions."

629 IDA Articles, Article VI, section 3, and AEI, section 5 (c).

630 ADB Charter, Article 31. As the first draft of the ADB Charter in the report of the Ad Hoc Working Group of Experts had used—as in the case of IDA—the word "conduct" instead of "direction," such difference in wording is seen in ADB to entail a "substantive difference" and to emphasize the "legislative" character of the ADB Board in contrast to the "executive" functions of the president.

631 CDB Charter, Article 30.

632 AfDB Agreement, Article 26.

633 See Chapter 4 (G. Droesse, ADB Concessional Financing).

634 Zedillo Report, p. 31.

635 GEF Instrument, para. 15.


637 For example, in ADB this was the case for the Asian Tsunami Fund, the Climate Change Fund, the Pakistan Earthquake Fund, and the Regional Cooperation and Integration Fund. See Chapter 4 (G. Droesse, ADB Concessional Financing).

638 IsDB Agreement, Article 23. The power to accept trust funds is vested in the board of directors.
executive directors to establish multidonor trust funds, the Executive Board so far has not established any trust funds on that basis. Since the power to accept trust funds is not listed among those vested in the plenary body that cannot be delegated, competence generally lies with the board of directors. In several cases, however, such power has been delegated to the executive head, and the board of directors decides only in special circumstances or only approves umbrella operational arrangements.

Power of Authentic Interpretation. Among the most important functions vested in the boards of directors of financial institutions studied here is the power of authentic interpretation of the constituent agreement. The decision to locate such power in the board of (executive) directors was first made at Bretton Woods, where it was seen as a corollary to the desire of drafters of constituent instruments that the governing bodies of organizations should determine their areas of operations and operational priorities. As stated by Eugene R. Black, IBRD president, “There is wide agreement that IDA’s Charter should be so drafted as to give the new institution great flexibility in shaping the character of its operations and in fixing the terms of its financing.” At Bretton Woods, the executive board of the IMF and IBRD were given the power of authentic interpretation of their articles of agreement, as the negotiators “wished to keep the interpretation in the hands of financial experts [as] co-operation in the area of competence of the Bretton Woods institution was considered an experiment too new and delicate to submit it to judicial control.” The articles of agreement of the IMF and the IBRD served as the model for interpreting the provisions of other international organizations.

To clarify the scope of relevant provisions, organizations may seek an interpretation of their constituent instruments either through legal opinions rendered by their general counsel or through a formal interpretation by their governing bodies. While legal opinions of general counsels are requested in many cases, formal interpretations of constituent agreements are not common as they are only sought in special circumstances.

The scope of an authentic interpretation of constituent instruments is limited in three respects:

(i) The interpretation provisions in respective documents are specifically limited to interpreting the constituent instruments, and do not extend to the bylaws, rules, and regulations of the governing bodies and similar instruments.

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640 In the case of the numerous single-donor trust funds administered by the World Bank, management generally makes decisions on issues relating to these funds, including the use of their resources. For multidonor trust funds, in certain cases a donors committee is established in which all donors are members and which makes decisions by consensus. The executive directors are generally involved only in cases where special facilities or multipurpose vehicles are established to provide financing on terms similar to IDA and/or which are substantially funded by transfers of IBRD net income. See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).

641 Quoted in I. F. I. Shihata. 2000. Issues Related to the International Development Association. In The World Bank Legal Papers. The Hague: Kluwer Law International. p. 553. Similarly, it might be noted that when the Ad Hoc Working Group of Experts of the UN Economic Commission for Asia and the Far East (ECAFE) was conceiving ADB, they declared that “[t]he Charter of the Bank should be drawn broadly so as to allow it considerable flexibility in its membership, capital resources and operations.” Their justification was that because “[t]he national and international economic scene and economic relationships change continuously…the Bank must be in a position to adapt its policies and procedures to the changing requirements [of its member countries].” ECAFE. 1964. Report of the Ad Hoc Working Group of Experts on the Asian Development Bank. p. 5.


643 IMF Articles, Article XXIX(a); IBRD Articles, Article IX.

644 E.g., Gold states, in relation to the IMF, that the procedure for authoritative interpretation is “expressly confined to problems of the meaning of the Articles [and] does not apply to the subordinate law of the IMF….” J. Gold. 1996. Interpretation: The IMF and International Law. London. The Hague. Boston: Kluwer Law International. p. 59. Hexner affirms that such power also extends to provisions in constituent instruments that deal with interpretation and amendment, but recognizes that the exercise of this power may involve problematic elements of ultra vires in some cases. E. P. Hexner. 1959. Interpretation by Public International Organizations of the Basic Documents. 53 A.J.I.L. 341–370, 350.
(ii) An authentic interpretation of a constituent instrument can extend only to questions of law and not to questions of fact.645

(iii) Most important, the power of authentic interpretation cannot introduce changes that otherwise should be effected by amendment.

Thus, interpretation cannot change fundamental features of the constituent document and “reach the point of virtually amending the text, substituting the will of the interpreters for the presumed will of those who negotiated and approved the text (and its formal amendments). . . .” 646

Interpretation must be “responsive to actual needs,”647 particularly where gaps are created by a factual change and where an amendment to the constituent agreement proves impractical. “It cannot, however, reach a meaning that goes into directions unrelated to the declared objective of the text or violates its explicit wording . . . [except] in the rare cases where the ordinary meaning of the words used in the text leads to a manifestly absurd or unreasonable result.”648

Thus, changes “introduced by way of interpretation, rather than amendment, cannot in any event change the fundamental features of the Charter of an international organization . . . . [and] cannot reach the point of virtually amending the text substituting the will of the interpreters for the presumed will of those who negotiated and approved the text . . . .”649

There is a fine line between a permissible authentic interpretation and illicit amendment of a constituent document. Generally, the more time that has elapsed since the establishment of an international organization, the less emphasis is placed on the historic interpretation of constituent documents. Among the various rules of interpretation established by the 1969 Vienna Convention on the Law of Treaties,650 the teleological approach best characterizes the interpretation technique of international financial institutions.651 Assessment on whether a proposed activity of an organization is consistent with its constituent document is generally made on the basis of the organization’s stated purpose and functions.

The IDA board of executive directors formally interpreted the IDA Articles on three occasions, the first regarding valuation of IDA’s subscription and supplementary resources, and the second and third with regard to debt relief under the HIPC Initiative and the MDRI. Formal interpretations of the ADB Charter have been required on various occasions, most importantly in relation to the allocation of OCR net income to the ADF.652 The AfDF Board of Directors had cause to formally interpret the AfDF Agreement in connection with the MDRI pursuant to Article 52 of the AfDF Agreement.653

645 Mann states that with reference to the applicable IMF Charter provisions regarding “Interpretation” that those only concern “the abstract question of interpreting the Agreement, namely the question of law [but do not] confer upon the Directors or Governors jurisdiction to decide facts.” F. A. Mann. 1970. The “Interpretation” of the Constitution of International Financial Organizations. Vol. 43, The British Year Book of International Law, 1968–69, 1–19, 4.


647 Ibid., LII.

648 Ibid.

649 Ibid., p. li. All subsequent assertions and quotation in this paragraph are drawn from this same source.


652 See Chapter 4 (G. Droesse, ADB Concessional Financing).

653 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
The governing body cannot make a formal interpretation when the constituent instruments do not provide for such power. While the NIB Agreement allows formal interpretation by its board of directors and board of governors, the NDF Agreement contains no similar provision. The GEF Instrument and Global Fund bylaws also do not provide for such formal interpretation by their respective constituent bodies. Nevertheless, the situation is substantially different in both cases. Not only is the GEF administered in accordance with the applicable provisions of the GEF Instrument and the decisions of its council and assembly, but the World Bank also is bound in the performance of its duties as trustee by the applicable provision of its own articles of agreement, bylaws, and decisions. Thus, perceived inconsistencies between decisions of the council and the rules of the trustee, particularly regarding the use of GEF resources, are resolved through consultations between the Council and the Trustee. The Global Fund board, on the other hand, is the fund’s supreme body. Since the board exercises the powers of the Global Fund and may amend its bylaws (which delineate the powers of the board and other governing bodies) at any time, it may be argued that it is also competent to interpret the constituent instrument of the fund, even though no express reference to that effect is contained in the bylaws.

Board of Directors and Replenishments

The boards of directors of the organizations studied here are involved to a different extent in the conduct and/or implementation of replenishments of concessional resources.

In some organizations, replenishment negotiations are conducted under the auspices of the board of directors. This is notably the case in CDB, where the board of governors has no involvement in replenishment negotiations. Every 4 years, the CDB Board of Directors considers the status of SDF(U) operations and decides whether to send invitations to members and potential contributors. After each replenishment meeting, the board of directors, which is substantially involved in replenishment negotiations, can provide comments on a report regarding the negotiation meeting. The Board notes the resolution of the contributors to the particular cycle of the SDF(U) and approves of the decisions set out in the report on the negotiations, which are required of the board under CDB’s lending policies and the SDF(U) rules.

Also in the case of the NDF, which has a two-tier structure, the executive directors used to play a decisive role in replenishment negotiations. Although the directors were empowered to appoint deputies to conduct replenishment negotiations, in practice they generally appointed themselves. Thus, the group of deputies conducting replenishment negotiations was composed in the same or in a very similar manner to the board of directors. Unlike the SDF, however, the Nordic Council of Ministers made the final decision on replenishments, following the recommendation of the NDF deputies.

In the ADF, AfDB, and IDA, members of the board of directors may be consulted or invited to observe replenishment negotiations, but they generally are not directly involved in such negotiations, which are conducted by senior officials from members’ capitals and approved by the board of governors. In ADB, the ADF donors’ report is incorporated by reference in the report of the directors to the board of governors and accepted as such by the board resolution approving the ADF replenishment. In AfDB and IDA, the (executive) directors approve the deputies’ reports prior to submission to the governors.

654 NIB Agreement, Article 16.
655 GEF Instrument, Annex B, para. 3.
656 GEF Instrument, Annex B, paras. 11 and 12.
657 Global Fund Bylaws, Article 14.
660 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
The bylaws or general regulations of organizations that have adopted the three-tier structure of the Bretton Woods organizations normally contain a general delegation of authority to the board of directors of all powers, except those vested in the plenary body that cannot be delegated. However, replenishment negotiations became a forum for donors to review their organization’s strategic directions in general terms and define new policies that apply not only to concessional windows but also to the organization, or organizational group, as a whole. Replenishment reports increasingly include specific undertakings regarding new policies and practices and thus have become important guidance mechanisms and the basis for subsequent policy formulation by organizations’ governing bodies. While generally the entire report is not deemed to be binding, substantial changes to specific undertakings set out in deputies’ or donors’ reports may require the agreement of all donors and, in certain cases, an amendment to the resolution of the board of governors that approves replenishment. This somewhat restricts the scope of the general delegation of authority given by the governors to the board of directors.

In IDA12, the deputies were assured and the executive directors were informed that any material changes to the policy recommendations of the IDA12 report would require approval by the governors. Deputies agreed on a series of specific operational and policy proposals to improve IDA’s effectiveness which were set out in this report. Since then, such approach has been adopted for all IDA replenishments. The respective roles of the IDA board and deputies have recently been the subject of scrutiny by the Development Committee, due to “a perception that, in discharging their responsibilities during the replenishment process, the IDA Deputies have become involved in IDA policy making, which is the responsibility of the EDs.” One of the issues that emerged was that “although the Board [of Executive Directors] reviews and approves the conclusions and recommendations of the IDA Deputies and Borrower Representatives as set out in the Deputies Report, it would be difficult in practice for the Board not to approve the Deputies’ report, hence the perception of an expanded role for IDA Deputies.” The Zedillo Report asserts that these arrangements, whereby IDA Deputies have the final say on IDA matters and exert influence on IBRD policy, lack transparency, separate decision-making power from shareholding, and create an accountability gap by delinking power from responsibility.

In all three organizations (ADF, AfDB, and IDA) the board of directors plays an important role in implementing replenishments. “The AfDB Board of Governors formally endorses and accepts the deputies’ report and adopts its main conclusions and recommendations by resolution of an 85% majority of the total voting powers of the participants to the AfDF.” Following adoption of the resolution of the board, the instructions contained in the deputies’ report are then elaborated in lending policy and financing policy guidelines for each cycle. Generally, the “delineation of powers and responsibilities between the Board of Governors and Board of Directors is clear and has not raised many issues.” As highlighted in the AfDB report, in some cases “both organs have been involved at different levels, with the

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661 See Chapter 1 (P. McCawley, Concessional Resources and Development Thought).
662 The AfDB Board of Governors formally endorses and accepts the deputies’ report and adopts its main conclusions and recommendations by resolution of an 85% majority of the total voting powers of the participants to the AfDF.
663 As the IDA15 negotiations were at an advanced stage, the Development Committee concluded that opening “issues on the relationship between IDA’s Board and IDA’s Deputies at this time might have unintended consequences” and recommended for that reason to maintain current arrangements, which had been tested and agreed upon. However, the committee envisaged that, after an agreement on the IDA15 replenishment is reached, there might be a window to start consultations regarding that matter. IMF and World Bank. 2007. Voice and Participation of Developing and Transition Countries in Decision Making at the World Bank. Options Paper (DC2007–0024, 11 October). p. 10. http://siteresources.worldbank.org/DEVCOMMINT/Documentation/21510673/DC2007–0024(E)Voice.pdf
664 As the IDA15 negotiations were at an advanced stage, the Development Committee concluded that opening “issues on the relationship between IDA’s Board and IDA’s Deputies at this time might have unintended consequences” and recommended for that reason to maintain current arrangements, which had been tested and agreed upon. However, the committee envisaged that, after an agreement on the IDA15 replenishment is reached, there might be a window to start consultations regarding that matter. IMF and World Bank. 2007. Voice and Participation of Developing and Transition Countries in Decision Making at the World Bank. p. 11.
665 Zedillo Report, p. 28.
667 Ibid.
668 Ibid.
Organizational Structures, Institutional Frameworks, and Decision-Making Procedures

Board of Governors approving the principles and setting guidelines and the Board of Directors designing and approving implementing mechanisms.669

The ADB Board of Directors plays an important role in the implementation of ADF replenishments. All new policies are submitted to the board for approval, even if they have been substantially discussed and agreed upon during ADF replenishments. Moreover, the ADF Regulations give the board a variety of other functions regarding acceptance of additional or delayed contributions, procurement arrangements, and other matters.

There are substantial differences between the GEF and the Global Fund regarding the manner in which replenishments are conducted. GEF replenishments are modeled on those of the World Bank and involve burden-sharing arrangements, the World Bank as trustee, and the GEF Council. While resource mobilization belongs to the World Bank's fiduciary responsibilities as trustee, replenishments shall only be initiated "at the request of the Council."670 Thus, conducting replenishments in accordance with the GEF Instrument and decisions taken by the council is part of the trustee responsibilities of the World Bank.671 While both contributing and noncontributing members are represented on the GEF Council, only contributing members participate in replenishment negotiations, which tends to undercut the collective and participatory processes foreseen for the GEF.672 However, the World Bank is not involved in Global Fund replenishments. The replenishments are conducted under the overall authority of the Global Fund Board, which is responsible under the bylaws for mobilizing resources.673

**Executive Head**

In organizational groups, a major distinction relates to whether the individual organizations have the same executive head. In the AfDB Group, the president of AfDB is also the ex officio president of the AfDF.674 In the World Bank Group, the president of IBRD is the ex officio president of IDA.675 However, the NIB Group has not established management links between the NIB and the NDF, and each organization has its own president.676

Another major distinction between MFDIs relates to whether the plenary body or the board of directors elects the president. This matter is not only procedural but also relates substantially to the president's position and status. Election by the board of governors strengthens the position of the executive head, conferring greater authority than election by the board of directors. For that reason, ADB opted for the election of the president by its board of governors. AfDB eventually adopted the same approach.677

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669 Ibid.
670 GEF Instrument, para. 10.
671 GEF Instrument, Annex B, para. 4.
674 AfDF Agreement, Article 30(1).
675 The management link between IBRD and IDA is set out in Article VI, section 5(a) of the IDA Articles, which provides that the IBRD president shall act as president of IDA. This situation is different in IFC, the articles of agreement of which provide that the president of IBRD shall be the ex officio chairman of the board of directors. The IFC president was to be appointed by the IFC board of directors on the recommendation of the chairman. Thus, in the case of IFC the two positions were combined in practice.
676 Haralz indicates that the NIB president Jannik Lindback had suggested to the Nordic Council of Ministers that a "management linking [between NIB and NDF] might be the best way of securing a smooth relationship. One possibility would be to have NIB's president acting, ex officio, as president of NDF. Alternatively, NIB's president could be responsible for all matters relating to both institutions, while NDF's president accounted for the use of [NDF's] resources. These suggestions had been brought to the attention of the [NDF] interim board [in 1998], but were apparently not discussed at its meetings." See Haralz, The Nordic Development Fund: 10 Years of History, p. 16.
677 The AfDB Agreement consistent with Article VI, section 5(a) of the IBRD Articles, initially provided that "[t]he Board of Directors, by a majority of the total voting power of the members, shall elect the President of the Bank." The board of governors of AfDB resolved by Resolution No. 10-70 on 28 August 1970 to establish a Standing Committee comprising governors.
as did most other organizations studied here. However, the executive directors of IBRD select the president of the World Bank Group.\(^{678}\) The president of the NDF, which has a two-tier governance structure, is appointed by its board of directors.\(^{679}\) Constituent instruments generally provide that the president shall not be a member of either the board of directors or the board of governors. Moreover, regional or subregional organizations generally require that the president come from one of the organization’s regional or subregional member countries.\(^{680}\) Since states did not want to create an entity with proper legal personality, the legal status of the GEF Secretariat differs from that of an international organization, and the status of the executive head of the GEF Secretariat cannot be compared with that of the executive head of an international organization. The GEF Council previously appointed a CEO for a 3-year term on the joint recommendation of its implementing agencies\(^{681}\) which consulted with the council before making their recommendation. Reappointment of the CEO fell within the exclusive competence of the council. While the GEF Instrument previously did “not articulate a comprehensive process for the appointment or reappointment”\(^{682}\) of the GEF CEO/Chairperson, the Council agreed in 2009 to create a selection and review committee composed of six council members (three from contributing participants and three from recipient participants) to oversee the appointment/reappointment process.\(^{683}\) In this context, the council also recommended amendments to the GEF Instrument for the primary reason “to eliminate the role of the Implementing Agencies in the appointment of the CEO/Chairperson” and the perception of conflict of interest which may result from the fact that the nominating committee for the CEO/Chairperson may include staff from the three implementing agencies when recommending the appointment of agency staff to the CEO/Chairman position.\(^{684}\) The Fourth GEF Assembly approved on 26 May 2010 the proposed amendment, which provides that the “CEO shall be appointed to serve for four years on a full time basis by the Council [and may] be reappointed by the Council for one additional four-year term.”\(^{685}\)

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678 IBRD Articles, Article V, section 5.

679 NDF Statutes, section 7.

680 ADB Charter, Article 34.1; AfDB Agreement, Article 36 (1). The CABEI Agreement states in Article 20 that the executive director of IBRD select the president of the NDF, which has a two-tier governance structure, is appointed by its board of directors.\(^{679}\) Constituent instruments generally provide that the president shall not be a member of either the board of directors or the board of governors. Moreover, regional or subregional organizations generally require that the president come from one of the organization’s regional or subregional member countries.\(^{680}\) Since states did not want to create an entity with proper legal personality, the legal status of the GEF Secretariat differs from that of an international organization, and the status of the executive head of the GEF Secretariat cannot be compared with that of the executive head of an international organization. The GEF Council previously appointed a CEO for a 3-year term on the joint recommendation of its implementing agencies\(^{681}\) which consulted with the council before making their recommendation. Reappointment of the CEO fell within the exclusive competence of the council. While the GEF Instrument previously did “not articulate a comprehensive process for the appointment or reappointment”\(^{682}\) of the GEF CEO/Chairperson, the Council agreed in 2009 to create a selection and review committee composed of six council members (three from contributing participants and three from recipient participants) to oversee the appointment/reappointment process.\(^{683}\) In this context, the council also recommended amendments to the GEF Instrument for the primary reason “to eliminate the role of the Implementing Agencies in the appointment of the CEO/Chairperson” and the perception of conflict of interest which may result from the fact that the nominating committee for the CEO/Chairperson may include staff from the three implementing agencies when recommending the appointment of agency staff to the CEO/Chairman position.\(^{684}\) The Fourth GEF Assembly approved on 26 May 2010 the proposed amendment, which provides that the “CEO shall be appointed to serve for four years on a full time basis by the Council [and may] be reappointed by the Council for one additional four-year term.”\(^{685}\)

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681 GEF Instrument, para. 21.


683 The process involves using an executive search firm and advertising the executive head position and the following steps: (a) At the Council meeting at least six months prior to the expiration of the term of the CEO, Council decides either: (i) to reappoint the incumbent CEO, if another term is permitted; or (ii) to start the process for selection of a new CEO. (b) If a new CEO is to be selected, at the same Council meeting, the Council will approve a terms of reference for the position, the terms of reference for an independent consulting firm (executive search firm), and the budget to support the process. The Selection and Review Committee will oversee the recruitment process including the process for advertising the position. (c) An independent executive search firm will be selected by the Secretariat, using the terms of reference supplied by the Council. (d) Position will be advertised. Furthermore, Council Members and participant governments may suggest candidates directly to the search firm. (e) Initial screening to prepare a list of all applicants meeting criteria/qualifications will be done by the outside consulting firm with advice of the Selection Committee. The firm will screen all applicants and recommend those who meet the criteria/qualifications specified in the TOR. (f) Selection and Review Committee prepares preliminary short list of up to ten candidates. (g) Selection and Review Committee to consult with Council members on the preliminary short list. (h) Selection and Review Committee prepares a final short list of candidates to be interviewed, interviews candidates, and consults with Council members. (i) Based on its interviews and consultations, the Selection and Review Committee, makes a recommendation to the Council of three candidates, in order of preference, for the Council’s final consideration and decision. (j) The Council appoints the CEO at the Council meeting just prior to the expiration of the term of the incumbent CEO. GEF. 2009. Policies and Procedures Concerning Certain Appointment, Reappointment and Performance Objective Reviews Processes (23 June), para. 8.


The proposed new selection procedures for the GEF are similar to those adopted by the Global Fund in 2006. The Global Fund decided then to amend its bylaws to include a provision that the “Executive Director is selected by the Foundation Board based on merit, in a non-political, open and competitive manner.” Appropriate amendments to the board operating procedures were also adopted at that time.

Such procedures may be a precursor for the introduction of merit-based selection procedures in the World Bank and IMF. In response to shareholders requesting the “introduction of an open, merit-based and transparent process for the selection of the President of the World Bank Group, [a] Working Group has been established by [the Committee on Governance and Administrative Matters] COGAM to develop recommendations for strengthening the selection process, in line with the request from the Development Committee. A report will be presented to COGAM and the Board for consideration before the 2011 Spring Meetings.

Powers of the Executive Head

Since Eugene Meyer, the first president of the World Bank, resigned in frustration at “having responsibility without authority,” many studies have explored the relationship between the executive head and the board of (executive) directors and their respective roles and functions. The second president of the World Bank, John J. McCloy, accepted his appointment only after reaching an understanding with the executive directors about their working relationship. In accordance with the “Report by the President to the Executive Directors with Regard to Matters of Organization and Loan Procedure” of 4 June 1947, the executive directors were responsible “for the decision of all matters of policy in connection with the operations of the Bank, including the approval of loans” and management was “responsible for developing recommendations on all matters of policy requiring decision by the Executive Directors.”

A general distinction was made regarding the functions of the president and the board of directors. While in most organizations the executive head is responsible for developing recommendations regarding operational policies, the extent of involvement by the board of (executive) directors in such matters differs.

The presidents of the MFDIs studied here are generally responsible for managing the institution and may perform functions as its legal representative and the chief of staff. Moreover, the president generally chairs meetings of the board of directors.

It is particularly interesting to explore (i) the extent to which powers of the board of (executive) directors can and have been delegated to the president, and (ii) the specific role of the president in relation to decisions regarding concessional resources.

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689 Mason and Asher, The World Bank since Bretton Woods, p. 46.

690 Shihata, World Bank Legal Papers, p. 693.

691 The constituent agreements of MFDIs describe the functions of the president in somewhat different terms. Article V, section 5(b) of the IBRD Articles and Article VIII, section 5(a) of the IADB Charter state that the president is responsible for “ordinary business,” while both Article 37, section 2 of the AfDB Agreement and Article 34.5 of the ADB Charter state that the president is responsible for “current business.”
Section 7 of the NDF Statutes provides that the NDF Board of Directors may delegate all its powers to the NDF president. Other organizations generally limit the delegation of powers to the president by the board. For example, the constituent agreements of ADB and the AfDB provide that the decision making of the board of directors is based on a proposal of the executive head. Under Article 15, section 3 of the AfDF Agreement, "Before financing is provided, the applicant shall have presented an adequate proposal through the President of the Bank and the President shall have presented to the Board of Directors of the Fund a written report recommending such financing, on the basis of a staff study of its merits." Article 14(iv) of the ADB Charter, which contains stipulations regarding loans that are similar to the cited provision of the AfDF Agreement, is interpreted in a similar manner. Thus, the boards of directors of ADB and AfDB cannot delegate authority regarding loan approval to the president. The provisions delineated in Article 15 of the CDB Charter are equivalent to the provisions of the ADB Charter and the AfDF Agreement. Thus, the CDB Board of Directors can approve loans (and guarantees) only on the basis of a staff study and the president’s written report and recommendations. While the IDA Articles contain no equivalent provision, the executive directors have authorized the delegation of loan approval authority to the president only in very limited circumstances. However, the board of (executive) directors has delegated various other decisions (e.g., those relating to the approval of technical assistance) to the president.

While in MFDIs the establishment of special funds is generally vested in the board of governors or board of directors, the acceptance of trust funds or noncore resources is increasingly delegated to the president. IDA requires the executive directors’ approval for the acceptance of trust funds only in special cases (e.g., the establishment of multipurpose vehicles and/or trust funds that will receive net income or surplus allocations from IBRD). In the World Bank Group, decisions regarding the acceptance of trust funds (e.g., single-donor trust funds) largely have been delegated to management. In ADB, acceptance and establishment of all trust funds, including straightforward single-donor funds (termed “channel financing agreements”) established for the provision of technical assistance still require approval by the board of directors, but the introduction of ADB’s partnership facilities entailed certain changes to the governance framework applicable to ADB’s trust funds. While the board of directors does not approve the financing partnership facilities as such, it does approve the establishment of trust funds and the acceptance and administration of fund contributions by bilateral, multilateral, and individual sources that conform to the terms and conditions set forth in the board paper that established the financing partnership facility. IFAD’s executive board has delegated authority to the president to accept supplementary funds and enter into supplementary fund arrangements with member states.

The power to determine the classification of member states under the organization’s classification system has been delegated to the president in the case of the World Bank Group, but it has been retained

692 AfDF Agreement, Article 15, section 3. The AfDB Agreement does not contain an equivalent provision.
693 ADB Charter, Article 14(iv).
694 Moreover, one of the conclusions, which is drawn from the aforementioned provisions, is that the board of directors can only decide jointly on the various proposals made by the executive head.
695 CDB Charter, Article 15 (c); see also Chapter 6 (Y. Lemonias-Seale, W. Smith, and A. Debique, The Unified Special Development Fund of the Caribbean Development Bank).
696 Since 1975, the executive directors of the World Bank have delegated authority to the president to approve advances from the Project Preparation Facility. In 1997, the executive directors further delegated loan approval authority to the president for learning and innovation loans (of $5 million or less) and adaptable program loans used in a series of loans to provide phased support for an agreed long-term phased development program.
697 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing) and Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development).
by the board of directors in other organizations. Generally, it is the primary responsibility of the executive head to determine allocations of concessional resources to certain countries in accordance with the policies approved by the board of directors.

The High Level Panel appointed by the AfDB president recommended that the board of directors should “focus on providing strategic direction, fiduciary oversight, and monitoring performance while giving management its proper space for day-to-day implementation. It should resist the urge to become involved in micromanaging the Bank, say, by allowing smaller projects to be approved by management.” The Zedillo Report concludes that the executive board, “abiding by sound governance principles should not have a co-managerial role [and proposes transferring responsibility] for the approval of all WBG [World Bank Group] financing operations [to Management thereby eliminating] the conflict of interest that is currently embedded in the Executive Board’s decision making.” A complete transfer of all financing decisions is not currently possible in ADB and the AfDF, as it would require amendments to the ADB Charter and AfDF Agreement. However, to a greater extent their boards of directors could adopt strategic approaches by giving wider application to processes already implemented to a limited extent (e.g., in ADB, in the context of multitranche facilities that function like standby letters of credit and under which a maximum amount approved by the board of directors is converted in a series of loans, guarantees, or credit lines). Boards of directors could approve umbrella operational arrangements for certain countries or sectors that define the strategic focus, overall purpose, modalities, and financial volume of operations in the country and/or sector and give authority to management to take financing decisions, accept trust funds, and conclude cofinancing arrangements that are consistent with the strategic focus and arrangements determined by the board of directors for the country or sector. Under the overall responsibility and strategic direction of the board of directors, specific governance structures could be created which are applicable to all types of resources.

The powers of the GEF’s CEO are much more limited and distinguishable from those of the executive heads of MFDIs. When the GEF was restructured in 1994, the CEO and the GEF Secretariat were not meant to have their own agenda and a general coordinating role, but were expected only to coordinate the work program between the implementing agencies, oversee its implementation, and prepare GEF guidelines. The CEO and secretariat service and report to the GEF assembly and council and are charged with implementing council and assembly decisions, coordinating and overseeing the implementation of program activities, and implementing operational policies. Various proposals for strengthening the CEO and the secretariat’s position have been made in the context of the sweeping institutional reforms of the GEF suggested in the context of the fifth replenishment.

The executive director of the Global Fund has a somewhat stronger position than the GEF CEO. The executive director is responsible for the day-to-day management of the Global Fund. While the GEF is still considering whether the secretariat may be given or delegated the power to sign funding agreements, the Global Fund Secretariat is competent to “organize the receipt and review of grant applications, and negotiate and execute grant agreements.” Moreover, a range of other functions has been assigned to the secretariat, which is headed by the executive director.

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700 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
703 See Chapter 4 (G. Droesse, ADB Concessional Financing).
705 Ibid.
706 Ibid.
707 Global Fund Bylaws, Article 8.2.
Decision-Making Procedures, Voting Rights, and Qualified Majorities

Each organization must determine how its members can participate in governance. While in most cases international organizations decide matters without a formal vote, members can generally request one at any time and it is a requirement in some cases. For that reason, decision-making procedures and related provisions on quorum, qualified majorities, and voting rights are important.

Quorum

Organizations have adopted provisions regarding the meeting quorum of their governing bodies. While such provisions ensure adequate representation of members, they may also imply that a governing body cannot make decisions in the absence of one or more major shareholders. In those circumstances, the provisions regarding a quorum implicitly confer veto power to members because they can block decision making simply by not attending a meeting.

Generally, constituent agreements contain cumulative requirements regarding the number of members who need to attend a meeting and the voting power that those members represent. A quorum is often defined as the majority of the members of the governing body, representing either one-half or two-thirds of the total voting power of the members. The applicable quorum may be the same or may differ for the plenary body and the board of directors. Moreover, the quorum may include requirements regarding representation of regional or subregional members at meetings of governing bodies (e.g., IADB and the CABEI).

When the IADB Charter was amended in 1994 in the context of IADB’s Eighth General Increase in Resources, the quorum for decisions of the board of governors was defined as “an absolute majority of the total number of governors, including an absolute majority of governors of regional members, representing not less than three-fourths of the total voting power of the member countries” implying that the status quo ante was maintained because the board cannot make decisions in the absence of IADB’s largest shareholder. However, the quorum for decisions of the board of executive directors was not changed; IADB requires an “absolute majority of the total number of directors, including an absolute majority of directors of regional members, representing not less than two-thirds of the total voting power of the member countries.”

In the NDF, four of the five members or alternates constitute a quorum. Different provisions apply to the GEF Council and the Global Fund Board. The GEF defines a quorum as two-thirds of the council’s members, while the Global Fund Board requires a majority of each of its two voting groups.

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709 In ADB, the same provisions apply to the board of governors and board of directors. In both cases, a majority of the members representing not less than two-thirds of the total voting power of the members is required (ADB Charter, Articles 29.2 and 32.2). The quorum requirements set forth in the CDB Charter (Articles 28[2] and 31[2]) are identical with those of the ADB Charter. The AfDB Agreement also stipulates the same requirements for the quorum of the AfDB board of governors and board of directors, even though on somewhat different terms (i.e., a majority of total number of governors or directors representing not less than three-fourths of the voting power of the participants (AfDB Agreement, Article 25[3] and 28[2]). Different criteria apply to IDA. The quorum for decisions of the IDA board of governors is a “majority of the Governors exercising not less than one-half of the total voting power.” The quorum for decisions of the board of directors is defined as “majority of the Directors exercising not less than one-half of the total voting power” (IDA Articles, Article VI, section 2[f] and section 4[e]).

710 The required quorum for decisions of the CABEI Board of Governors, in accordance with Article 14 of the CABEI Agreement, is “one half plus one of the total number of governors, including at least three Governors from the founding countries and representing a minimum of two thirds of total member votes.” The quorum for decisions of the CABEI Board of Directors is the “majority of the Directors having the right to vote, including at least three Directors from the founding states” (CABEI Agreement, Article 19).

711 IADB Charter, Article VIII, section 2(e). In accordance with Article VIII, section 4(b) of the IADB Charter, the voting power of the largest shareholder cannot be reduced below 30% of total voting power.

712 IADB Charter, Article VIII, section 3(f).

713 NDF Statutes, section 6.

714 See GEF Instrument, para. 17 and Global Fund Bylaws, Article 7.7. The two voting groups are defined in Article 7.6 of the bylaws: “In order to pass, motions require a two-thirds majority of those present of both: a) the group encompassing the eight donor seats and the two private sector seats and b) the group encompassing the seven developing country seats and the two non-governmental organization seats and the representative of an NGO who is a person living with HIV/AIDS or from a community living with tuberculosis or malaria.” It is further expressly stated in the said provision that physical presence at the board meeting is not required.
**Decision-Making Procedures**

The plenary body and boards of directors frequently decide matters without a formal vote, and in that case the chair ascertains the sense of the meeting. However, a formal vote is required in certain cases (e.g., electing members of the board of directors). Moreover, any member has the power to request a formal decision by the plenary body or the board. While MFDIs often make decisions by consensus, it is not a legal requirement for decision making. If consensus is not assured, decisions are based on the voting power of members, subject to the required quorum and to special majorities, if so required.

The GEF generally takes decisions by consensus. A proposed definition of consensus contained in the 1994 draft Rules for the GEF Council was dropped as no agreement on the proposed definition or even the need for a definition could be reached. However, there is widespread agreement that consensus allows a decision if no participant in the decision-making process blocks the proposed decision. The GEF Instrument stipulates that decisions of the GEF assembly and council shall be taken by consensus but provides for a formal vote in the event that “all practicable efforts by the Council and its Chairperson have been made and no consensus appears attainable.” In that case, council decisions are made by a double-weighted majority. The decision-making procedures of the Global Fund are modeled on those of the GEF and apply the same double-weighted majority but in a somewhat different context.

The increasing trend to softer decision-making procedures with greater involvement of developing member countries and civil society also manifested itself in relation to the CIFs that were established in 2008 and have also adopted a consensus procedure for the CTF and SCF trust fund subcommittees. Such procedure was adopted in response to criticisms of the World Bank’s “involvement in climate change funding” and to the concern expressed by some sectors that the “creation of the CIFs at the Bank could undermine or predetermine the outcomes of post-2012 climate negotiations.” As consensus does not imply unanimity, “a dissenting decision maker who does not wish to block a decision, may state an objection by attaching a note or statement to the decision.” However, unlike the GEF and Global Fund, no votes are cast and, consequently, the requested decision must be postponed or withdrawn if consensus is not attainable.

Similarly, the NDF Board of Directors makes its decisions by consensus. The NDF Statutes require that “no one present and entitled to vote oppose the decision.” Thus, the board can make a decision if one member is absent or if a member abstains from voting. However, the board cannot make a decision if one member opposes it. The NDF has not provided for a formal vote in such circumstances.

One important difference between IDA and other international organizations relates to the voting procedure. In accord with the IMF Articles, IDA does not allow executive directors to split the votes for...
the various members of their constituency,\textsuperscript{724} thus strengthening the role of the executive directors, who are viewed as an organ of IDA and not as country representatives. As long as this “block-voting provision” is unchanged, the voice of Part II members in terms of decision making effectively does not improve even if their shareholding increases.\textsuperscript{725}

While ADB\textsuperscript{726} and IsDB\textsuperscript{727} do not require directors to cast votes as a unit, the executive directors of the AfDF appointed by AfDB are required to do so,\textsuperscript{728} which has been seen as denying “the regional Executive Directors a voice” in the AfDF board.\textsuperscript{729} However, an AfDF director representing more than one state participant “may cast separately the votes of the States he represents.”\textsuperscript{730}

In the GEF, “a Member of the Council appointed by a Group of Participants may cast separately the vote of each Participant.”\textsuperscript{731} That issue does not arise in the Global Fund, where each voting member of the Global Fund board has only one vote.\textsuperscript{732}

\textbf{Voting Rights}

The fact that decisions of international organizations are frequently made by consensus, without a formal vote, does not imply that voting rights are not important. This is underlined by the discussion on the governance structure of IBRD and the IMF, which has been the subject of substantial scrutiny and criticism. Because the quotas of IMF members and shareholding in IBRD were viewed as no longer giving a fair voice and adequate representation to several developing member countries, amendments to their articles of agreement have been approved in the context of the first phase of voice and quota reform. The second phase of accelerated reform has commenced in 2010,\textsuperscript{733} and with the Manuel and Zedillo reports, proposals for fundamental changes to the IMF’s and the World Bank’s governing structure are currently under consideration. Because voting rights and member representation of members are clearly correlated in governing bodies, voting rights are a major issue when new organizations are established. In certain cases, the establishment of new organizations or the creation of a new governance structure attached to trust funds has been prompted by dissatisfaction with the existing representation mechanisms.

\textbf{Organizational Structure, Governance Structure, and Voting Rights}

Organizational and governance structures of financial institutions are directly related to the voting rights of members. There is a substantial difference between voting systems of affiliated organizations that have proper legal personality as part of an organization’s group and consequently a proper capital structure and those of organizations that jointly administer concessional and nonconcessional resources. In affiliated organizations, constituent instruments determine voting rights, generally allocating such rights

\textsuperscript{724} CDB and IADB have adopted the same approach. CDB Charter, Article 32(3); IADB Charter, Article VIII, section 4(d)(ii); IDA Charter, Article VI, section 4(c).

\textsuperscript{725} IMF and World Bank, Voice and Participation of Developing and Transition Countries, para. 28.

\textsuperscript{726} ADB Charter, Article 33.3.

\textsuperscript{727} IsDB Agreement, Article 34(3).

\textsuperscript{728} AfDF Agreement, Article 29(5).


\textsuperscript{730} AFDF Agreement, Article 29 (5).

\textsuperscript{731} GEF Instrument, para. 25(c)(ii).

\textsuperscript{732} Global Fund Bylaws. Article 7.1.

\textsuperscript{733} For updates of phases I and II, see: IMF, Reform of IMF Quotas and Voice. See also IMF and World Bank, Development Committee, Enhancing Voice and Participation of Developing and Transition Countries in the World Bank Group: Update and Proposals.
to members in a manner at least partially proportionate with their subscriptions and/or contributions. However, voting rights in organizations that administer OCR and concessional resources under one legal personality and one institutional roof are not necessarily proportionate to contributions to special funds, but generally are allocated based on the organization’s capital structure and members’ shareholdings.

Thus, voting rights of members commonly differ in organizational groups comprising several legally-independent organizations even though their governance structures are coordinated. The implication is that voting rights may be allocated to members in each organization on the basis of their subscriptions. This is the case in both the AfDF and IDA. However, a major difference between the AfDF Agreement and the IDA Articles is that AfDB itself is a party to the AfDF Agreement and has subscribed funds for the AfDF.

As a matter of law and policy, there is no direct linkage between shareholdings of countries in AfDB or IBRD and their level of contributions to the AfDF or IDA. Nevertheless, a harmonization of shareholdings between the concessional and nonconcessional organizations of a group may provide donors with an incentive to maximize their contributions to concessional financing windows. For this reason, “in several selective capital increases in the past, shareholders’ decisions on IBRD shareholding have also explicitly but selectively taken into account support for the Bank Group, specifically IDA contributions and trust funds.”

In organizations that jointly administer concessional and nonconcessional resources, the same voting rights generally apply to the organization’s concessional and nonconcessional operations. Express provision to that effect has been made in IADB, where the board of governors and board of executive directors decide all matters regarding OCR and special funds. The members’ voting power is identical for both types of operations. The same applies in ADB, where any allocation of special voting rights to donors in consideration of special funds would require an amendment to the ADB Charter. In both organizations, voting rights relating to special operations are allocated based on the organizations’ capital structure regarding OCR. The capital structure of ADB and IADB guarantees that the majority of shares and voting rights is given to regional countries.

That the same voting rights apply to ordinary operations and special operations is consistent in IADB with the fact that increases in OCR and FSO resources are often in the same proportion and jointly negotiated through the Committee of the Board of Governors. However, neither applies in ADB, where ADF replenishments are negotiated in different forums, at different times, and often in different proportions than ADB general capital increases. Some ADB members contribute to the ADF well in excess of the percentage of their shareholdings in ADB while for others the proportion of their ADF contributions is less than that of their shareholdings in ADB. However, the Charter constrains, ADB’s ability to provide incentives to contributors to Special Funds resources by allocating special voting rights. Also, no special voting rights are applicable to the CABEI’s FETS and FONTEC or to CDB’s SDF.

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735 Article IV, Section 9(a) of the IADB Charter provides: “In making decisions concerning operations of the [FSO], each member country of the [IADB] shall have the voting power in the Board of Governors accorded to it pursuant to Article VIII, Section 4(a) and (c), and each Director shall have the voting power in the Board of Executive Directors accorded to him pursuant to Article VIII, Section 4(a) and (d).” Article VIII regulates the voting rights of members based on their subscriptions to IADB’s capital stock and any increases thereto.

736 Chapter 4 (G. Droesse, ADB Concessional Financing).

737 Ibid.
and OSF.\textsuperscript{738} In deciding on operational and policy matters regarding these special funds, members have the same voting rights as for matters funded by their OCR. However, the situation is different for the ISFD, because IsDB does not require the same voting rights for ordinary and special operations. Thus, IsDB was not prevented from allocating voting rights to ISFD participants who are not members of IsDB proportionate to their contributions and allocating a higher number of basic votes to participant countries than applicable under the IsDB Agreement.\textsuperscript{739} This shows that—even though precluded in certain cases by specific provisions of constituent instruments—allocation of specific voting rights to contributors is not intrinsically incompatible with the establishment or administration of Special Funds resources by international organizations.

Weighted Voting Systems

The approach to decision making in international organizations has been shaped by “the equalitarianism of traditional international law, the majoritarianism of democratic philosophy, and the elitism of European great power diplomacy [which] have been transferred to the sphere of international organization.”\textsuperscript{740} Equal voting rights were largely a corollary of the principle of sovereign equality of states in international law. However, the MFDIs studied here generally have adopted weighted voting systems modeled on those of the IMF and the World Bank.\textsuperscript{741} Such systems seek to facilitate resource mobilization by giving providers of concessional resources and/or capital a voice in the organization, while ensuring adequate representation of low-income countries and small countries.

Organizations face different challenges in striking a balance between these competing objectives. Balance is generally achieved by allocating a certain number or percentage of votes (i.e., basic, membership or subscription votes) uniformly among members, with the remaining votes allocated on a proportionate basis in relation to member subscriptions.

The main issue for IFAD involved its ability to mobilize resources, which was constrained by the fact that members’ voting rights in its system were unrelated to their contributions.\textsuperscript{742} This was a direct consequence of the fact that members’ voting rights initially reflected the specific characteristics of IFAD as an “organization founded on three pillars of membership.”\textsuperscript{743} While this “balance allowed equal participation for the interests of contributing countries and developing countries, creating a unique partnership,”\textsuperscript{744} it gave no incentive to members to make contributions to IFAD replenishments. Thus, a special committee appointed during the fourth replenishment concluded that “a formal category structure” was no longer necessary and should be abolished. Based on the recommendations of that committee, the AEI and other basic texts of IFAD were amended,\textsuperscript{745} approving the recommendations of

\textsuperscript{738} In the case of the FETS and FONTEC, no provision for special voting rights has been made in the resolutions of the board of governors establishing these funds.

\textsuperscript{739} In accordance with Article 11.01 of the ISFD regulations, each participant country shall have 1,000 basic votes plus 100 votes for each $1,000,000 it has contributed and paid to the fund, and each participant institution of a member country shall have 100 votes for each $1,000,000 it has contributed and paid to the fund. Under Article 34 of the IsDB Agreement, each member has only 500 basic votes plus one vote for every share subscribed.


\textsuperscript{742} See Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development).


\textsuperscript{744} For IFAD’s vote allocation system, see Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development).

\textsuperscript{745} IFAD. 1995. Resolution 86/XVIII. January.
the special committee.746 The new vote allocation system introduced by the fourth replenishment, which became effective on 20 February 1997, entailed substantial changes to IFAD’s governance structure.747

Other organizations faced a major challenge in ensuring adequate representation of developing member countries. AfDF and IDA have adopted different solutions in this regard.

As a group, AfDB and state participants each have 1,000 votes in the AfDF. “While the allocation of votes in two blocks of 1000 votes each represented an equilibrium between the voting rights of the AfDB and the State participants, the voting rights allocated to the AfDB were not a reflection of the AfDB’s financial contribution to the [AfDF], which represented about 5.5% of the total initial subscriptions.”748 Based on their subscriptions, state participants have a proportionate share of aggregate votes.749 Regional members of AfDB are represented in the AfDF only indirectly through AfDB if they are not state participants.750

On the other hand, all members of IDA, including developing member countries, are allocated voting rights. While “initial votes were tied to subscriptions and the price was uniform for all members,”751 Part I and Part II members were distinguished according to their ability to pay.752 The distinction between these two categories was to facilitate participation of developing member countries for which different arrangements regarding payment in usable currencies were applied. Each original member of IDA had 500 initial subscription votes (twice the amount allocated in IBRD) and one subscription vote for each $5,000 of its initial subscription.753

Additions to IDA’s resources can be authorized as additional subscriptions with voting rights or contributions without voting rights. Under Article III, section 1 of the IDA Articles, additional subscriptions (which carry voting rights) require two-thirds majority of the total voting power of the board of governors; other members can exercise preemptive rights (i.e., subscribe an amount that enables them to maintain their relative voting power).754

IDA members made additional contributions to the first and second replenishments, in proportions different from their initial subscriptions.755 The two replenishments resulted in increased discrepancy

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746 The total number of votes in the governing council now consists of original votes (composed of 790 membership votes distributed equally among all members and 1,100 contribution votes distributed proportionately in relation to members’ cumulative contributions) and replenishment votes. Replenishment votes are “in a total amount of votes to be decided by the Governing Council” for each replenishment commencing with the Fourth Replenishment. See AEI, Article 6, section 3.


749 AfDF Agreement, Article 29(3).

750 Originally, regional member countries did not have any voting rights if they joined the AfDF as a state participant. See AfDF Agreement, Article 29(3). This did not encourage regional members to join and delayed the participation of South Africa. In 2002, an amendment to the AfDF Agreement was approved by the board of governors, which allocated to regional member countries who become state participants up to 1% of the total voting rights of state participants, with the proviso that state participants can only exercise voting rights derived from their own participation and not from their representation of AfDB. In the context of the review of the AfDF governance structures, consideration is given as to whether the above interim solution should be maintained, or the voting rights allocated for that purpose should be expanded by 1% or 2%.


752 In accordance with Article II, section 2(c) and (d) of the IDA Articles, 10% of the initial subscription was payable in gold or freely convertible currency. The remaining 90% were payable in gold or freely convertible currency for Part I members but in local currency and in five equal annual installments for Part II members.

753 IDA Articles, Article VI, section 3(a).

754 IDA Articles, Article III, sections 1(c) and 2(b).

755 Resolutions no. 48 and 66 of the board of governors regarding the first two replenishments of IDA contained identical provisions stating that “[s]uch contributions shall not be regarded as additional subscriptions and, in accordance with the provisions of Article VI, Section 3(a) of the Articles of Agreement of [IDA], shall not carry voting rights.”
between the resources contributed by members and their voting rights.\footnote{IDA. 1970. Report of the IDA Executive Directors of 21 July, Additions to IDA Resources: Third Replenishment. Washington, DC: IDA.} Therefore, during negotiations for the third replenishment, members agreed that voting rights of Part I members should be adjusted “to reflect their total financial contributions to [IDA],” including those being made available under the Third Replenishment” (IDA3). Short of amending the IDA Articles, the only way of doing this was to authorize them to make additional subscriptions to IDA,\footnote{IDA Articles, Article VI, section 3(a).} thus requiring under the agreement's preemptive rights provision\footnote{IDA. 1989. Memorandum of the Legal Department, The Legal Aspects of Voting Rights in IDA. 20 March.} that all members be given the opportunity to increase their subscriptions.\footnote{In their report on IDA5, the deputies agreed to review the general question of voting rights in IDA before the start of the sixth replenishment. A discussion on this subject took place at the special meeting of deputies in June 1978 when it was clear that there was substantial opposition to any amendment of the IDA Articles. Subsequently, it was decided that the method used of adjusting voting rights should also be followed for the sixth replenishment (IDA. 1980. Report of the Executive Directors of IDA, Additions to Resources: Sixth Replenishment). Certain refinements regarding allocation of voting rights in the case of submission of a qualified instrument of commitment were approved in the context of IDA8 negotiations. During the negotiations regarding the ninth replenishment of IDA (IDA9), donors addressed IDA's voting rights system but recommended that it should not be changed. See IDA. 1990. Additions to IDA Resources: Ninth Replenishment. Washington, DC.} The result was a comprehensive review of voting rights governed by four basic principles that, with some further refinements, currently still apply:

(i) The voting rights of each Part I member should correspond (except for the membership votes) to its share of the total cumulative Part I resources contributed to IDA.

(ii) To enable Part II members to maintain their relative voting power at minimal cost, Part II members were authorized to make subscriptions at nominal cost and payable in local currency.\footnote{\$80 per vote in the third replenishment and $25 per vote in subsequent replenishments. Ibid.}

(iii) Special arrangements were made for those Part II members that provide additional resources “in usable form” to IDA and its lending operations.

(iv) To avoid dilution of relative voting power of the smaller members, additional membership votes were allocated to Part I and Part II members when they made additional subscriptions.\footnote{See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).}


Nevertheless, the system introduced during IDA3 did not fully achieve the desired purpose of avoiding dilution of the voting rights of Part II members; there is “a large discrepancy between votes allocated and actual voting rights, because not all Part II members have subscribed for the full amount allocated to them.”\footnote{IDA. 2005. Additions to IDA Resources: Fourteenth Replenishment, Working Together to Achieve the Millennium Development Goals. http://siteresources.worldbank.org/IDA/Resources/14th_Replenishment_Final.pdf. See IMF and World Bank, Development Committee. 2008. Enhancing Voice and Participation of Developing and Transition Countries in the World Bank Group: Options for Reform. (DC2008-0013, 10 October 2008). para. 41. http://siteresources.worldbank.org/DEVCOMMINT/Documentation/21937448/DC2008-0013(E)Voice.pdf} Because Part II members as a group could increase their subscriptions substantially (i.e., from 41.8% to 48.3%) by paying up their allocated subscriptions, the World Bank's management seeks to encourage Part II members to avail themselves of this opportunity to increase their voting rights. As of March 2010, Part II members’ voting power has increased to 45.59% through “subscriptions by
members and activation of the IDA Voice Trust Fund which is funded from contributions from France, Norway, Spain, and Switzerland.\textsuperscript{764}

Different approaches regarding allocation of voting rights have also been adopted by CDB and IADB, on the one hand, and ADB, on the other hand. Each IADB member has 135 votes\textsuperscript{765} and CDB members have 150 votes apiece,\textsuperscript{766} and each organization allows its members one additional vote for each share of capital stock. Thus, in CDB and IADB, votes uniformly allocated to members are defined in absolute terms. This is not the case in ADB. Under the ADB Charter, basic votes correspond to 25% of proportionate votes.\textsuperscript{767} In ADB, unlike in other organizations, the percentage of basic votes is not diluted in the context of capital increases. For this reason, ADB’s charter offers an example for reforms in other organizations (e.g., IBRD and IMF).

**Qualified Majorities**

Generally, MFDIs have identified in their constituent instruments certain matters of fundamental importance that require qualified majorities (i.e., support by more than a simple majority of the members). Such matters often belong but are not limited to those vested in the plenary body or board of governors; in certain cases, boards of directors also are required to decide matters by a qualified majority. In addition, constituent instruments sometimes require agreement of all members or consensus. Since the process of obtaining unanimous decisions tends to be time consuming and cumbersome, the constituent instruments of organizations define unanimity requirements narrowly and generally limit them to a few cases where members’ rights must be protected.\textsuperscript{768} Thus, IDA requires the agreement of all members only for amendments that limit the right of a member to withdraw from the organization, exercise preemptive rights, or concern limitations of members’ liabilities.\textsuperscript{769} The AfDF Agreement contains similar unanimity requirements.\textsuperscript{770} However, any amendment to the AfDF Agreement modifying “voting majority requirements” must gain the unanimous approval of the governors.\textsuperscript{771} Moreover, any admission of a new state participant to AfDF membership requires a “unanimous resolution [of the Board of Governors] adopted by the affirmative vote of the total voting power of the participants.”\textsuperscript{772} This may be seen as a corollary of the fact that states may become a member of the AfDF without being a member of AfDB. Thus, IDA, which only admits members of IBRD, has no such requirement. The requirement also does not exist in the other MFDIs studied here that allow admission by simple or qualified majority.

It is an interesting phenomenon that through the establishment of special funds and, in general, in the context of the replenishments of concessional resources, unanimity requirements have been created that extend substantially beyond the specific cases listed in constituent instruments that require this type of decision making. For example, the ADB Charter does not preclude that provision for special majorities is made for certain decisions regarding special funds. Special majorities are delineated in the ADF Regulations that were adopted by the ADB Board of Directors pursuant to Article 19.4


\textsuperscript{765} IADB Charter, Article VIII, section 4(a).

\textsuperscript{766} CDB Charter, Article 32(1).

\textsuperscript{767} See Chapter 4 (G. Droesse, ADB Concessional Financing). The ADB Charter provides that “[t]he total voting power of each member shall consist of the sum of its basic votes and proportional votes. (i) The basic votes of each member shall consist of such number of votes as results from the equal distribution among all the members of twenty (20) per cent of the aggregate sum of the basic votes and proportional votes of all the members. (ii) The number of the proportional votes of each member shall be equal to the number of shares of the capital stock of the Bank held by that member” (Article 33.1).

\textsuperscript{768} For example, see the ADB Charter, Article 59.2; IADB Charter, Article XII (b); IsDB Agreement, Article 62(2).

\textsuperscript{769} IDA Articles, Article IX (b).

\textsuperscript{770} AfDF Agreement, Article 51(2) (i), (ii), and (iii).

\textsuperscript{771} AfDF Agreement, Article 51(2) (iv).

\textsuperscript{772} AfDF Agreement, Article 3(3).
of the ADB Charter. Thus, while ADB’s governing bodies cannot allocate special voting rights to donors in consideration of contributions to special funds, they may define special majorities relating to such funds. Under the ADF Regulations, the acceptance of supplementary resources from nonmember governments and other sources, and any amendment to the ADF Regulations, require the adoption of a special resolution approved by a majority of directors representing not less than two-thirds of the total voting power of ADB members.\textsuperscript{773} In addition, “prior consent in writing of every Contributor”\textsuperscript{774} is required for amendments regarding the use of ADF resources, drawdown of contributions, charging of administrative expenses, right of a contributor upon withdrawal and arbitration. In accordance with the SDF Regulations, “[t]hese Rules may be amended or revoked by CDB only at the end of a Contribution Cycle [and no] such amendment or revocation shall be effective in respect of any Contribution Agreement concluded prior thereto without the unanimous consent of the Contributors.”\textsuperscript{775}

Further unanimity requirements may result from the fact that reports of deputies or donors regarding replenishments of concessional resources increasingly incorporate specific undertakings agreed upon during replenishment negotiations regarding actions to be taken by MFDIs on certain financial, operational, or policy matters. Necessary changes to matters covered by such undertakings may require prior agreement of all donors.

Amendments to constituent instruments often require ratification by members’ legislative bodies. Thus, to the extent that unanimity is not required, in IDA, amendments are approved “when three-fifths of the members having four-fifths of the total voting power have accepted them.”\textsuperscript{776} Following approval of an amendment by the Board of Governors, IDA asks all members whether they accept the amendment. Unlike IBRD, the biggest shareholder has no veto right in IDA. However, no amendment can take effect if the two largest shareholders or a group of members do not agree.\textsuperscript{777} Other MFDIs studied here require a decision of their plenary body with a qualified majority for any amendment to their constituent instrument, either a four-fifths majority of the total number of votes (IFAD)\textsuperscript{778} or a majority of two-thirds of the total number of governors representing not less than three-fourths of the total voting power (ADB, CDB, IsDB).\textsuperscript{779} In IADB, the same percentage of total voting power is required for amendments to take effect. However, provision has been made that the majority of the total number of governors approving an amendment must include two-thirds of the governors of regional members.\textsuperscript{780} In the organizations discussed above, provision has been made that formal certification of the adoption of an amendment is communicated to all members. Amendments take effect 3 months after the date of that communication unless the plenary body specifies a different period.\textsuperscript{781}

\textsuperscript{773} ADF Regulations, Section 1.02. (c), 2.06. (a), and Section 6.1.
\textsuperscript{774} Those cases are specified in the ADF Regulations Section 6.01 (a) to (e).
\textsuperscript{775} SDF Regulations, para. 6.1.1.
\textsuperscript{776} IDA Articles, Article IX (a).
\textsuperscript{777} IDA Articles, Article IX (a).
\textsuperscript{778} For IBRD, see the IBRD Articles, Article VIII, which requires acceptance of amendments by three-fifths of the members having 85% of the total voting power. For IDA, see the IDA Articles, Article IX (a), which requires acceptance of amendments by three-fifths of the members having four-fifths of the total voting power. For the voting power of members in IBRD and IDA, see World Bank, Board of Directors. Voting Powers. http://web.worldbank.org/WEBSITE/EXTERNAL/EXPECTANT/ ORGANIZATION/BODEXT/0,,contentMDK:21429866~menuPK:64020035~pagePK:64020054~piPK:64020408~theSit ePK:278036,00.html
\textsuperscript{779} ADF Regulations, Section 1.02. (c).
\textsuperscript{780} For example, see the ADB Charter, Article 59.1; CDB Charter, Article 58(1); IsDB Agreement, Article 62(1).
\textsuperscript{781} IADB Charter, Article XII (c); CDB Charter, Article 58(3); ADB Charter, Article 59.3; IsDB Agreement, Article 62(3).
Qualified majorities are also required for a range of other important decisions. Admission to membership requires a qualified majority in most cases. Such majorities are also foreseen for decisions such as

(i) suspension of membership,
(ii) increases in capital,
(iii) increasing the size of the board of directors,
(iv) determining the procedure for election to the board of directors,
(v) electing or terminating the appointment of the executive head,
(vi) permanently suspending or terminating an organization,
(vii) settling obligations and distributing assets, and in some cases
(viii) operational and financial decisions (e.g., procurement of goods and services from nonmember countries or conversion of currencies).

However, there is no uniformity among organizations regarding the matters that are subject to a qualified majority, or the types of majorities being used. Provisions for qualified majorities are “to ensure that the most important decisions receive the consensus necessary to carry them out or make them effective.” Often there are cumulative requirements regarding the number of members (and regional members) of a governing body making a decision and the voting power those members represent. Moreover, various types of qualified majorities may apply. For example, ADB uses four types of special majorities.

Some organizations and organization groups have defined qualified majorities for their concessional operations that do not apply to operations funded by their OCR. This is notably so for the AfDF and IADB, where qualified majorities for concessional operations are the rule rather than the exception.

In the AfDF, a three-fourths majority of the total voting power of participants is required for all matters before the board of governors and board of directors, but AfDB has no such requirement. Moreover, the AfDF requires an 85% majority of the voting power in some cases (e.g., general increases in subscriptions and contributory arrangements with nonmembers). In essence, this means that all AfDF matters require a joint decision by AfDB and its state participants.
Similarly, IADB requires a three-fourths majority for all decisions regarding the operations of the FSO.\textsuperscript{798} These provisions give the major shareholder or groups of shareholders a veto right regarding decisions on AfDF and FSO matters. While such power is rarely used, it gives important leverage to the countries concerned.

In IDA, the required qualified majority (two-thirds of total voting power) for additional subscriptions in IDA\textsuperscript{799} is less than that applicable to increases in IBRD capital stock (three-fourths of total voting power).\textsuperscript{800} An increase in the number of executive directors requires a qualified majority of four-fifths\textsuperscript{801} of the total IBRD voting power.

Qualified majorities are among the reasons that make institutional reform a difficult and time-consuming task. They may give one or more members or a group of members a veto right. Thus, amendments to constituent instruments and other fundamental changes to institutional or governance structures generally require a consensus of all major shareholders, which often can be assured only by pursuing suboptimal results of modest ambition.

**Double-Weighted Voting System**

The GEF’s double-weighted voting system is a “hybrid between the UN and the Bretton Woods systems.”\textsuperscript{802} This system is interesting because it aims to promote a balance between criteria applicable to the Bretton Woods institutions, “which place a high value on the fulfillment of economic criteria such as efficiency, cost effectiveness and financial accountability,” and the political structure of the UN, which is “designed to further political values such as country-based democratic representation, universality and accountability” through institutions whose “main decision-making principle…is one country, one vote.”\textsuperscript{803} While effectively not applied in practice, the GEF Instrument provides for a formal decision-making process in the event that no consensus can be achieved. In such a case, decisions are made by an affirmative vote representing a 60% majority of both the total number of participants and the total voting power. This system inspired the voting system of the Global Fund. Nevertheless, there are important differences. While in the case of the GEF, the double-weighted majority system ensures that “those making contributions are accorded adequate importance in the decision-making process,” in the Global Fund “voting groups aim at ensuring that all constituencies are equally represented on the vote.”\textsuperscript{804} Also, the Global Fund’s decision-making process “gives the private sector, NGOs and affected communities a real voice on the Global Fund’s Board and therefore on funding decisions.”\textsuperscript{805}

The double-weighted voting system of the GEF and the Global Fund is under consideration for wider application in other international organizations (e.g., the IMF and the World Bank) because it gives developing member countries an effective voice and influence in decision making, while allocating to donors voting powers proportionate to their contributions. It “would reconcile the principle of the juridical equality of states with the need to take strong account of the prevailing hierarchy of economic power, and would [in the IMF] also simplify other problematic aspects of the quota determination and voting procedures.”\textsuperscript{806} While IBRD and IDA articles of agreement both require an affirmative vote by

\textsuperscript{798} IADB Charter, Article IV, section 9(b).

\textsuperscript{799} IDA Articles, Article III, section 1 (a) and (d).

\textsuperscript{800} IBRD Articles, Article II, section 2 (b), and IDA Articles, Article III, section 1.

\textsuperscript{801} IBRD Articles, Article V, section 4 (b) (ii).

\textsuperscript{802} Sjöberg, Restructuring the Global Environment Facility, p. 50.

\textsuperscript{803} Ibid., pp. 53–54.

\textsuperscript{804} See Chapter 10 (A. Tripone, Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid).

\textsuperscript{805} Ibid. For details regarding the double-weighted voting of the Global Fund, see Chapter 10 (A. Tripone, Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid).

a specified number of members and a specified voting power in certain cases, no current requirement states the necessity of a decision supported by a majority of developing countries and transition countries. Amendments to the articles of agreement of IBRD and IDA would be necessary to introduce such double majority or additional qualified majority requirements to ensure substantial support of developing countries and transition countries for specific decisions. While many members of the IMF and the World Bank have requested such changes, these are mostly considered only for a rather limited application (e.g., selection of the IMF’s managing director)\textsuperscript{807} and for certain operational decisions, rather than as a replacement of current decision-making procedures. In particular, the implementation of any financial and strategic decision would continue according to current decision-making procedures and based on current voting rights, as there is concern that the introduction of a double-weighted voting system must not weaken the financial strength of MFDIs. However, even such limited application of the double-weighted voting system in the Bretton Woods institutions would require amendments to their constituent instruments, making any such undertaking a very difficult task.

**Special Voting Rights Regarding Contributions to Special Funds**

Voting rights regarding special funds are generally allocated to members based on nominal capital subscription to the organization’s OCR without consideration of whether such subscription is in a usable currency or whether the MFDI has actually made use of the payment provided by the member in cash or promissory note. Such allocation of voting rights may be a legal requirement under the constituent instrument and/or under secondary law.\textsuperscript{808} However, allocating special voting rights for contributions to special funds may provide an incentive to contributors to contribute to such resources to their full potential. The example of ISFD shows that it is not incompatible per se with the establishment of a special fund that special voting rights are allocated to members’ contributions to that fund. While under Article 34 (1) of the IsDB Agreement each member has 500 basic votes plus one vote for each IsDB share subscribed for decisions regarding IsDB’s OCR and operations, each country participating in the ISFD has 1,000 basic votes plus 100 votes for each $1 million it has contributed and paid for decisions regarding ISFD matters.\textsuperscript{809} This measure was adopted to encourage contributions to the ISFD. Participating institutions, which are allowed to share in decision making if they contribute $20 million or more, are not allocated any basic votes but only 100 votes for each $1 million contributed and paid.\textsuperscript{810} In decision making before the board of governors, representatives of eligible participants may cast their votes directly. However, this is not the case for decision making before the board of executive directors, where participating institutions are represented only through the executive director acting for their country. In the ISFD, governors and executive directors are entitled to cast the votes of the participants they represent in the ISFD as well as a proportionate share of IsDB votes in the ISFD.\textsuperscript{811}


\textsuperscript{808} See Chapter 4 (G. Droesse, ADB Concessional Financing).

\textsuperscript{809} ISFD Regulations, Article 11.01.

\textsuperscript{810} Ibid.

\textsuperscript{811} ISFD Regulations, Articles 11.02 and 11.04. IsDB’s initial contribution to the ISFD amounted to $1 billion (ISFD Regulations, Annex A).
Special Voting Rights Regarding Contributions to Trust Funds

Trust funds and organizations’ regular concessional financing window are linked in many ways. Trust funds supplement organizations’ own resources, and they may be administered on terms and conditions similar to the organizations’ own resources. Nevertheless, there are only a few cases where contributions to trust funds result in allocation of voting rights in organizations providing concessional financing. In IDA, this situation has occurred when resources of the trust fund were absorbed by or used for payments to IDA.

One of the most important examples relates to the allocation of voting rights in IDA in consideration of donors’ contributions to the HIPC Trust Fund. As a matter of law, such an allocation is distinguishable from the allocation of voting rights given to IDA members in consideration of their contributions to the MDRI, which were partially made in the form of subscriptions to IDA carrying voting rights and is also different from additional subscriptions and contributions of IDA members to IDA regular resources to compensate IDA for the cost of debt relief under the HIPC Initiative.812 While the MDRI involved additions to IDA’s resources to provide compensation for IDA’s debt forgiveness, thus constituting an unscheduled replenishment of IDA, the contributions to the HIPC Trust Fund carried voting rights because they were meant to finance the cost of IDA’s debt relief.813 Regarding the bridging arrangements that became necessary in certain cases (e.g., the Special Account and the IDA11 Interim Trust Fund),814 voting rights were allocated to members only after the trust funds had been terminated and their resources had been allocated to IDA’s resources.

One characteristic of trust funds is that voting rules can be attached to funds that are different from those of the organization acting as trustee. This is the case for many FIFs (e.g., the GEF and the Global Fund). In trust funds for which international organizations act as administrator and, accordingly, have authority to decide on the operational commitment of such funds, special voting rights generally are not applicable. However, exceptions to this principle have been made in some cases. The IADB Grant Facility and the Intermediate Financing Facility (IFF) are particularly interesting because the provision of voting rights in these two cases differs from Article IV, section 9(a) of the IADB Charter, which allocates to members the same voting power for decisions regarding the FSO and for operational decisions regarding the IADB’s OCR. The resolution of the board of governors that established the IFF provides that, for decisions to fund a portion of the interest due to [IADB] on capital loans taken by the Board of Executive Directors..., each member country shall have one vote for each one thousandth

812 IDA members had the option to support “the continued use of the two mechanisms introduced in IDA14 for donors’ HIPC-related contributions: (a) contributing to IDA directly; or (b) channeling contributions through the Debt Relief Trust Fund. The HIPC-related contributions will be recorded separately from regular IDA contributions in order to ensure that HIPC debt relief is additional to other IDA assistance.” IDA. 2008. Additions to IDA Resources: Fifteenth Replenishment. IDA: The Platform for Achieving Results at the Country Level. p. 37. http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/73449-1172525976405/FinalreportMarch2008.pdf?bcsi_scan_B90AE85AF6AB15C6=0&bcsi_scan_filename=FinalreportMarch2008.pdf

813 Donors were given by the IDA 14 Resolution the opportunity to make HIPC-related contributions to IDA (as part of their regular contribution to the replenishment). Alternatively, they had the option to channel their contribution through the HIPC Trust Fund (IDA, Additions to IDA Resources: Fourteenth Replenishment, p. 36) by depositing their contributions in the World Bank component of the HIPC Trust Fund, which contributions [were] transferred to IDA to reimburse IDA for its foregone credit reflows. Since these funds become part of IDA’s general resources at the time of transfer from the HIPC Trust Fund to IDA’s cash accounts, donors [received] additional voting rights in IDA following such transfers. Ibid. In accordance with the IDA 14 Resolution, para. 13(c), each member that had made an HIPC Transfer Contribution was “allocated a proportionate share of the subscription votes … following payment of any amount of its HIPC Transfer Contribution to compensate [IDA] for forgiveness for debt under the HIPC Debt Initiative.” Similar provisions were agreed upon for IDA 15. IDA. Additions to IDA Resources: Fifteenth Replenishment. pp. 37 and 38.


814 See Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
of a percent that its contribution in convertible currencies to the [IFF] on any given time bears to total of such contributions.”815 Identical provisions are contained in the resolution of the board of governors establishing the IADB Grant Facility.816 Thus, unlike FSO matters, special voting rights are allocated to members for decisions regarding the grant facility and the IFF, which are approximately equivalent to members’ contributions to the FSO. However, such voting rights are allocated only for contributions in convertible currency. Moreover, the decision-making procedure differs from that of the FSO in that a qualified majority of three-fourths of the total voting power is not required.817 Rather, in the case of the grant facility and the IFF, all decisions are made by the total voting power allocated to the member countries.

**Future Perspectives**

**Current Issues**

Much has been written about the proliferation of concessional windows, which has resulted in the establishment of channels for the provision of concessional financing that far exceed the number of recipients.818 Donor fragmentation occurs when a large number of donors provide a small percentage of aid to a given country, and is exacerbated when donors providing such financing are internally fragmented as well because their many concessional windows are not well coordinated either internally or in the recipient countries of their financing. MFDIs use a wide variety of different paradigms of organizational structure, institutional frameworks, governance structures, replenishment processes, and terms and conditions for the provision of concessional financing, often without ensuring proper coordination between their various concessional windows and also between their concessional and nonconcessional windows. In addition, they frequently lack a coherent conceptual and operational framework for using all of their concessional and nonconcessional resources.

When IDA was established in 1960, those who drafted its articles of agreement sought to distance IBRD from IDA. However, the need for close cooperation and strengthened synergies between concessional and nonconcessional windows is articulated more frequently. Against this background, some have asked whether affiliated organizations with separate legal personality remain an appropriate organizational paradigm for the provision of concessional financing. Thus, the High Level Panel appointed by the president of AfDB suggested among other things that AfDB “should bring together its concessional and nonconcessional windows, its sovereign and nonsovereign operations into a coherent whole [and stated that AfDB’s resources] must be deployed accordingly, and management and shareholders must work together to unlock the Bank’s untapped financial capacity.”819 Doing so would require enhanced cooperation between AfDB and AfDF and also would require “a nuanced approach [and] tailored solutions to the particular needs of each country.”820 So far, the full potential of synergies between organizations’ concessional and nonconcessional resources has not been realized, and a large middle ground between the financing offered by organizations’ hard windows and soft windows requires further exploration.

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817 IADB Charter, Article IV, section 4(b).
819 AfDB, *Investing in Africa’s Future*, p. 27.
820 Ibid., p. 13.
While this is particularly evident in the AfDB Group, where less than one-third of African countries are eligible to borrow from AfDB and only very few blend countries are eligible to borrow from both AfDB and AfDF,\textsuperscript{821} it is by no means limited to that group. Unlike affiliates, organizations that jointly administer concessional and nonconcessional resources are not constrained by the separate legal personality of their concessional windows that insulates such windows from their nonconcessional operations. However, such organizations have much room for enhancing the synergies between both types of windows in finding tailored solutions for each country.

In the last decade the amount of concessional financing channeled through trust funds has increased dramatically. There are substantial differences regarding the extent to which MFDIs use trust funds. Some organizations (e.g., the World Bank) have administered thousands of trust funds, while others (e.g., CDB and IFAD) do not use trust funds at all as channels of concessional financing, or use them only to a limited extent.

Another major cause of internal fragmentation of MFDIs is the currently marginal exploitation of synergies between organizations with regular concessional windows (established as affiliates or special funds) and trust funds and other cofinancing arrangements which organizations use to leverage their activities and support their work programs. While trust funds and other cofinancing arrangements joined the mainstream of concessional financing, funds mobilized on that basis are still administered for the most part without sufficient coordination with organizations’ regular windows, and partly with separate governance structures and replenishment procedures. This adds to the transaction costs of organizations providing concessional financing and reduces their development impact and effectiveness.

There are substantial differences regarding the extent to which MFDIs use trust funds. Some organizations, such as the World Bank, have administered over the years thousands of trust funds, while other organizations (e.g., CDB and IFAD) do not use trust funds as channels of concessional financing, or only to a limited extent. In addition to trust funds administered and executed by MFDIs, there is a wide range of recipient-administered trust funds and FIFs, with a great variety of different legal status, governance structures, and replenishment procedures. Resources allocated to alliances, facilities, and multi-actor funds established in the latter category have dramatically increased. These alliances, facilities, and multi-actor funds have become a substitute for the establishment of new international organizations. Overall the situation has become of such complexity that, even for experts, it is not easy to keep an overview of the multiple channels of concessional financing.

The changes to the governance structures of MFDIs since their establishment in the 1960s and 1970s have been minor. However, the demographic, economic, and political realities have changed dramatically during recent decades. It is increasingly questioned whether MFDIs are representative and effective in the performance of their functions. In particular, the IMF and World Bank currently face substantial challenges because their governance structures no longer reflect either changed circumstances or the weight and importance of countries in the world economy and are no longer considered representative by many developing member countries. For that reason, IMF and World Bank have engaged in a process of enhancing voice and participation of developing and transition countries in decision making.\textsuperscript{822} While demands for fundamental changes to organizations’ governance structures have increased, no consensus has emerged regarding the nature of the changes that are required.

\textsuperscript{821} Ibid., p. 28.

The Difficult Reform Agenda

Reform proposals have been made at several levels. Some proposals aim at a great redesign of the international aid architecture: merged institutions, the creation of new institutions to replace existing ones, the creation of entirely new governance structures, and fundamental changes to voting rights and decision-making procedures. These proposals can be adopted only by amending constituent instruments, and would require decisions by a qualified majority or, in certain cases, a unanimous vote of the governing bodies of one or more institutions. Many countries also require legislative approval for accepting amendments to constituent instruments.

There is a range of other proposals (e.g., changing relative shareholdings through special increases in subscriptions) and changes to procedures regarding the appointment of the executive heads of organizations. Such changes normally do not require an amendment of the constituent instrument, but some institutions require decision by a qualified majority in these matters.

Considering vested interests in the current system, the general difficulty of fundamentally changing the governance, institutional, and organizational structures of international organizations and, particularly, the voting rules and qualified majorities that present formidable obstacles to any institutional reform, the likelihood that proposals for a grand redesign of the international aid architecture will succeed in a short or even medium-term appears slim. While guaranteeing the interests of members, qualified majorities also tend to produce suboptimal solutions of modest ambition.

Nevertheless, the 2008 financial crisis, which resulted in a worldwide meltdown of financial institutions, has generated an increased realization that something has to be done and has given impetus to proposals for reforming the IMF and the World Bank. The Group of Twenty Finance Ministers and Central Bank Governors (G-20)823 will provide an important forum for those discussions. Established in 1999 in response to the financial crisis of the late 1990s, the G-20 has a broad mandate to address international development, economic, and financial windows. Comprising 10 industrial countries and the 10 largest emerging economies, the G-20 is highly representative and, therefore, viewed as the nucleus of a new system of global governance. It was instrumental in advancing the discussion on voice and quota reform in the IMF and in making voting rights in the IMF more reflective of economic developments. At its 15 November 2008 Summit on Financial Markets and the World Economy in Washington, DC, G-20 members expressed their commitment “to advancing the reform of the Bretton Woods Institutions so that they can more adequately reflect changing economic weights in the world economy in order to increase their legitimacy and effectiveness.”824 Since then, the reform of international financial institutions has been on the agenda of the G-20, among other gatherings at the Pittsburgh summit of 25 September 2009825 and the Toronto summit in June 2010.826 Discussions in the G-20 and other forums may lead to new concepts of international aid architecture. However, the difficulties in making fundamental changes to the organizational and governance structures of institutions must not be underestimated.

The IMF and the World Bank have initiated a process to adjust current imbalances of quota and voting rights. The first phase of voice and quota reform commenced in 2008 and the second phase has commenced in 2010. However, institutional reform is likely to be a long and drawn-out process, as emphasized by the fact that relatively minor amendments approved by the IMF Board of Governors in April 2008, following years of discussion, required more than two years before acceptance by

IMF member countries. Although important, the amendments are relatively minor in comparison with the sweeping changes that would be required for a major restructuring of the IMF or the World Bank, as recommended by the Manuel and Zedillo Reports, let alone a restructuring of the entire aid architecture. The IMF Articles already foresee a ministerial-level governing body (i.e., the Council). Thus, this body can be activated at any time if the IMF Board of Governors decides with an 85% majority of the total voting power that the provisions of Schedule D of the IMF Articles shall be applied.\footnote{IMF Articles, Article XII, section 1, and Schedule D.} However, the reconstitution of the World Bank’s board of executive directors as World Bank Board with ministerial membership would require an amendment to the IBRD Articles, as would other fundamental changes proposed by the above reports.

Experience shows that any substantial restructuring of MFDIs involving amendment of constituent agreements by governing bodies and/or member states entails substantial difficulties and requires an extended period for implementation. Moreover, any restructuring of the IMF and the World Bank would not automatically solve the proliferation of concessional windows and the fragmentation of aid architecture, since any proposals involving changes to institutional structures of other organizations and concessional windows likely would be considered only in a second phase, following the completion of restructuring the IMF and/or the World Bank.

Substantial changes to the current aid architecture within a short- or even middle-term period probably could be implemented only in the event of dramatic events (e.g., a major health or security crisis), the impetus of which is sufficient to overcome the institutional barriers that currently insulate concessional windows from each other. Lacking such an event, the current situation is likely to continue for a longer period, possibly several decades. Thus, it is not advisable to wait until a possible restructuring of the aid architecture to address the phenomena listed above. Rather, in parallel with the attempts to reform the current aid architecture, discussion should focus on matters that can be achieved within a medium-term range, based on the current legal frameworks of concessional windows.

A possible solution could be to transform international organizations in similarly structured multi-donor platforms and umbrella operational arrangements comprising in addition to their own resources a variety of trust funds, including financial intermediary funds, and other co-financing arrangements which are administered on the same terms and conditions for a defined purpose.

As is shown in this book, there are many examples of elaborate governance structures which have been created for financial intermediary funds. The governing bodies of such funds are often composed in a different manner than those of the organization acting as trustee and different decision-making procedures may apply. The Water Facility Special Fund of AfDB discussed above is an interesting example of an AfDB special fund with its own governance structures. As shown, there are also various examples of partnership facilities which comprise in addition to organizations’ own resources (e.g., special funds), trust funds other types of co-financing arrangements and which have governance structures of their own. Moreover, under the overall framework of facilities approved by organizations’ governing bodies, financing decision have been delegated in certain cases (e.g., for multi-tranche facilities) and/or executive heads of organizations have been authorized to accept trust funds and other types of co-financing arrangements. While such arrangements so far are only being applied in a very rudimentary manner and for specific and narrowly defined circumstances, they could be combined and be given a wider application.

While a complete delegation of financing decisions to the executive head of an organization is often not possible under MFDIs constituent agreements, organizations’ governing bodies (e.g., board of governors or board of directors) generally have the power to establish under umbrella operational arrangements for countries or sectors approved by them supplementary governance structures (e.g., a council, steering committee, annual donors’ meeting or other similar body) which are applicable to all resources administered by them, including trust funds (financial intermediary funds) and other types of co-financing arrangements. The bodies so established may be composed in a different manner (e.g.,
comprising nongovernmental organizations and other stakeholders) than organizations’ regular governing bodies and different decision-making procedures might apply. Adopting this approach, organizations could be transformed in multi-donor (and possibly) multi-actor platforms which are structured in a similar manner. Such transformation could be achieved as a matter of policy and would not necessarily require, even though it could be combined with, amendments to organizations’ constituent agreements.

Adopting such an approach would involve advantages at various levels. It might allow organizations to involve stakeholders which are currently not included in their formal decision-making processes. It would allow organizations to offer, through closely coordinated trust funds or other co-financing arrangements which are administered on the same terms and conditions as their regular concessional windows, a range of new modalities of concessional financing (e.g., for trade financing or additional risk management products). In addition, organizations could mobilize additional resources from the private sector and philanthropy and substantially reduce their transactions cost while enhancing their development effectiveness through increased synergies resulting from the coordinated administration of their different resources.

Coherent Frameworks and Umbrella Operational Arrangements for All Resources

Simplification, enhancement of organizations’ current windows for concessional and nonconcessional financing, and further alignment of administrative procedures are urgently required. This process should parallel the discussions on institutional and governance reforms of international organizations.

As shown here, there is a large middle ground between organizations’ concessional and nonconcessional windows, which has not been sufficiently explored thus far. It is important to further strengthen synergies between such windows. For that purpose, a range of new instruments and innovative solutions “tailored to country needs” and involving both concessional and nonconcessional financing should be developed (e.g., for regional projects that cut across client groups and projects at the subsovereign level). However, the process should not stop there. It is equally important to integrate, in addition to MFDIs’ concessional and nonconcessional resources, trust funds and other cofinancing arrangements in coherent conceptual and operational frameworks and to align and coordinate their administrative procedures and governance structures.

Implementation arrangements would necessarily vary among organizations and depend on their organizational structure, institutional framework, and governance structure. However, to the extent possible the overall guiding principle should involve standardizing and simplifying the terms, conditions, and contributory mechanisms under umbrella operational arrangements that comprise organizations’ own resources as well as trust funds and other cofinancing mechanisms on a joint and parallel basis. In addition, the same administrative arrangements and terms and conditions should apply to all resources covered by the umbrella operational arrangements and their replenishment mechanisms should be aligned and coordinated. Moreover, streamlined approval procedures, under which governing bodies approve the terms of umbrella operational facilities that might comprise resources of organizations’ hard windows, soft windows, trust funds, and other cofinancing arrangements, should be applied. Under the umbrella operational arrangements approved by the board of directors, and consistent with the strategic direction defined by the board, governance structures (e.g., steering committees, annual donor meetings) could be established, which are applicable to all types of resources.

Replenishments of core concessional windows (e.g., the ADF, AfDF, IDA, and SDF) would continue on a burden-shared basis, while voluntary replenishment mechanisms could be put in place for supplementary concessional windows established for special purposes (e.g., for climate change,
the environment, and governance). To enable organizations to offer a coherent concessional product, trust funds should be established wherever feasible on untied terms and conditions and by a constitutive act of the organization concerned, rather than by agreement with contributors, and be administered on similar terms and conditions as organizations’ own resources. At the same time, the system should be flexible enough to provide an incentive to donors to make additional resources available. While the administrative terms of such funds would be similar and their governance structures be aligned to the extent possible, donors could contribute to multidonor trust funds or channel contributions through single-donor trust funds or other cofinancing arrangements on a joint or parallel basis, and could earmark part of their contributions for certain thematic areas. In this context, it would be important to ensure the additionality of payments to such windows, so that earmarking is without prejudice to the replenishment of organizations’ regular concessional windows. Wherever feasible, streamlined approval procedures should apply to the acceptance of contributions and commitment of resources covered by umbrella operational arrangements.

The system described above would be advantageous at several levels by

(i) substantially reducing the transaction costs and administrative expenses inherent in the current lack of coordination between organizations’ concessional windows,

(ii) facilitating cooperation among organizations, and

(iii) enabling organizations to offer additional concessional products under trust funds or under framework agreements that are aligned and consistent with their regular concessional windows and supplement their financing.

Organizations could take such action as a matter of policy, without fundamentally changing their governance structures and amendments to their constituent instruments. Building on the work already begun since the Paris Declaration on Aid Effectiveness of 2005, consultations between organizations would aim to further eliminate obstacles to collaboration between organizations and align the terms and conditions of their concessional windows to the extent possible, including procurement arrangements and other administrative arrangements.

From Centralized to Decentralized Decision Making and from Consensus to Cooptition

To avoid wasting scarce resources through duplication of activities, concessional windows must coordinate their activities and be selective in their operations. Organizations have acted to operationalize these principles, which have been reiterated by donors in replenishment negotiations on many occasions. These actions were accomplished through a “loosely tiered system of coordination or, rather coordination attempts, known as the ‘Consensus Model,’” the highest tier of which is the Millennium Development Goals adopted in 2000, followed by the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. The other tiers consist of consultative group meetings at the country level and PRSPs or equivalent instruments. The Consensus Model “is an imperfect process and partially fulfilled aspiration.” While it has increased the number of options for aid recipients, the consensus model has certain limitations (e.g., insufficient encouragement of innovation, thus constraining organizations’ ability to respond to specific needs of their member countries) and faces substantial challenges in its implementation.

The current system, which is characterized by proliferating concessional windows and fragmented aid architecture, entails adverse effects at several levels and substantial transaction costs. However, one potential

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832 Ibid. See Introductory Remarks.

833 Ibid., p. 11.
advantage of the fact that several organizations provide concessional financing could be that organizations are afforded the opportunity to experiment with new and innovative solutions and find new and better ways to respond to the needs of their clients. Thus far, that potential advantage has not been sufficiently exploited. While organizations must align their procedures and practices and coordinate their activities in their member countries to avoid wasting scarce resources, cooperation and harmonization do not imply—and should not lead to—uniformity. Competition between different providers of concessional financing may enhance their development impact as long as it is focused on innovation and development outcomes. Thus, potential solutions should minimize the adverse effects of the current system and maximize its positive implications. For that purpose, organizations should consider shifting decision making from global to subglobal levels and a paradigm shift from consensus to “cooptition” (i.e., cooperative competition).

Kawai, Petri, and Sisli-Ciamarra (2009) suggest resorting to decentralized decision making.

Partially decentralized decision making offers a promising solution. The concept of institutional families—global institutions built from regional or otherwise differentiated building blocks—offers a way to put decentralization into practice. Under such a system, decisions would be made by different groups of countries, but would be governed by common rules and standards and would benefit from a shared infrastructure. Such “federalism” has served governments well in other contexts and has begun to emerge also in the existing framework of international organizations.834

They propose that a global organization such as the World Bank should focus on project lending to address broad, global objectives, such as the United Nations’ Millennium Development Goals. It would also include lending to alleviate negative global externalities, such as climate change, global energy and food shortages, and global epidemics [and] activities with great economies-of-scale, such as providing an administrative infrastructure for development finance and serving as a “knowledge bank” to collect and disseminate research findings.835

Regional development banks should focus on “sub-global development challenges, particularly for the provision of regional public goods to be shared by countries with common interests,”836 “investments for regional infrastructure or regional financial markets.”837

The relationship between institutions should be governed by cooptition. Brandenburger and Nalebuff (1996), who coined the term “co-opetition,” have used game theory to argue that (i) cooperation may enhance competition and (ii) businesses should cooperate to be competitive.838 Various sectors between companies follow such practices to facilitate market access, reduce costs (e.g., by sharing facilities), and pursue other common objectives. In other words, companies cooperate to create a market and compete to divide it.

Cooptition is also common between messaging services, cargo operators, and especially airlines. Airline alliances may represent a possible paradigm for the relationship of international organizations and other concessional windows in the (possibly extended) interim phase until substantial institutional reforms can be implemented. Airlines that have joined an alliance have largely harmonized their operational administrative procedures in order to transport passengers and freight safely and effectively. Moreover, by

835 Ibid., p. 17.
836 Ibid.
837 Ibid.
cooperating in certain areas (check-in, lounges, etc.), they have not only reduced cost but also streamlined
and aligned their operational procedures. However, each airline maintains its own character and competes
in providing the best standards of service and in selecting the specific locations where they operate.

Similar principles should apply to the relationship of organizations providing concessional financing.
Harmonizing administrative terms and conditions is necessary to reduce transaction costs and facilitate
cooperation between international organizations. Also, MFDIs and other windows are, in their communal
operations, still largely channels of ODA. Thus, concessional windows should not compete with each
other over the terms and conditions of their financing or over administrative arrangements, but rather
should cooperate at the country level wherever feasible in minimizing costs and increasing the efficiency
of their services. It is also warranted and appropriate to ensure overall coordination of organizations’
activities. However, each organization should find new and innovative solutions in responding to the
needs of its clients, enhancing their development impact, developing new instruments, and providing
excellent service. Thus, MFDIs should compete, and be encouraged to do so, in offering the best business
model and the most effective operations. This would also facilitate donors taking decisions on allocations
of their resources to various organizations.

The proposed streamlining and simplification of organizations’ concessional windows and a
relationship between organizations that is based on cooptition would substantially facilitate more far-
reaching projects aiming at institutional reforms and could be combined with such efforts in a third
phase. Returning to the airline paradigm, the airline industry has been going through mergers, major
restructuring, and reorganization recently. The same could apply in a later phase to organizations
providing concessional financing.
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| 168  | St. Vincent and the Grenadines | x<sup>a</sup> | x | x | x | x | x<sup>i</sup> |
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| 174  | Syrian Arab Republic | x | x | x | x<sup>i</sup> | x | x |
| 175  | Taipei, China | x<sup>a</sup> |
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| 177  | Tanzania, United Republic of | x<sup>c</sup> | x | x | x | x<sup>i</sup> |
| 178  | Thailand | x<sup>a</sup> | x | x | x | x<sup>i</sup> |
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1 ADB members are grouped according to (a) Regional Member Countries, and (b) Non-Regional Member Countries. ADB Membership. www.adb.org/about/membership.asp
2 AfDB members are grouped according to (c) Regional Member Countries, and (d) Non-Regional Member Countries. AfDB Membership. www.afdb.org/en/about-us-members/


4 CDB Member Countries. CDB members are grouped according to (e) Regional Members or those which “are allowed to borrow funds from the Bank and also have voting rights, which entitles them to be a part of the decision-making process of the Bank, (f) Other Regional Members, which are "not entitled to borrow funds from the Bank", and (g) Non-Regional Members, which "have voting rights but are not entitled to borrow funds from the Bank." www.caribank.org/titanweb/cdb/webcms.nsf/AllDoc/8B168C9C694934EB872572BF007ADFD3OpenDocument

5 GEF Participants. www.thegef.org/gef/member_countries

6 IADB Member Countries. IADB members are grouped according to (h) Borrowing Member Countries (which are further categorized into [1] Group I and [2] Group II, based on their GNP per capita in 1997), and (i) Non-Borrowing Member Countries. www.iadb.org/en/about-us/member-countries,6291.html

7 IBRD Members. http://go.worldbank.org/65RBXCIJW0

8 IDA Members. http://go.worldbank.org/F0KXRSAI60. For the purposes of its financial resources, the membership of IDA is divided into two categories: (1) Part I members (j), which make payments of subscriptions and contributions provided to IDA in convertible currencies which may be freely used or exchanged by IDA in its operations and (2) Part II members, which make payments of ten percent of their initial subscriptions in freely convertible currencies, and the remaining 90 percent of their initial subscriptions, and all additional subscriptions and contributions in their own currencies or in freely convertible currencies. Certain Part II members provide a portion of their subscriptions and contributions in the same manner as mentioned in (1) above. See World Bank. 2009. The World Bank Annual Report 2009: IDA Financial Statements and Internal Control Reports. p. 140. http://siteresources.worldbank.org/EXTAR2009/Resources/6223977-1253132981998/6440371-1253209164289/IDA_Financial_Statement.pdf

9 IFAD members are grouped according to (a) List A (former Category I countries, which are primarily OECD members), (b) List B (former Category II countries, which are primarily OPEC members), and (c) List C (former Category III countries or developing countries). List C is further divided into sub-list C1 (countries in Africa); sub-list C2 (countries in Europe, Asia, and the Pacific); and sub-list C3 (countries in Latin America and the Caribbean). IFAD Member States. www.ifad.org/governance/ifad/ms.htm?bcsi_scan_B90AE85AF6A815C6=K8OdwxVAPkdeEB3B74wdfQQAAAATF091&bcsi_scan_filename=ms.htm

10 IsDB Member Countries. www.isdb.org/irj/portal/anonymous?NavigationTarget=navurl://750e51a0219ad70c78e6329e8895122714e

11 (k) OAS Member States. www.oas.org/en/member_states/default.asp. On 3 June 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES.2438 (XXXIX-O/09), that resolves that the 1962 resolution, which excluded the Government of Cuba from its participation in the inter-American system, ceases to have effect in the OAS. The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be result of a process of dialogue initiated at the request of the Government of Cuba, in accordance with the practices, purposes, and principles of the OAS. (l) On 5 July 2009, the Organization of American States (OAS) invoked Article 21 of the Inter-American Democratic Charter, suspending Honduras from active participation in the hemispheric body. The unanimous decision was adopted as result of the 28 June coup d’état that expelled President Jose Manuel Zelaya from office. Diplomatic initiatives are ongoing to foster the restoration of democracy to Honduras. www.oas.org/en/about/offices_mem_states.asp?Code=BAR

12 OECD Member Countries. www.oecd.org/documentprint/0,3455,en_2649_201185_1889402_1_1_1_1,00.html

13 NDF Member Countries. www.ndf.fi/index.php?id=42

14 NIB Member Countries. www.nib.int/about_nib
Chapter 3
Modalities of Multilateral Concessional Financing

Gerd Droesse*

Introduction

This chapter\(^1\) reviews the concessional financing\(^2\) modalities of concessional windows comprising nine multilateral financial development institutions (MFDIs)\(^3\) and multipurpose vehicles, facilities, and trust funds associated with these organizations. These concessional windows represent different paradigms of organizational structures, institutional frameworks, and governance structures.

In certain cases, e.g., the African Development Fund (AfDF), the International Development Association (IDA), and the Nordic Development Fund (NDF), intergovernmental agreements established soft windows as affiliated organizations of organizational groups having legal personality under international law. The constituent instruments and governing bodies of such organizations may be structured differently from those of other organizations within the group. Moreover, the procedures and voting rights that apply to the affiliated organization may differ from those of the organization that sponsors its establishment.

Most MFDIs reviewed in this study were established specifically to provide either concessional financing, e.g., the International Fund for Agricultural Development (IFAD), or, more usually, to provide such financing through a “hard” window (at preferential market-based rates reflecting their high

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1 This paper is intended as a companion piece to Chapter 2 (G. Droesse, Organizational Structures, Institutional Frameworks, and Decision-Making Procedures of Multilateral Concessional Financing, hereinafter, Organizational Structures).

2 The concept of concessionality, which was first introduced in 1969 by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD), entailed a minimum 25% grant element calculated on the basis of a flat 10% discount rate. That definition is still used by the OECD for official development assistance (ODA). (See OECD. 2008. *Is It ODA? Fact Sheet – November 2008*, www.oecd.org/dataoecd/21/21/34086975.pdf; regarding the degree of concessionality of a loan and the measurement of its grant element, see International Monetary Fund (IMF). 2009. *Concessionality and the Design of Debt Limits in IMF-Supported Programs in Low-Income Countries*, www.imf.org/External/np/pdr/conc/index.htm. Regarding the OECD criteria, see D. Potts and W.Y. Chung. 2008. How Concessional is Aid Lending? *Journal of Development Studies*, Vol. 44, No. 7. (August 2008), pp. 1023–1036.) In the context of this study, the term “concessional financing” is used for all types of financing which have such a minimum grant element, including grants for technical assistance and/or projects or programs. Multilateral assistance takes the form of membership subscriptions or discretionary contributions to funds managed by agencies, institutions, or organizations whose members are governments and which conduct all or part of their activities in favor of development. Assistance is multilateral if “contributions are pooled so that they lose their identity,” thus becoming an integral part of the assets of such institutions. OECD. 2009. *Better Aid. Managing Aid. Practices of DAC Member Countries*, p. 68. http://browse.oecdbookshop.org/oecd/pdfs/browseit/4309161E.PDF

3 The study comprises the World Bank Group and African Development Bank (AfDB) Group; the concessional windows of the Asian Development Bank and the Inter-American Development Bank (IADB); two subregional development banks, i.e. the Caribbean Development Bank (CDB) and Central American Bank for Economic Integration (CABEI); and three other MFDIs, the International Fund for Agricultural Development (IFAD), the Islamic Development Bank (IsDB), and the Nordic Development Fund (NDF).
credit rating) and a “soft” window (on concessional terms).\(^4\) Where organizations provide concessional and nonconcessional financing under one legal personality and one institutional roof, the organization’s constituent agreements cover both concessional and nonconcessional operations\(^5\) and its governing bodies determine both types of operations. The Caribbean Development Bank (CDB) and Inter-American Development Bank (IADB) have incorporated specific concessional windows into their constituent instruments, but other organizations’ constituent agreements contain only a general authorization for establishing special funds.

In association with or in addition to MFDIs, concessional financing is increasingly channeled through trust funds, the number and financial volume of which have increased dramatically in particular during the last two decades. In most cases, organizations use such funds to leverage their activities or provide concessional financing in special circumstances. They may establish trust accounts, special facilities, or multipurpose vehicles for a wide range of purposes, including assisting nonmember countries and countries in post-conflict situations, and supporting interest subsidies, bridging financing arrangements when the continuation of concessional financing is threatened, debt relief, and arrears clearance and promoting partnerships with remittance operators. In addition to funds where international organizations act as administrator and trustee, several funds are administered by recipients or support a wide range of alliances, facilities, partnerships, and innovative financing mechanisms. Funds in the latter category have become important channels of concessional financing and in a number of cases have substituted for the establishment of international organizations.\(^6\)

Aid modality itself is not a development strategy, but “it importantly affects the nature of aid relationship and the effectiveness of addressing development problems in recipient countries [and] determines how funds and knowledge are transmitted to donor countries, how goods are procured and how recipient and donors interact in such processes.”\(^7\) The main modalities of concessional financing involve loans and grants for investment and technical assistance projects and programs. Other modalities include interest subsidies, guarantees, equity investments, trade financing, and debt relief. Increasingly, the international community discusses new modalities such as general budget support, sector budget support, and fund pooling arrangements. This chapter discusses these modalities and their legal frameworks as well as the classification systems and criteria that MFDIs use to determine eligibility and access to concessional financing. It also discusses associated trust accounts, special facilities, multipurpose vehicles, and financial intermediary funds such as the Global Environment Facility (GEF) and the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund). Finally, it provides an overview of the resource structures and innovative financing mechanisms of various concessional financing windows, their replenishment processes, bridging arrangements, procurement, and financial management.

Legal Framework of Concessional Financing

MFDIs have legal personality under international law and have been established by member-ratified intergovernmental agreements. Established as intergovernmental organizations, MFDIs have a dual character as “their authority and mandates are based on an international agreement [and] their rights and

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\(^5\) See the constituent agreements of ADB, AfDB (regarding special funds administered by AfDB), CBEI, CDB, and IsDB.

\(^6\) See Chapter 2 (G. Droesse, Organizational Structures).

obligations arise from the applicable public law principles [but] they engage in financial transactions, which
despite their public purpose, are, by nature, similar to market-based financial transactions [and thus] share
many characteristics with the private sector’s financial contracts.”8 Their constituent agreements define
the organization’s overall purpose and function, set out its general principles of operations, establish its
capital structure and institutional and governance framework, and define its privileges and immunities.
However, MFDIs differ regarding the extent to which they regulate concessional financing. Moreover,
there are substantial differences regarding their status under international law.

Global organizations such as the IMF, the World Bank (IBRD and IDA), and IFAD have the status of
specialized agencies of the United Nations while other MFDIs (e.g., regional and subregional development
banks) do not possess such status as they were not seen, at the time when they were established, to
possess the “wide international responsibilities” required by Article 57, paragraph 1 of the Charter of the
United Nations for recognition as a specialized agency.

Specialized agencies of the United Nations are covered by the Convention on the Privileges
and Immunities of the Specialized Agencies (CPISA)9 approved by the General Assembly of the
United Nations on 21 November 1947 which contains detailed provisions governing organizations’
privileges and immunities in their host countries and in general, in those states to which the convention
applies. Organizations not covered by the CPISA, such as ADB, generally do not enjoy privileges and
immunities outside their member countries,10 and in their member countries enjoy only those privileges
and immunities specified in their constituent agreements. Matters not covered by their constituent
agreements (e.g., inviolability of their premises) have to be specified in agreements with each country
where they maintain an office. Organizations such as the NDF which conduct their operations outside
their member countries cannot rely on their constituent agreements for privileges and immunities. They
need to conclude framework agreements with beneficiary countries to ensure that their operations are
covered by privileges and immunities in these countries.

In organizations such as IFAD, which was established specifically to provide concessional financing,
and affiliated organizations established for that purpose (e.g., AfDF, IDA, and NDF), constituent
agreements contain detailed provisions regarding permissible modalities of concessional financing and
funding modalities (e.g., the types of subscriptions available) and other relevant details. The Agreement
Establishing the Inter-American Development Bank (IADB Charter)11 established and funded the Fund
for Special Operations (FSO) and regulates it in substantial detail. When the constituent agreement
contains a general authorization for establishing special funds, e.g., the Asian Development Bank (ADB),
Islamic Development Bank (IsDB), and the “Other Special Funds” (OSF) of CDB, the organizations’
governing bodies determine the terms and modalities of concessional financing.

“[T]rust funds can exist as mere bank accounts under the management of the trustee, as informal
entities organized under the format of a conference of States, or be endowed with legal personality, whether
domestic or international.”12 Whether they are instilled with legal personality is agreed upon by donors
and trustees and depends upon their purpose and functions, funding modalities, governance structures,

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International B.V. pp. 1–30, 1.

9 Available at www.unog.ch/80256EDD006B8954/%28httpAssets%29/C8297DB1DE8566F2C1256F2600348A73/$file/Convention%20P%20the%20%20%281496%20-%20%20E.pdf

Boston: Nijhoff, pp. 381–460, para. 84.

11 IADB. 1959. Agreement Establishing the Inter-American Development Bank (hereinafter, IADB Charter). Article IV.

and trustee arrangements. Trust funds may be established by agreement between the trustee and the party providing the funds, which acts as an instrument of appointment, or by a constitutive act of the administering organization. They are administered for the benefit of designated beneficiaries in accordance with the agreement, the instrument establishing the trust fund, and pertinent organizational policies and procedures.

Often, the “legal nature of trust funds is problematic” because the nature of the legal instrument(s) that establishes them and/or the applicable law regulating their affairs is unclear. In many cases, trust funds do not have legal personality and thus cannot be the subject of right and obligations. This may be addressed by giving the trustee legal ownership (towards third parties) of the assets and by appointing staff acting for the trust fund as staff of the trustee or another international organization enjoying privileges and immunities under international law. However, the fact that trust funds are deprived of legal personality may be a constraint to their effectiveness, particularly in case of financial intermediary funds such as the GEF.

When the GEF was established, donors wanted to avoid creating a new international organization and the time-consuming process involved in ratifying an intergovernmental agreement. In “an interesting example of treaty-making among international organizations and institution creation”, the GEF was established in 1994 when the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), and the World Bank jointly resolved to adopt the Instrument for the Establishment of the Restructured Global Environment Facility (GEF Instrument). This unique instrument contains detailed information about the governance structure of the GEF, the role and responsibilities of the World Bank as trustee, and principles of cooperation among the implementing agencies, i.e., the World Bank, the UNDP, and UNEP. Because the GEF is not a legal entity and lacks legal personality under international or national law, it cannot enter into contracts. As this is seen as a constraint to its development effectiveness, proposals have been made to instill the GEF with legal personality. However, the GEF’s quest for legal independence has not yet succeeded so far.

The Global Fund is a global public–private partnership dedicated to attracting and disbursing additional resources to prevent and treat HIV/AIDS, tuberculosis, and malaria. Due to concerns that a new intergovernment organization would be redundant and result in costly processes, the transitional working group that was set up to make proposals regarding the creation of the Global Fund rejected that option. However, to enable the Global Fund to enter into legal agreements, promote confidence, and receive contributions, the group still recommended that the Global Fund board should instill the fund with legal personality. Thus, the Global Fund was established as a nonprofit organization under the bylaws approved by the Global Fund board at its first meeting.

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13 Ibid., p. 26. As highlighted by Bantekas, the “trust contract between the appointee (or donor) and the trustee may, but does not necessarily or ipso facto establish the entity of the trust fund. For certain, it acts as an instrument of appointment, followed [as is the standard practice of the World Bank and other organizations] by a further obligation by the trustee to set up the trust fund, usually by opening a bank account and thereafter arranging the modalities for deposits, financial maintenance and disbursement.”


17 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).


The Global Fund was incorporated pursuant to a public deed dated 22 January 2002 and registered in the Geneva Trade Register on 24 January 2002. It operates under the supervisory authority of the Government of Switzerland. Although it was established under Swiss law, the Global Fund enjoys privileges and immunities similar to those of an international organization under a headquarters agreement concluded with the Government of Switzerland. For that reason, its status is unique. On 1 January 2009, the Global Fund became an administratively independent and fully autonomous international financing institution upon termination of the 24 May 2004 service agreement between the Global Fund and the World Health Organization (WHO)—under which WHO provided administrative services to the Global Fund and the staff of the Global Fund enjoyed the privileges and immunities of WHO staff (e.g., under the CPISA). Thus, in the future the Global Fund will manage its own administrative services in the areas of human resources, finance, administration, procurement, and IT services. Following termination of the service agreement with WHO, “the Global Fund and its assets—including funds, archives and staff—no longer have diplomatic immunities, privileges and exemptions outside Switzerland and the US.” In 2009, a working group of interested constituencies was established to investigate how to confer such immunities, privileges, and exemptions elsewhere.

Organizations’ bylaws, statutes, regulations, and the rules of procedures for their governing bodies and/or other basic documents, may contain important principles regarding the governance structures of concessional financing windows. In MFDIs, the plenary body generally adopts bylaws meant to complement the organization’s constituent agreement. Rules of procedure generally stipulate the manner in which meetings of governing bodies are convened and conducted as well as decision-making processes. As organizations’ legal frameworks are governed by the rule of law, there is a hierarchy of norms in relation to the above. Their bylaws and rules of procedure also need to conform to the basic principles embodied in constituent agreement. Nevertheless, some deviations have been allowed for the sake of expediency (e.g., in some organizations, the rules of procedure of boards of governors give members the power to appoint a temporary alternate governor even though this position is not provided for by the constituent instrument and the rules of procedure of the Board of Directors allow the appointment of a temporary alternate director which is also not foreseen in the constituent agreement). Resolutions or decisions of governing bodies such as a board of governors or board of (executive) directors need to be consistent with the organizations’ constituent agreements, their bylaws, statutes, regulations, and with their rules of procedure.

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24 In the case of the NDF, the Statutes of the NDF were adopted by the Nordic Council of Ministers. They contain provisions regarding the capital of the NDF and its operations and governance structure. NDF 2009. Statutes of the Nordic Development Fund (as amended) in NDF 2009. Agreement Statutes. www.ndf.fi/docs/NDF-agreement-statutes.pdf


28 See Chapter 4 (G. Droese, Concessional Financing of the Asian Development Bank (ADB) and Other Channels of Concessional Financing, hereinafter, ADB Concessional Financing).
The Global Fund’s primary governance policies and procedures are set out in its bylaws— which were approved by both the Global Fund Board and the Federal Supervisory Board for Foundations—and its Board Operating Procedures. The framework document of the Global Fund, adopted on 28–29 January 2002 by the board of the Global Fund itself, guides the Global Fund’s operations and emphasizes national ownership, defines fund priorities, and establishes a simplified grant-making process and an independent review process.

When the constituent instrument of an MFDI is silent, governing bodies are competent to define the rights of contributors and the modalities of concessional financing through special funds. This is particularly true of organizations like ADB, whose constituent instrument contains only general authorization for the administration of special funds and thus gives wide discretion to ADB’s governing bodies in establishing the legal framework for such funds. They are, similar to trust funds, largely “creatures of self-regulation.”

Because the ADB Charter does not include detailed provisions for the legal framework of special funds, such funds can be either established or accepted by the ADB Board of Governors or Board of Directors. The Board of Governors, notably in connection with the establishment of the Asian Development Fund (ADF) and ADF replenishments, resolved to adopt the basic principles of the ADF legal framework. All ADF replenishments require approval of ADB’s Board of governors. IsDB followed a similar approach when it created the Islamic Solidarity Fund for Development (ISFD), which was established by a decision of the IsDB board of governors, leaving to the directors the task of preparing regulations and guidelines relating to that fund for adoption of the governors. The Central American Bank for Economic Integration (CABEI) governors approved the establishment of the Special Fund for the Social Transformation of Central America (FETS) and FONTEC, its technical cooperation fund even though the Constitutive Agreement of CABEI does not provide for the establishment of any special fund. In doing so, the governors also approved the statute of FONTEC, but delegated that same decision for the FETS to CABEI’s board of directors.

However, plenary bodies are not necessarily involved in the establishment and/or replenishment of special funds. Thus, in CDB, the board of directors determines the terms, conditions, and modalities of OSF financing and approves replenishments of the SDF which has been incorporated in the CDB Charter. In ADB, several special funds have been established by a constitutive act of the Board of Directors.

In certain cases, e.g., the Nigeria Trust Fund (NTF), international agreements substantially determine the legal framework of concessional windows. However, conclusion of a treaty is required neither for the establishment of special funds (such as the NTF) nor for the creation of trust funds. Donors often

32 Bantekas uses the term “creature of self-regulation” for the intergovernmental trust vehicle. Bantekas, Trust Funds under International Law, p. 12.
34 See Chapter 2 (G. Droesse, Organizational Structures).
35 Fondo Especial para la Transformación Social de Centroamérica.
36 See Chapter 2 (G. Droesse, Organizational Structures).
37 Chapter 4 (G. Droesse, ADB Concessional Financing).
make contributions to special funds by submitting an instrument of commitment or contribution (IoC) in accordance with the rules and regulations established by the administering organization which set out the terms and conditions applicable to such funds. Donors’ contributions to trust funds may be covered by a variety of contributory mechanisms, and “it is not uncommon for the trust agreement to take the form of MOU.”

Governing bodies of MFDIs and financial intermediary funds (e.g., the GEF) may reach cooperative arrangements and agreements with other parties, thus supplementing the terms provided by their constituent instruments and/or international agreements. This framework for coordination is particularly important in the GEF. For example, memoranda of understanding (MOUs) define the relationship between the GEF Council and the various environmental conventions for which the GEF serves as a financial mechanism. The three implementing agencies each have special arrangements with the trustee and cooperate through meetings of their heads (in the context of an interagency committee) and meetings of staff at all levels. The relations between the GEF Secretariat and the seven executing agencies (ADB, the AfDB Group, EBRD, the Food and Agriculture Organization of the United Nations [FAO], IADB, IFAD, and the United Nations Industrial Development Organization [UNIDO]) which, in addition to the three implementing agencies have direct access to GEF financing, were also defined by MOUs.

Governing bodies may further define modalities of concessional funding and financing, composition of concessional resources, entitlements of contributors in case of withdrawal or termination, and other terms and conditions of concessional financing in regulations and general conditions as well as strategies, policies, guidelines, directives, and instructions applying to concessional financing.

MFDIs generally have legal personality both under international and municipal law and can contract, acquire, and dispose of movable and nonmoveable property and institute legal proceedings. Because the Global Fund has legal personality under Swiss law, it can enter into contracts with other parties. The GEF, which lacks legal personality under either international law or national law, has no such powers.

**Purpose and Functions of Organizations and Role of Concessional Financing**

Consistent with the fact that they perform a wide range of activities in many sectors, the purpose and functions of MFDIs are usually couched in very general terms.

When MFDIs were established during the 1950s and 1960s, most theorists emphasized investment and economic growth. Culpeper observed that “[w]hat mattered was the overall rate of growth of the economy. Who benefited from growth or how growth affected the distribution of wealth and poverty were questions rarely raised.” Thus, the constituent documents of many organizations highlight

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42 Ibid.
43 E.g., ADB Charter, Article 49.
45 See International Development Association Articles of Agreement (hereinafter, IDA Articles); Article 1 (IDA. 1960. *IDA Articles of Agreement*. http://siteresources.worldbank.org/IDA/Resources/ida-articlesofagreement.pdf); Agreement Establishing the African Development Bank (hereinafter, AfDB Charter), Article 1 (AfDB. 2002 *Agreement Establishing the African Development Bank* [revised], 6th edition); IADB Charter, Article 1, section 1; ADB Charter, Article 1; Articles of Agreement of
economists as their primary purpose, although those of AfDF, IADB, IsDB, and NDF also refer specifically to social development or social progress. The constituent instruments of regional or subregional development institutions (e.g., ADB, AfDF, and CDB) also address the core function of regional economic cooperation or integration.

IFAD clearly focuses on mobilizing resources “on concessional terms for agricultural development in developing Member States.”46 The NDF statement of purpose sets forth two competing and potentially conflicting objectives: (i) promoting economic and social development in developing countries, and (ii) promoting Nordic interests.47 When establishing the NDF, its member countries never clearly decided whether it was a “Nordic IDA, pursuing development objectives in poor countries [or] a support agency for Nordic project export, linked to NIB's project investment lending.”48 While the NDF came to resemble much more a Nordic IDA, its procurement arrangements continued to reflect this intrinsic ambiguity, which was one of the reasons why the Nordic Ministers for Development Corporation decided in 2005 to terminate the NDF operations after they failed to reach agreement on the fund's fifth capital replenishment.49 However, that decision was never actually implemented. Rather than providing soft loans, the Nordic Cooperation Ministers decided in 2009 that henceforth the NDF would finance grants for projects related to climate change.50 Effective 5 May 2009, the NDF Statutes were amended accordingly to allow the NDF to provide grant financing.51 Moreover, the NDF adopted new procurement arrangements in 2009 for NDF grants.

While broad consensus supports the importance of economic growth, the concept has changed substantially since the 1960s and 1970s, as “[t]here were numerous calls for increased attention to be given to ‘broad-based growth’ that appropriately emphasized the social aspects of development (e.g., health, population, education, and nutrition).”52 Greatly expanding policy and operational matters, along with a “Christmas tree”53 of items attached to the international development agenda and seen by donors as priorities, is a corollary of this changed concept of economic growth. All MFDIs studied here assumed functions and responsibilities far beyond what was envisaged when they began operations, as they evolved from agencies for financing certain projects to full-fledged development institutions espousing poverty reduction as their overarching goal. In some cases, organizations have acted like chameleons,54 changing colors as they engaged in a range of activities for which they were not designed. The NDF which fundamentally changed its functions, modalities of concessional financing and procurement arrangements is a glaring example for such changes in color. However, many other international organizations also

47 NDF. 1998. Agreement Regarding the Establishment of the Nordic Development Fund (hereinafter, NDF Agreement). Article 1. www.ndf.fi/docs/NDF-agreement-statutes.pdf “The purpose of the Nordic Development Fund, hereinafter referred to as the Fund, is to promote economic and social development in developing countries through the participation in financing on concessional terms of projects of interest to the Nordic countries.”
52 See Chapter 2 (P. McCawley, Concessional Resources and Development Thought).
53 Ibid.
started activities for which they were not designed, e.g., the International Monetary Fund (IMF), which dramatically changed its functions since the later 1970s by engaging in concessional financing operations through trust funds.

Some of those who contend that MFDIs have lost their focus through “mission creep” and fail to comply with the provisions set forth in their constituent instruments have criticized the expansion of organizations’ functions. In effect, mission creep may undermine institutional effectiveness by “reducing accountability for results and increasing the risk that resources will be misallocated or spread too thin.” However, organizations had to be responsive to the emerging needs of their members and could not but respond to the fundamental changes of the environment in which they were operating. Their expanding functions are “within the limits of their charters, although just barely,” because their constituent instruments were deliberately worded to give them flexibility regarding the areas of their operations. This “creative ambiguity” positions them well for dealing with future contingencies.

Agreed upon by 189 nations at the United Nations (UN) Millennium Summit in September 2000, the Millennium Development Goals (MDGs) embody an unprecedented level of consensus on what is needed to achieve sustainable poverty reduction. However, each organization faces different challenges in implementing these goals. Organizations have sought to redefine their roles, missions, and purposes, and struggled to design new ways to remain relevant to the demands of their members in an increasingly complex global aid architecture. Many countries had “made considerable progress in reducing extreme poverty” before the 2008 financial crisis although progress towards achieving other MDGs had been uneven even then. The 2008 financial crisis had a negative impact as it attacked faster growth and better service delivery, which are two critical drivers of progress, and led to a deterioration in debt ratios of low income countries. This worrisome development, coupled with the impact of the economic downturn, and the recent dramatic increases in food prices emphasize the strong need for the international community to continue providing support to developing countries. Allocation of concessional financing figures importantly in enabling the poorest regions to meet their development challenges and priorities.

The importance of multilateral concessional financing varies substantially in Africa, Asia, and Latin America. With inadequate infrastructure, limited regional integration, “insufficient and ineffective human development systems; limited and non-inclusive financial systems; poor governance and institutional capacity; continued dependence on low-value agriculture; narrow productive, revenue and savings bases” at least 23 African country members of the African Development Bank (AfDB) are unlikely to meet any of the MDGs by 2015, even for poverty reduction. Africa must overcome huge development challenges

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60 Ibid.
to avoid “another generation of Africans … trapped in poverty,”\textsuperscript{63} and the recent current global financial crisis presents additional challenges. Multilateral concessional financing continues to represent one of the main instruments for assisting poor African countries in meeting their challenges. Many such countries face the risk of debt distress even after receiving substantial debt relief from the international community.

One of the greatest successes in Asia and the Pacific is the reduction of “the number of people living on less than $1.25 a day from 1.5 billion to 947 million, and the region is on track for the poverty goal.”\textsuperscript{64} However,

In many areas, the region’s progress is far too slow. Almost 2 billion live without basic sanitation and nearly half a billion without safe drinking water. Infant mortality in some countries is over 10 times higher than in developed countries—in Afghanistan, it is a shocking 30 times higher. In South Asia, the highest illiteracy rates are among the highest in the world, and slum–dwellers comprise 40% of the urban population. And women are still far too often deprived of the benefits of growth.

The region’s environment, too, faces daunting threats. The decline in forest cover and the steady rise of greenhouse gas emissions have yet to be dealt with effectively. Recent catastrophic floods that have brought misery to millions in the region highlight the need for stronger measures to counter climate related vulnerabilities and better adapt to climate change.\textsuperscript{65}

These are the two faces of Asia—a “‘shining Asia’, which is competing internationally and benefiting from the forces of globalization, technological change, and economies of scale” and a “suffering Asia” with “unacceptably wide swatches of its population who are poor and vulnerable. These two faces of Asia are both a beacon of hope and a symbol of despair.”\textsuperscript{66} To achieve the MDGs, Asia must overcome substantial challenges and requires continued allocation of concessional resources.\textsuperscript{67}

Under Strategy 2020,\textsuperscript{68} ADB pursues its vision and mission to help its DMCs reduce poverty and improve living conditions and quality of life by focusing on three complementary strategic agendas—inclusive growth, environmentally sustainable growth, and regional integration. As ADB’s poorest member countries continue to rely heavily on official development assistance, differentiated approaches have to be considered in view of the diversity of these countries. Thus, Strategy 2020, ADB’s corporate strategy, mandates ADB to configure its assistance to fit the circumstances of each country, so as to enable ADB to meet the MFG targets by 2015 and to enable ADB member countries to graduate as soon as possible from concessional assistance and, in the case of fragile countries and situations, to “seek innovative means to strengthen the effectiveness of country-led models of engagement.”\textsuperscript{69}


While the importance of multilateral concessional financing continued to grow in Africa and Asia, as shown by constant increases in allocations to AfDF and ADF, the same was not the case in Latin America. For a time, “private flows to the region were sufficiently strong to [give] rise to a heated debate about the continued relevance of multilateral institutions as financial intermediaries.” While IADB’s FSO had been an essential ingredient for Latin American development particularly in the first two decades of IADB’s existence, the availability of other resources in the region substantially diminished its importance. For well over 15 years after the approval of IADB’s Eighth General Increase in Resources in August 1994 IADB donors have been unable to provide for or even agree on an infusion of new donor resources to the FSO. Recently, the FSO has been substantially decapitalized through the use of its reserve for grants and debt relief. For that reason, the FSO currently is only marginally important to IADB operations. This situation is not substantially changed by the small FSO replenishment which was agreed upon by the IADB Board of Governors in 2010 in conjunction with the Ninth General Capital increase of IADB and still needs to be implemented.

In CDB, however, concessional financing remains substantially important. CDB acts as a catalyst for development resources in a region which is vulnerable to economic shocks and disasters, and where poverty, inequality and social exclusion remain defining features of the economic and social reality. The SDF and the other special funds allow CDB to reduce poverty through “a range of operations that would not otherwise be possible, including operations in the poorest, most vulnerable and most highly indebted countries among [CDB’s] membership” and thus play “a critical role” in achieving MDGs and “major economic adjustment in the Caribbean.”

When IFAD was established, its clear focus on poverty reduction distinguished it from other MFDIs. Although poverty reduction became the overarching objective of all MFDIs studied here, IFAD continues to play a special role in “mobiliz[ing] additional resources to be made available on concessional terms for agricultural development in developing member states.” While other MFDIs “swung their attention away from agriculture and rural poverty reduction in the 1990s,” IFAD maintained a comparative advantage by remaining focused on rural areas, agriculture, and rural poverty reduction. Although development efforts and investments focused on agriculture had increasingly declined during the last quarter-century, agriculture returned to the top of the political agenda due to the rapid increase in food prices. IFAD’s special focus is important in the context of food security being again seen as a global sociopolitical security issue.

In the “Declaration on I[s]DB Group Cooperation with Africa,” otherwise known as the Ouagadougou Declaration, adopted in 1423H (2002), IsDB made a commitment to provide $2 billion in development assistance to its least developed member countries in Africa over the 5-year period

72 In their Cancún Declaration, the governors of IADB agreed “to separately provide $479 million to finance the cancellation of Haiti’s debt and remaining local currency conversions to the FSO in a manner that provides immediate grant financing to Haiti and converts undisbursed loans to Haiti to grants. The Governors also committed through these funds for those countries remaining within the FSO to ensuring that the FSO is fully replenished for the next decade.” IADB. 2010. Cancún Declaration, p. 2. Annual Meeting of the Boards of Governors (AB-2728, 21 March) http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35291148
74 Ibid., p. 1.
75 AEI, Article 2.
that began with its 2003–2004 financial year. In 2006, the IsDB vision statement called for a “dramatic increase in the priority, thinking and resources devoted to poverty alleviation.”79 In this context, IsDB called for the “establishment of a special fund for poverty alleviation and combating diseases,”80 marking a new emphasis on concessional financing. The Islamic Solidarity Fund for Development was established in response to this strategic focus. Established in 2007, it commenced operations in 2008 and since then “has provided $548.9m for 47 projects in various sectors in the 27 member states, and in [2009], approved loans totaled $234.5m for 22 projects in 17 Member States ....”81

In the absence of an explicit legal basis for doing so, MFDIs sometimes must establish new vehicles for concessional assistance to respond to the needs of their members. Although the Constitutive Agreement of the Central American Bank for Economic Integration82 (hereinafter, CABEL Agreement) does not provide for the establishment of special funds, the CABELI created a technical cooperation fund in 1988 to support its technical assistance operations. When two Central American countries accumulated unsustainable levels of debt that prevented them from borrowing from the CABELI ordinary capital resources (OCR), CABELI established the FETS, thus providing the concessional loans and grants that allowed ongoing engagement with those countries.83

During the IDA15 negotiations, the deputies discussed the role of IDA in an increasingly complex international aid architecture characterized by donor proliferation and aid fragmentation.84 They saw that role as supporting a country-based model aligned with national development strategies and also performing a dual role in “providing direct financing and knowledge services to client countries in support of their priorities and needs; and providing a platform which helps other development partners operate effectively to achieve results at the country level.”85 The World Bank’s vision is to reduce poverty through inclusive, and environment-friendly sustainable growth, but this vision “is being implemented in a changing global landscape where progress in achieving development outcomes has stalled or reversed and millions have been pushed back into extreme poverty by the global crisis; economic power configurations have changed; and the global aid architecture has become broader and more complex.”86

During the IDA16 negotiations, “[p]articipants underscored the importance of IDA's continuing role as a platform for the effective delivery of aid, particularly given the increasingly complex global aid architecture [which] includes: convening and collaborating with other development partners at the global, regional, and at the country level, working with development partners to support country leadership of its own development agenda.”87 They also welcomed the role IDA “has been playing among the MDBs and other multilaterals in terms of developing and disseminating policies and practices for aid

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80 Ibid.
81 HE Obaid Humaid Al T ayer heads UAE delegation to 35th IDB Board of Governors Meeting in Azerbaijan. 23 June 2010. www. ameinfo.com/236142.html
83 See Chapter 2 (G. Droesse, Organizational Structures).
effectiveness (e.g., on conditionality) [as well as IDA’s] efforts in the area of aid predictability and aid on budget [in spearheading and mainstreaming] PRSPs, [and in developing] standards for country systems and diagnostic tools to assess the adequacy of these systems.”

On 15 December 2010, donors approved an IDA replenishment in the amount of US$49.3 billion which exceeded by 18 percent the amount pledged under IDA15. Donors mandated IDA to boost during the IDA16 period growth in the world’s poorest countries “and overcome poverty by financing infrastructure, improving health services, educating children, and combating climate change [with special focus given to Sub-Saharan Africa and addressing] gender issues and helping fragile and conflict-affected countries in their quest for peace and development.”

A new feature of international aid architecture is the emergence of thematic or vertical funds (e.g., the GEF and the Global Fund). The GEF was conceived “as a mechanism for international cooperation for the purpose of providing new, and additional, grant and concessional funding to meet the agreed incremental costs of measures to achieve global environmental benefits” in defined focal areas. The Global Fund, on the other hand, was conceived as a “financial instrument” whose purpose is to attract, manage and disburse additional resources through a new public–private partnership that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals.

In the case of GEF and Global Fund, states sought to avoid the lengthy and cumbersome process of establishing a new intergovernmental organization. Nevertheless, in both cases there have been developments towards progressive institutionalization of their legal and operational frameworks. Such trend is underlined in the case of GEF by the “desire of the GEF Secretariat for more independence than allowed by the GEF’s structure,” and the proposals to give legal personality to the GEF and increase the powers of its CEO; and in the case of the Global Fund, which had legal personality under Swiss law from the time it was established, by the substantial expansion of the scope of its activities following the termination of its administrative services agreement with WHO.

General Terms and Operating Principles

Financing Limited to Member Countries

Some organizations (e.g., NDF) provide concessional financing exclusively to nonmember countries. The other MFDIs studied here generally provide concessional financing only to member countries or to countries that are members of the nonconcessional arm of an organizational group. In certain cases, only developing countries are eligible to receive concessional financing.

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88 Ibid., pp. 19 and 20.
90 Ibid.
92 Global Fund Framework Document, section II.
94 The Organization of the Petroleum Exporting Countries (OPEC) Fund for International Development is another example where an international organization provides financing to nonmembers only. OPEC. 1980. Agreement Establishing the OPEC Fund (as revised on 27 May). Article III (3.01). www.ofid.org/publications/PDF/AE-eng_Fund.pdf
95 CABEI has created a special membership category for beneficiary countries. Article 4 of the CABEI Constitutive Agreement provides:

In order to incorporate beneficiary countries, the Board of Governors shall include, in the regulations that it approves, provisions with regard to beneficiary countries, including among other issues, admission requirements, contribution...
For example, IFAD limits concessional financing “to developing States that are Members of the Fund or to intergovernmental organizations in which such Members participate.” Similarly, ADB generally must use all resources at its disposal to finance the development of its regional developing member countries. To access loans, guarantees, and equity investments, a country must be classified as a regional developing member. However, the ADB Charter does not restrict technical assistance to ADB members. Since the purpose of ADB extends to both members and nonmembers in its region, regional member countries that have not been classified as developing countries and, in exceptional cases, nonmember countries in the region may also receive technical assistance. In this manner, ADB could provide technical assistance to Timor-Leste before it became a member.

The constituent agreements of AfDF and IDA do not classify members into either developed or developing countries, even though the concessional financing of both organizations focuses mainly on the poorest countries. Generally, AfDF and IDA financing benefits their own members and/or members of the nonconcessional arms of the groups to which they belong, as emphasized by the AfDF Agreement, which relates the purpose of the AfDF to “making an increasingly effective contribution to the economic and social development of the Bank's [AfDB's] members.” The constituent agreements of the International Bank for Reconstruction and Development (IBRD) and IDA also constrain extending financial assistance to nonmember countries. IBRD is charged with aiding the “reconstruction and development of territories of members.” while IDA provides “financing to further development in the less-developed areas of the world included within the Association's membership.” However, this has not precluded the World Bank from making certain allocations from its administrative budget to assist nonmembers when such grants would benefit its members.
The World Bank adopted this approach on 5 November 1991, when it established a fund to provide technical assistance to the former Union of Soviet Socialist Republics, which was not a member.

In a 1993 opinion, the general counsel of the World Bank stated that “[t]he use of the Bank’s resources for work in and related to a territory which is not yet a member of the Bank and has not applied (or has no present qualifications to apply) for such membership depends on the benefits which may accrue to members from the use of the Bank’s resources and facilities in such a situation. If in the opinion of the Executive Directors, such use of the Bank’s resources is for the benefit of the Bank’s members, it would be possible to make such a use even if other non-member beneficiaries are involved.”

When the scope of its financial assistance was very large, the World Bank channeled resources through trust funds to assist nonmember countries and to engage with such countries. The Trust Fund for Gaza, which is substantially funded through transfers of net income or surplus from IBRD resources, offers an important and interesting example. IFAD was “in a similar position to that of the World Bank and other international financial institutions (IFIs) in that it [was] constrained [under Article 7, section 1(b) of the AEI] to lend only to members of the organization, or to other entities within a member state, provided that there is a suitable guarantee provided by a member state.”

Lending to the Gaza Strip and the West Bank through the Palestine Liberation Organization recognized by some IFAD members was deemed to meet all the requirements of Articles 2 and 7 of the AEI except for the reference to “Members of the Fund.” Under the circumstances, IFAD had three options to lend to the Gaza Strip:

(a) to obtain a guarantee for a loan from one of its Member States;
(b) to lend, with governmental or other guarantees, to an intergovernmental organization, which would in turn on-lend the amount to the Gaza Strip and the West Bank; or
(c) to waive the application of Article 7, Section 1(b) of the AEI and to establish a fund for the specific purpose of lending to the Gaza Strip and the West Bank.

The third option was chosen to provide assistance to the Gaza Strip and the West Bank. Resolution 107/XXI of the Governing Council, which was adopted on 12 February 1998, established an IFAD Fund for Gaza and the West Bank and appointed IFAD as its administrator. The fund was set up to provide loans and grants “in accordance with the terms, conditions, rules, regulations, guidelines and procedures applicable to loans and grants provided by IFAD from its regular resources save for any limitation that may apply thereon requiring the recipient to be a Member State of IFAD. Repayments of such loans and payments of interest/service charges thereon accrued to IFAD as part of its regular resources.”

The GEF does not define eligibility for financing by participation in the GEF. Since the GEF provides grants within the framework of the four environmental conventions for which it acts as financial mechanism, the conference of the parties to each convention determines the eligibility criteria.

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109 Ibid., p. 4.
111 Ibid., p. 9.
Otherwise, countries qualify for GEF grants if they are eligible to borrow from the World Bank or receive UNDP technical assistance, subject to any additional eligibility criteria as determined by the GEF Council. On the other hand, the Global Fund does not require membership in any organization, reflecting a growing trend to move away from membership as a basis of eligibility for concessional financing.

**General Operating Principles**

Constituent agreements set forth several other conditions that apply to all operational activities. Generally, organizations cannot undertake financing in the territory of a member that objects to such financing or if financing is available from other sources. Many organizations also require using the proceeds of any financing only for the purposes for which the assistance was provided, with due attention to economy and efficiency. Consistent with that requirement, organizations have acted to mainstream good governance, anticorruption efforts, and anti-money laundering in their operations. Doing so is an integral part of policies aiming to facilitate economic development and poverty reduction. Generally, constituent instruments contain provisions requiring the use of organizations’ resources to finance specific projects, it being understood that such provisions do not prejudice the ability to engage in other types of activities, such as structural adjustment lending or program loans. Moreover, some constituent agreements require compliance with sound banking principles and contain provisions regarding procurement. Such provisions are the basis of the conditionality that MFDIs include in their legal agreements with concessional financing recipients. Generally, the financing agreements between MFDIs and borrowers contain several conditions regarding counterpart funds, sound banking practices, environmental protection, resettlement, indigenous people, and other safeguards; in certain cases, they may include specific institutional reforms in financing agreements. In addition, MFDIs have engaged in policy-based lending operations (including structural adjustment and program lending) by incorporating in their financing agreement conditions relating to macroeconomic outcomes, adoption of new policies and establishment of new institutions, restructuring of entire sectors, and, in certain cases, adoption of new legislation. However, there has been a substantial evolution in this regard—from an early emphasis on macroeconomic adjustment and growth to the flexible approaches adopted by MFDIs in this decade,

112 GEF Instrument, para. 9.
113 IDA Articles, Article V, section 1(e); ADB Charter, Article 14(iii); AfDB Agreement, Article 17.1(b); and CDB Agreement, Article 15(b).
114 IDA Articles, Article V, section 1(c); ADB Charter, Article 14(v); AfDB Agreement, Article 17.1(c); and CDB Agreement, Article 15(d).
115 IDA Articles, Article V, section 1(g); ADB Charter, Article 14(xi); AfDB Agreement, Article 17.1(h); and CDB Agreement, Article 15(k).
116 IDA Articles, Article V, section 1(b).
117 This issue was the subject of extensive discussion and deliberation and has long since been settled. Indeed, Article 19 of the IsDB Agreement was drafted in the 1970s and refers explicitly to “programme loans.” Such loans are also an integral part of concessional financing in other organizations (e.g., ADB). For the development of the World Bank adjustment lending, see I. F. I. Shihata. 1991. The World Bank in a Changing World. Selected Essays. Compiled by F. Tschofen and A. R. Parra. Dordrecht/Boston/London: Martinus Nijhoff. pp. 25 ss. Early interpretations of the IBRD Articles by its executive directors recognized IBRD’s power to provide funds for operations other than specific projects, subject to the proviso that, given its mandate and objective, IBRD should “satisfy itself that its lending will facilitate investment for productive purposes even if a loan does not directly finance such investments.” (Ibid., p. 25). See also Sureda, The Law Applicable to the Activities of International Development Banks, pp. 62 ss.
118 ADB Charter, Article 14(xiv).
119 ADB Charter, Article 14(ix); AfDB Agreement, Article 17.1(d), and CDB Agreement, Article 15(h).
121 See Head, Symposium: Developing the IMF, the World Bank and the Regional Development Banks.
which recognize the importance of country ownership and development effectiveness. In this context, there has also been a gradual shift from “ex ante to ex post policy conditionality, allocating aid based on attained levels of policy reform rather than on promises of policy change.”

Constituent agreements also mandate MFDIs to have “special regard to the needs of the smaller or less developed member countries in the region.” While the operational activities of ADB include special consideration for assisting smaller countries, CDB’s reason for existence relates to the development of small island economies. CDB seeks to promote economic cooperation and integration among its member countries in the Caribbean, “having special and urgent regard to the needs of the less developed members of the region.”

Similarly, NTF aims to enable Nigeria to make an increasingly effective contribution to the economic development and social progress of Africa, especially of those member countries of the Bank which are relatively less developed or are most seriously affected by unpredictable catastrophes, including adverse international economic events, through the financing of projects which will further economic and social development in their territories.

There is an increasing trend to ensure private sector participation in funding concessional windows and to adopt “private sector solutions and new forms of risk sharing” for assistance to developing countries. The role of concessional windows as channels of official development assistance (ODA) involves removing impediments to investment, building on partners’ own objectives in areas such as legal systems, regulatory reforms, institutional change, human and institutional capacity, infrastructure, and financial markets. Thus, even in organizations such as IDA which are not “prohibit[ed] from making credits to private entities” the functions of concessional windows generally involve removing macroeconomic constraints to private sector development rather than engaging the private sector directly. Organizations usually conduct equity investments on market-based terms through their private sector windows, through affiliated organizations in some cases and departments in others. However, the NDF expressly allowed the use of NDF resources for equity investments.

With the exception of the NDF, the constituent agreements of all MFDIs studied here require organizations to be guided by economic considerations and not to interfere in the political affairs.

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124 ADB Charter, Article 2(ii).

125 CDB Agreement, Article 1.

126 NTF Agreement, Article 1, section 1.2.


129 I. F. I. Shihata. 2000. World Bank Legal Papers. The Hague: Martinus Nijhoff. p. 575. “[T]here is nothing in the [IDA] Articles which prohibits IDA from making credits to private entities (presumably on commercial terms) directly or through a government or a local development institution, if such financing is not otherwise available from private sources or from the [IBRD]. Given IDA’s practice, a change of policy would require the approval of IDA’s Board before considering a specific proposal.”

130 IDA. Strengthening the Private Sector in IDA Countries.

131 For the International Finance Corporation, which forms part of the World Bank Group, see www.ifc.org/about

132 E.g., ADB’s Private Sector Department. www.adb.org/psod/default.asp

133 NDF Statutes, Section 3.
of member countries.\textsuperscript{134} This distinguishes them from the European Bank for Reconstruction and Development (EBRD), which was founded to “foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics,”\textsuperscript{135} and thus is based on political conditionality. There are calls for MFDIs to play a more active political role and to amend their constituent agreements for that purpose. Also, the current literature argues that, even without such amendments, MFDIs “are not only free to take sustainable development concerns into account but have an international legal obligation to do so....”\textsuperscript{136} Nevertheless, MFDIs have exercised restraint in assuming a direct political role regarding their actions, pronouncements, and financing. Thus, while the MFDIs studied here seek to strengthen the criminal justice system,\textsuperscript{137} they generally do not finance expenditures with a low likelihood of contributing to economic development and a high likelihood of constituting political interference (e.g., weapons and other lethal equipment or police activities, military and paramilitary police activities or intelligence services, anti-narcotics law enforcement campaigns and other specific law enforcement cases, or criminal justice activities relating to political crimes or crimes against the state).\textsuperscript{138}

### Resources of Concessional Financing Windows

#### Hard Windows and Soft Windows

The capital structures of hard and soft windows are fundamentally different. Hard windows relate to the core function of development banks as financial intermediaries and are substantially funded by organizations’ own borrowings from capital markets. They are designed to mobilize their resources through shareholder capital and borrowings on capital markets, which are guaranteed by shareholders. Organization members make available only a small portion of their capital (in cash as “paid-in” capital); the remaining portion is subscribed and guaranteed by members (“callable” capital). What Mistry described as the “figment of confidence underlying the capital structure of the MDBs is embedded in the notion of callable capital” and ensures that shareholder equity fully backs MFDI borrowings, even though the actual resources members make available in the form of cash or promissory notes are very limited.\textsuperscript{139} Shareholder guarantees enable organizations to maintain high credit ratings and borrow on preferential (AAA) terms to support projects in developing countries. Thus, MFDIs can offer preferential market-based terms for loans, along with long-term maturities not generally offered by commercial banks. Since loan repayments enable MFDIs to repay investors, they must provide financing of hard windows on market-based terms.

\textsuperscript{134} AfDF Agreement, Article 21; IADB Charter, Article VIII, section 5(f); ADB Agreement, Article 36; CDB Agreement, Article 35; AEI, Article 6, section 8(g); IsDB Agreement, Article 37.


\textsuperscript{136} G. Handl. 2001. Multilateral Development Banking. Environmental Principles and Concepts Reflecting General International Law and Public Policy. International Environment Law and Policy Series. 58. The Hague/London/Boston: Kluwer Law International. p. 35. ‘Against the background of [multilateral development banks] MDB’s expanding the scope of their lending criteria to support ‘sustainable development,’ this convergence of views or strengthening of expectations is legally significant: It represents evidence of—arguably—an emerging international consensus as to peremptory or overriding normative effects associated with the core principles and rules of sustainable development; or much more persuasively, of subsequent practice involving Bank management and shareholders, practice that interprets or modifies the ‘political activity’ strictures of the respective MDB’s constituent instrument’ (Ibid., pp. 24–25).


\textsuperscript{138} In view of the constraints which are applicable in the case of the World Bank to the funding of police activities, in the case of the Afghanistan Reconstruction Trust Fund, which is the instrument for funding the civilian budget of Afghanistan, provision was made for such activities to be funded by the UNDP-managed Law and Order Trust Fund. World Bank. Afghanistan Reconstruction Trust Fund: The Benefit of Working Together. http://go.worldbank.org/FTQUSNM660

\textsuperscript{139} Mistry, Multilateral Development Banks, p. 22 (emphasis in the original).
On the other hand, MFDIs provide concessional financing either on terms considerably lower than regular market rates or on a grant basis. Their soft windows are designed as revolving funds rather than for mobilizing resources directly from capital markets. In organizations such as the AfDF and IDA, which have proper legal personality under international law, members contribute to the capitalization of the organization. Unlike hard windows, these organizations do not use an equity base to support borrowings in capital markets. Rather, organizations pass the resources they receive from donors in the form of subscriptions and contributions directly to the recipients at a rate of 1:1. Thus, their financial structure is similar to the special funds administered by organizations under one legal personality and with nonconcessional resources. The financial architecture of both types of soft windows is based on the concept of multilateral clubs of donors who collaborate in providing permanent grant resources to these respective funds. Such resources are used for concessional loans and other modalities of concessional financing.

**Types of Resources**

In some cases (e.g., ISFD), the main source of funding for concessional operations derives exclusively or predominantly from the investment income of an initial endowment provided by the organization’s members. Due to scarce budget resources, however, it is often difficult to fund concessional windows on that basis. Thus, donors generally fund only a time slice of the organization’s concessional operations. Their subscriptions and contributions provide the most important source of concessional financing. In addition, MFDIs or organizational groups also contribute substantially to funding their concessional windows by allocating resources from their hard windows. Other sources of commitment authority derive from reflows of resources from previous replenishments, investment income, and, to a limited extent, cancellations of nonperforming concessional loans. As the resource basis of concessional windows grew, internal resources became important sources of concessional financing. Moreover, organizations use increasingly innovative financing mechanisms to mobilize resources for concessional windows.

**Subscriptions and Contributions**

MFDIs have adopted different approaches regarding the allocation of voting rights vis-à-vis contributions to concessional windows. These approaches seek to balance the competing objectives of facilitating resource mobilization by giving providers of concessional resources and/or capital a voice in the organization, while ensuring adequate representation of low-income countries and small countries.

The constituent agreements of the AfDF and IDA specify the subscriptions of the original AfDF state participants and IDA members, but their boards of governors have substantial discretion in determining the terms and conditions of membership and the admission of new members. Additional subscriptions, which can take the form of general or individual increases, are the main method of increasing the resources of these institutions. When authorized, additional subscriptions give all IDA members and all AfDF state participants the opportunity to exercise preemptive rights by subscribing to an amount that enables them

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140 Ibid., p. 18.
142 See Chapter 2 (G. Droesse, Organizational Structures).
143 Additional subscriptions by state participants (AfDF Agreement, Article 7), which may be in the form of general increases and individual subscriptions, have been the main method of resource mobilization. All authorizations and determinations in respect of general increases require a majority of 85% of total voting power (AfDF Agreement Article 7[4]). In the case of individual increases in subscription, other members are entitled to exercise preemptive rights.
144 Article III, Section 1 of the IDA Articles contemplates that IDA shall “at such time as it deems appropriate in the light of the schedule for completion of payments on initial subscriptions of original members, and at intervals of approximately five years thereafter, review the adequacy of its resources and, if it deems desirable, shall authorize a general increase in subscriptions.” In addition to such general increases in subscription (i.e., the IDA replenishments), at the request of a member, individual increases in subscriptions may be authorized at any time with a special two-thirds majority of the total voting power. In such a case, all members are entitled to exercise preemptive rights.
to maintain their relative voting power. In IDA, replenishments have provided the opportunity to Part II members to exercise that right indefinitely if they choose not to exercise it immediately. Unlike the AfDF, additions to IDA resources may also include contributions without voting rights.

In Article III, sections 2(a) and 2(b), the IDA Articles uniquely provides for supplementary resources in the currency of another member. This provision was incorporated in “deference to the United States,” because one of the main reasons for creating IDA was to attempt to allow the United States (US) to reduce its holdings in various inconvertible local currencies. While this provision authorized IDA to accept, without voting rights, supplementary resources provided by a member in the currency of another member, any such arrangements are subject to the agreement of the member concerned. Thus, even though the existence of “sizable holdings of US-owned local currencies unquestionably hastened the creation of IDA,” it did not affect operations of IDA and has never been applied. Other organizations (e.g., ADB) also accept “supplementary” contributions. However, in the context of ADB, this term refers to contributions made in convertible currency but not covered by burden-sharing arrangements.

Donor contributions to special funds generally do not carry voting rights in organizations that jointly administer concessional and nonconcessional resources. Thus, ADB (for ADF and other special funds), CDB (for SDF and OSF), and IADB (for FSO), allocate voting rights based on the capital structure and the voting rights that pertain to their own OCR. IsDB is the only organization studied here that allocates voting rights based on contributions to a special fund.

Although both IADB and CDB incorporated their concessional windows (FSO for IADB and SDF for CDB) in their charters, these windows differ substantially. The IADB Charter capitalized the FSO with $150 million and established quotas for initial members. Conversely, the CDB Charter contains a general authorization for CDB to receive contributions for the SDF (and CDB’s other general funds [OSF]) as may be agreed upon with the contributor and CDB.

For IADB members, there is significant correlation between the proportion of their contributions to the FSO when joining IADB and their subscriptions to the ordinary capital of IADB. The same is also generally true regarding member contributions to FSO replenishments, even though in certain cases members contributed a proportion to such replenishments that differed from their capital subscriptions.

In IADB, all members generally contribute to the FSO, but regional members did so partially or completely in local currency. IADB members may exercise preemptive rights regarding increases in FSO resources “in terms of the proportion between the quota in effect for each member and the total amount of the resources of the [FSO] contributed by members.” Increases in FSO resources are generally negotiated

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145 AfDF Agreement, Article 7(2); IDA Articles, Art. III, Sec. 1(c).
146 See Chapter 2 (G. Droesse, Organizational Structures).
148 Ibid., p. 393.
149 Unlike the IDA, any supplementary contributions to the ADF can only be made in convertible currency. Section 2.06 of the Regulations of the ADF authorizes ADB to accept, with the approval of the Board of Directors, supplementary resources provided by members and, by a Special Resolution of the Board of Directors, contributions from any nonmember government or from any national or international entity, public or private. In ADB, this term, as defined in replenishment resolutions, refers to contributions made by members in excess of their burden share.
150 See Chapter 2 (G. Droesse, Organizational Structures).
151 IADB Charter, Article IV, sections 3(c)–3(d).
152 CDB Agreement, Article 8(3).
153 The Republic of Korea, when it became a member of IADB on 16 March 2005, “made a commitment to provide $200 million in special contributions to the IADB Group.” IADB. 2006. Annual Report 2005. p. 61. However, the Republic of Korea did not commit to make a contribution to the FSO in the context of the Ninth General Increase in Resources while indicating that a contribution of $1 million is under consideration. IADB. 2010. Report on the Ninth General Increase in the Resources of the Inter-American Development Bank. [AB-2764, 21 May], p. 35.
154 IADB Charter, Article IV, section 3(g) refers to Article II, section 3(b), which applies to an increase in ordinary capital.
at the same time and through the same bodies as increases in OCR. The FSO was replenished in 1994, in the context of IADB’s eighth general increase in FSO resources (IADB-8). After IADB’s participation in the HIPC Initiative in 1997, FSO’s already limited resources were projected to sharply decline in 1999. IADB needed additional concessional resources in convertible currency to implement its mandate of poverty reduction and meet the exceptional needs caused by natural disasters. Thus, in 1999, regional members took the “historic decision” to convert over time a total amount of $2.4 billion into local currency. With these additional resources, reflows from previous replenishments and contributions to the eighth general increase in resources amounting to $1 billion, IADB was able to provide from FSO resources a total of $6.6 billion in loans and $6.7 billion in disbursements between 1994 and 2008. As there had been no infusion of new resources since 1994, FSO financing was much lower than that provided by ADF and the AfDF for the same period and IADB’s ability to assist its poorest member countries through concessional financing remained substantially constrained due to lack of resources. In the last three years, the FSO was substantially decapitalized through the use of its resources for debt relief and grants. The small replenishment of FSO ($479 million for the entire next decade) agreed to in 2010 will only enable IADB to provide debt relief and immediate grants to Haiti and financial support to a select few other countries at a low operational level.

There is no general correlation between members’ capital subscriptions to CDB and their contributions to the SDF, either when joining CDB or thereafter in the context of replenishments. Also general capital increases and SDF replenishments are not conducted in conjunction.

Although the ADB Charter does not provide for an incorporated concessional window similar to the SDF, it does provide for the administration of Special Funds resources. As with CDB, there is no direct link between the shareholdings of ADB members and their contributions to the ADF. Nevertheless, as a matter of policy, a substantial contribution to the ADF is a condition of admission for all nonregional members. As ADF contributions must be made in convertible currency, only developed countries contributed to the ADF initially. While several regional developing countries currently contribute to the ADF, most regional countries do not. These facts distinguish the ADF from the FSO.

IFAD makes a fundamental distinction between regular (core) resources and nonregular resources. As specified in Article 4, section 1 of the AEI, the core resources of IFAD consist of

- initial contributions (of original and non-original members);
- additional contributions (of members);
- special contributions from nonmember states and other sources; and
- funds derived from operations or otherwise accruing to IFAD.

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157 On 22 February 1999, the IADB Board of Governors adopted Resolution AG-1/99, thus accepting an agreement on concessional and related matters reached at the meeting of the Committee of the Board of Governors on 9 December 1998. Under that agreement, Brazil made available 80% of local currency ($718 million) and other regional countries contributed 65% ($1,435 million) of local currency.


160 See Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development) for more detailed information.
IFAD’s nonregular resources include supplementary funds and complementary contributions. There is a substantial difference between both types of funds. Supplementary contributions are received from donors for purposes (IFAD-administered grant financing, sectoral/thematic studies, consultant supplementary funds) specified in agreements with donors that set out the use of proceeds and reporting requirements. They do not form part of IFAD’s core resources and must meet certain criteria for resource mobilization and use. Complementary contributions, on the other hand, are part of IFAD’s core resources. This term refers to voluntary payments made by IFAD members during replenishment periods for which IFAD members, unlike in regular replenishment contributions, do not receive commensurate votes.

Similar to IFAD, other MFDIs normally have authority to accept contributions from nonmember countries or other sources (e.g., foundations and private sector institutions) even if their constituent instruments do not explicitly contemplate receipt of such resources. A qualified majority may be required for acceptance of such contributions. Increasingly, efforts are being made and operational frameworks being developed to mobilize financing from such sources. In doing so, organizations must weigh the benefit of receiving additional resources against possible risks to their reputation and the integrity of their operations (e.g., resulting from conflict-of-interest or unfair-advantage situations). Overall, contributions by foundations and the private sector account for a relatively small percentage if any, of total financing of conventional windows.

The same situation applies to the GEF, which also was structured as a channel for ODA and to the Climate Investment Funds. The Global Fund receives most of its funding from state donors. However, the Global Fund actively seeks financing in the form of cash and non-cash contributions from the private sector and nongovernment actors (businesses, corporations, social enterprises and philanthropic foundations). Similar efforts are being made for other channels of concessional financing in the health sector. Those efforts reflect a changed aid architecture, where philanthropy has become a major source of development assistance and “competition among multilateral channels for a largely stable pool of resources has been combined with an increase in the role of private providers/managers of aid.”

Borrowings as a Source of Concessional Financing

MFDIs rarely use loans as a funding mechanism for concessional operations, and then only to a very limited extent and only on concessional terms. In accordance with Article V, Section 5(i) of the IDA Articles, IDA may “borrow funds with the approval of the member in whose currency the loan..."
is denominated.” Although IDA accepted non-interest-bearing loans during its early replenishments (repayable over a 50-year period) from Switzerland\textsuperscript{167}, which was not yet a member, it does not rely on concessional loans as a regular mode of financing for its operations. The same is true for CDB, which is explicitly authorized by its charter to receive loans for SDF,\textsuperscript{168} and for the AfDF, which may enter in arrangements to receive loans, but only on concessional terms.\textsuperscript{169} The legislative history of the ADB Agreement shows that the Preparatory Committee did not support ADB borrowings from capital markets for special funds. Thus, Article 20(b) of the ADB Charter regarding Special Fund resources was amended to clarify such intent.\textsuperscript{170} Both a nonregional member and a nonmember country have given CABEI loans for the FETS.\textsuperscript{171} However, CABEI has not borrowed for the FETS on capital markets, although the FETS statute\textsuperscript{172} explicitly authorizes CABEI to issue bonds.

Nevertheless, development thought has changed markedly since January 2003, when the Government of the United Kingdom launched a proposal for an International Finance Facility to provide an additional $50 billion per year in development assistance up to 2015.\textsuperscript{173} The proposed facility was meant to leverage additional money from capital markets by issuing bonds based on legally binding long-term donor commitments. A similar scheme was implemented on a pilot basis for the International Finance Facility for Immunisation (IFFIm),\textsuperscript{174} whose institutional structure was partially modeled on the Global Fund, since it was established as a charity with the Charity Commission for England and Wales and registered as a company in England and Wales. To prevent massive loss of life from preventable diseases, the IFFIm was designed to accelerate the availability of funds for health and immunization programs through the Global Alliance for Vaccines and Immunisation (GAVI Alliance)\textsuperscript{175} by frontloading resources.\textsuperscript{176} For that purpose, several states entered into long-term grant and guarantee agreements under which they agreed to make scheduled payments for as long as 20 years. The IFFIm converts such long-term government pledges

\textsuperscript{167} Under IDA2, IDA accepted a loan from Switzerland in the amount of $12 million. IDA. 1968. Additions to Resources: Second Replenishment, Revision of Documents (IDA/R68-11/1, 8 March). Report of the Executive Directors to the Board of Governors on Additions to IDA Resources: Second Replenishment. p. 4. In IDA3, the Executive Directors reviewed loans as a mode of financing IDA replenishments. As the equity of the IDA was small and the IDA's lending was to weaker credit risks, the IDA was reluctant to assume a large debt. However, some members argued that an institution that provides loans should also be financed by loans, which would make it easier for members to contribute to the IDA's replenishments. (IDA. 1970. Report of the Executive Directors of IDA: Additions to IDA Resources: Third Replenishment [21 July], Annex B). While not precluding reconsideration of this matter during later replenishments, the executive directors concluded that members should not use loans to replenish the resources of the IDA. Notwithstanding the above, the IDA agreed to again accept a loan (equivalent to approximately $30 million) from Switzerland, then a nonmember, repayable without interest over a period of 50 years (Ibid., paras. 5 and 9). During the IDA4 negotiations, Switzerland again expressed its intention to participate in the replenishment and sought approval for an interest-free loan to the IDA totaling 200 million Swiss francs (then equivalent to $66,179,147), repayable over 50 years (IDA. 1973. Report of the Executive Directors of IDA, Additions to IDA Resources, Fourth Replenishment [30 October], para. 7). See IDA. 1977. The Fifth Replenishment of IDA. Report of the Executive Directors of IDA. para. 6: “The Swiss Confederation had expressed its intention to participate in the Fourth Replenishment of IDA by making a loan to IDA in the amount of 200 million Swiss francs. Under the Swiss Constitution, this proposed participation, adopted by the Executive and Legislative Branches, was subject to a referendum by the Swiss electorate which in June 1976 defeated the legislation involved. Switzerland has, therefore, not been able to participate in the negotiations for the Fifth Replenishment of IDA.”

\textsuperscript{168} CDB Agreement, Article 8(1).

\textsuperscript{169} Article 8(1) of the AfDF Agreement authorizes the AfDF to enter in arrangements “to receive other resources including grants and loans from members, participants, States which are not participants and from any public or private entity or entities.” However, in accordance with Article 8, para. 5, the AfDF may accept loans only on concessional terms and thus is barred from borrowing on regular market terms. It appears that the AfDF never availed in practice of the power to accept loans on concessional terms.

\textsuperscript{170} See Chapter 4 (G. Droesse, ADB Concessional Financing).

\textsuperscript{171} Development agencies of a nonregional member (Taipei,China) and a nonmember country (Denmark) have provided loans to the FETS on highly concessional terms.

\textsuperscript{172} CABEI Board of Directors Resolution No. DI-28/2000.


\textsuperscript{174} International Finance Facility for Immunisation. www.iff-immunisation.org/

\textsuperscript{175} GAVI Alliance. www.gavialliance.org/about/in_finance/index.php

into immediately available cash resources by issuing IFFIm bonds. The proceeds of the assigned grant payments are used to repay the principal and interest of the bonds issued by the IFFIm. In 2009, the expansion of the IFFIm and other innovative financing schemes for the health sector were proposed by a taskforce of world leaders. The eight countries (United Kingdom, France, Italy, Spain, Sweden, the Netherlands, Norway, and South Africa) which support IFFIm have jointly pledged to contribute to IFFIm the equivalent of $5.9 billion over 23 years.

The MFDIs studied here and the Global Fund have not yet decided whether to issue bonds. In this context, each case will require an evaluation to determine whether such a scheme might erode future aid and whether the benefits of the scheme justify the additional cost resulting from issuing bonds, which are not negligible. If implemented on a wider scale, similar schemes could result in accelerated and rapidly available funding to MFDIs and address the problem of insufficient frontloading of donor contributions resulting from the fact that contributions are generally made in installments and encashed over an extended period.

While the fact that affiliated organizations have legal personality could potentially facilitate their leveraging resources through the issuance of bonds, they may need to make changes to their legal and financial frameworks for issuing bonds on similar terms as IFFIm. Some organizations administering concessional and nonconcessional resources under one legal personality (e.g., CABEI) are authorized to issue bonds for their special funds, but have not done so to date. In such a case, there may not be any major obstacles for engaging in a scheme similar to that implemented by IFFIm, even though some changes to their legal and financial frameworks may be required. However, the situation is different in the case of organizations whose constituent agreements do not envisage issuing bonds for their special funds, which funds do not possess legal personality of their own and thus cannot be the subject of rights and obligations. In such a case, short of an amendment to their constituent agreement or the establishment of an affiliate with proper legal personality, a possible solution might be for these organizations to establish special purpose vehicles for issuing bonds as trust funds with legal personality (e.g., through a corporation incorporated in a member country of the sponsoring organization). The legal and framework of such special purpose vehicles could be structured in a similar manner as IFFIm. As regards their governance structures, various solutions would be possible. They could either have their own governance structure, or the sponsoring organizations could perform the functions of administrator and trustee.

Allocations from Organizations’ Hard Windows

In addition to donors’ subscription and/or contributions, allocations from hard windows are increasingly used to fund concessional operations.

Unlike ADB, whose Charter authorizes its Board of Governors to set a portion of its unimpaired paid-in capital aside to establish special funds, the constituent instruments of other MFDIs do not provide for allocations from their paid-in capital. CDB is expressly prohibited from doing so.

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177 For details regarding the IFFIm, see the IFFIm Prospectus. 2008. www.iff-immunisation.org/pdfs/prospectus7_22.pdf


179 See IFFIm. Donors. www.iff-immunisation.org/donors.html


181 Article 19.1(i) of the ADB Charter enabled ADB to provide concessional financing shortly after its establishment. The ADB Board of Governors used this power to allocate amounts to the Multipurpose Special Fund, which were subsequently transferred to the ADF. Article 21(vi) of the Charter also authorized ADB in the first five years of its operations to “use up to two (2) per cent of its paid-in capital” for furnishing technical assistance on a non-reimbursable basis. However, ADB has never used its paid-in capital for that purpose.

182 CDB Agreement, Article 8(4). “No allocation may be made to the Special Development Fund provided for in paragraph 1 of this Article or to any other special fund from the paid-up capital or reserve of the Bank or from funds borrowed by the Bank for inclusion in its ordinary capital resources.” (emphasis added)
However, transferring net income or surplus from organizations' hard windows is widely recognized as a source of concessional financing. Some constituent instruments expressly allow such transfers (e.g., IADB, where in the past such transfers have occurred only rarely in practice).  

Other MFDIs required a formal interpretation of their constituent instrument by their governing bodies to allow such transfers. This was necessary in ADB, where the Board of Directors ruled, pursuant to Article 60 of the ADB Charter, that transferring OCR net income or surplus to the ADF was consistent with the ADB Charter, particularly Article 10.1, which provides for the separation of OCR and Special Funds resources.

The governors’ resolution establishing the FETS expressly authorized the CABEI directors to allocate resources to the FETS. The same situation applies under the FONTEC Statute, which was approved by the CABEI Board of Governors. While CABEI’s allocations are the main funding modality for both funds, neither has received any, or only very few, contributions from CABEI members.

While allocating OCR net income to OSF, CDB has so far not made any transfer of OCR net income to the SDF. In the seventh SDF replenishment cycle, transfers to the SDF are under consideration for the first time.

IsDB is unique in that prior to 2008, it lacked a dedicated window for concessional financing and funded most loans and technical assistance through its OCR. While it had previously sought to set aside 29% of its annual operations on a pro rata basis for that purpose, the lack of cash resources made such allocation unsustainable. In 2006, IsDB set the annual allocation for concessional resources from its OCR at the equivalent of $315 million, comprising loan financing ($300 million) and technical assistance ($15 million). This equaled about 18% of the IsDB Annual Operations Plan for 2006–2007, which totaled $1,700 million. IsDB allocated about 80% of its concessional financing to least developed member countries (LDMCs), which also were the sole beneficiaries of a $30 million allocation from the Special Account for the Least Developed Countries that had been established by IsDB in 1992. From 2007 to 2008, IsDB allocated a total of $303.6 million from its OCR. LDMCs received about 88% of IsDB’s total concessional financing as well as $10 million from the LDMCs Loan Account and $5 million (30%) of the overall amount allocated for technical assistance ($17 million). Thus, the overall concessional base of IsDB was very limited.

Currently, the ISFD, which began its operations on 10 January 2008, is a major source of funding for loan financing. The ISFD targets IsDB’s least developed member Countries (LDMCs) and evaluates their needs on the basis of country poverty assessments. In addition to implementing projects in 27 IsDB member countries, IsDB placed during its first ISFD strategy (2008–2012) emphasis...
on two thematic programs: the Vocational Literacy for Poverty Reduction Program (VOLIP) and the Microfinance Program for African Member Countries. To enable the ISFD to commence operations immediately, IsDB agreed to “meet financing requirements of projects approved under the ISFD from its own capital resources [and to provide] up to $357 million per year in concessional financing until the proceeds of investment of the ISFD resources reach a sufficient level to meet its commitments.” Financing of the ISFD in the form of concessional loans and grants is supplemented by other initiatives such as the Special Program for the Development of Africa which seeks to stimulate in partnership with African countries sustainable growth and effective poverty reduction and IsDB funding.

Existing Resources
MFDIs differ in the extent to which they rely on existing resources for funding commitment authority. The ISFD of IsDB is special because it was created as a charitable endowment fund (“conditional waqf”) and its operations are meant to be financed (after it is fully funded) from the investment returns of its core resources. The target principal for the ISFD is $10 billion, to be contributed by member states and institutions of member states of IsDB and by IsDB itself. More than 20 member countries pledged initial contributions, including Saudi Arabia ($1 billion) and Kuwait ($400 million), which are the two main contributors. IsDB contributes $1 billion. The income from this endowment fund (waqf) will be used for “providing financing for projects and programmes aimed at reducing poverty in the member countries of the Organization of the Islamic Conference...” Although IsDB has planned no regular replenishments, its board of governors may increase the principal amount of the ISFD “at any time upon such terms and conditions, as it may deem appropriate.” While no member is obliged to subscribe to such an increase, each member will have “a reasonable opportunity to subscribe to a proportion of the increase” if it so desires.

The FSO of IADB, which was substantially funded by contributions from IADB members, represents a concessional window for which IADB de facto has adopted a sustainable lending concept at a low operational level; it has provided concessional financing exclusively from its existing resources since the replenishment of the FSO in 1994 during the Eighth General Increase in IADB Resources. Therefore, the ability of the FSO to fulfill its commitments depended on current and projected liquid holdings. IADB has used the FSO general reserve, which contains retained earnings, to provide allocations to the Intermediate Financing Facility (IFF) and the Grant Facility for Haiti, and to fund the cost of debt relief. However, as mentioned above, the Grant Facility will funded in the future by OCR transfers. The Cancún Declaration of March 2010 provides for modifications “to the existing Grant Facility for Haiti’s use in order to receive grant funds in support of financing Haiti’s reconstruction and development” which would allow Haiti to suspend its borrowing from the FSO.

NDF grant financing for climate change mitigation and adaptation will also derive substantially from reflows of NDF loans. The NDF currently envisions no further replenishment. Because it will provide

193 IsDB, Resource Mobilization for Establishing a Fund for Poverty Reduction: High Level Delegation Sets Out to Meet Heads of States in Member Countries.
194 ISFD Regulations, Annex A.
195 ISFD Regulations, Article 5.04.
196 ISFD Regulations, Article 5.06.
197 ISFD Regulations, Article 6.05.
198 The FSO previously provided IFF funding through annual transfers from accumulated FSO income.
199 IADB, Cancún Declaration, para. 5.
grant assistance, in accordance with the new functions given to the NDF in 2009, the NDF would be gradually decapitalized over the next 35 years by using the reflows of disbursed loans for grant financing unless a decision on infusion of new resources is taken at a later stage.

Other MFDIs still rely largely on new subscriptions and/or contributions to fund their concessional operations. As their resource base grew, internally generated resources such as reflows from previous replenishments, investment income, and, to a limited extent, loan cancellations have become sources of concessional financing. Their endowment of internal resources insulates concessional windows somewhat from the volatility of resource allocation processes in donor countries. Nevertheless, development thought has changed markedly regarding the use of internal resources. In the 1990s, discussion focused mainly on enabling MFDIs to achieve long-term sustainability of their concessional financing. Therefore, the terms of concessional loans hardened in some cases. Currently, however, other objectives have taken precedence as organizations’ policies focus mainly on assisting low-income countries in achieving their development goals without creating future debt problems. Against this background, new modalities of concessional financing expanded with the introduction of debt relief and grants for projects and programs. These new modalities substantially reduced organizations’ endowment with internal resources and increased their “dependency on donor funding.”200

There are substantial differences regarding the extent to which organizations rely on internal resources. During ADF IX, the internal resources of the ADF exceeded the amount of new donor contributions for the first time.201 Further enhancements to the financial management framework of the ADF were approved during negotiations for ADF X. While the financial implications of ADB’s participation in the Heavily Indebted Poor Countries (HIPC) Initiative were rather limited, the participation of the AfDF and IDA in the Multilateral Debt Relief Initiative (MDRI) substantially reduced the internal resources that those organizations could allocate to concessional financing.202 Nevertheless, their existing resources still form a substantial part of their total resources, but to a lesser extent than in ADB.203 In CDB, internal resources are rather limited, partially due “to the very conservative investment guidelines that are applied to the management of surplus cash of the SDF(U).”204 The situation also differs for GEF, which only uses concessional loans in exceptional circumstances, and the Global Fund, which provides assistance only in the form of grants. Both organizations have limited internal resources and for that

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201 See Chapter 4 (G. Droesse, ADB Concessional Financing).

202 In the IDA, commitment authority against internal resources substantially declined due to debt relief under the MDRI. In IDA14, commitment against internal resources totaled SDR8.7 billion against donor contributions of SDR14.1 billion (IDA. 2005. *Additions to IDA Resources: Fourteenth Replenishment. Working Together to Achieve the Millennium Development Goals.* http://siteresources.worldbank.org/IDA/Resources/14th_Replenishment_Final.pdf) Under IDA15, Deputies endorsed SDR16.5 billion of total donor contributions for IDA15 and reaffirmed the need for additional donor contributions for the MDRI replenishment of SDR4.1 billion. They acknowledged proposed commitments totaling SDR4.1 billion against the IDA’s internal resources. See IDA, *Additions to IDA Resources: Fifteenth Replenishment.* p. 32. “In FY10, available reflows from credit principal are about $2 billion, which compares with expected new commitments for credits and grants of $12–16 billion during that year. While principal reflows of IDA, after the impact of debt relief under HIPC and the MDRI, are still projected to increase over the next two decades, they would top out at about $4 billion per year, well below the current level of IDA’s annual financing commitments.” IDA. 2010. *A Review of IDA’s Long Term Capacity and Financial Instruments,* p. 4. http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/73449-1271341193277/IDA16-Long_Term_Financing.pdf

203 ADF X was financed from the following sources: (i) SDR2.6 billion from new donor contributions; (ii) SDR4.3 billion from internal resources, consisting of SDR3.2 billion reflow-based resources and SDR1.1 billion from liquidity drawdown; and (iii) SDR0.2 billion from net income transfers from OCR, subject to annual approvals by the ADB Board of Governors. See ADB, *Asian Development Fund X Donor’s Report,* p. 22.

reason rely substantially on the infusion of new resources to finance their concessional operations. For this reason, they are particularly vulnerable to the effects of payment arrears.

**Innovative Financing Mechanisms**

In the past, MFDIs sought to mobilize additional financing mainly through single and multidonor trust funds, including special facilities, multipurpose vehicles and other facilities and trust funds, including those for debt relief, and through buyback, arrears clearance, and debt swap mechanisms. However, international organizations have entered a phase where development funding mechanisms are becoming more and more diversified. At the national level, this has led to a proposal for global taxes, similar to the airline tax proposed by the Government of France, diaspora bonds, and gross domestic product (GDP)-indexed bonds to provide aid to Africa, and a range of other transactions. It is proposed that some of these instruments (e.g., GDP-indexed bonds) should also be used by MFDIs. Internationally, a number of innovative schemes has been implemented. There has been a range of innovative initiatives, particularly in the health sector. In addition to the IFFIm, the GAVI Alliance relies on advance market commitment to accelerate the development of new medicines. That scheme is predicated on donor commitments guaranteeing the price of vaccines once they are developed, provided that they meet stringent and already agreed upon criteria for effectiveness, cost, and availability, and that developing countries demand them. The Debt2Health scheme of the Global Fund offers an example of innovative financing. However, the search for innovative financing options is not limited to the health sector. Innovative funding mechanisms are also considered for other areas, including the water sector, financing the high cost of climate change adaptation and mitigation, and generally assisting developing countries in filling the large funding gap for meeting the MDGs.

In 2006, the Paris Conference on innovative financing for development marked “a new step towards rallying the support of the international community for innovative financing for development.” In the

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205 On the basis of the allocations of the council, the World Bank, as trustee of the GEF, can only make commitments to executing and implementing agencies up to the amount of funds that it has actually received from contributors. See Chapter 9 (S. Smyth, A Practical Guide to Creating a Collective Financing Effort to Save the World: The Global Environment Facility Experience). For the Global Fund, the board may “commit funds up to the cumulative uncommitted amount of assets that the Board determines will be available at the time of the Secretariat committing the funds in the related grant agreements.” Global Fund. 2009. Comprehensive Funding Policy and Related Board Decisions. www.theglobalfund.org/documents/comprehensive_funding_policy.pdf


208 Diaspora bonds are debt instruments issued by a country, subsovereign body, or private corporation to raise funds from a country’s overseas diaspora. See World Bank. 2008. New Ways to Finance Development in Sub-Saharan Africa. 10 March. http://go.worldbank.org/QNZMZ16FB0


211 GAVI Alliance. www.gavialliance.org/about/in_finance/index.php


same year, African financial ministers at the Abuja Conference encouraged “the development of innovative financing mechanisms such as taxes on airline tickets being implemented by the French Government,” and the IFF. Following these and other conferences, the discussion on new and innovative financing mechanisms gained momentum in the AfDB Group and other MFDIs studied here. The Doha Declaration on Financing for Development (December 2008) called on multilateral and regional development banks and other stakeholders to continue exploring innovative modalities and sources of financing. Inadequate aid flows and ODA that is too limited in scope have spurred MFDIs to explore a great variety of innovative financing mechanisms to reduce poverty in developing countries and help them achieve higher levels of development. Accordingly, actions have begun to assess the potential of such new techniques and their implications for MFDIs. While some of the proposed new schemes may be unsuitable for MFDIs, they have the potential of substantially enhancing the development impact and volume of MFDIs’ financial assistance. Since ODA is expected to fall short of the level required to enable developing member countries to achieve the MDGs, developing member countries may benefit, with necessary prudence, from tapping market-based financing and mobilizing cross-border capital flows through both the public and private sectors.

**Classification, Eligibility, Access, and Allocations**

Each organization that provides concessional financing must define its own criteria for determining the type and amount of resources it wishes to allocate to eligible recipients. Organizations may determine recipients’ overall eligibility to receive concessional resources in accordance with established eligibility criteria (based on country or project criteria) and also determine recipients’ eligibility to receive certain types of concessional resources (e.g., concessional loans or grants) using a set of thematic criteria or, more recently, a single criterion such as debt sustainability analysis. In addition, donors may restrict access to concessional financing for certain countries that, based on their classification, would otherwise be eligible to receive such financing. Notably, the amount of resources allocated to countries is determined on the basis of performance and in accordance with an organization’s operational strategies for each country.

**Eligibility, Graduation, and Country Classification**

MFDIs have adopted different approaches to identify recipients eligible for concessional financing. Some organizations (e.g., previously, the NDF) allocate financing on an ad hoc basis or in accordance with established policies. However, most MFDIs categorize their members for analytical and operational purposes. In some MFDIs, all borrowing members are eligible to receive concessional financing; others restrict such financing to the poorest countries.

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219 World Bank, Innovative Financing for Development.

When the NDF was established, a few general guidelines had been formulated. “It should promote economic and social development in developing countries, it should give priority to poor countries, it should take debt service capacity into account, and the projects it financed should be of interest to the Nordic countries.” The NDF initially searched “freely for opportunities within these broad confines” by providing financing to countries that met the general criteria, including countries in the middle-income category. Also, “there was no particularity about sectors, so long as the projects served developmental purposes and could suitably utilise Nordic knowledge and technology.” However, the “age of innocence did not last long. Limited administrative resources demanded concentration and scarce investment funds called for direction towards basic objectives.” Consequently, a “[s]trict selectivity of countries and sectors” became the norm and the NDF board decided in 1997 “to adopt the DAC sector classification, commonly applied in OECD countries.”

For CDB, IFAD, and IsDB (and previously, IADB), country classification determines the modalities and terms and conditions of concessional financing, rather than country eligibility; in principle, all borrowing members are (or were) eligible. In CDB, this is a corollary of the fact that the CDB Charter does not restrict the provision of concessional financing to any regional country; in IFAD, all core resources are administered under the same mandate. While IFAD focuses on the poorest states, its classification of developing countries into four groups determines allocations and the terms of financing granted to developing member states.

IADB classifies countries into four categories, termed A, B, C, and D. Since the IADB Charter established and funded the FSO, borrowing members contributed to the FSO from the outset. The IADB system has evolved in the context of its replenishments. Under the first five general increases of FSO resources, all borrowing member countries were eligible to receive concessional financing. Such financing was an integral part of its operational activities, enabling IADB to play a dynamic role in the development of its regional member countries. The fourth general increase was important because IADB formulated for the first time a loan program that foresaw larger loans from its OCR than its FSO. While, in principle, all borrowing member countries remained eligible to receive FSO resources, IADB adopted a policy wherein less-developed countries and those with insufficient markets received preferential treatment over unrestricted resources in convertible currency. In 1976, the more developed countries in Groups A, B, and C decided not to request financing in foreign exchange. Under its sixth general increase, IADB disqualified the most developed of its developing member countries in Group A from receiving FSO concessional financing and made them eligible to receive loans exclusively from OCR. IADB then created the IFF “to provide intermediate-term financing to the Group C countries and also to Group D countries activities for which FSO financing [was] insufficient.” IADB would eventually limit FSO funding to the five poorest countries, classified as Group D: Bolivia, Guyana, Haiti,
However, decisions taken by the IADB Board of Governors in 2006 and 2007 resulted in the suspension of all new financing through the IFF, and both the former eligible FSO countries (Bolivia, Guyana, Honduras, and Nicaragua) and former IFF-eligible countries (Guatemala and Paraguay) became eligible to receive FSO financing through parallel OCR and concessional FSO loans. Presently, only Haiti is qualified to receive grants under the IADB Grant Facility established in 2007.

CDB currently applies a country grouping strategy of four groups for “the purpose of setting terms and conditions for SDF lending and providing a basis for the blending of SDF and OCR funding at the country level.” Classification in one of the four groups triggers the maximum maturity, maximum grace period, interest rate, and upper lending limit for each group. While all CDB member countries are eligible to receive SDF financing, Group 1 countries (with most advanced development status) do not qualify for a country allocation, but they may “be the beneficiaries of regional projects.”

In IFAD, all developing member countries are eligible for financing. Although IFAD operations focus mainly on the poorest countries, it has not sought “to develop a pattern of country allocations,” instead designating several priority countries for programming purposes. IFAD extends financing to developing member countries on highly concessional, intermediate, or ordinary terms based on per capita gross national product (GNP), and allocates 67% of its loan resources to countries that borrow on highly concessional terms. Among eligible countries, IFAD focuses on general economy and agricultural policies and practices, based on the assumption that a strong commitment to pro-poor policies reflected in countries’ policies is paramount to the success of IFAD’s lending operations.

In organizations such as the ADB, the AfDB Group, and the World Bank Group, country classification may determine a country’s eligibility for concessional financing, the appropriate type of financing, and the terms and conditions of such financing. Their concessional windows mentioned above were initially created as channels for transferring resources from developed countries belonging to the Organisation for Economic Co-operation and Development (OECD) to developing countries. Concessional financing was

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231 Under the Seventh General Increase in IADB resources, all Group D countries were still eligible to receive FSO loans, but as an interim measure it was agreed that “preferential treatment would be offered to the five Group D countries that are facing the most severe economic difficulties. Fifty-five percent of the total FSO program for the period 1990–1993 would be targeted for these countries. The remaining forty-five percent would go to the remaining Group D countries.” IADB. 1989. *Proposal for the Seventh General Increase in the Resources of the Inter-American Development Bank* (AB-1378, 19 April) Washington, DC. pp. 15 and 16. Under the Eighth General Increase in IADB resources, FSO resources were to be “used exclusively for the poorest, least developed countries in Group D….” IADB. 1994. *Report on the Eighth General Capital Increase in the Resources of the Inter-American Development Bank* (AB-1704, 12 August), Washington, DC. p. 73. As under the Seventh General Increase, Group C and D countries were eligible for IFF funding, with preference given to the poorest countries. Ibid.


233 Three formerly eligible IFF countries (Ecuador, El Salvador, and Suriname) became ineligible in 2009 to receive FSO financing due to an increase in their GDP.

234 Resolution AG-3/07 of IADB’s Board of Governors and Resolution No. AG-8/07 ([IsDB]) “Grant Facility” adopted on 29 June 2007.


240 Ibid., para. 31.

viewed as a transitional instrument of support from which countries graduate. Thus, ADF, AfDF, and IDA limited eligibility for concessional financing to some of their developing countries from the outset. While initially concessional financing was also provided to some countries with higher incomes, eligibility was subsequently restricted to lower-income countries.\(^{243}\)

Traditionally, the World Bank distinguishes between (i) IDA-only countries, (ii) blend countries, and (iii) IBRD-only countries.\(^ {244}\) The classifications used by the AfDB Group and ADB (which in 2008 again adopted the World Bank system\(^ {245}\)) are essentially identical to those of the World Bank Group.\(^ {246}\)

Two fundamental tests of a country’s eligibility for concessional resources are its ‘poverty and its lack of creditworthiness for market-based borrowing’\(^ {247}\) from both commercial sources and the organizations’ hard windows. Countries with per capita incomes for more than two consecutive years above an operational cutoff defined by IDA\(^ {248}\) ($1,165 for FY11) are generally also not eligible to receive concessional financing from ADB, AfDF, and IDA. Based on the criteria mentioned above,\(^ {249}\) a country’s eligibility for concessional financing is determined in a two-stage process. While assessments of poverty

\(^{243}\) From the outset, the IDA “wanted to set its money to work quickly, while maintaining strict standard in project selection and execution.” For that reason the IDA attached importance to the “productive use of [its] resources [and gave] preference … to countries with acceptable projects.” The executive directors of the IDA viewed “the claims of the poorer Part II countries [as] stronger than those at higher levels of income,” but they did not attempt “to draw a hard and fast line.” Therefore, the IDA also gave credits to countries such as Chile, Colombia, Costa Rica, and Turkey. IDA. 1963. _IDA Lending Policy_ (IDA/SecM63–42 Revised, 26 November).


\(^{245}\) While ADB’s country classifications and developing member countries classification criteria broadly concurred with those of the World Bank, a three-tier classification system formed the initial basis for determining the eligibility of developing member countries to borrow from the ADB. Group A countries were fully eligible, Group B (blend economies) were eligible for limited amounts and in specific circumstances, and Group C countries were ineligible. In the context of the adoption of ADB’s graduation policy in 1998, Group B was split into two categories: ADF with limited OCR (B1) and OCR with limited ADF (B2). In the context of the review of ADB’s graduation policy, ADB realigned its clarification system with that of the World Bank in 2008; ADB returned to a three-tier classification system by merging groups B1 and B2. For details, See Chapter 4 (G. Droese, ADB Concessional Financing).

\(^{246}\) Thus, the 38 countries eligible for AfDF resources during AfDF-X correspond to the IDA-only countries. See Chapter 5 (A. Akin-Olugbade and A. Flory, Concessional Financing Windows of the AfDB Group).

\(^{247}\) IDA. 2001. _IDA Eligibility, Terms and Graduation Policies_. p. 3. http://sitesources.worldbank.org/IDA/Resources/Seminar%20PDFs/id%20eligibility.pdf. “Creditworthiness” has been defined as the “ability to service new external debt at market interest rates over the long term.” Creditworthiness considerations have always guided IDA lending policies, since [Article V, section 1(c) of the IDA] Articles of Agreement limit IDA from providing assistance if financing is ‘available from private sources on terms which are reasonable for the recipient or could be provided by a loan of the type made by the Bank.’”


\(^{248}\) The ceiling for IDA eligibility was initially set at $250 per capita in 1964. However, as IDA resources were scarce, particularly in the Fourth Replenishment period of IDA, World Bank management adopted in 1987 a lower income ceiling for eligibility, which became known as the “operational cutoff.” The historic cutoff was subsequently only used for determining preference in civil works procurement. See IDA, _IDA Eligibility, Terms and Graduation Policies_.

\(^{249}\) Until IDA11, the IDA’s eligibility criteria explicitly included a performance criterion (i.e., “the capacity to make use of IDA’s resources effectively”). This criterion was emphasized in IDA12 by the “much strengthened performance framework that governs the allocation of concessional resources.” Nevertheless, performance criteria continued to complement eligibility criteria, particularly in cases where IDA resources are “made available to a previously IBRD-only country, and/or a blend country is to be reverted to IDA-only status on the ground that its inadequate economic management and poor governance had resulted in a decline in its creditworthiness.” This avoids making IDA eligibility a reward for economic mismanagement. IDA. 2001. _IDA Eligibility, Terms and Graduation Policies_. http://sitesources.worldbank.org/IDA/Resources/Seminar%20PDFs/id%20eligibility.pdf
and lack of creditworthiness coincide for most countries, some countries with per capita incomes below the operational cutoff were deemed ineligible for concessional financing if they were eligible to obtain substantial loans from organizations’ hard windows and other sources on commercial terms. On the other hand, lack of creditworthiness implies a need for concessional resources as part of a sustainable long-term financing package. For that reason, the so-called gap countries, whose incomes exceed the operational cutoff but are not creditworthy for IBRD lending, qualify for IDA concessional financing. In addition, IDA has made exceptions to the established operational cutoff for some small island economies that otherwise would have little or no access to World Bank financing.250

Blend countries constitute a special category that can access concessional financing and also borrow from nonconcessional windows. Such countries are eligible to receive concessional financing based on income and are also creditworthy for limited market-based lending. Their blend status illustrates a stage in the development process (i.e., when a country progresses from only being eligible for concessional financing, to blend status, to eligibility only for market-based lending, and eventually to graduation). However, such development does not always occur, and economic and political crises have resulted in deteriorating creditworthiness for several blend countries. Thus, “[e]ligibility has become a more hazardous and complicated two-way street.”251 Also, the number of blend countries currently able to borrow from both hard windows and soft windows is rather limited,252 leaving a large middle ground that requires further examination.

Among the 79 countries that are IDA-eligible for borrowing, 16 are classified as blend countries and 7 are classified as gap countries.253 Of these, ten are middle-income blends above the operational IDA cutoff, including some small-island economies;254 six are low-income blends below the operational cutoff;255 and seven are classified as gap countries.256 During IDA’s history, 35 countries have graduated and ceased to borrow from IDA. Eight of these countries have since reentered IDA by reverse graduation.257

In IADB, three countries previously entitled to IFF financing graduated from concessional financing in 2009 after their per capita income increased. ADB and the World Bank have procedures regarding graduation from concessional financing. Normally, graduation is triggered when a country exceeds the operational per capita income guideline ($6,885 in FY11).258 However, considering that “income levels fluctuate from year to year, countries whose per capita income has risen above the threshold by a marginal amount, would normally begin a graduation process that, in most cases, lasts for several years.”259 There are instances when a country graduates from IDA on an accelerated basis, as when “improved information becomes available showing that a country’s income is substantially higher than previously estimated.”260 Notably, a country may graduate without rising above the per capita income level. This happens when the country becomes creditworthy for adequate amounts of funding from

250 For these countries, IDA funding is considered on a case-by-case basis for the financing of projects and adjustment programs designed to strengthen creditworthiness. OP 3.10-Annex D (note 2).
251 IDA, IDA Eligibility, Terms and Graduation Policies, p. 2.
252 See the website on IDA’s borrowing countries, which lists all blend countries: http://go.worldbank.org/83SUQIPXD20
254 Blend countries above the operational cutoff are Armenia, Azerbaijan, Bolivia, Bosnia-Herzegovina, Cape Verde, Dominica, Georgia, Grenada, St. Lucia, and St. Vincent. Ibid.
255 Blend countries below the operational cutoff are India, Pakistan, Papua New Guinea, Uzbekistan, Viet Nam, and Zimbabwe. Ibid.
256 Gap countries are Angola, Bhutan, Republic of Congo, Guyana, Honduras, Moldova, and Sri Lanka.
258 From FY1961 to FY2008, a total of 35 countries have graduated from the IDA. In eight cases, graduation was reversed. Thus, at present there are 27 graduates. Ibid.
259 IDA, IDA Eligibility, Terms and Graduation Policies, p. 12.
260 Ibid., p. 12. “In such cases, where the new income data indicates that country income is substantially above the IDA operational cutoff, the country may be graduated at the end of the fiscal year. A country where this has recently occurred is Egypt, which was graduated from IDA at the end of FY99. In other cases, a substantial amount of petroleum or other natural resources may be
IBRD or other commercial entities\textsuperscript{261} and often is the case when countries achieve a “track record of successfully borrowing on the international commercial markets to meet much of their capital needs.”\textsuperscript{262} More often than not, such countries are already blend countries.\textsuperscript{263} While AfDB did not have any detailed graduation policy, two countries have graduated to AfDB-only status (Egypt in 1999 from blend status and Equatorial Guinea from AfDF-only status).\textsuperscript{264} Since the adoption of AfDB’s Credit Policy of 1995, AfDB has strictly followed the World Bank Group’s country classification for African countries, except for Nigeria which the World Bank reclassified as an IDA-only country in 2006 while the AfDB Group maintained it as a blend country, “largely to avoid crowding out resources otherwise available to smaller, less endowed [AfDF]-only countries.”\textsuperscript{265} In addition to Nigeria and, previously, Egypt, Zimbabwe has also been classified as a blend country. Cape Verde was reclassified as Group B country in 2009 and thus became eligible for AfDB financing.\textsuperscript{266}

As shown above, ADB, AfDF, and IDA use per capita income “as a proxy for individuals’ potential access to income to enhance their well being [although it] does not indicate how equitably income is shared within the country, the extent of existing poverty, and where the country stands with respect to international development goals.”\textsuperscript{267} Current literature argues convincingly that “income as the sole indicator of well-being is inappropriate and should be supplemented by other attributes or variables, e.g., housing, literacy, life expectancy, provision of public goods and so on.”\textsuperscript{268} Rather than using per capita income, poverty might better be captured by human development indices\textsuperscript{269} that also consider factors such as life expectancy and educational achievement. This is also the view of the High Level Panel appointed by the AfDB President which considers in its 2008 report that human development indicators are “a more comprehensive measure [and suggests] that measures other than income could be considered in setting eligibility for the [AfDB’s] two windows and could increase the number of countries with access to both.”\textsuperscript{270} As shown by Cielito Habito,\textsuperscript{271} country rankings differ substantially when poverty is measured multidimensionally and not on income alone.

IDA introduced new categories following the creation of “hardened” credit terms, including a hard-term credit window and a grant allocation system based on a joint World Bank–IMF debt sustainability framework (DSF). The grant allocation system provided a comprehensive rationale for grants based on debt distress risk, and moved away “from a multi-purpose and exogenously determined

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\textsuperscript{261} Ibid.

\textsuperscript{262} “[The People’s Republic of] China is the most recent example of a country which ceased to borrow from IDA at the end of FY99 with a per capita income of $860, less than the operational cutoff of $925 at the time, but with substantial access to capital on commercial terms.” Ibid.

\textsuperscript{263} Ibid.


\textsuperscript{265} Ibid., p. 3.


\textsuperscript{267} AfDB, Investing in Africa’s Future, p. 29.


level of grants” and a “multifaceted view on the appropriate use of increased concessionality” similar to that of IDA13. IDA13 had viewed the greater concessionality of grants as “particularly relevant for resource-poor countries requiring large expenditures and investments to achieve their poverty-reduction goals [considering that] at the same time, many of these countries remain vulnerable to external shocks, including natural disasters, conflicts, and fluctuating commodity prices.” In certain areas, grants were considered more effective than other modalities of financing (e.g., concessional loans), and the basic assumption was that grants “could increase IDA’s effectiveness as a development institution.” Thus, thematic eligibility categories were created for grants. However, IDA14 and IDA15 adopted a different approach, establishing countries’ risk of debt distress as the single grant eligibility criterion:

Under the grant allocation system in IDA, a country’s external debt distress risk rating is translated into a “traffic light” which in turn determines the mix of credits and grants for the country. The traffic lights comprise three categories: green corresponds to a low risk of debt distress; yellow to a moderate risk of debt distress; and red to a high risk of debt distress or actually being judged to be in debt distress. A traffic light is assigned annually to each IDA-only country. The configuration of credits and grants by traffic light is then given as follows: a green light results in an allocation of 100 percent IDA credits; yellow light results in an allocation of 50 percent IDA credits and 50 percent grants; and red light results in an allocation of 100 percent grants.

ADB and AfDF also adopted the DSF-based grant allocation system of IDA. Since 1986, IsDB has used a three-tier system that classified member countries as low-, middle-, and high-income, based on per capita GDP. In principle, all borrowing member countries were eligible for concessional loans, and their group classification triggered the loan maturity and degree of concessionality. Despite an evolving development agenda, this classification system remained essentially static until 2003, when IsDB revised it to add a new group to the low-income tier, the LDMCs. The current system classifies IsDB member countries into four groups according to gross national income. LDMCs in Group A generally have low per capita income, high indebtedness, and low ranking under the UNDP Human Development Index, and they qualify for debt relief under the HIPC Initiative. The World Bank classifies this group as IDA-only countries. During 2008–2009, LDMCs received the equivalent of $220.7 million (76.9% of all IsDB loans). Group D countries have the highest per capita income and generally are not eligible for IsDB loans. This country classification provided a basis for determining a country’s graduation from one group to another through a sequence of stages. An analysis of the ISDB’s concessional loans for 2008 and 2009 shows that IsDB allocates the vast majority of resources to LDMCs. During 2008 and 2009, ISDB provided the equivalent of $787.83 million in concessional loans, of which $662.89 million were allocated to LDMCs.

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274 IDA replenishments are denominated by a designated number; thus, the Thirteenth Replenishment is IDA13 and so on.
277 For a comparison of the IDA13 and IDA14 grant systems, see IDA. Assessing Implementation of the IDA14 Grants Framework, pp. 4–5.
280 According to information provided by the Division Manager, Strategy & Program Management Division, Islamic Solidarity Fund for Development (ISFD), Islamic Development Bank, in an e-mail to the author on 17 July 2010, ISDB provided in 2008
GEF funding is not open to all GEF participants. To the extent that grants and other types of concessional financing are available within the framework of the financial mechanisms of environmental conventions, eligibility criteria are decided by the conference of the parties of each convention. Different eligibility criteria apply to GEF financing outside the financial frameworks of environmental conventions. In that case, the GEF makes grants available to countries that are eligible to borrow from the World Bank or receive technical assistance grants from the UNDP. The GEF Council also determines eligibility criteria for other types of concessional financing.

The Global Fund provides funding to countries classified by the World Bank as low, lower-middle, and upper-middle income; high income countries are not eligible. The lower-middle and upper-middle income categories must meet additional requirements, including cost sharing. Determining country eligibility is a multi-step process that draws on

1. the World Bank’s classification of countries and other economies by income level,
2. a Global Fund requirement that certain applicants (lower-middle income and upper-middle income applicants) ensure a predominant focus on key affected populations in their proposals, and
3. a newly introduced principle of “cost sharing” for lower-middle income and upper-middle income applicants.

Access and Allocations

Eligibility for concessional financing does not automatically translate into access to concessional resources. While eligibility is generally defined in objective terms in accordance with established parameters, access is based on policy assessment. Thus, in some organizations concessional financing may be restricted for certain countries that are eligible as a matter of classification, but granted to certain countries that do not meet the eligibility criteria.

For example, India largely met the criteria for an ideal IDA recipient:

[a country with] an excellent record of economic performance and a stable government determined to maintain it; which has suitable projects ready for financing and a proven capacity to implement them; which has relatively high saving rates (both average and marginal) but is also poor and unable to mobilize all the capital it needs to finance the level of investment that would otherwise be practicable; and finally, which has exhausted its creditworthiness for Bank [IBRD] loans and cannot obtain sufficient capital from other sources. . . .

Considering the importance IDA attached to using its resources productively, it gave preference to countries with acceptable projects, such as India, which met many of the above criteria. It is not
surprising that, from the beginning, IDA operations concentrated heavily on India.\textsuperscript{287} IDA also allocated substantial resources to the People’s Republic of China (PRC). Since both countries had already obtained large aid allocations from IDA, donors did not agree on giving them access to ADF financing from ADB even though they were eligible as a matter of country classification.

This discussion shows that access to concessional financing is sometimes restricted if donors cannot reach a consensus. It also shows that donors may sometimes take a global perspective in determining the role of specific concessional financing windows and access of certain recipients to such windows.

In addition, organizations have restricted access to concessional financing on policy grounds for nonpayment of arrears or noncompliance with other organizations’ policies. Unlike IDA, ADB donor reports regarding ADF replenishments explicitly list the countries eligible for concessional financing. Restoring access to concessional financing (e.g., Afghanistan) requires the express agreement of donors.\textsuperscript{288}

**Performance-Based Allocations**

Based on an assessment of policy performance, institutional capacity, and/or need, organizations seek to allocate scarce concessional resources to countries that will use funds most effectively to promote growth and reduce poverty. Thus, the organizations studied here have a shared interest in using performance-based allocation (PBA) systems in the distribution of resources. PBA policies “reflect distinctive institutional mandates, policies, governance structures and client groups.”\textsuperscript{289} There has been a substantial convergence of practices among institutions.\textsuperscript{290} In particular, the PBA policies of ADB, AfDB, and IDA align closely and apply similar weights and criteria for evaluating performance.

In 1977, IDA formally linked annual staff assessments of the performance of IDA-eligible borrowers with its lending allocations.\textsuperscript{291} Stressing the increased emphasis that donors attributed to good governance, the IDA13 negotiations introduced a governance factor to ensure “focus on governance for IDA countries at all levels of governance performance”\textsuperscript{292} and driven by the need to mitigate fiduciary and reputation risks to IDA funds posed by weak governance in IDA countries.\textsuperscript{293}

Under IDA14, PBA system country performance ratings were crucial because allocations to client countries were based primarily on such ratings and only to a lesser extent on per capita gross national income. A country performance rating was determined using

(i) a country policy and institutional assessment that assesses the quality of a country’s present policy and institutional framework,


\textsuperscript{288} In the case of Afghanistan, agreement of ADF donors and approval of the ADB Board of Governors was sought.


(ii) portfolio performance ratings that measure the percentage of IDA-funded investment projects at risk in each country, and

(iii) a governance factor that assesses country public sector management and institutions to ensure good use of IDA resources.294

The IDA PBA system became an important model for the performance-based evaluation systems of other multilateral development banks (MDBs). Between 1972 and 1976, the AfDF did not allocate financing based on precise guidelines, and in some cases relatively wealthy countries received more concessional resources than poorer countries. The AfDF first introduced strict lending criteria in 1976, when it adopted a lending policy. Since November 1998, following a request of its deputies, the AfDF system has been substantially aligned with that of the World Bank,295 with some criteria specific to the AfDF introduced in the process.296

Introduced as part of the ADF VIII replenishment, the ADB PBA system is largely modeled on that of the World Bank. It was substantially revamped as part of the ADF reform agenda during ADF IX to provide stronger linkage between ADF allocations and performance, as measured by the country performance assessment.297 Although the shift to the new PBA system coincided with an increased volume of concessional resources, the absolute volume in some countries declined under the new system, emphasizing the “inherent tension between addressing the needs of the weakest countries” and simultaneously “upholding the principle of rewarding performance”.298

In addition, the closely aligned PBA systems of ADB, AfDB and IDA encountered problems in dealing with regional projects and “the needs of fragile states and post-conflict countries.”299 The organizations attempted to address these problems through exceptional allocations to post-conflict countries that deviated from the established PBA system300 and other enhancements.301 However, despite these improvements, the basic question is whether applying the same or very similar criteria to regions with very different characteristics and problems (e.g., Africa and Asia) is warranted and appropriate, or whether the current system unduly constrains the ability of ADB and AfDB to respond to their members’ specific needs. The High Level Panel of the AfDB Group subscribed to the latter view, severely criticizing the current PBA system by stating:

We believe that the PBA is inadequate and should be reviewed. First, by adopting performance indicators designed to be universally applicable, the PBA assumes a common development model that leaves little room for country-owned development strategies or continental diversity. Second, the assessment of need is too narrow. Third, much of the assessment is essentially subjective and backward-looking. It measures intermediate policy choices rather than results actually achieved and relies on data of often poor quality.


297 See Chapter 4 (G. Droesse, ADB Concessional Financing).


299 The High Level Panel appointed by the AfDB president criticized that “[t]here are two other problems with the PBA. One is that it does not deal adequately with the needs of fragile states and post-conflict countries. We have already argued in favor of more resources to meet the special needs of these countries. The PBA should be adjusted to allow for this. The other problem is that as an annual, country-based system, the PBA is poorly adapted to allocating resources to regional projects.” AfDB, Investing in Africa’s Future, p. 30.


Fourth, the annual allocation cycle introduces an unhealthy and unnecessary degree of uncertainty in planning and management both for the Bank and for borrowers.\textsuperscript{302}

The PBA formula of the AfDB Group has also been criticized in a study for giving excessive weight to economic policy and governance, and for lacking in transparency and consistency.\textsuperscript{303}

While MDBs have accepted that differences in judgment and cutoff periods necessarily lead to differences in country performance ratings and that “there is a need to avoid [a] ‘one size fits all’ approach,”\textsuperscript{304} so far, they have not yet made any fundamental changes to the current system which was seen to allow professional judgment and sufficient flexibility in considering country-specific circumstances.\textsuperscript{305} However, further changes to their PBA formula that take into account the specific circumstances of each region should be considered in the adoption of tailored solutions for each country.

CBD, IADB, and IFAD also consider performance when allocating resources, but use criteria somewhat different from those applied by ADB, AfDB, and IDA.

IADB initially channeled concessional financing through its FSO and the Social Progress Trust Fund. Until 1978, IADB used sector and beneficiary criteria for allocating FSO resources. “Sectoral priorities were set in various concessional resource replenishment documents, and generally favored social sectors. Beneficiary criteria required the Bank to assess the poverty status of the persons receiving Bank concessional resources.”\textsuperscript{306}

As the FSO became the only channel for concessional financing by IADB, “the Bank moved away from sectoral and beneficiary criteria and toward country criteria,”\textsuperscript{307} beginning with the Fifth General Increase in Resources. Until 2002, IADB continued to determine country allocations on the basis of needs assessment, measuring population and GNP per capita\textsuperscript{308} for FSO, in addition to the country’s official debt service ratio for IFF.\textsuperscript{309} IADB eventually incorporated performance as an indicator for country allocation.\textsuperscript{310}

The interest in performance was driven by three concerns: First, by the practical concern that a country might not actually make use of its allocation, thus depriving others of access to this scarce resource without obtaining any development gain. Second, by concern that poor institutional and policy performance might diminish the developmental yield to the region (and to the Bank). Third, by the concern that need criteria alone provided no incentive structure to encourage countries to improve their performance.\textsuperscript{311}

IADB introduced new allocation systems for the IFF and FSO in 2002. The FSO allocation system was based on four variables: population, GNP per capita, portfolio performance, and the country institutional


\textsuperscript{305} Ibid.


\textsuperscript{307} Ibid.

\textsuperscript{308} Ibid.

\textsuperscript{309} Official debt service ratio refers to “non-commercial debt service obligations as a percentage of the total value of exports of goods and services, reflecting both the burden to the country of official debt service and the country’s official debt servicing capacity.” IADB. 1999. \textit{Allocation Framework of IFF Resources under the Eighth General Increase in Resources} (FN-263–8). Quoted in IADB, \textit{Oversight Note on the Performance Criteria for Allocating Resources}, p. 3.

\textsuperscript{310} On 19 June 2002 for the FSO and 9 October 2002 for the IFF.

\textsuperscript{311} IADB, \textit{Oversight Note on the Performance Criteria for Allocating Resources}, p. 3.
and policy evaluation. The new IFF allocation system was based on the same four variables, but added an additional variable regarding debt service.

In 2007, IADB implemented an enhanced PBA system that aligned with its DSF and allowed eligible countries to access OCR and FSO resources under the parallel loan structure introduced in 2007. In addition to considering needs and debt sustainability, the financing envelope is determined by performance indicators that consider both the quality of a country’s institutions and policies and its portfolio performance.

CDB uses an allocation formula that includes a needs component and a country performance (or effectiveness) component. The IFAD performance-based evaluation system develops lending and grant allocations “within the framework of the distribution between highly concessional and non-highly concessional lending” in accordance with IFAD lending policies and criteria.

The GEF and the Global Fund also developed criteria for allocating special resources. The GEF resource allocation framework bases resource allocations on a country’s potential to generate global environmental benefits and their capacity to implement GEF projects successfully. In addition, the Global Fund adopted a performance-based funding system. While initial funding for Global Fund programs is based on the quality of their applications, recipients must demonstrate results against defined performance targets to qualify for subsequent financing. Countries choose the indicators used to assess performance, thus increasing the degree of country ownership of projects.

## Modalities of Concessional Financing

Each institution must make a crucial determination regarding permissible modalities of concessional financing. In some organizations, the constituent agreements or other legal instruments contain specific constraints on certain modalities; governing bodies make the decisions, subject to the proviso that all activities must be consistent with the institution’s overall purpose and functions.

In most MFDIs studied here, soft loans were initially the only or the most important concessional product they could offer. Soft loans were meant to finance projects and programs in countries that were unable to borrow from organizations’ hard windows and/or for investments without any immediate return. When the MFDIs were created, projects were considered investment activities “in which financial resources are expanded to create capital assets that produce benefits over an extended period of time” and viewed as the best available instruments for ensuring effective use of resources—the “cutting edge of development.” Thus, MFDIs’ constituent instruments largely incorporated a specific project approach.

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321 Ibid., p. 3.
reflecting the fact that projects were viewed as the most effective modality of (concessional) financing. They were frequently combined with technical assistance loans or grants for project preparation, or stand-alone technical assistance for advisory services and capacity-building.

In addition to using projects “as a ‘time slice’ of a long-term program for a region, a commodity or a function ...,” MFDIs engaged in a rapidly expanding structural adjustment and program lending during the 1980s. In 1980, the World Bank “introduced structural adjustment loans ... out of the realization that in certain countries facing severe balance of payments deficits, restructuring the economy was a necessary pre-condition for the sound financing of new investment.” In other MFDIs, program loans became an integral part of lending operations. These are quick disbursing loans provided to DMCs for such purposes as developing or improving a sector or subsector through mid- to long-term policy and institutional improvements.

By the end of the 1980s, in particular in the African context, “widespread frustration” and criticism regarding “stand-alone projects” were voiced due to

(i) coordination failure, with a number of aid projects becoming development enclaves,
(ii) under-budgeting of recurrent expenditures, with donor-driven projects leading to inefficient public spending;
(iii) high transaction costs of aid delivery ... and
(iv) parallel off-budget systems undermining the effectiveness of government systems and accountability.

These factors were seen as isolating donor projects from political realities, particularly in “highly aid-dependent countries in sub-Saharan Africa,” and “led to further undermining local ownership and capacity.” Moreover, adjustment lending (in the form of structural adjustment loans and sectoral adjustment loans) increased steadily in the 1980s but often did not produce the desired results. Thus, new ways were sought to enhance the effectiveness of aid delivery systems in the 1990s.

In response to the changing aid environment, the focus of sector-wide approaches shifted “from ‘stand-alone’ projects to project ‘clustering,’ often in the form of pooling funds.” These approaches emerged in the mid-1990s “in support of public expenditure programs and as a means of improving aid effectiveness.” They reflected a different type of relationship between government and development partners—neither “blueprint” nor “modality per se.” Rather, sector-wide approaches may comprise a wide range of instruments, and they usually have three components:

(i) an approved sectoral policy document and overall strategic framework, which define government priorities;

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322 Ibid., p. 5.
326 Ibid.
330 Ibid.
331 Ohno and Niiya, *Good Donorship and the Choice of Aid Modalities*, p. 3 (Box 2–1).
(ii) a medium-term expenditure framework for the sector; and
(iii) a coordinated process amongst the donors in the sector, led by government.332

Under sector-wide approaches, governments could “re-take ownership”333 of sectors as donors supported a program and strategy determined by the government rather than contributing to individual projects driven by their own priorities and preferences.

The comprehensive development framework334 supported national ownership of programs, as did the poverty reduction strategy paper (PRSP) process initiated by the IMF and World Bank in 1999. The comprehensive development framework emphasized “partnerships between government (at the national, and local levels), civil society, the private sector, and external assistance agencies [and] encourages coordination to improve efficiency and coherence in the use of financial flows and services”.335 PRSPs sought to integrate “poverty reducing policies into a coherent, growth oriented macroeconomic framework,”336 representing a process based on the following (interrelated) principles: an emphasis on country ownership and partnership between donors and recipients, formulation of a PRSP through broad national-level participation, a result-oriented approach including establishing a link between debt relief and impact on poverty, and comprehensive and long term.337

PRSPs became the “framework through which national leadership over development priorities is exercised and implemented.”338

The last 10 years brought changes at several levels. MFDIs began providing grants for investment projects and programs, and such grants became the preferred method of financing global public goods, particularly for windows like the GEF and Global Fund. Similar to loans, such grants have the potential of raising countries’ welfare through direct resource transfers and by calling for policy and institutional reforms.339 In practice, such potential has at times only been exhausted to a limited extent. There is also a mixed record regarding other modalities in which organizations have engaged (e.g., guarantees, equity investments, trade financing, and debt relief), partially combined with innovative financing schemes. Moreover, increasingly the question about whether current aid delivery systems remain adequate is being raised. As donors made commitments to align their assistance with national priorities, new modalities (e.g., direct budget support, sector budget support, pooling arrangements, and direct delivery of aid to the poor) have begun to appear.

Concessional Lending

Organizations’ concessional lending operations are a function of their organizational and capital structures. The situation of IsDB is unique, due to the principles of Islamic law that govern all IsDB operations and

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332 Ibid.
333 HLSP Institute, Sector Wide Approaches, 6 (1.2).
do not allow it to charge interest. Consequently, IsDB does not have a hard window for market-based loans. IsDB introduced loans in 1976, and they are “concessionary in nature.” Prior to 2008, IsDB funded concessional loans from its OCR and the LDMC special account. Currently, the ISFD provides the main channel of concessional financing for IsDB.

IFAD, which provides all its core resources under the same mandate, also lacks a hard window, even though it sometimes provides loans on so-called ordinary terms similar to those offered by IBRD. However, most organizations studied here source their lending operations either from their hard windows at preferential market-based terms or from their concessional financing windows on soft terms. Organizations can provide loans on concessional terms either by lending to recipients concessional resources subscribed or contributed by donors and/or specifically allocated for that purpose, or by subsidizing the terms of loans from their hard windows. The latter technique has been used, in particular, for providing loans on terms intermediate between those applicable to their hard windows and soft windows.

Loans
As providers of highly concessional loans for project finance and budget support, the MFDIs studied here play a distinctive role in the international aid architecture.

Some MFDIs provide assistance only in the form of loans (e.g., previously, the NDF), while concessional loans are the most important financing modality for the other MFDIs studied here.

Prior to the establishment of IDA, there was much debate on whether it should provide loan or grant assistance. IDA and most other MFDIs studied here decided that concessional loans should be their preferred modality of concessional financing. Thus, concessional loans are at the core of the concessional financing operations of financial institutions such as ADB, AfDF, CDB, IADB, and IDA. This is highlighted by these organizations’ constituent agreements and/or other legal acts governing their concessional windows (e.g., ADB, where the resolutions of the Board of Governors regarding the establishment of the ADF and ADF replenishments and the ADF regulations explicitly refer to loans as the preferred [and previously only] mode of concessional financing).

In addition to using their own resources for concessional loans, organizations can also provide concessional loans from trust funds established for that purpose. Contributed by the US, the Social Progress Trust Fund provided the major source for IADB concessional operations in the years following its establishment. The World Bank and other organizations also have several special facilities that provide

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541 This issue had been discussed in four studies which were prepared by the early designers of multilateral aid. While all studies were based on the assumption that concessional assistance in the form of loans or grants could only be funded by national governments, they proposed different modalities of concessional assistance. (D. Kapur, J. Lewis, and R. Webb, eds. 1997. *The World Bank, Its First Half Century [Volume 1: History]*. Washington, DC: Brookings Institution. pp. 1121–1124). The 1949 report by V. K. R. V. Rao, Chairman of the UN Commission on Economic Development, “suggested soft loans would be more saleable politically.” However, the other three reports suggested that grants would be simpler and “reasoned that if a graduated array of concessionalities was desired, this could be achieved as well by directing two transfers, one hard and one soft, to the same purpose and blending the mix, as by tailoring the terms of a single loan.” (Ibid., p. 1123). The World Bank’s position regarding soft loans evolved considerably since the Rao report was first drafted. Similarly, the view of the Eisenhower administration regarding soft loans also underwent “considerable change during the last part of the 1950s. (J. H. Weaver. 1965. *The International Development Association, A New Approach to Foreign Aid* New York: Frederick A. Praeger. p. 61). Thus, the view of the Rao report eventually prevailed as many American legislators, editorialists and interest-group leaders considered that a grant was a giveaway and a loan, however soft, was more businesslike.” (Ibid., p. 1113).

542 The IDA Articles specifically provides in Article V, section 2(a) that “[f]inancing by the Association shall take the form of loans.” The provisions of the AfDF Agreement (Article 16 [1]) are modeled on those of the IDA. Loans are also at the core of the concessional financing operations of IFAD (Article 7, section 2[a] AEI) and the Unified Special Development Fund (SDF[U]) of CDB (CDB Agreement, Article 8.1).

543 See Chapter 4 (G. Droesse, ADB Concessional Financing).

544 See Chapter 2 (G. Droesse, Organizational Structures).
loans on terms and conditions similar to IDA. Such facilities may be established to provide assistance to nonmembers, create bridging arrangements when interruption of concessional financing is threatened, and for a variety of other purposes. Finally, concessional loans are utilized by various partnership facilities, and they are among the main financing instruments of the two Climate Investment Funds (CIFs) established in 2008 (i.e., the Clean Technology Fund [CTF] and the Strategic Climate Fund [SCF]) with its three targeted programs.

Concessional loans are particularly important in the case of the CTF, whose loan products are designed “to fill the investment gap in projects and programs that contribute to the demonstration, deployment and transfer of low carbon technologies, with concessionality related to the additional costs and risks of such deployment. Concessional lending from the CTF could be used, possibly in combination with revenues from emissions reductions, to make low carbon investments financially attractive by improving the internal rates of return on such investments.” MDBs may provide CTF concessional financing through lending to national governments (including for onlending to subnational entities) or lending to sub-national entities.

In addition to projects in the public sector, CTF funds may also support private sector proposals.

Loans also are among the modalities of financing of the three targeted programs under the SCF. Financing under these programs is to provide the MDBs with instruments for blending resources from these programs with their own resources (and/or financing from other sources, such as domestic public and private finance) so as to enable them to dispense tailored financing to countries.

The Program for Scaling-up Renewable Energy in Low Income Countries (SREP) was designed “to pilot and demonstrate, as a response to the challenges of climate change, the economic, social and environmental viability of low carbon development pathways in the energy sector by creating new economic

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345 For ADB’s partnership facilities, see Chapter 4 (G. Droesse, ADB Concessional Financing).

346 The World Bank and the regional development banks (ADB, AfDB, EBRD, and IADB) jointly established two CIFs—the CTF and the SCF—to promote international cooperation on climate change and support progress toward the future of the climate change regime. These funds provide concessional financing in conjunction with financing allocated by the World Bank and the regional development banks.

The CTF was established to fill the “gap in the international architecture for development finance for funding available at more concessional rates than standard Multilateral Development Bank (MDB) terms and at the scale necessary to help provide incentives to developing countries to integrate nationally appropriate mitigation actions into sustainable development plans and investment decisions.” (World Bank. 2008. The Clean Technology Fund. p. 2. http://siteresources.worldbank.org/INTTCC/Resources/Clean_Technology_Fund_paper_June_9_final.pdf) It is designed to “invest in projects and programs that contribute to demonstration, deployment and transfer of low carbon technologies with a significant potential for long term greenhouse gas emissions savings.” (Ibid., p. 7) Since country circumstances differ, investment programs are developed on a country-specific basis to achieve nationally defined objectives through large-scale projects or programs in sectors or regions, or through the private sector. (Ibid.) CTF financing provides a “grant element tailored to cover the identifiable additional costs of the investment necessary to make the project viable thereby providing the appropriate incentive to facilitate deployment of low carbon technologies at scale. The CTF will utilize a range of concessional financing instruments, such as grants and concessional loans, and risk mitigation instruments, such as guarantees and equity.” (Ibid., pp. 8–9.) The approach for choosing financing instruments is “flexible and differentiated among sectors. CTF financing should avoid crowding out the private sector [and] may include complementary financing for policy and institutional reforms and regulatory frameworks.” (Ibid., p. 9.)

The SCF is broader and more flexible in scope and serves as an overarching fund that can support various programs to test innovative approaches to climate change. It makes available “a range of financing, credit enhancement and risk management tools such as loans, credits, guarantees, grants and other support, targeted to the needs of developing countries.” (World Bank. 2008. Strategic Climate Fund. p. 10. http://siteresources.worldbank.org/INTTCC/Resources/Strategic_Climate_Fund_final.pdf#Strategic_Climate_Fund) The SCF serves as an overarching framework to support three programs: the Forest Investment Program, the Pilot Program for Climate Resilience and the Program for scaling-up Renewable Energy to Low-Income Countries. See CIF Strategic Climate Fund. www.climateinvestmentfunds.org/cif/node/3. Both the CTF and SCF have their own governance structures, including a Trust Fund Committee and a Partnership Forum, and make decisions by consensus. See Chapter 2 (G. Droesse, Organizational Structures).


opportunities and increasing energy access through the use of renewable energy.” Financing under the SREP is to “address the additional costs and risks associated with renewable energy technologies which adversely affect the viability of investments [and SREP financing modalities are accordingly designed] to meet the specific requirements of removing financial and institutional barriers.” The SREP uses for that purpose among a range of other modalities (e.g., grants) also (concessional) loans for providing support to long-term investment programs and investment in public and private renewable energy projects and to help (through fast-disbursing loans or grants) a borrower/recipient address actual or anticipated development financing requirements. Financing in the forms of loans is granted, in particular in cases where projects generate revenue which is greater than the discount rate of SREP financing, while grants are given in those cases where the project does not generate sufficient revenue.

The financing modalities of the Forest Investment Program (FIP) comprise “concessional loans with a significant grant element.” FIP concessional lending “could be used, possibly in combination with revenues from emissions reductions, to make forestry investments financially attractive by improving the internal rates of return on such investments [and the] concessional terms [of such loans] contain a grant element, which is defined as the difference between the loan’s face value and the sum of the present value of debt service to be made by the borrower, expressed as a percentage of the face value of the loan.” FIP concessional loans may also be extended in certain cases to the private sector.

The appropriateness of concessional loans was extensively discussed for the Pilot Program for Climate Resilience (PPCR) which seeks to “promote a participatory approach towards development of a broad-based strategy to achieving climate resilience at the national level in the medium and long-term.” A rationale given for the use of loans under the program is that such loans may help attracting “private sector investments that may on their own not deliver the required rates of return, but where blending highly concessional loans with conventional financing to the private sector can help buy-down the additional costs and risks of private sector investments that would bring significant contribution to increasing national climate resilience.”

However, there is a “strong divergence of views regarding concessional loans in the adaptation context. For some, the underlying fact that climate change has been caused largely by emissions from industrialized countries implies that loans are inappropriate for developing country adaptation programs.” Thus, it is
not clear as yet whether, respectively to what extent, the above pilot program will effectively be used for concessional loans.\textsuperscript{361}

While “both grants and concessional loans will be available to finance the additional costs necessary to make a development activity resilient to the impacts of climate change,” there is express provision that “[c]ountries may choose to only access PPCR grant resources.”\textsuperscript{362} PPCR concessional loans for investment projects, development projects and actual or anticipated development finance requirements\textsuperscript{363} generally have a higher element of concessionality than standard IDA credits as “[the grant element of the loan] should be sufficient to cover the additional costs of integrating climate risk and resilience into development activities.”\textsuperscript{364} Concessional finance may be provided to both public sector and private sector projects and programs. For sovereign projects, “MDBs may provide PPCR financing support through: (a) lending to national governments; (b) lending to national governments for on-lending to sub-national entities (which include state-owned enterprises); or, (c) lending to sub-national entities”\textsuperscript{365} provided that they “will not seek any guarantee or security for PPCR loans.”\textsuperscript{366} In addition, PPCR concessional finance may support “private sector projects and programs that have the potential of being replicated in the future without further subsidies [subject to] terms and structures of each financial investment [to be determined on a case by case basis to address the specific barriers identified in each case.”\textsuperscript{367}

Unlike the MFDIs studied here, the GEF uses concessional loans and other non-grant instruments only on an exceptional basis, and particularly for increasing its engagement with the private sector. The GEF may provide either small-scale soft loans through a revolving fund or ensure concessional lending terms by blending a GEF grant with the hard loan of a financial institution.\textsuperscript{368}

**Loan Terms**

In determining the terms of concessional loans, organizations must weigh interest in an effective and just allocation of resources against the need to ensure effective implementation. “A uni-product approach”\textsuperscript{369} toward the terms of concessional loans tends to exacerbate the scarcity of concessional resources. On the other hand, the adoption of variable terms and conditions adds considerable complexity to the administration of concessional resources, particularly where decisions on applicable lending rates are made based on project considerations.

The main (or in the case of IsDB, the only) purpose of loan charges is to cover administrative expenses incurred by organizations in processing concessional loans. The situation of IsDB is special as “[i]n sharp contrast [to other MFDIs], the service fee charged by the [IsDB] on its loans has the character of a charge solely to cover the precise expenses incurred by [IsDB] in the process of making the loan as

\textsuperscript{361} The third window, the Forest Investment Program (FIP) set up a targeted grant program “to provide grants to indigenous peoples and local communities in country or regional pilots to support their participation in the development of the FIP investment strategies, programs and projects.” Climate Investment Funds. 2009. Design Document for the Forest Investment Program, A Targeted Program under the SCF Trust Fund. p. 14. www.climateinvestor.org/cif/sites/climateinvestmentfunds.org/files/FIP_Final_Design_Document_July_7.pdf


\textsuperscript{363} Ibid., p. 5.

\textsuperscript{364} Ibid., p. 2.

\textsuperscript{365} Ibid., p. 8.

\textsuperscript{366} Ibid.

\textsuperscript{367} Ibid., p. 12.


\textsuperscript{369} Mistry, supra at p. 113.
also those it will occur during the life of the loan.” IsDB is bound under its Articles of Agreement to calculate loan charges precisely on that basis, including for loans funded by the ISFD. Although soft loans are not meant to generate major profits in the other MFDIs studied here, charges are not necessarily the exact equivalent of incurred administrative expenses, but rather a concessional price determined in accordance with their policies and procedures. In addition to loan charges, MFDIs may assess other charges (e.g., commitment fees).

In the past, ADB, AfDF, and IDA offered uniform terms and conditions for all their concessional loans; NDF followed this practice in its previous lending operations. Most often, however, the MFDIs studied here introduced some degree of differentiation in loan charges, based on country or project considerations, the type of loan provided, the type of resources used for the provision of the loan, or on an ad hoc basis that considered local conditions.

Fixing loan charges based on country considerations is the most common approach followed by ADB, AfDF, and IDA. IFAD sets loan charges based on its classification system. In addition to loans on highly concessional terms to the poorest countries (service charge of 0.75% per annum and maturity of 40 years), IFAD also provides financing on intermediate and ordinary terms, the latter on terms and conditions similar to those offered by IBRD. In the case of CDB, different interest rates, maturities, grace periods and upper lending limits apply to each of the four categories of the CDB classification system and also to regional projects. However, differentiation of loan terms in CDB is less marked than those in IFAD. Although some CDB Group 1 countries receive financing from Unified Special Development Fund (SDF[U]) resources on terms similar to those of organizations’ hard windows, the less fortunate countries in Groups 2, 3, and 4 are still required to pay interest in the range of 2% to 4%.

IADB can use FSO resources for (i) investment loans that finance specific projects supporting economic and social development and (ii) policy-based loans that support policy reforms and/or institutional changes in a sector or subsector. Since IADB began its operations, its FSO-financed loans have had lower interest rates and longer grace and maturity periods than loans financed by IADB’s ordinary capital. IADB fundamentally revised its system in 2007, when the DSF became the basis for

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371 In accordance with Article 20(3) of the IsDB Agreement, “The Bank shall levy a service fee to cover its administrative expenses.”
372 Article 14.04 of the ISFD Regulations provides that “All dealings and activities of the Fund shall be in conformity with Islamic Shariah.”
373 When ADB hardened its loan charges, it redesignated the “service charge” levied on ADF loans as an interest charge, part of which covers administrative expenses. See ADB. 1998. Review of Loan Terms of the Asian Development Fund. Manila (R205–98, 23 November), para. 11.
374 NDF loans had a maturity of 40 years and included a 0.5% commitment charge on the undisbursed amount and a service charge of 0.75% per annum. See Haralz, Nordic Development Fund: 5 Years of Action, p. 22.
376 The IFAD president is authorized to establish interest rates for the following year without board approval, but must notify the executive board of the rates so established. IFAD ordinary lending rates are routinely established on the basis of the IBRD variable interest rates which were set on 27 September 2007 by the IRBD Executive Board at the London Interbank Offered Rate minus 4 basis points. Taking account of the above and the fact that IBRD loans are subject to a front-end fee equivalent to 4 basis points per annum during the life of the loan, IFAD’s interest rate for special drawing right (SDR) loans for the year 2009 has been set at 4.27% for loans on ordinary terms and 2.14% for loans on intermediate terms. IFAD. 2009. IFAD’s Lending Terms and Conditions: Interest Rates for the Year 2010 for Loans on Ordinary and Intermediate Terms (EB 2009/97/R.46/Rev.2, 15 September 2009). www.ifad.org/gbdocs/eb/97/e/EB-2009-97-R-46-Rev-2.pdf. As regards the lending rates for 2010 see IFAD. 2010. IFAD’s lending terms and conditions: Interest rate for the year 2010 for loans on ordinary and intermediate terms (EB 2009/98/R.14, 23 November 2009). www.ifad.org/gbdocs/eb/98/e/EB-2009-98-R-14.pdf
377 The SDF consists of SDF(U), which is governed by rules adopted in 1983, and the old or “other” SDF (SDF[O]), which is governed by the 1970 rules. For details, see Chapter 2 (G. Droeose, Organizational Structures).
allocating FSO loan terms. To contain the risk of debt accumulation under the current framework, the level of debt distress determines the concessionality levels granted to countries. Countries with strong performance and low risk of debt distress receive higher levels of financing and lower conditionality, while weakly performing countries receive a smaller financing envelope and high levels of concessionality. The case of IADB is special as concessionality is currently achieved in all cases through a combination of loans from IADB’s OCR and FSO loans. Concessionality levels achieved by blending OCR and FSO loans may range from 15% to 90%. They may vary over time as IADB management adjusts the blend structure to grant countries the appropriate level of concessionality required by the macroeconomic program in line with the DSF approach.

The experience of the consolidated special funds of ADB shows that determining loan charges based on project considerations may raise concerns. Prior to June 1973, ADB determined the specific terms of each special funds loan based primarily on the country’s economic situation and also considered the specific project. Similar to IADB practice at the time, ADB used four different interest rates during this period in an attempt to “make a somewhat finer distinction to reflect the needs of the recipients of Special Funds loans” and vary both the amortization and grace periods. While this gave ADB substantial flexibility in adjusting the terms of the loans with the economic condition of borrowing developing member countries, the resulting complexity made it difficult to negotiate with borrowers and made the creation of uniform terms a priority when the ADF was established.

Differentiating loan terms based on the type of loan provided is very common. CABEI is interesting because loan terms (including charges to cover administrative expenses) are determined based on the terms and conditions on which concessional financing is provided to the FETS in the form of concessional loans or as grants. In cases where CABEI has been able to mobilize concessional loans for the FETS, it onlends such loans to borrowing countries on the same terms with the addition of a small service charge to cover its administrative expenses. In cases where resources allocated to the FETS by CABEI or other FETS resources are used for the provision of concessional loans, CABEI uses a combination of tenure, grace period, and interest rate for providing borrowers loans with a concessionality element of 35%. CABEI seeks to ensure the same concessionality element when cofinancing FETS-funded projects with other donors. CABEI has a policy for setting front-end fees and commitment fees on the concessional loan, however these can be waived on a case-by-case basis.

The experience of ADB, AfDF, GEF, and IDA in developing their respective lending terms deserves closer examination.

Historically, IDA has been a single-price entity, with some differentiation for blend countries, even though its countries do not constitute a homogenous group. Between 1961 and 1987, IDA issued loans with a 50-year final maturity and a 10-year grace period that carried a service charge of 0.75% per annum on the then disbursed balance. The term of AfDF loans remains consistent overall with these original

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379 Prior to 2007, FSO loans had a 10-year grace period and final amortization after 40 years. The lending rate was 1% during the grace period and 2% thereafter. The loans also assessed a credit fee totaling 0.50% of the undisbursed loan balance and a one-time supervision and inspection fee totaling 1% of the loan amount.

380 Under the current framework, FSO loans have a 40-year grace period and 40-year bullet repayment with a 0.25% interest rate. OCR loans (i.e., a pool-based, adjustable lending rate, single-currency facility) have a 30-year maturity and a 5.5-year average grace period.


382 1.5%, 2%, 2.5%, and 3% per annum.


384 Ibid., para. 4: “Amortization periods ranged from 12 to 40 years, including grace periods which varied from 3 to 10 years. For the determination of these periods both the country considerations and the nature of the project were taken into account.”

385 IDA, IDA Eligibility, Terms and Graduation Policies, para. 16.

386 In January 1982, the IDA established a commitment fee of 0.5% per year on the disbursed balance, bringing its income more in line with its administrative expenses. Using average prevailing discount rates reflecting the weighted cost of capital in donors’
IDA terms. However, in 1987, maturities of IDA credits were reduced to 40 years, and a variable commitment charge was introduced beginning in FY89. Despite that hardening of loan terms, there was only a marginal difference between the terms of IDA credits for the poorest countries (IDA-only) and other IDA borrowers (blend countries), which were eligible to receive a blend of IBRD and IDA loans. Therefore, discussions were held on various occasions regarding whether further differentiation in loan terms was warranted and appropriate.

During the IDA13 negotiations, Deputies recognized that

“[i]n addition to increasing IDA's concessionality for the most vulnerable IDA borrowers, [there is a] need to reduce IDA’s concessionality for those borrowers that are capable of servicing debt on harder terms. Along these lines, Deputies agreed that it would be reasonable to introduce somewhat less concessional lending terms for borrowers that are IDA-eligible on an exceptional basis despite their per capita incomes’ being above the eligibility threshold. This provision would not apply to the small islands that have exceptional access to IDA....”

In the context of IDA14, IDA created a window funded by a “volume discount.” The modified volume approach applies a 20% volume discount on grants that is then “subdivided in two components, each addressing a different objective: (i) an incentives-related portion (11 percent), to help maintain the strength of IDA’s incentive system; and (ii) a charges-related (9 percent) portion, to finance foregone charge income on IDA14 grants.” Resources from the charges-related portion are then made available for lending to IBRD–IDA blend countries through a hard window that is more concessional than

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387 AfDF loans have a term of 50 years, with a 10-year grace period. Loan principal is repayable at a rate of 1% per annum during years 11–20, and thereafter at a rate of 3% per annum. A service charge (0.75% per annum) on the principal amount disbursed and outstanding is payable semi-annually. Loans approved after June 1996 carry a 0.5% per annum commitment charge on the undisbursed portion. See Chapter 5 (A. Akin-Olugbade and A. Flory, Concessional Financing Windows of the AfDB Group).

388 The question about hardening the above terms was discussed extensively during the IDA8 negotiations; some donors felt that the IDA had become an “excessively concessional facility.” Based on the understanding that a hardening of loan terms would “enhance the size of the Replenishment, and that the effects on the grant element of IDA credits would be modest [deputies agreed to recommend to IDA's] Board of Executive Directors that under the Eighth Replenishment final maturities on credits be reduced from 50 years to 40 years for the least-developed IDA recipient countries. . . . and to 35 years for other recipients, but that grace periods be maintained at 10 years for all countries.” Such changes were implemented in 1987 and are currently still applicable.” IDA. 1987. Additions to IDA Resources: Eighth Replenishment, paras. 5.1 and 5.3.

389 Each year, the IDA Board of Executive Directors approves the commitment charge which will apply to that fiscal year. The IDA notifies borrowers accordingly at the beginning of each financial year.

390 This issue was also addressed during IDA11 and IDA12. IDA11 and IDA12 deputies, while discussing whether to recommend changes in maturity, interest charges, grace period, or payment arrangements, did not consider it necessary either to harden or soften loan terms. IDA. 1996. Additions to IDA Resources: Eleventh Replenishment (IDA/SecM96–270), pp. 10 and 16. IDA. 1998. Additions to IDA Resources: Twelfth Replenishment, A Partnership for Poverty Reduction (IDA/R98–195, 23 December). The Deputies also discussed “the feasibility and desirability of hardening the terms of IDA lending—for example, by changing the maturity, interest charges, grace period, or repayment arrangements for IDA credits, particularly for blend countries. Among the possible options explored were adding an interest charge to new credits, shortening the grace period, and shortening the repayment period. Any change in terms would apply only to new loans, so harder terms would have a very modest effect on IDA's financial position during IDA12. The possible hardening of IDA terms for 'blend' countries was also reviewed in the context of the graduation of blend countries from IDA borrowing. It was noted that an equivalent financial effect for the IDA recipients could be achieved by 'hardening the blend'—that is, increasing the share of IBRD lending in total IDA and IBRD lending to a country as its economic position strengthens.”


392 IDA. Additions to IDA Resources: Fourteenth Replenishment, p. 27.
prevailing rates for IBRD loans. These loans are restricted to “creditworthy blend countries with per capita incomes below the operational cutoff for IDA but with an active IBRD lending program.”393 IDA decided to make such credits available to IDA14 blend countries, provided that their per capita income was below the operational cutoff and they had an active ID lending program. Eligibility to such financing was determined annually. Standard IDA service and commitment charges and a fixed interest charge for the life of each credit (3.2% per annum for hard-term lending in FY11) apply.394

Thus, IDA issues credits on regular, blend, hardened, and hard terms.395 IDA-only countries receive regular terms; blend countries enjoy blend terms; borrowers with GNP per capita above the operational cutoff for more than two consecutive years qualify for hardened terms; and certain blend countries (determined annually) with GNP per capita below the operational cutoff and an active IBRD program receive loans on hard terms.

Current aid flows to developing countries are highly volatile, substantially reducing their value, complicating planning, and on rare occasions generating income shocks to developing countries.396 Blending arrangements of financing from hard and soft windows are a way of reducing such volatility and may serve to mobilize additional resources for developing countries. Thus, changes to the current system, which bars all but a few blend countries from borrowing from IBRD (and other hard windows), should be considered. In 2009, the very rationale of the current system came into question when interest rates from organizations’ hard windows fell below 1%. In its 2009 progress report on actions from previous G-20 summits, the G-20 proposed giving low-income IDA countries with sustainable debt positions and sound policies, based on the IBRD-enclave framework, “temporary access to non-concessional IBRD lending to compensate for the loss of access to capital markets.”397

Adjustment to the terms of IDA financing are also under consideration. Due to the increased use of grants, IDA’s weighted average grant element has increased from around 60% (at IDA12) to some 66%–68% (IDA13–15) and the overall concessionality of IDA’s financing is further enhanced due to the large amounts provided by IDA as debt relief under HIPC and MDRI.398 Moreover, IDA’s blend terms still offer a grant element of 57% which is nearly as high as the grant element of regular IDA credits of 60%. To improve IDA’s capacity to assist the poorest IDA countries, it is suggested to substantially reduce the concessionality of IDA’s blend terms and “hardened” terms and lower the maturity of IDA’s hard term credits while extending such credits to all blend countries.399 It has also been proposed that such measures could be supplemented by the establishment of an IDA Blended Financing Facility under which IDA would provide an upfront grant (equivalent to the net present value of loan charges and interest payments over the life of an IBRD loan) to provide resources to blended and hardened term countries.400

Due to the problems ADB faced with its consolidated special funds, the ADF offered only one lending rate and standardized terms when it was established in 1974.401 The concessionality of ADF loans

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393 Ibid., p. 28.
399 Ibid.
401 ADB loans carried an annual service charge of 1%, and a maturity of 40 years. They had a grace period of 10 years, with an annual principal repayment of 2% for the first 10 years following the grace period and 4% thereafter.
was reduced during ADF VIII. The concessionality of ADF’s loan and blend terms is for that reason somewhat lower than that of IDA. While a modified volume approach was not part of the arrangements for ADF VIII, ADB subsequently acted to align its grant framework with that of IDA and introduced a hard window funded by a modified volume discount, similar to IDA. To “offset the risk of perverse incentives and moral hazard in replacing loans with grants for countries with poor debt management [and] help offset the [net present value] NPV of charge income foregone in switching from loans to grants,” during the ADF IX period ADB established a separate ADF facility with harder lending terms that overall are consistent with IDA. On the other hand, AfDF has used the resources from incentives-related volume discount, not to create a hard window but rather to reallocate AfDF resources to AfDF-only countries through the use of PBAs.

MFDIs’ current legal and operational frameworks are fundamentally based on the separation between concessional and nonconcessional windows. Generally, countries are only eligible to borrow from either the concessional or the nonconcessional window. Only the small group of countries in the blend category (which in the AfDB Group comprises only very few countries) can borrow from both windows. This strict separation between concessional and nonconcessional windows constrains organizations from finding tailored solutions that may involve both concessional and nonconcessional resources. Rather than emphasizing the separation of concessional and nonconcessional windows, close cooperation between the two types of windows is warranted. IADB currently provides all its concessional financing from FSO resources on blend terms. While this solution is prompted mainly by the scarcity of FSO resources, it may serve as an example that blending arrangements can produce a wide range of different levels of concessionality and such arrangements may be adjusted in accordance with changed circumstances to find tailored solutions for specific countries and sectors. For that reason, wider use of blending arrangements should also be considered by other MFDIs studied here.

The CTF example shows that blending arrangements may produce tailored financing terms for project-specific sectors. Such arrangements are “a key feature of the CTF” as governments are often “reluctant to borrow on non-concessional terms for projects and programs that generate little additional revenue”; thus, “[c]oncessional forms of finance could help unlock demand.” Project-specific sector financing terms as those above might be considered for wider application by MFDIs.

In the case of the CTF, the grant element of CTF concessional loans is defined “as the difference between the loan’s face value and the sum of the present value of debt service to be made by the borrower, expressed as a percentage of the face value of the loan.” The GEF determines the terms of its concessional loans on an ad hoc basis, “taking into account the local financial needs and circumstances (existing credit availability and terms, liquidity, credit worthiness, risk aversion)” when projects are

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402 “Investment loans financed from ADF resources have a fixed-term, 32-year maturity including a grace period of 8 years, a 1.0% interest charge during the grace period and 1.5% during the amortization period, and equal amortization. Program loans from ADF resources have a fixed-term, 24-year maturity including a grace period of 8 years, a 1.0% interest charge during the grace period and 1.5% during the amortization period, and equal amortization.” ADB. 2007. Lending and Grant Policies (Asian Development Fund). Operations Manual. OM D2/BP. Manila. www.adb.org/documents/manuals/operations/OMD02.pdf. For the terms of emergency loans, see ADB. 2004. Disaster and Emergency Assistance. OM D7/BP. Manila. www.adb.org/Documents/Manuals/Operations/OMD07_15jun04.pdf


404 Ibid., p. 7.


407 See CIF, Clean Technology Fund Financing Products.

408 Ibid., Clean Technology Fund Financing Products.

409 GEF. Operational Policies and Guidelines for the Use of Non-Grant Instruments.
designed. Project identification forms included in GEF work programs should include, “if possible at this stage, the terms of concessionality that will be offered to the intermediaries (if any) and to the ultimate beneficiary.”

Loan Currencies

Loan currencies may be denominated in (i) single currencies, (ii) special drawing rights (SDRs) or units of account, or (iii) mixed currencies. While single-currency loans may be advantageous in certain situations, particularly where the concessional resources or the revenues of borrowers are exclusively or predominantly in one currency, they are vulnerable to the considerable volatility of exchange rates. Such volatility decreases substantially if loans are determined in SDR or units of account. Mixed currency systems may be seen as a way to preserve the value of donors’ contributions. However, such systems suffer from substantial administrative complexity, and the limited benefits of a mixed currency system must be weighed against the substantial difficulties it poses to an efficient currency management. This was the case for the ADF before 2005, when planning was conducted and the size of replenishments was determined in SDRs, contributions were made in national currencies or SDRs set at different rates, loans were denominated in SDRs, and disbursement was made in various national currencies, depending on the currencies available in the ADF pool. ADF loans then had to be repaid in the liability currency or currencies used for disbursement. ADB faced substantial operational problems due to the complexity of the system mentioned above before it introduced a full-fledged SDR system in 2005.

IDA credits, since 1 August 1980, and ADF loans, since 1983, have been denominated in SDRs; AfDF uses units of account (UAs). With the creation of the SDF(U) in 1983, CDB now denominates its loans in US dollars. Initially denominated in SDRs, NDF loans are now denominated in euros. Under current blending arrangements, IADB denominates its FSO loans in US dollars, and borrowers are obligated to repay the loan in US dollars as well.

Subsidy Schemes

Some organizations that only provide financing from their hard windows have established subsidy schemes that reduce the cost of borrowings from such windows. Such schemes may be the only source, or an additional source, of concessional financing, funded by other concessional resources, transfers of net income or surplus from hard windows, trust funds, or other external resources. The governing bodies of organizations determine the operational activities funded by the hard windows and also determine the terms of the subsidy scheme and the terms and conditions of the subsidy; where the subsidy is funded through trust funds or other external resources, they also authorize the acceptance or establishment of such funds and/or resources and the terms and conditions attached thereto. Generally, the same voting rights apply, although provision can be made for special majorities. Subsidy schemes may be funded by (i) special funds, or (ii) trust funds or independent trust accounts.

Subsidies from Special Funds

As an additional form of concessional financing, some organizations provide subsidies drawn from a special fund (e.g., the CDB Interest Subsidization Fund [ISF], an OSF). The ISF was initially established with $21 million, comprising $11 million appropriated from surplus of CDB’s OCR and $10 million from SDF resources. The CDB Board of Directors approved rules and regulations determining criteria for

410 Ibid., para. 33 (c).
411 See Chapter 4 (G. Droesse, ADB Concessional Financing).
412 Previously, IADB denominated its FSO loans in US dollars or their equivalent in other currencies, and borrowers were obligated to repay their loans and interest in currencies disbursed by IADB (thus, a loan in local currency had to be repaid in the same currency).
operating the ISF and eligibility for ISF financing. Since ISF operates within the standard loan processes of CDB, OCR loans, and ISF subsidy payments both require specific board approval. Eligibility for financing was initially restricted (with two exceptions) to countries in category 3 of the CDB classification system and determined in accordance with the criteria set forth in the CDB policy of performance-based lending. At its 28 May 2007 meeting, the board approved an ISF interest rate subsidy for investment-type loans for specified projects. CDB uses the ISF to subsidize loans from its OCR at an interest rate of 2%.

Subsidies from Trust Funds or Independent Trust Accounts

Subsidy schemes may also be funded by trust funds or independent trust accounts (e.g., the “Third Window” and the IFF of IADB).

The World Bank established the Third Window in June 1975 after the development committee unanimously recommended the creation of a financing facility to provide development assistance on terms intermediate between those of the bank and IDA. The Third Window was created as a trust fund because it would provide loans only for a limited period, and only eight member countries supported it. The president’s memorandum, recommending to the executive directors of IBRD the establishment of that fund, proposed that the Third Window be established on the basis of full additionality to planned allocations under IBRD loans, with an interest subsidy fund comprising contributions from donor governments to supplement interest payments to IBRD in an amount equal to 4% per annum of the principal amount outstanding on loans made by the facility, subject to the condition that in case of a shortfall of resources, the borrower was obliged to ensure that IBRD received the regular interest rate. Management estimated at the time that the $114 million pledged by donors would finance Third Window operations of $500 million and add approximately 15 projects to IBRD operations.

Country eligibility for Third Window loans was the subject of consultations with contributors, particularly regarding per capita income. The main beneficiaries were the poorer countries with a per capita income of up to $375 (in most cases, with per capita incomes under $200). The World Bank administered the Interest Subsidy Fund, whose assets were to be held in trust and used only for the purposes set forth in the resolution.

The IADB IFF was established in 1983 in response to resource constraints on FSO financing and “to broaden the range of concessional resources available to the lesser developed countries of [IADB].” The IFF is an independent trust account that in the past was substantially funded by the FSO through annual transfers from FSO accrued net income; it was designed to allow IADB to defray part of the amount payable as interest by borrowers on loans from the ordinary capital resources of [IADB]. This arrangement enabled IADB to lend resources on intermediate terms between those charged for loans from capital resources and from the FSO. IADB discontinued this practice in 2007, following a decision to extend the IFF to 2015 by blending OCR and FSO loans.

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413 CDB. 2007. Rules and Regulations for the Establishment, Administration and Use of Resources of the ISF. para. 2. The description of the ISF is substantially drawn from the said rules and regulations. See Chapter 2 (G. Droese, Organizational Structures).
414 Canada, Kuwait, The Netherlands, Norway, Qatar, Saudi Arabia, the United Kingdom, and Venezuela.
416 Ibid., p. 5.
417 Ibid., p. 6.
420 The applicable rate for IFF loans was the rate applicable to IADB’s OCR loans minus 5%, provided it could not fall below the FSO effective rate of 1.88%). See IADB. 1984. Immediate Financing Facility Account Regulations (FM-263-2, 17 January), Article 6. In practice, however, the bank provided the maximum subsidy of 5% through the extension of intermediate
Europe’s social development bank, the Council of Europe Development Bank (CEB), also implemented a subsidy scheme. CEB does not have a concessional financing window as such and its pricing of loans reflects the costs of CEB borrowings. However, the CEB Administrative Council may decide to subsidize interest on certain qualifying loans, such as loans for priority target groups (e.g., refugees), displaced populations, migrants, and populations affected by natural or ecological disasters in selected member countries. The subsidy is provided from the Selective Trust Account established in 1995 to provide interest rate subsidies for CEB projects with high social content; it is fed by CEB profits and voluntary contributions of CEB members.

Technical Assistance and Cooperation

MFDIs have traditionally provided technical assistance to their member countries, either as part of their lending operations or as grants. For most national development agencies and many international organizations (e.g., UN and its specialized agencies), technical assistance grants are the main or only form of concessional assistance. This also applied to some development banks such as EBRD and the Black Sea Trade and Development Bank. The constituent instruments of most organizations studied here explicitly mention technical assistance, an operational modality that complements their lending and other financing modalities. However, the NDF did not have a window for technical assistance operations before 2009, as previously, it did not finance the preparation of projects but instead provided cofinancing for projects that were designed and implemented by other organizations.

Initially conceived mainly as a tool to aid the preparation of financing proposals, technical assistance serves a range of purposes in the other MFDIs studied here. Today, preparatory technical assistance is still largely used to develop a pipeline of suitable projects and identify, operate, and develop projects. However, the importance of technical assistance extends far beyond this purpose. Technical assistance operations also assist in “(i) identifying, formulating, and implementing development projects; (ii) formulating and coordinating development strategies, plans, and programs; (iii) improving recipients’ institutional capabilities; (iv) undertaking sector-, policy-, and issues-oriented studies; and (v) improving the knowledge about development issues. . . .” Analytical work supported by technical assistance has been very important in the context of organizations’ knowledge management strategies, which have become an integral part of organizations’ efforts to achieve their overarching goal of poverty reduction. It also has been crucial for a variety of other matters such as supporting regional cooperation and integration. To emphasize a mutual learning process rather than a one-way transfer of knowledge, MFDIs increasingly use the term “technical cooperation” rather than “technical assistance.”

The GEF distinguishes between full- and medium-sized projects, enabling activities, and the Small Grants Programme in accordance with the amount of the grant. The Small Grants Programme

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422 The interest subsidy is currently up to 300 bp.


424 See Introductory Remarks and Chapter 2 (G. Droesse, Organizational Structures).


426 Nevertheless, ADB maintained that using the term “technical cooperation” would complicate institutional arrangements (e.g., it would be necessary to change the name of the Technical Assistance Special Fund [TASF]). See ADB. 2008. Increasing the Impact of the Asian Development Bank’s Technical Assistance Program. Manila. Footnote 13. www.adb.org/Documents/Policies/Impact-ADB-TA-program/r87-08.pdf
is administered through the country offices of the UNDP, which plays a “primary role in ensuring the development and management of [the GEF’s] capacity building programs and technical assistance projects.”

Established in 1992, the program aimed to build the capacity of civil society and local communities to access GEF funding; it may associate most closely with the traditional concept of technical assistance. It provides up to $50,000 to nongovernment and community-based organizations. However, the GEF does not differentiate conceptually between projects, programs, and technical assistance operations for the other three categories. In the organizations studied here, some or all of the activities funded by these projects and programs would be associated with technical assistance. The GEF also provides project preparation grants to partially cover the project preparation cost incurred by the GEF Agencies. The situation is similar for the CTF and the three targeted programs under the SCF (i.e., FIP, PPCR and SREP). Global Fund grants cover a wide range of activities, including those often associated with technical assistance.

Organizations use different funding modalities for their technical assistance operations. Generally, such assistance may be financed on a reimbursable basis through concessional or nonconcessional lending instruments. Some concessional windows fund technical assistance exclusively through loans. However, most MFDIs studied here also provide technical assistance on a grant basis, from either concessional resources or the current income (i.e., gross revenue) of their hard windows, through allocations from the net income or surplus of hard windows, or through trust funds.

Concessional Resources

In the international organizations studied here, the major source of funding for nonreimbursable technical assistance operations is their concessional resources, including contributions and subscriptions provided by donors during replenishments of concessional windows, resources of affiliates, and Special Funds resources as well as internal resources (e.g., investment income). As a matter of law and policy, organizations differ regarding the extent that concessional resources can be used to fund technical assistance. This is underlined by a comparison of the legal frameworks applying to technical assistance in AfDF and IDA, which were established as affiliated organizations.

The IDA Articles contain a general authorization for providing technical assistance and advisory services in response to a member’s request. In principle, IDA can use all its resources—including general resources, donor subscriptions and contributions, and reflows from previous replenishments—to fund technical assistance operations. If a country is willing to use its IDA allocation for technical assistance, there is no constraint for using IDA resources for that purpose. Effectively, IDA frequently finances a mix of technical assistance, goods, and services. AfDF’s authorization for funding nonreimbursable technical assistance operations is somewhat more restrictive. The AfDF Agreement expressly stipulates that AfDF may provide technical assistance to further its objectives, “but such assistance will normally be on a reimbursable basis if it is not provided from technical assistance grants or other means made available.”

427 GEF Instrument, Annex D, para. 11.


429 The CTF also uses grants for preparation of CTF investment plans and the development of quality investment projects, but does not conceptually distinguish between grants provided for that purpose and other grants given for investments. See CIF. 2009. Clean Technology Fund. Financing Products. CIF, Clean Technology Fund Financing Products. p. 5. FIP grants may be used amongst others for preparation of FIP investment strategies, where needed, and other preparation activities (e.g., for FIP supported projects) and for implementation activities (e.g. capacity development activities and activities related to policy and regulatory frameworks) and for indigenous peoples and local communities. CIF. 2010. FIP: Investment Criteria and Financing Modalities. p. 10. PPCR grants may support the preparation of the Strategic Program for Climate Resilience and PPCR co-financed projects CIF. 2010. Pilot Program on Climate Resilience (PPCR): Financing Modalities. p. 6. The SREP may be used for preparation of investment plans and co-financed projects. CIF. 2010. SREP Financing Modalities. pp. 8–9. Both FIP and SREP projects may also be used for investment projects and programs as further described below.

430 The NDF previously funded technical assistance only through concessional loans.

431 IDA Articles, Article V, section 5(v).
available to the [AfDF] for that purpose.”432 Thus, the AfDF must allocate funding for nonreimbursable technical assistance specifically for that purpose. After the first two AfDF replenishments, AfDF resources effectively have been used for nonreimbursable technical assistance operations, initially through the technical assistance account adopted under AfDF III and renamed the Technical Assistance Fund in 1988. The AfDF discontinued the Technical Assistance Fund during the AfDF IX replenishment in 1999, when grants became a regular modality of AfDF funding.433 The AfDF 11 negotiations highlighted how the AfDB Group434 can act as “a one-stop shop for its clients in its areas of operations, offering both public and private sector financing, technical assistance, capacity building and knowledge services.”435

In 2009, the NDF decided to fundamentally change its purpose and function by providing henceforth “grant aid to technical assistance for innovative engagements in the general area of climate and development”436 for climate change adaptation and mitigation. Thus, while the NDF previously did not provide technical assistance, such grants will be its main function in future.

Although the AEI does not mention technical assistance explicitly, the organization has provided them regularly under its grants program. Moreover, IFAD uses its supplementary resources to fund technical assistance activities.437

The rules and practices of organizations that jointly administer concessional and nonconcessional resources also differ. During its first three years of operation, IADB was authorized to use up to 3%, in total, of the initial FSO resources for technical assistance,438 enabling immediate commencement of technical assistance operations. After the initial period, only FSO or OCR net income could be used for funding technical assistance.439 IADB offers technical assistance loans and grants from its FSO, while technical assistance grants are classified into national and regional technical cooperation grants and considered an FSO expense. Over the course of time, FSO resources in local currency became a very important source for funding technical assistance activities by IADB. However, in 1999, after the IADB Board of Governors440 approved the agreement regarding the conversion of such FSO resources in convertible currencies, local currency resources effectively ceased to be available which hampered IADB’s “capacity to provide non-reimbursable technical cooperation activity in a number of key areas.”441 For this reason, it may be necessary to identify alternative mechanisms for funding IADB’s technical assistance operations.

One of the core functions of CDB under its charter is the provision of technical assistance.442 SDF resources have traditionally provided the major source of CDB’s technical assistance operations. Currently, CDB’s technical assistance operations is generally financed in accordance with the technical

432 AfDF Agreement, Article 19.
434 AfDB also provides technical assistance through the special funds it administers, such as the Nigeria Trust Fund (NTF). As part of the 2003 Technical Cooperation Agreement between the Government of Nigeria and AfDB, $25 million was allocated from the corpus of the NTF to finance activities under the technical cooperation agreement. See Chapter 5 (A. Akin-Olugbade and A. Flory, Concessional Financing Windows of the AfDB Group).
435 AfDF, ADF 11 Deputies Report.
438 IADB Charter, Article VI, section 3(b).
439 Ibid.
442 CBD Charter, Article 2 (d).
assistance program agreed upon during SDF(U) replenishment negotiations, although some are funded from the OSF.

ADF does not fund technical assistance operations, and ADB also does not use ADF net income for that purpose, although in principle, such net income could be used, to the extent annually authorized by the Board of Governors, for providing technical assistance grants. Effectively, ADB never transferred ADF net income to the Technical Assistance Special Fund (TASF), the major channel for funding ADB technical assistance operations, but rather depended on general replenishments of the TASF that have been conducted on several occasions in conjunction with ADF replenishments. ADB also provides technical assistance through other special funds (e.g., the Japan Special Fund).

In IsDB, the Waqf Fund, which was established as a special fund in 1979 and caters mainly to the needs of Muslim communities and organizations in nonmember countries and LDMCs, is a major source of technical assistance funding. Managed by IsDB through a board of trustees, the Waqf Fund was originally funded from income derived from IsDB deposits with conventional banks.

Paid-in Capital, Net Income from Ordinary Capital Resources, Administrative Expenses, and Current Income from Ordinary Capital Resources

Funding for technical assistance may derive from paid-in capital, allocations from net income or surplus from an organization’s hard window or from those windows’ current income or administrative expenses. These funding modalities differ substantially. Allocation of net income or surplus from hard windows to affiliated organizations, special funds or trust funds relates to distribution of excess income or a dividend. On the other hand, charging technical assistance to current OCR income or administrative expenses means treating it as a business expense that, theoretically, could even be funded on that basis if there was no excess income to distribute.

As discussed in Chapter 2, the Development Grant Facility of the World Bank and the Development Grant Facility of IFAD are funded as administrative expenses. Other organizations have under their legal and financial frameworks limited ability to fund technical assistance through administrative expenses, but may fund such assistance, as in case of ADB, by current OCR income. ADB has done so on two occasions pursuant to Article 21 (vi) of the ADB Charter. ADB’s situation is unique as it is the only one of the MFDIs studied here authorized by its Charter to use up to 2% of its paid-in capital for furnishing nonreimbursable technical assistance to its member countries. Article 21(vi) of the ADB Charter allowed ADB to do so within the first 5 years of its operations; however, it has not exercised this power.

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443 ADB Board of Governors Resolution No. 62, para. 5(b). Section 4.07 of the ADF Regulations provides that “[n]et income accruing on the resources of the Fund shall be retained in the Fund; provided that, if authorized by the Board of Governors, a portion of such net income accruing in any year may be transferred from the Fund and applied towards financing the cost of technical assistance provided by ADB on a grant basis.” www.adb.org/Documents/Reports/Regulations-of-ADF/regulations-adf.pdf

444 See Chapter 4 (G. Droesse, ADB Concessional Financing).

445 The IsDB board of directors also serves as the board of trustees of the Waqf Fund.


“According to the Board of Governors resolution No. BG/2-428, and the Board of Executive Directors resolution No. BED/ BG/2-428, 5% of the IDB 1427 net income was allocated to finance Technical Assistance Operations in the form of grants during the year 1428H.”

447 See Chapter 4 (G. Droesse, ADB Concessional Financing).
Trust Funds

Trust funds are a major source of funding for technical assistance. The World Bank alone has administered thousands of bilateral and multilateral trusts, many of which provide technical assistance grants. The emergence of partnership facilities that administer special funds resources and trust fund resources under the same terms and conditions (e.g., ADB) is particularly interesting. In addition, trust funds have become part of the mainstream of concessional financing in other MFDIs. The AfDB Group has formulated in 2006 very interesting policy reform proposals for technical assistance operations through better trust fund management, “based on three guiding principles of (i) standardization of the Bank’s business processes and donor conditionalities; (ii) simplification of internal and external procedures of administration; and (iii) alignment of the Bank’s policies with those of other MDBs.” AfDB may also promote multidonor thematic funds and untied bilateral cooperation funds.

Grant Financing of Projects and Programs

The highly concessional MFDI resources “provide a framework of financial discipline and economic performance within which other flows, especially from donors on a grant basis, can be most productive [and] support basic investments in structural reform, physical and human capital which are intended to generate economic growth well in excess of their cost of funds.” Most bilateral ODA is provided in the form of grants. Many multilateral donors (e.g., EU and the UN system) also provide assistance primarily or exclusively in the form of grants. However, grant financing of investment projects and programs was not a preferred modality of concessional financing when most MFDIs were established. Until 2009, the NDF did not have a window for this modality, because NDF financing was intended for cofinancing projects with other organizations. The constituent agreements of various other organizations either preclude any modality of concessional financing other than loans (e.g., the FSO of IADB) or contain special approval requirements for any such modalities.

However, the development paradigms regarding grant financing of projects and programs have substantially evolved since ADB, AfDB, IADB, and IDA began operations in the 1960s. The constituent agreement of IFAD expressly allows such grant financing, which became in this decade also a regular modality of concessional financing in the four MDBs mentioned above. In the MDBs mentioned above, grant financing of projects and programs is “[a] lasting legacy of the Jubilee 2000 debt campaign, taken up by the Meltzer Commission and the Bush Administration in the US, is the call to convert all remaining concessional loan windows into grant terms.” While this matter was the subject of many heated discussions during replenishment negotiations, in the end a consensus emerged in all four MDBs

450 IDA, Grants in IDA13, p. 2.
452 The NDF Statutes previously did not provide for financing other than interest-free loans, subordinated loans, or equity capital.
453 AEL, Article 7, sec. 2(a). “Financing by [IFAD] shall take the form of loans and grants. . . .”
454 In November 1998, Congress established the International Financial Advisory Commission (IFIAC), an 11-member panel headed by Professor Allan Meltzer. The Meltzer Commission found that the IMF and WB were failing in their mission to address world poverty and economic stability – they needed major reform. The Commission recommended restricting the IMF to short-term crisis assistance and that the Bank and its regional equivalents move away from assisting middle-income countries altogether and operate on grant terms in low-income countries. The Meltzer Commission full report is at www.house.gov/jec/imf/meltzer.htm
that concessional windows for grant financing had to be created and debt reduction had to be added to the instruments for providing support to developing member countries.

The legal status of donative transfers is unclear in certain respects and there are different concepts which are being applied. While generally grants are given to recipients without a repayment obligation, the grant schemes implemented by the MFDIs studied here were not meant to fundamentally alter their character but rather give them additional flexibility and instruments for dealing with development challenges and complementing the work of other agencies that provide assistance predominantly or exclusively on a grant basis. To the extent that grants are used to finance projects or programs, such financing is contingent upon compliance with organizations’ anticorruption policies and a range of other covenants. The agreement under which the grant is provided can be suspended, cancelled or terminated if the grant is used in a manner inconsistent with the terms and conditions of the grant agreement. Generally, the same fiduciary standards apply to loans and grants. This is one of the reasons why some organizations (e.g., ADB) apply procedures similar to loans for processing and approving grants for high priority projects or programs.

In addition to channeling grants for projects and programs through IDA, the World Bank administers and executes a range of trust funds, including multipurpose vehicles, that provide grant financing, and hosts “over seventy separate grant-making global programs, all of which operate with their own distinct identities under the umbrella of the World Bank, which typically serves as trustee of the funds that donors commit to the partnership.” Grants for projects and programs also became an integral part of concessional financing by AfDB’s AfDF and ADB’s ADF. In addition, AfDB and ADB provide grants through (other) special funds and trust funds. The constituent instrument of IFAD expressly authorizes IFAD to provide grants, but IADB cannot use FSO resources for that purpose. Thus, special arrangements became necessary in IADB to enable it to respond to the needs of its members.

Currently, grant financing of projects and programs is the modality most commonly used for supporting countries in post-conflict situations or afflicted by catastrophes, promoting innovation, and providing support to heavily indebted countries. Moreover, it has generally become the preferred, or even the only, modality for financing global public goods, as evidenced by the financing programs of the GEF and the Global Fund.

**Legal Constraints Regarding Grant Financing in ADB, IADB, the AfDF, and IDA**

**Authorization for Grant Financing**

The IADB Charter does not allow grant financing of projects and programs from FSO resources. The constituent agreements of AfDF and IDA require that their respective boards of governors must explicitly authorize for grant financing.

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460 ADB provided major grant assistance through the Asian Tsunami Fund and the Pakistan Earthquake Fund for projects in countries afflicted by natural catastrophes. In 2009, ADB created the Asia Pacific Response Fund, another special fund, to provide immediate assistance to countries impacted by natural disasters. All these funds provide assistance in the form of grants. In addition, trust funds (e.g., funds established under partnership facilities) may be a source of grant financing. See Chapter 4 (G. Droesse, ADB Concessional Financing). AfDB also administers trust funds providing grants, such as the Water Facility Special Fund, which was established in 2004 when the AfDB Board of Governors approved the instrument of that fund. See AfDB. 2007. African Water Facility. Operational Procedures (Revised). www.africanwaterfacility.org/en/publications-reports/operational-procedures/


462 IADB Charter, Article IV, section 1. The FSO was established “for the making of loans on terms and conditions appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects.” (emphasis added) Other modalities of concessional financing are not contemplated.
authorize any grant financing of projects and programs. Until recently, the same requirement applied to the ADF under Resolutions of the ADB Board of Governors and ADF Regulations. Special constraints apply to resources allocated from ADB’s paid-in capital to the ADF.

Grant financing for projects and programs may not be obtained from IDA general resources but only from “additions to resources,”\textsuperscript{463} i.e., additional subscriptions and contributions made available by donors in the context of IDA replenishments, supplementary resources,\textsuperscript{464} or from funds derived from the two sources mentioned above (e.g., repayments and commitment charges), if express prior authorization has been provided for such type of financing. Neither could IDA replenishments and transfers of IBRD net income or surplus for which no grant financing had been authorized be used to provide grants. AfDF also requires express authorization by its board of governors for grant financing under the AfDF Agreement.\textsuperscript{465}

It is a special and rather unique feature of the ADB Charter that the ADB Board of Governors may decide to set aside resources from ADB’s unimpaired paid-in capital and establish therewith one or more special funds. The resources set aside under Article 19.1(i) of the ADB Charter and transferred to the ADF represent only a small part of all ADF resources. These resources can be used only for concessional loans “and on such other terms and conditions not inconsistent with applicable provisions of this Agreement nor with the character of such Funds as revolving funds.”\textsuperscript{466} While ADB is not precluded from using income from set-aside resources for purposes other than loans (e.g., technical assistance), the corpus of the set-aside resources must remain intact and cannot be used for grants.\textsuperscript{467}

A separate legal regimen applies to special funds that ADB administers in accordance with Article 19.1(ii) of the ADB Charter. Those who drafted the Charter wanted to leave the decision on using special funds to the discretion of ADB management and the Board of Directors.\textsuperscript{468} The ADB Charter (Article 19.3) defines the use of Special Funds resources accepted by ADB only in very broad terms in that such funds “may be used in any manner and on any terms and conditions not be inconsistent with the purposes of [ADB] and with the agreement [with contributors] relating to such Funds.” Thus, Article 19.3 does not preclude grant financing of projects and programs from Special Funds resources accepted by ADB for administration. However, the resolutions that established the ADF and the various resolutions of the ADB Board of Governors regarding ADF replenishments (collectively referred to as ADF resolutions) contained specific constraints, as did the ADF regulations. When grant financing for projects and programs was introduced during ADF IX, the ADF legal framework was not comprehensively amended to allow the use of ADF resources for grants, but only “in the event and to the extent” that the relevant resolution of the Board of Governors provides for such financing.\textsuperscript{469} However, in 2009 the ADB Board of Governors approved global changes to the ADF resolutions and the Board of Directors’ amendments to the ADF regulations that enabled the use of all ADF resources for grants.\textsuperscript{470} Thus, grants for projects and programs became a regular modality of ADB’s concessional financing.

\textsuperscript{463} IDA Articles, Article III, section 1.

\textsuperscript{464} IDA Articles, Article III, section 2. Supplementary resources include “resources other than IDA replenishments provided by an IDA member in a currency of another member, as well as other contributions from a member or another source, e.g., the Bank’s [IBRD’s] grants to IDA.” Shihata, 2000. *World Bank Legal Papers*. p. 575.

\textsuperscript{465} The AfDF Agreement provides that financing provided in the form of subscriptions and from loan repayments shall take the form of loans. However, the AfDF may “provide other financing, including grants, out of other resources received pursuant to arrangements [with members, participants, non-participant states or any other public or private entity] expressly authorizing such financing.” AfDF Agreement, Article 16(1) in relation to Article 8(1).

\textsuperscript{466} ADB Charter, Section 19.2.

\textsuperscript{467} ADB Charter, Section 19.2; ADB. 1968. *Set Aside of Bank Capital for Special Funds Purposes*. Manila (R57-68, Revision 1, 24 December). Appendix II (Staff study).

\textsuperscript{468} For this reason, the guidelines on the acceptance and use of trust funds were not incorporated into the ADB Charter. See R. Krishnamuriti. 1977. *The Seeding Days*. Manila: ADB, pp. 120–122 and Chapter 4 (G. Droese, ADB Concessional Financing).

\textsuperscript{469} ADF Regulations, Article III, Section 3.01(b). (2005). See Chapter 4 (G. Droese, ADB Concessional Financing).

Grant Schemes

IDA set the pace in implementing the new grant schemes that were initially adopted in IDA11 in the context of the HIPC Initiative and selectively extended them in IDA12 to countries in post-conflict situations. The grant instrument subsequently evolved and became a regular modality of IDA’s concessional financing. General authorization for the provision of grants was first included in Resolution No. 204 of the Board of Governors (IDA13 Resolution). During the IDA13 replenishments, the deputies agreed to expand the use of IDA grants in the range of 18% to 21% of overall IDA13 resources. They also provided guidance for the executive directors and management in determining the use of grants, emphasizing the need for flexibility in managing the grants and the importance of countries’ policy performance in determining the overall grant allocation. IDA14 negotiations marked a substantial change in the IDA grant program. The decision was taken to allocate grants to IDA-only countries on the basis of debt analysis rather than “multiple, special-purpose eligibility criteria.”

IDA donor countries broadly endorsed the joint IMF–IDA DSF, which linked the risk of debt distress to the quality of policies and institutions in low-income countries as “the analytical foundation for the link between debt sustainability and grant eligibility.” They recommended limiting grants to IDA-only countries.

During the first eight replenishments of AfDF, grants had been used only to finance technical assistance, not as a modality for the financing of investment projects or programs. Authorization for using AfDF grants was obtained during the Ninth Replenishment negotiations, when AfDF decided to adapt the IDA grant-financing framework to a general authorization for grant financing from AfDF resources, which was then incorporated into the Ninth Replenishment Resolution.

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471 In the IDA11 Report, deputies took note of the ongoing joint initiative of the IMF and the World Bank to address the debt problems of HIPCs and urged IDA management to assist these countries by way of grants. This authorization was granted with the passage of Board Resolution No. 183. During the IDA12 negotiations, there was agreement to extend grant financing to post-conflict countries. A limited number of grants were provided for exceptional cases as approved by the IDA’s executive directors.

472 Deputies restated their view that IDA financial assistance should remain primarily in the form of IDA credits. However, they reaffirmed their support for the selective and limited use of IDA grant funding under the HIPC Initiative. In addition, they recognized the unique problems faced by post-conflict countries—particularly in the immediate post-conflict phase, where quick action is crucial but normal donor relationships have not been reestablished. The deputies agreed, in the context of a framework for post-conflict countries approved by the Executive Directors, that exceptional IDA grant funding could also be provided, as a last resort where other funding sources are inadequate and where the use of IDA credits would be inappropriate. Such post-conflict IDA-funded grants, if any, during IDA12 will be very limited. See IDA, Additions to IDA Resources: Twelfth Replenishment, para. 44. Deputies also recognized the need to have instruments available to respond to the needs of Heavily Indebted Countries and to support the HIPC Debt Initiative. Ibid. para. 61. Para. 9 of the Resolution No. 194 adopted on 8 April 1999 by IDA’s Board of Governors (IDA12 Resolution) states: “Authorization of Grants. The Association is hereby authorized to provide financing under the Twelfth Replenishment in the form of grants in addition to loans, in the context of the HIPC Debt-Initiative or assistance to post-conflict countries under a framework approved by the Executive Directors.” (emphasis added)

473 The preamble of the IDA13 Resolution stated that “[i]t is desirable to authorize the Association to provide financing in the form of grants and guarantees in addition to loans.” The resolution also authorized the IDA to provide financing under the Thirteenth Replenishment in the form of grants.

474 IDA, Additions to IDA Resources: Fourteenth Replenishment, p. 25.


476 Under the eighth general replenishment (AfDF VIII), the AfDF was only authorized to provide grants for technical assistance. See AfDF. 1999, “Final Report on the Consultative Meetings of the Eighth General Replenishment of the Resources of the African Development Fund” (ADF- VIII/C.M.5/99/16/FINAL) and Resolution F/BG/99/09 entitled “The Eighth Replenishment of the Resources of the African Development Fund” adopted on 30 June 1999 by the board of governors of the AfDF.


478 The Ninth Replenishment Resolution provided, in part: “An amount in the range of 18%–21% of the total available resources under the Ninth Replenishment shall be set aside in the form of grants for the permitted uses in accordance with the Report..."
During the Tenth Replenishment of AfDF, the World Bank–IMF Debt Sustainability Analysis was the basis for the allocation for AfDF financing, including grants.\textsuperscript{479} As highlighted in Chapter 6, this “essential [meant] that after the AfDF country allocation of resources has been determined by the PBA system, the actual loan/grant financing terms will be determined by the degree of debt distress associated with each AfDF-eligible country.”\textsuperscript{480}

When ADB introduced grants for projects and programs following the ADF IX replenishment negotiations,\textsuperscript{481} it modeled its grant framework on IDA\textsuperscript{13}, allocating grants on the basis of country criteria and to support interventions in specific sectors (e.g., projects to combat HIV/AIDS and other communicable diseases). All eligible countries with access to the ADF could request grant financing for projects that met the sector criteria. ADB substantially revised its grant framework during the ADF IX replenishment period to align it with the IDA\textsuperscript{14} grant framework, which was based on the DSF of the IMF and World Bank. Under the revised grant framework, ADF grants were only based on debt distress and not sector-specific criteria and were limited to ADF-only countries. As in the case of IDA, the portion of grants in a country program was dependent on the debt-distress classification of the country.\textsuperscript{482}

While the NDF provided financing exclusively through concessional credits and thus lacked a grant window, the 2004 NDF evaluation suggested introducing a small grant facility. While concluding that applying eligibility criteria similar to IDA\textsuperscript{13} to the NDF would be difficult, the evaluators suggested that the NDF could make grants available to match IDA grant allocations to the poorest and most debt-vulnerable countries, thus enabling the NDF to participate in “post disaster reconstruction” projects.\textsuperscript{483} However, this proposal was never implemented.

Under the amendment to the NDF Statutes that took effect in 2009, the NDF is expressly authorized to provide “grants.” While it is envisaged that technical assistance will be the main focus of future NDF activities, the Statutes do not preclude the NDF from financing expenditures under investment projects


\textsuperscript{480} AfDF, \textit{Report on the Tenth General Replenishment of the Resources of the African Development Fund}.


\textsuperscript{482} The debt-distress classification for countries eligible for grant assistance is as follows: (i) no grants for low risk of debt distress, (ii) 50\% grants for moderate risk of debt distress, and (iii) 100\% grants for high risk of debt distress. ADB. 2007. \textit{Revising the Framework for Asian Development Fund Grants}. Manila (R143–07, 5 September). www.adb.org/Documents/Papers/ADF-Grants/R143-07.pdf

and programs on a grant basis.\footnote{Section 3 of the revised NDF Statutes states: “The [NDF] finances development projects in developing countries. Financing can be extended in the form of interest-free loans, subordinated loans, equity capital and grants.” (emphasis added).} As a co-financing institution, the NDF generally funds components of projects identified jointly with other organizations such as the World Bank, ADB, AfDB, and IADB with which the NDF has strong working relationships. NDF grants may amount from EUR500,000 to EUR4 million. To the extent that such grants fund investments (i.e., goods, works and services), such investments currently are generally related to NDF-financed technical assistance.\footnote{See the NDF website on NDF Financing, \texttt{www.ndf.fi/financing.shtml}}

In view of the constraints applicable under the IADB Charter, IADB established an independent trust account to enable grant financing for projects and programs. IADB is empowered to “exercise such other powers as shall be necessary or desirable in furtherance of its purpose and functions consistent with the provisions of this Agreement.”\footnote{IADB Charter, Article VII, section 1(v).} These “miscellaneous powers” enabled the IADB Board of Governors to establish on 29 June 2007\footnote{IADB Resolution AG-8/07 of 29 June 2007.} the Grant Facility Account, its second independent trust account.

IADB had various options for funding the Grant Facility Account. While possible solutions included a distribution of OCR net profits authorized for that purpose,\footnote{IADB Charter, Article VII, section 4(a).} instead, IADB initially decided to fund the account by transferring accrued FSO income (previously allocated to the FSO general reserve) and through possible direct contributions from donor countries. Trust account resources are intended “to make grants appropriate for dealing with special circumstances arising in specific countries or with respect to specific projects”\footnote{IADB. 2007.\nThe regulations of the I[A]DB Grant Facility (Resolution AG-8/07). \texttt{http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1349766}} under terms and conditions as may be approved by the Board of Executive Directors. Currently, such special circumstances apply only to Haiti, which had become eligible, based on overall criteria developed for the DSF and PBA system, for annual grants of $50 million for the period 2007–2009, and for a mix of grants and loans from the FSO thereafter. IADB allocated an initial aggregate amount equivalent to $50 million in convertible currency from the FSO general reserve.\footnote{Ibid.} However, in future funding for the IADB Grant Facility will be provided from ordinary capital resources net income. In the Cancún Declaration of March 2010, IADB’s Board of Governors acknowledged “that, in order to recover, the people of Haiti need an extraordinary amount of assistance to help them build back to a better standard than before the earthquake and achieve greater stability and prosperity.”\footnote{IADB, \textit{Cancún Declaration}, p. 2.} They also confirmed that the Grant Facility will continue to be separate from the FSO, and will allow Haiti to suspend its borrowing from the FSO. The governors undertook to provide “$200 million annually in transfers of OC income to the Haiti Grant Facility through 2020.”\footnote{Ibid., p. 3; For details regarding IADB’s assistance to Haiti, refer to IADB’s “Hope for Haiti” website at \texttt{www.iadb.org/haiti/?lang=en}}

The situation of CDB differs from that of IADB in two respects. First, loans are not the only modality of concessional financing listed for the SDF in the CDB Charter. Instead, the provision in the CDB Charter which states that the “Special Development Fund may be used to make or guarantee loans of high developmental priority” has been construed as not excluding other modalities of concessional financing.\footnote{CDB Agreement, Article 8(1).} Although the CDB Charter does not specifically reference grants as a modality of SDF financing, a significant portion of SDF(O) and SDF(U) resources has been used for grants to CDB borrowing member countries. The share of SDF grants has increased steadily over various SDF replenishment cycles, most particularly during SDF 5, when “the level of grants has exceeded 50% of
the level of new contributions,” partly due to a shortfall of new contributions. Thus, in proportion to SDF(U) financing, the “level of grant operations in the SDF [is] appreciably higher than in other MDBs in terms of share of total concessional operations.” Among other things, SDF grants have been used for the CDB Basic Needs Trust Fund, which proved an effective instrument for addressing poverty issues in communities and to a limited extent for disaster response activities. In the case of CDB, contributors also approved under SDF a set-aside allocation for grants for two expected new borrowing members, Haiti and Suriname. Second, the CDB Agreement, which is modeled on that of ADB, empowers CDB to “establish or be entrusted with the administration of other special funds which are designed to serve its purpose and fall within its functions.” Such funds (OSF) “may be used in any manner and on any terms and conditions not inconsistent with the purpose and functions of the Bank or with any agreement relating to such funds.” Thus, the above provisions, which are modeled on Article 19.3 of the ADB Charter, do not contain any specific constraints regarding the use of OSF resources for grants.

Grant Financing as a Regular Modality of Concessional Financing

IFAD offers a particularly interesting model of grant financing. First, grant financing for projects and programs is a regular modality of concessional financing in IFAD. Unlike the ADB, AfDB, and IDA charters, the Agreement Establishing IFAD (AEI) does not require explicit prior authorization by the Board of Governors for the use of IFAD resources to finance projects and programs during each IFAD replenishment. Thus, IFAD can use reflows from previous replenishments and new donor contributions alike for concessional financing. However, “the proportion of grants shall not normally exceed one-eighth of the resources committed in any financial year.”

Unlike the organizations that allocated grants predominantly or exclusively on the basis of country considerations and did not earmark grant financing for certain types of projects, IFAD grants had to “adhere to two basic principles: (i) [they] should focus on interventions where grants have a significant comparative advantage over loans as a financing instrument; and (ii) [they] should complement the loan programme.”

IFAD’s grant financing policy provided that “Grant-financed interventions should address elements of pioneering innovation, policy dialogue and institutional development involving opportunities that preclude larger-scale loan investment.” In particular, grants were viewed more appropriate than loans in time-sensitive situations such as natural disasters or other emergencies and for “reach[ing] recipients, such as certain civil-society actors and community-based organizations (CBOs) not commonly eligible for financial assistance directly through the loan instrument.” IFAD provides grant funding only to developing member states, intergovernment organizations in which such member states participate, and civil society organizations and IFAD-hosted initiatives that comply with either or at least one of the grant program’s strategic objectives.

495 Ibid., p. 12.
496 Ibid., p. 13.
497 Ibid., p. 5.
498 CDB Agreement, Article 8(2).
499 CDB Agreement, Article 8(3).
500 AEI, Article 7, section 2(b).
502 Ibid.
503 Ibid.
IFAD “policy on grant financing has evolved within the broad structure provided in the Agreement Establishing IFAD (Article 7, section 2) and, in particular, in its Lending Policies and Criteria.”

While the AEI sets a 12.5% ceiling of total loans and grants per year for grant financing, the executive board adopted a lower ceiling (7.5%) for several years, as a matter of policy. In accordance with the recommendations of the Consultation on the Sixth Replenishment of IFAD resources, the ceiling increased to 10% in 2004. The IFAD grant program “focused heavily on the development of innovative approaches to technical and institutional issues confronting the rural poor [and also became] increasingly involved in organizational and institutional development in non-agricultural areas, parallel[ing] some aspects” of other international organizations’ technical grant programs. An amendment to the AEI stipulates that amounts allocated to the debt sustainability mechanism do not fall within grant ceiling.

Following approval of its DSF in 2007, IFAD allocates grants under its DSF, which allows IFAD to replace loans with grants. In 2009, its Executive Board approved the Revised IFAD Policy for Grant Financing which seeks to promote innovative activities, technologies and approaches to support IFAD’s target group, further awareness, advocacy and policy dialogue on issues of importance to poor rural people, strengthen capacity of partner institutions and increase lesson learning, knowledge management and dissemination of information.

Under the IsDB Agreement, grants for projects and programs are a permissible modality of concessional financing. Previously, IsDB extended special grants through its Waqf Fund to global populations suffering natural calamities and disasters. Currently, IsDB may also use ISFD resources for such grants. Article 22 of the IsDB Agreement confers wide authority to establish special funds (i) to assist Muslim communities in non-member countries, (ii) provide technical assistance, or (iii) for any other specific purpose. The ISFD Regulations expressly provide that Board of Directors shall make decisions regarding “individual loans, grants and other forms of financing to be provided by the [ISFD]”. Grants are effectively one of the major modalities of ISFD financing.

Grant Financing as a Preferred or Only Modality

There is a wide range of global programs and partnerships that provide financing exclusively in the form of grants. Grants are the preferred modality for financing global public goods. While most financial intermediary funds provide for financing in the form of grants, there are substantial differences between

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506 IFAD, IFAD Policy for Grant Financing.
507 IFAD amended the AEI on 16 February 2006 by Resolution 141/XXIX on the Seventh Replenishment of IFAD’s Resources. Article 7, Section 2(a) of the AEI was amended as follows: “Financing by the Fund shall take the form of loans, grants and a debt sustainability mechanism, which shall be provided on such terms as the Fund deems appropriate, having regard to the economic situation and prospects of the Member and to the nature and requirements of the activity concerned. The Fund may also provide additional financing for the design and implementation of projects and programmes, financed by the Fund through loans, grants and debt sustainability mechanisms, as the Executive Board shall decide.” (emphasis added) Vochttp://www.ifad.org/gbdocs/gc/29/e/GC-29-Res-141-XXIX-Rev-1.pdf
510 ISFD Regulations, Article 9.04(i).
such funds in regard of their purpose and the modalities of their financing, as may be seen from the examples below.

Grants for projects are used for different purposes. One example is the case of the Climate Investment Funds wherein CTF grant funding is intended “for project components with very high additional costs… or with significant risks, and innovative financing instruments to soften commercial and/or MDB lending terms for low carbon projects or programs” \[512\] while PPCR grant funding is meant to cover “additional costs associated with mainstreaming climate resilience into investments.” \[513\] PPCR grants may support public sector investment programs and projects, either for deploying upfront capital (e.g., for supporting capacity development and policy analysis/formulation for resilience issues), as capital or buy-down grants for lowering the cost of development projects and for knowledge management components of investment projects. \[514\] FIP grants may be used for preparation of FIP investment strategies, where needed and other preparation activities (e.g., for FIP supported projects) and for implementation activities (e.g., capacity development activities and activities related to policy and regulatory frameworks), for FIP investment projects or programs, indigenous peoples and local communities and for knowledge management activities as component of investment projects and programs. \[515\] The SREP provides consistent with the IMF–World Bank debt sustainability framework and based on the financial rate of return of investments for a decision-tree to determine where grants (or risk mitigation instruments are appropriate (rather than loans). \[516\] SREP may also be used for investment projects and programs. \[517\]

The GEF generally provides financing in the form of grants, \[518\] and its three implementing agencies and seven executing agencies work with the operational focal point in each country on the design and implementation of a range of full- and medium-sized grant projects. \[519\] In certain cases, non-traditional grants have been provided subject to a repayment obligation if certain criteria are not met. Moreover, performance grants have been proposed which may be launched through prizes that reward innovation with clear global environment benefits in fields such as sustainable second-generation biofuels. \[520\]

While the GEF provides non-grant financing in certain cases, the Global Fund disburses its funding solely on the basis of grants, without obligation of repayment, to public, private, and nongovernment programs, \[521\] thereby seeking to complement other donor financing and catalyze additional investments of donors and recipients. \[522\]

The Fast Track Initiative (FTI), \[523\] which was launched by the World Bank in 2002 as a global partnership to enable low-income countries meet the MDGs, is another sample of an innovative channel of concessional financing providing financing in the form of grants. The FTI “is a new compact for

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512 CIF, Clean Technology Fund. Financing Products, p. 5.
514 CIF, Pilot Program on Climate Resilience (PPCR): Financing Modalities, pp. 5–8.
516 CIF, SREP Financing Modalities, Figure 1, p. 7.
517 Ibid.
518 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects).
519 Medium-sized projects receive a maximum of $1 million and full-sized projects receive more than $1 million.
520 See Chapter 8 (M. Ragazzi, Global Environment Facility: Institutional and Operational Aspects) and GEF, Operational Policies and Guidance for the use of Non-Grant Instruments (GEF/C.33/12, 26 March), para. 29.
522 Ibid.
523 World Bank. EFA Fast Track Initiative (FTI) and the World Bank. http://go.worldbank.org/8EZE2MXEZ0. See also the Education For All Fast Track Initiative Website www.educationfasttrack.org/
the education sector that explicitly links increased donor support for primary education to recipient countries' policy performance and accountability for results.” Main funding for the FTI is provided by the Catalytic Fund which is managed by the World Bank on behalf of donors. It was established in 2003 to provide temporary financial assistance to countries in scaling up implementation of their sector programs and attracting, based on a track record of satisfactory performance, longer-term financing. However, ensuring the transition from Catalytic Fund financing to longer-term donor sector support proved to be difficult; for that reason, proposals are under consideration to create new funding mechanisms to provide “long term predictable financing to countries with FTI-endorsed education sector plans but with insufficient domestic or external aid resources to implement them.” As further described below, the Catalytic Fund promotes country-level processes and new aid delivery mechanisms such as sector budget support and pooling arrangements. Funding for projects is only provided as and to the extent that such other arrangements are not feasible or appropriate (e.g., because using government budget systems involves high fiduciary risks). World Bank specific investment grants are covered by guidelines adopted in 2008.

Guarantees

The hard windows of the MDBs studied here were “framed with the clear idea in mind that these institutions would use extensively their powers to guarantee loans and investments made by private lenders to borrowing member countries.” Such windows were established to promote resource flows to developing member countries, thus complementing direct lending and cofinancing operations. The guarantee function was particularly important for IBRD, which was conceived at Bretton Woods as an institution that would bridge, through the provision of guarantees, “the period until private investors, who had been leery of foreign lending after the experience of the 1920s, would resume the practice of buying the securities of foreign governments.”

However, implementing this instrument proved difficult and it was used only rarely or not at all by the MDBs until the mid-1980s. Also, guarantee facilities often did not become an integral part of their concessional operations, even where the legal frameworks of concessional windows did not preclude them.

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525 As of March 2010, pledges to the Catalytic Fund for the period 2003 to 2011 amount to $1.6 billion. www.educationfasttrack.org/financing/catalytic-fund/. In addition to the FTI Catalytic Fund, funding for the FTI is provided through the Education Program Development Fund which was established in 2004 and currently is undergoing restructuring. See the Education Program Development Fund website www.educationfasttrack.org/financing/epdf/
529 Mistry, Multilateral Development Banks, p. 74. Emphasis in the original.
531 Mason and Asher, The World Bank since Bretton Woods.
532 The AfDF Agreement does not expressly mention guarantees as a modality of AfDF financing. Thus, the general principle set forth in Article 16(1) of the said agreement that financing other than in the form of loans can only be provided "out of resources received pursuant to arrangements under Article 8 expressly authorizing such financing" applies. So far, no such authorization has been provided by the board of governors. The current legal framework of the ADF does not allow the use of ADF resources for guarantees. The NTF Agreement, on the other hand, does not contain specific constraints against guarantees. Instead, the NTF Agreement expressly refers to Article 17 of the AfDB Agreement, which mentions guarantees as one of the modalities of AfDB financing. However, currently NTF resources are not being used for providing guarantees. See NDF Agreement, Article IV, section 4.1.
The constituent agreements of CDB and IDA explicitly address the provision of concessional guarantees. Guarantees are also used for other concessional windows such as the CIF and credit guarantees and risk guarantees also form part of the non-grant instruments of the GEF.

Article V, section 5(iv) of the IDA Articles provides that IDA may, “in special cases, guarantee loans from other sources for purposes not inconsistent with the provisions” of its charter. Shihata interprets this provision as follows:

Given the restrictions mentioned earlier in Article V, Section 2(a) [which requires IDA financing to take the form of loans except where expressly authorized otherwise], there are two ways of reading this permissive clause. Either it is a mere repetition of the earlier rule, the “special circumstances” being the approval of the sources of funds provided as “additional” or “supplementary” resources, or it refers to funds not subject to the restrictions in [IDA Articles, Art. V] Section 2(a), i.e., to funds which are neither initial subscriptions nor additional or supplementary resources, or funds derived therefrom. This leaves only the repayment of credits made out of (initial) subscriptions (reflows) and other funds derived from such credits.”533

IDA adopted the latter interpretation. Thus, when the guarantee instrument was introduced in IDA11, it was proposed that guarantees be used for special cases as defined by the board of directors and “be backed by reflows of credits made out of the initial subscriptions to IDA.”534

In 1997, the IBRD executive directors supported a limited number of “enclave” projects or foreign exchange earning projects in IDA-only countries through IBRD loans. Such guarantees were structured so that the government whose obligations were guaranteed by IBRD was not exposed to commercial or foreign exchange risks associated with the payment of project output but would only be liable if the guarantee was called due to the specified government nonperformance risks covered.535 However, there was a perceived demand for increased risk mitigation and a gap in the range of available instruments for IDA-only countries ineligible for IBRD enclave guarantees. Since private investors had shown increasing interest in investing in some countries where macroeconomic reforms had improved the business environment and to ease the transition of those countries, the executive directors authorized IDA to offer a “partial risk guarantees to private lenders against country risks that are beyond the control of investors and where the official agencies and the private market currently offer insufficient coverage.”536

Funding for this pilot program was first drawn from repayments on credits financed by initial subscriptions to IDA. Guarantees could not exceed $300 million, a level that increased to $500 million following a review of the World Bank guarantee program in 2000.537 Subsequently, the IDA guarantee program was funded by allocations made expressly for that purpose during IDA replenishments. The IDA deputies first granted this authorization during IDA12, with the condition that (i) the pilot program was judged useful and effective, (ii) IDA guarantees fitted within the context of an overall private sector

533 Shihata, World Bank Legal Papers, p. 576. In this case, the earlier rule refers to IDA Articles, Article III, sections 1 and 2, on additions to resources through additional subscriptions or through supplementary resources provided by a contributing member.

534 IDA, 1997. A Proposal for Guarantees in IDA-Only Countries. (IDA/R97-97, 13 August). p. 7. “Such reflows can only be used for guarantees in ‘special cases’ to be defined by IDA’s Executive Directors. We propose the following principle for determining the special cases. For operations that require support through coverage of political risks in privately sponsored projects and where IFC and MIGA cannot provide the needed support, preference should be given to using IDA resources for guarantees rather than credits, because the use of partial risk guarantees allows for the transfer of commercial risks to private parties and thereby achieves a more efficient risk allocation.” Ibid. pp. 7–8.


536 IDA, A Proposal for Guarantees in IDA-Only Countries.

development strategy of the World Bank Group, and (iii) the guarantees were limited to a small proportion of IDA resources. \(^538\) “Deputies noted that IDA’s ‘partial risk’ guarantee program fits within the context of the World Bank Group’s PSD strategy and has been useful in the limited number of operations that are currently under implementation,” \(^539\) particularly in countries with significant public sector risk that held little interest, if any, for commercial lenders. \(^540\)

Demand for IDA guarantees was constrained because the full face value of a guarantee was counted towards IDA commitment authority and country allocations. To reduce this disincentive, IDA decided to apply only one-fourth of the guarantee’s face value against a country’s allocation as well as to extend IDA guarantees to certain blend countries that could obtain only very small IBRD loans, if any. \(^541\) The guarantee program is limited to partial risk guarantees, through which IDA guarantees lenders to private investment projects against debt service defaults that result from nonperformance of government obligations undertaken by governments or their agencies in private sector operations. It is “intended as an instrument of last resort to help fill financing gaps in cases where IBRD exposure could not be increased and neither [Multilateral Investment Guarantee Agency] MIGA nor the International Finance Corporation could provide sufficient support and lenders would only be prepared to participate with an IDA guarantee of sovereign risks.” \(^542\) Compared with other IDA operations, the guarantee program remains rather marginal. \(^543\) Nevertheless, IDA’s Executive Directors approved in financial year 2008 “establishing IDA partial risk guarantees as a mainstreamed, regular financial product, therefore ending the ‘pilot’ status of the IDA Guarantees Pilot Program.” \(^544\) While currently guarantees are only available for IDA-only countries where an IBRD enclave guarantee is not applicable and in blend countries where IBRD exposure cannot be increased, World Bank “Management is currently exploring a possible future expansion of the spectrum of IDA guarantee instruments with a view to offering partial credit guarantees on sovereign debt, either through Partial Credit Guarantees for investment operations or Policy-Based Guarantees for general balance of payment support, or both as in the case of IBRD.” \(^545\)

IDA partial risk guarantees “can be used for any commercial debt instruments (loans, bonds) provided by any private institution, including debt provided by sponsors in the form of shareholder loans [and] can cover both foreign currency and local currency debt.” \(^546\) Private project sponsors or the project company have to pay a one-time initiation fee of 0.15% on the amount of the guarantee (or a minimum of $100,000), a one time processing fee of up to 0.5% on the amount of the guarantee, and a guarantee fee of 0.75% per annum on the disbursed and outstanding guarantee amount. \(^547\)

In certain cases, IDA, MIGA, and other development banks have jointly established guarantee facilities to offer guarantee products. One interesting example is the Afghanistan Investment Guarantee Facility, which was funded by an IDA credit and ADB soft loan, each in the amount of $5 million,
and $10 million in insurance from MIGA that was coinsured by ADB for $10 million. The facility provides political risk guarantees to investors concerned about their investments in Afghanistan. It also includes innovative features, among other things, because it may insure transactions that do not involve a foreign equity partner (e.g., loans extended by the local branch of a foreign bank to local Afghani business).

Article 8.1 of the CDB Charter provides that CDB can use SDF for lending or guaranteeing high-priority development loans with “longer maturities, longer deferred commencement of repayment and lower interest rates than those determined by the Bank for its ordinary operations.”

As of December 2008, the CDB Board of Directors had approved only one guarantee using SDF(U) resources. Furthermore, the CDB Microfinance Guarantee Fund, which was established by the CDB board of directors on 9 December 1999 as an OSF, was not effective. The Microfinance Guarantee Fund, which had its own rules and regulations for administration and resource use, was funded by an appropriation of SDF resources to establish a guarantee fund (a US dollar fund) to provide coverage for intermediary guarantees issued. The investment income of the guarantee fund and guarantee fees were to be used to cover losses and administrative expenses. Upon agreement of the SDF(U) contributors, $10 million was appropriated from CDB’s SDF(U) to the Microfinance Guarantee Fund to fund the Microfinance Guarantee Programme. The guarantees issued under that program were to cover 80% of a loan from a commercial lender to a specialized microfinance institution, with a duration matching the duration of the loan. The guarantee fee was set at 1.5% of the loan. However, even though in existence for over 10 years, the Microfinance Guarantee Fund effectively has not been used.

While there is general recognition of the important role of private finance in combating climate change, there continues to be impediments for achieving this objective. To bridge the gap between finance and project needs, risk-mitigation instruments are necessary to enhance private investments for climate-related projects in high-risk countries. For this purpose, in 2010 the NDF Board of Directors, in partnership with the Nordic Environment Finance Corporation, approved financing of EUR10 million for a new ProClimate Facility which can extend (in addition to technical assistance) partial loan guarantees and technical and operational guarantees to selected small and medium-sized projects.

As shown above, concessional resources may be used to subsidize the cost of guarantees. An interesting alternative to subsidies is to use concessional resources to leverage additional private investment capital by risk subordination of the concessional funds. Under such a structure different risk tranches of capital are created, where the first loss may be covered by concessional sources and the upper tiers by development finance and commercial investors. A waterfall repayment mechanism assigns the first payment of revenues to the senior tranches and the last to the first loss tranche. The use of concessional resources under this structure allows leveraging additional commercial funds at a large scale for development purposes in some cases up to seven times the amount contributed by donors for the first loss tranche. The risk buffers of the higher risk tranches also provide significant comfort to more risk averse investors especially when markets

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550 CDB Agreement, Article 8.2.

551 CDB. 1999. Rules and Regulations for the Establishment, Administration and Use of Resources of the Microfinance Guarantee Fund, Barbados. The following description of the fund is substantially drawn from such rules and regulations.


and business partners do not avail of commercial ratings. This funding structure is being increasingly used in recent years for various funds, such as the European Fund for South East Europe (EFSE), a public–private partnership established in 2005, which is supported by public investors such as the European Commission and national governments and development finance institutions such as KfW, OeEB, IFC, EBRD and the European Investment Bank as well as private investors. An interesting characteristic of EFSE is the flexible pooling and targeting of resources across different risk tranches. EFSE operates as the umbrella for different national or regionally targeted sub-funds which allow to accommodate donor targeting of specific countries and regions. In EFSE Public investors invest in the Junior Tranche (first loss), while development finance institutions invest the mezzanine tranche which in the case of loss is only affected if the first loss tranche has been depleted, while holders of senior capital are only affected after the junior and mezzanine tranches have been depleted. EFSE is a debt fund lending to qualified financial intermediaries, who provide sustainable funding to entrepreneurs and private households in Southeast Europe. Similar structures are suitable for a variety of purposes and transactions. Recent examples include agricultural value chain and trade financing, micro-finance, and assistance to small businesses, development of long-term local currency hedging products, and for fostering economic development and prosperity in Sub-Saharan Africa.

Guarantees may also be financed by trust funds administered by international organizations or under framework agreements with development partners. Risk and credit guarantees are non-grant instruments of the GEF. Several GEF non-grant projects provided resources for first loss, partial loan guarantee mechanisms that, even though never called, were instrumental in gaining approval of loans for energy efficiency improvements. “Credit guarantees have been the most often used instrument [but] performance risk guarantee mechanisms have been used much less frequently.”

Further, the two Climate Investment Funds (CIFs) established in 2008 (i.e., the Clean Technology Fund (CTF) and targeted programs under the Strategic Climate Fund (SCF)) provide risk mitigation in the form of guarantees such as credit guarantees and partial risk guarantees. In the case of the CTF, guarantee instruments may be used to mitigate risks that lenders and investors are unwilling to accept (e.g., promoting low-carbon technology projects and programs that would otherwise fail to attract adequate capital).

The same is applicable to the three targeted funds under the SCF. “FIP resources may be deployed as guarantees to promote forestry projects and programs which would otherwise fail to attract adequate capital [and] proceeds from the FIP may be used to issue such guarantees by the MDBs, in accordance with their policies for determining eligible beneficiaries, eligible forms of investment, maximum tenor

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554 See for detailed information the EFSE website: www.efse.lu/Funding-mechanism------_site._site..html_dir._nav.37_likecms.html
555 See EFSE. Funding Mechanism. www.efse.lu/Funding-mechanism------_site._site..html_dir._nav.37_likecms.html
556 See ProCredit Holding website: www.procredit-holding.com/front_content.php?idcat=23
558 See Regional MSME Investment Fund for Sub-Saharan Africa. www.regmifa.com/presentation/fund-structure
560 Ibid., p. 3.
and maximum amounts.”\textsuperscript{565} FIP resources may be employed for loan guarantees covering (up to an agreed portion of the actual) the loss on account of debt service default for lenders or for providing contingent finance disbursed to the project upon underperformance of a forestry technology and where such risk is not commercially insurable at reasonable costs or has occurred beyond the period for which commercial insurance is available. Guarantees may be funded by SREP resources “to promote renewable energy investments which would otherwise fail to attract adequate capital [and proceeds] from the SREP may be used to issue such guarantees by the MDBs, in accordance with their policies for determining eligible beneficiaries, eligible forms of investment, maximum tenor and maximum amounts.”\textsuperscript{566}

**Equity Investments, Trade Financing and Other Forms of Concessional Financing**

A distinguishing feature of the NDF was its ability to use financing for direct investments in joint ventures and participation in venture capital funds.\textsuperscript{567} The NDF has effectively used both types of investments in its private sector activities. In addition, it has also provided credit lines to subregional and national development banks to promote small and medium-sized enterprises.

Because the NDF Statutes initially did not allow interest-free credits or investment in equity capital, it developed a hybrid solution (i.e., “subordinated quasi-equity credits”) that supported private sector projects through “subordinated interest-free loans subjected to the same conditions as the equity investment of the project’s lead agency.”\textsuperscript{568} While a 1999 evaluation of the NDF suggested the creation of a facility for private sector lending in economic infrastructure, the NDF Board felt that “opportunities for private sector support ought to be sought over a wider field than this.”\textsuperscript{569} Following the proposal of the NDF Board of Directors, the Nordic Council of Ministers amended the NDF Statutes accordingly effective 14 September 2001 to allow concessional financing in the form of equity capital.\textsuperscript{570} Since the end of 2001, the NDF has provided financial support without government guarantee for private sector activities in developing member countries. This form of investment was connected to a relatively small portion of NDF operations,\textsuperscript{571} as part of a “conscious decision” on the part of NDF management to keep private sector operations at a modest level.\textsuperscript{572} Under the 2009 amendment to the NDF Statutes, the NDF will provide future grant financing for interventions targeted at adaptation and mitigation to climate change in poor developing countries. While the wording of the revised statutes does not preclude the NDF from conducting equity investments in future, it is not clear whether it effectively will provide such investments.\textsuperscript{573}

Non-grant instruments of the GEF include equity participations in companies. In accordance with the objective to increase GEF engagement with the private sector, particularly in case of very new and innovative small and medium-sized enterprises, minority participations lower than 35% of capital and

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\textsuperscript{566} CIF, SREP Financing Modalities, p. 15.
\textsuperscript{567} Similar to the ADF, the AfDF and the IDA have no authority to conduct equity investments.
\textsuperscript{568} Haralz, Nordic Development Fund: 5 Years of Action, p. 16.
\textsuperscript{569} Ibid., p. 17.
\textsuperscript{570} NDF Statutes, section 3; Haralz, Nordic Development Fund: 5 Years of Action, p. 18.
\textsuperscript{571} NDF, 2005. Annual Report. At the end of 2005, the NDF had entered into 188 agreements, the total value of which, including additional financing and adjusted for cancellations, amounted to EUR956.8 million (2004: EUR 874.3 million). Of these agreements, 160 were credits to public sector projects (EUR906.8 million), 25 were loans with equity features or equity investments (EUR33.3 million), and three were other loans (EUR16.8 million).
\textsuperscript{573} Section 3 of the revised NDF Statutes provides in pertinent part: “The Fund finances development projects in developing countries. Financing can be extended in the form of interest-free loans, subordinated loans, equity capital and grants.” (emphasis added)
without participation in management have been proposed as one of the GEF non-grant instruments. Investments under the CIF can also be made on an equity basis.

CDB does not permit the use of SDF resources for equity investment, and the rules governing its SDF include a note that equity is excluded from SDF financing. In its special operations, however, CDB may hold equity in some mostly national and regional projects in Group 1 and 2 countries, paying particular attention to the economic and financial situation of the country and the local availability of other sources of funds for providing equity.

While loans and grants represent the main modalities of concessional financing from ISFD resources, in principle ISFD can fund all permitted modalities of IsDB financing. Thus, ISFD can provide concessional financing through modes that comply with Islamic law (e.g., Ijara, Istina’a, and installment sale).

One area where there is potential for MFDIs to substantially expand their operations is trade financing on concessional terms. “Concerns about the scarcity of trade finance for developing and low-income countries have been identified as an issue in the WTO since the Asian financial crisis….” As early as 2003, the perceived need to work at an inter-governmental institutional level to find global solutions to trade finance challenges led the Managing Director of the IMF, the President of the World Bank, and the Director-General of the WTO …. to convene major players to find ways to improve flows of trade finance (for example, letters of credit and other documentary credit) to developing and least-developed countries.” Since then, in addition to providing aid for trade, MDBs have taken action to substantially expand their trade financing facilities.

In most cases, trade financing is provided on market-based terms, commonly through their private sector windows. However, there are certain cases where trade financing is provided on concessional terms, as in case of the IsDB, one of the main objectives of which has been the strengthening of trade cooperation between the member countries of the Conference of Islamic States. IsDB provided subsidized export financing to LDMCs under the recently dissolved export financing scheme, which involved a longer repayment period and a lower mark-up. This arrangement derived added value by promoting trade (export) among LDMCs. The operations of the export financing scheme and its resources, which consist of

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574 GEF, Operational Policies and Guidance for the Use of Non-Grant Instruments.
575 At the time of the establishment of the CTF, it was envisioned that the CTF would use equity among a range of concessional financing instruments. CIF, Clean Technology Fund, para. 24. However, equity investments are so far not the focus of CTF operations. Both the SREP and FIP may offer equity products to support private sector investments but concessionality for such products will be kept to the minimum. See CIF. 2010. FIP: Investment Criteria and Financing Modalities. p. 20, and CIF. 2010. SREP Financing Modalities. p. 20.
576 See CDB Rules of the Special Development Fund, note to section 4.1.
579 Ibid.
580 Ibid.
581 See WTO. The challenges of trade financing, citing Auboin and Meier-Ewert. www.wto.org/english/trade negotiations/collapse/nta_challenges_e.htm
582 See WTO. The challenges of trade financing. www.wto.org/english/trade negotiations/collapse/nta_challenges_e.htm
of contributions of member states, currently reside with the newly established International Islamic Trade Finance Corporation (ITFC).585

In 2006, the Organization of the Petroleum Exporting Countries (OPEC) Fund for International Development (OFID) established a trade finance facility that supports trade through a variety of instruments including loans, lines of credit, and guarantees.586

Trade financing is viewed by OFID as a “natural progression” of other concessional products offered by it.587 Concessional financing may support such progression. MFDIs can provide such financing either from their regular concessional windows, from trust funds, or under framework agreement with national development institutions. As many states are actively involved in trade financing, in particular the latter solution deserves consideration. Concessional financing may support this process. MFDIs might substantially expand their role in trade financing by establishing special facilities for that purpose and by mobilizing additional resources for that purpose under framework agreements or other co-financing arrangements with development partners.

**Debt Relief**

In the 1970s and 1980s, several factors resulted in sharply increased external borrowing and the buildup of unsustainable debt in some developing countries. Such buildup was prompted by weak macroeconomic policies, creditors’ willingness to take risks unacceptable to private lenders, trade and oil price shocks, high interest rates, and recessions.588 The international community sought to address the debt problems through:

(i) the adoption of stabilization and economic reform programs supported by concessional loans from the IMF and the World Bank;

(ii) in support of these adjustment programs, flow rescheduling agreements with Paris Club creditors on concessional terms followed by a stock-of-debt operation after three years of good track records under both IMF arrangement and rescheduling agreements;

(iii) agreement by the debtor country to seek at least comparable terms on debt owed to non-Paris Club bilateral and commercial creditors facilitated by IDA debt-reduction operations on commercial debt;

(iv) bilateral forgiveness of ODA debt by many creditors; and

(v) new financing on appropriately concessional terms.”589

Multilateral donors supported these initiatives by designing adjustment programs and providing instruments that enabled borrowers to reduce their commercial debt. In addition, MFDIs engaged in debt-for-development swap mechanisms and established special facilities to allow indebted countries to reduce or buy back their debts and clear their arrears. Nevertheless, as traditional mechanisms proved

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inadequate for several countries that remained unable to reach a sustainable level of debt, the international community sought to pursue comprehensive approaches to debt relief through the HIPC Initiative and Multilateral Debt Relief Initiative (MDRI). The basic assumption underlying these and other debt-relief initiatives is that they relieve “resources in the recipient country government budget that can be rechanneled into other spending (or used to reduce the fiscal deficit).”590 However, that purpose was not achieved in a number of cases. The MDRI alone resulted in debt relief totaling well over $50 billion for IMF, IDA and AfDF and accounted for a significant proportion of official aid flows. While ODA to developing member countries has substantially increased during recent years, such increase largely resulted from debt forgiveness. Thus, the amounts allocated to developing member countries for projects and programs effectively did not increase in the same proportion as the overall increase of ODA.591

**Special Facilities for Debt Relief and Arrears Clearance**

Special facilities for debt relief may be funded either by MFDI concessional resources or by trust fund resources. Both funding modalities are frequently closely interlinked.

One early debt relief program of IDA was the so-called Fifth Dimension Program, which originated in the Special Program for Assistance established in 1987 to support adjustment programs in eligible countries, primarily in Africa.592 The Fifth Dimension Program was established on 23 September 1988 to assist IDA countries that were no longer able to borrow on IBRD terms but had outstanding IBRD debt. Reflows, investment income, IBRD net transfers, and other resources (RITO) from previous IDA replenishments substantially funded this facility. Additional resources were allocated annually as supplementary credits in proportion to a country’s interest payment on its IBRD debt. IDA-eligible countries that had not undertaken an IBRD-approved loan within the previous 12 months and lacked creditworthiness for IBRD lending became eligible for Fifth Dimension credits if they were current on IBRD and IDA debt service and had in place an IDA-supported adjustment program.593 Only IBRD loans approved prior to the creation of the program were covered.594

In 1989, IBRD and IDA acted jointly to establish, by way of a trust fund funded by $100 million of IBRD net income allocated for that purpose, a facility for IDA-only countries. This “sixth dimension” of development assistance became known as the Debt Reduction Facility for IDA-only countries. The facility aimed to enable IDA-only countries to effect cash buybacks of commercial debt at substantial discounts or, in exceptional circumstances, debt exchanges to collateralize principal.595 While all heavily

592 Four sources (“dimensions”) of supporting adjustment financing were previously available: (i) adjustment credits from the IDA, (ii) the Structural Adjustment Facility and Enhanced Structural Adjustment Facility of the IMF; (iii) bilateral and other multilateral adjustment financing from organizations like AfDB and the European Community (EC), and (iv) debt relief provided by bilateral donors. Donor assistance, mostly from Nordic countries, with IBRD debt service came to be known as the “Fifth Dimension of the SPA.” IDA. 1998. *Use of IDA’s RITO Resources—FY99 (ID/R98–147, 28 September).*
593 Fifth Dimension Program. Under IDA’s Fifth Dimension program, a portion of principal repayments to IDA are allocated on an annual basis to provide supplementary IDA development credits to IDA-eligible countries that are no longer able to borrow on IBRD terms, but have outstanding IBRD loans approved prior to September 1988 and have in place an IDA-supported structural adjustment program. Such supplementary IDA development credits are allocated to countries that meet specified conditions, in proportion to each country’s interest payments due that year on its pre-September 1988 IBRD loans. To be eligible for such IDA supplemental development credits, a member country must meet IDA’s eligibility criteria for lending, must be ineligible for IBRD lending and must not have had an IBRD loan approved within the last twelve months. To receive a supplemental development credit from the program, a member country cannot be more than 60 days overdue on its debt-service payments to IBRD or IDA.” World Bank. 2004. Annual Report 2004. www.worldbank.org/html/extpa/2004/download_report.html; IBRD Financial Statements: 30 June 2004, p. 70.
indebted IDA-only countries were eligible for Debt Reduction Facility support, the decision on which countries to support was made on a case-by-case basis, in accordance with defined criteria. The facility played an important role in reducing sovereign debt burdens and extinguishing commercial external debt from the public sector books of low-income countries.

Particular problems that arose for countries in post-conflict situations required a pragmatic approach, as “fragile political situations and often devastated economies make the development of rigid performance criteria unfeasible and inappropriate.” In such situations, “resources have to be made available as soon as conditions on the ground allow and when the requirements change from relief-only to reconstruction.” Since arrears constitute a major additional complication, the World Bank and other international organizations (e.g., the AfDB Group and IFAD) have pursued arrears clearance mechanisms.

AfDB created two special facilities that allow countries to clear their arrears. On 25 June 2002, the AfDF Board of Directors established a special arrears clearance mechanism to assist the Democratic Republic of the Congo in its reconstruction efforts. The AfDF deputies “authorized an allocation of approximately UA36.50 million of grant resources ‘from the ninth replenishment of the AfDF (AfDF-IX)’ to clear the entire stock of the [Democratic Republic of the Congo] DRC’s arrears to the Fund.” In 2004, the AfDB Group established a framework to help post-conflict countries clear their arrears, setting aside resources drawn from AfDB net income allocations and contributions from AfDE. The Post-Conflict Country Facility (PCCF) comprised “sui generis trust fund arrangements governed by general principles of customary law,” the terms and conditions of the resolution approving its creation and its own rules and procedures. In 2008, a resolution of the AfDF board of directors transformed the PCCF into the Fragile States Facility (FSF). While three options for its legal structure were considered, the PCCF was established as a trust fund and governed by the general principles of trusts administered by international financial institutions.

IDA implemented various enhancements to enable engagement with countries in arrears. During the IDA15 negotiations, the deputies called for a systematic approach to arrears clearance and supported

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596 The existence of a “medium term adjustment program” and “strategy for debt management” which includes a program for resolving the commercial debt problem in a comprehensive manner and provides for substantial relief from official bilateral creditors through an agreement with the Paris Club on the so-called Toronto terms were required. Ibid.


599 Ibid., p. 32.


602 Ibid.


604 The three options for the FSF which were considered were a special earmark or set aside within [AfDF] 11; a special purpose [AfDF] window and a new, independent Fragile States Facility. The third option was selected. See AfDB Group. FSF Structure. www.afdb.org/en/topics-sectors/initiatives-partnerships/fragile-states-facility/fsf-structure/

605 Ibid.

606 The IDA12 deputies report authorized the IDA to approve pre-arrears clearance grants to engage at an earlier stage in countries emerging from severe conflict (IDA, Additions to IDA Resources: Twelfth Replenishment, p. 14.) Deputies endorsed rescheduling of arrears and the use of Fifth Dimension type funding in these countries. These measures are envisioned to be the main additional instruments to assist post-conflict countries. However, Deputies recognized that in certain exceptional cases, where the needs are great and alternative sources of financing are inadequate or inappropriate, there is a potential need for very limited IDA grant funding prior to arrears clearance. They agreed that where the use of IDA credits would be inappropriate Executive Directors could approve the use of IDA grants as a last resort and as part of a concerted international assistance effort to assure positive flows to post-conflict countries as soon as performance warrants. The IDA13 replenishment report provided for an expanded use of grants to post-conflict countries and confirmed that IDA grants would continue to be available to “support recovery efforts during the pre-arrears clearance phase in IDA-eligible countries with large and protracted arrears.”
the use of IDA’s resources for that purpose after the World Bank’s requirements for reengagement and conditions\(^{607}\) had been met. They also noted the positive experience of selectively using IDA grants to support recovery efforts prior to arrears clearance.

**Debt Swaps and Buyback Arrangements**

Debt-for-development swap mechanisms involve the cancellation by a creditor of a debt at its nominal value and the investment of the debtor of part of the cancelled amount in development projects. Since their emergence as debt-for-equity swaps in countries such as Argentina and Chile following the 1982 debt crisis, they have been used by developing member countries for a variety of purposes.

In the 1980s, debt-for-nature swaps supported specific environmental projects. Conducted on a smaller scale than the equity swaps, these mechanisms responded to requests of IDA\(^9\) donors urging “IDA [to] play a catalytic role in facilitating debt-for-nature transactions in support of sustainable development.”\(^{608}\)

Although debt swaps have been used less frequently since then, they have resurfaced as a way of funding MDG programs. One example is the Debt2Health mechanism, which was formally launched by the Global Fund on 26 September 2007. Debt2Health is a partnership between creditors and grant recipient countries which “uses debt swaps to free up domestic resources that can be invested in approved Global Fund programs.”\(^{609}\)

Under a concluded Debt2Health agreement, the creditor agrees to forgo payment of a portion of interest and principal on the condition that the beneficiary invests an agreed counterpart amount in health through the Global Fund. The exact amount of counterpart payment to be made depends on the individually-negotiated terms and conditions of each Debt2Health agreement.

Once a Debt2Health agreement has been concluded, the first step is the counterpart payment by the beneficiary to the Global Fund, either as a one-time payment or in installments that correspond to the annual interest payments. The counterpart payment does not come from health-related budgets or expenditures by health ministries. Once the counterpart payment has been made, the creditor reduces the debt stock covered by the swap. This usually involves a bilateral side agreement or amendment to existing bilateral agreements concerning outstanding claims. The side agreement is signed at the same time as the overall Debt2Health agreement to maintain complete understanding of the various parts and stages of the Debt2Health transaction. An early or “upfront” debt stock reduction is possible because both parties rely on the credibility and effectiveness of the established and proven systems of the Global Fund….

Debt2Health funds are disbursed through normal Global Fund channels and procedures. Once a grant is approved, the funds are disbursed in small tranches based on disbursement requests filed by the Principal Recipient (PR) of a grant. Debt2Health resources are disbursed on a first-out basis as the Secretariat honors a disbursement request.\(^{610}\)

\(^{607}\) Such conditions are a medium-term growth-oriented reform program, satisfactory performance under an IMF program, and a financing plan that provides for full clearance of arrears to the World Bank and for the normalization with other multilateral institutions. IDA, *Additions to IDA Resources: Fourteenth Replenishment*, p. 31.


Germany was the first creditor country to offer Indonesia debt-swap arrangements thereby facilitating a substantial reduction of the debt burden on Indonesian society.\(^{611}\) Thus far, six debt-swap agreements, including Debt2Health, have been implemented between the Government of Indonesia and the Government of Germany, totaling €143.56 million.\(^{612}\) Australia followed suit in 2009 by offering to write off A$75 million in commercial debt to Indonesia in return for Jakarta investing half that amount in domestic tuberculosis programs that are supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria.\(^{613}\)

Another type of swap arrangement used for development purposes involves buying down a country's debt. The Bill & Melinda Gates Foundation, Rotary International, the UN Foundation, and the World Bank launched the Investment Partnership for Polio in 2003. The Bill & Melinda Gates Foundation provided $25 million and the Rotary International and the UN Foundation provided $25 million to create a $50 million trust fund to "'buy-down' a country's IDA loans upon successful completion of that country's polio eradication programs."\(^{614}\) In essence, this program converts IDA loans into grants. Because the buy-down program depended on the successful completion of a polio eradication program, it provided countries with strong incentives to ensure effective program implementation.

**Comprehensive Approaches to Debt Relief**

**Debt Relief as a Modality of Concessional Financing**

There had been a long-standing discussion before the World Bank Group regarding the permissibility of debt relief in the overall context of the organization's functions and purpose. Shihata reported that several proposals sought "to make financing available from reflows for the purpose of alleviating the debt burdens of IDA borrowers [to IBRD]."\(^{615}\) Such proposals involved providing IDA credits to finance interest on new IBRD loans, servicing existing IBRD loans, or refinancing existing IBRD loans.\(^{616}\)

Particular legal issues have arisen regarding the participation of organizations in the HIPC Initiative and MDRI (see below). The basic legal question involved whether debt relief is consistent with an organization’s purpose and functions. Given the overall limits on interpreting legal texts, this issue is particularly relevant when the constituent instruments of organizations do not contain provisions regarding debt relief.

While the IDA Articles do not address debt relief, they do provide that IDA

may, when and to the extent it deems appropriate in the light of all relevant circumstances, including the financial and economic situation and prospects of the member concerned, and on such conditions as it may determine, agree to a relaxation or other modification of the terms on which any of its financing shall have been provided.\(^{617}\)

On 7 January 2000, the general counsel of the World Bank issued a legal opinion entitled “Interpretation of IDA’s Articles of Agreement Regarding Debt Relief” in relation to the World Bank’s participation in the HIPC Initiative. The opinion noted that

"[i]n their [1959] discussions of IDA’s draft Articles, the Executive Directors [of the IBRD] left open the possibility that the [cited] provision could be interpreted as including partial

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\(^{612}\) Ibid.


\(^{616}\) Ibid., pp. 570–574.

\(^{617}\) IDA Articles, Article V, section 3.
debt forgiveness, and that it was not intended that the wording of Article V, Section 3 limit IDA’s inherent powers.\textsuperscript{618}

The general counsel concluded that the executive directors could “reasonably interpret the phrase ‘relaxation or other modification of the terms on which any of its financing shall have been provided’ in Article V, Section 3 of Articles of Agreement of IDA as including the provision of debt relief through the forgiveness of a portion of the debt service on credits as it falls due.”\textsuperscript{619} Based on that legal opinion, IDA’s executive directors adopted a formal interpretation of the IDA Articles pursuant to Article X “that provision of debt relief through the forgiveness of a portion of the debt service on credits … is consistent with the terms of Article V, Section 3 of the Articles of Agreement.”\textsuperscript{620}

The World Bank’s Acting General Counsel Scott B. White referred the aforementioned legal opinion and interpretation of the IDA Articles when he rendered in 2006 a legal opinion on the permissibility of total debt forgiveness under the Multilateral Debt Relief Initiative (MDRI).

Neither the 2000 legal memorandum nor the interpretation by the Executive Directors at that time identified inherent limits on the interpretation of “relaxation or other modification of terms” to permit total debt forgiveness. IDA’s implied power to forgive debt is not limited to partial forgiveness. Moreover, the text of Section 3 itself provides considerable latitude and flexibility for IDA in deciding to agree on relaxation or other modification of terms. That Section further provides that IDA’s decision is to be taken both when and to the extent “it deems appropriate in light of all relevant circumstances.” These circumstances include “the financial and economic situation and prospects of the member concerned” as well as the potential impact on IDA. Finally, IDA may exercise this latitude and flexibility “on such occasions as it may determine.”\textsuperscript{621}

The memorandum of the general counsel further emphasized that, in accordance with the IDA Articles, “all decisions by the Association must be guided by IDA’s purposes, which are set out in Article I.”\textsuperscript{622} Moreover, the memorandum concluded that in addition to the express power in Article V, section 3 of the IDA Articles,

IDA also has the power under the Articles to “exercise such other powers incidental to its operations as shall be necessary or desirable in furtherance of its purposes.” For IDA to utilize one of these implied, incidental powers, “it is enough that its exercise may further the achievement of its statutory purposes, and that it is not prohibited by, or inconsistent with the Articles of Agreement.”\textsuperscript{623}

Based on his legal opinion and his conclusion that “there is a reasonable legal basis in the provisions and history of Section 3 for the Executive Directors to interpret that clause to permit total debt forgiveness,”\textsuperscript{624} the Executive Directors, having considered the matter, [decided] that total debt forgiveness [was] consistent with the terms of the Article V, Section 3 of the Articles of Agreement.”\textsuperscript{625}


\textsuperscript{619} Ibid., para. 11.


\textsuperscript{621} IDA, Debt Relief by the International Development Association. Memorandum of the General Counsel (14 March), para. 9.

\textsuperscript{622} Ibid., p. 24.

\textsuperscript{623} Ibid., p. 25.

\textsuperscript{624} Ibid., para. 10.

\textsuperscript{625} IDA, 2006. IDA’s Implementation of the Multilateral Debt Relief Initiative. Annex 3, p. 34.
Thus, IDA’s implied power to forgive debt is not limited to partial forgiveness.\textsuperscript{626}

The AfDF Agreement does not contain a provision equivalent to Article V, section 3 of the IDA Articles, nor does it explicitly provide for or prohibit debt cancellation or forgiveness. However, authorization for debt relief may be derived from AfDF’s general power to “undertake such other activities incidental to its operations as shall be necessary or desirable….,”\textsuperscript{627} in conjunction with Articles 2 and 52 which respectively define the purpose of the AfDF and give the AfDF Board of Director the power of authentic interpretation of the AfDF Agreement. In the context of the MDRI, the board of directors adopted a formal interpretation that debt cancellation is among the purposes of AfDF.\textsuperscript{628}

CDB has issued no formal opinion on the use of OSF for debt relief. However, it has long been held that OSF may be used for that purpose (e.g., by substituting low-interest OSF resources for higher interest OCR). The CDB Board of Directors may agree to change the source of funding for projects.

Following adoption of Resolution 101/XX of the Governing Council on 21 February 1997, IFAD participated fully in the HIPC Initiative. In 2006, the IFAD board of governors amended Article 7, section 2(a) of the AEI, establishing a debt sustainability mechanism as one of the modalities of concessional financing.\textsuperscript{629} By the end of 2008, IFAD had committed debt relief under the HIPC Initiative for all 32 countries that had reached the decision point.\textsuperscript{630}

All Nordic countries strongly supported NDF participation in the HIPC Initiative “and there were no doubts on NDF’s behalf that its participation would be in full accordance with its basic objectives and its character of a multilateral institution.”\textsuperscript{631} In January 1997, the NDF Board of Directors approved “the participation in principle after a legal opinion had concluded that such a decision was within its mandate [and subsequently], it was decided to finance the contributions to the initiative from accrued profits and to make a provision to this end of SDR1.5 million in the accounts of 1996.”\textsuperscript{632} Following enhancement of the HIPC Initiative in 1999, NDF management presented a paper to the board explaining the need for greater participation in the initiative by more countries than originally expected.\textsuperscript{633} Since the NDF’s accumulated net earnings were not sufficient to cover payments to the HIPC Trust Fund in such a case, the NDF Statutes were amended effective 14 September 2001, authorizing the NDF to use, if necessary, part of its capital “to provide its part of shared contributions under international debt relief initiatives in the framework of internationally co-ordinated initiatives in which other multilateral organizations participate.”\textsuperscript{634}

The situation is somewhat different in IADB, because using the FSO corpus for debt relief is inconsistent with the IADB Charter, which only provides for concessional loans and technical assistance as modalities of FSO concessional financing. Under Article VI, section 3(b) of the IADB Charter, IADB was authorized only during the first three years of its operations to use the corpus of the FSO for technical assistance grants; afterwards only FSO or ordinary capital income could be used for that purpose. As non-reimbursable operations cannot be funded by the corpus of FSO resources, the IFF was funded under the Resolution of the Board of Governors establishing\textsuperscript{635} it by an allocation from the FSO General Reserve to

\textsuperscript{626} Ibid., p. 26.
\textsuperscript{627} AfDF Agreement, Article 20.
\textsuperscript{628} ADF 2006. ADF Implementation Modalities of the Multilateral Debt Relief Initiative (DOC ADF/BD/ WP/2006/31, 5 April).
\textsuperscript{630} IFAD, Annual Report 2008, p. 51.
\textsuperscript{631} Haralz, Nordic Development Fund: 10 Years of History, p. 66 (Box 6).
\textsuperscript{632} Ibid.
\textsuperscript{633} Haralz, Nordic Development Fund: 5 Years of Action, p. 21.
the independent trusts account established for that purpose. Also, accrued FSO income (allocated to the FSO general reserve) was used to pardon outstanding loans. In addition, the Charter does not preclude IADB from enhancing the concessionality of FSO loans (e.g., by offering loans without interest and other charges). IADB can also use accrued FSO income (allocated to the FSO general reserve), in whole or in part, to pardon outstanding loans.

**Heavily Indebted Poor Countries Initiative**

Despite the traditional responses to debt problems of HIPCs, some countries continued to have unsustainable debt levels and required, “on a case-by-case basis,” flow reschedulings on more concessional terms involving a reduction on eligible debt. The agreement on the HIPC Initiative reached by governments in 1996 and the establishment of the HIPC Trust Fund constituted an important step in the evolution of the international development agenda, as they reflected “the coming of age of a new authorizing environment with the active participation of civil society. It has introduced greater transparency and accountability in the sovereign debt regime, raised development cooperation to a higher plane, including between the World Bank and the International Monetary Fund.”

While multilateral creditors previously relied on their preferred creditor status for not rescheduling their loans, the HIPC Initiative provided debt relief from their own resources for the first time. The “original focus of the HIPC Initiative was on removing the debt overhang and providing a permanent end from the rescheduling process.” It sought to provide a robust exit from the process of repeated reschedulings by providing a stock reduction equivalent to an irrevocable and certain stream of relief on future debt service. The HIPC Initiative which has been “surrounded by myths and misunderstandings since its inception” was developed around four building blocks: (i) eligibility (limited to IDA-only countries that were not expected to reach a sustainable external debt situation), (ii) debt sustainability analysis (DSA), (iii) performance criteria governing actions of the country concerned and (iv) participation by all relevant creditors. Multilateral creditors and the boards of the IMF and World Bank agreed to a proportionate approach to burden-sharing based on the present value of their outstanding claims. Countries that had achieved sustainable levels of debt after obtaining a stock-of-debt reduction with other creditors were not eligible to participate in the HIPC Initiative. However, when this was not the case both the Paris Club and multilateral organizations committed themselves to grant further debt relief, on a case-by-case basis, up to 80% in net present value, until the country concerned had reached debt sustainability.

It was generally acknowledged that the HIPC Initiative was a step in the right direction. However, considerable concerns were voiced, particularly by civil society, regarding the breadth and timing of the

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636 IADB Charter, Article IV, section 10 provides: “The Board of Governors of the Bank shall determine what portion of the net profits of the Fund shall be distributed among the members after making provision for reserves. Such net profits shall be shared in proportion to the quotas of the members.”

637 The HIPC Initiative, annexed in Boote and Thugge, Debt Relief for Low-Income Countries and the HIPC Initiative, p. 25.


641 Ibid.


HIPC debt relief.\textsuperscript{646} Based on a 1999 review of the HIPC Initiative, the boards of the IMF and the World Bank approved substantial enhancements for the HIPC Initiative, broadening debt relief, providing faster relief, and establishing a stronger link between debt relief and poverty reduction.\textsuperscript{647}

Under the enhanced HIPC Initiative, countries were required to meet income and indebtedness criteria.\textsuperscript{648} Countries were also required to have had an IMF program at some time since the start of the initiative in 1996 to qualify for participation. Moreover, in return for debt relief they had to pledge to introduce key reforms regarding their national economic (macroeconomic) policies and legal and financial systems, and also had to develop a PRSP involving civil society participation.

Important milestones under the HIPC Initiative are the “decision point” and “completion point.” The decision point for participation is reached when a country has pledged to implement reforms; established and implemented a track record of macroeconomic stability and satisfactory performance under IMF- and IDA-supported programs; and has debt-burden indicators (based on the year immediately prior to the decision point) that are above established thresholds.\textsuperscript{649} HIPC debt relief is only provided to countries facing “an unsustainable debt burden that cannot be addressed through traditional debt relief mechanisms,”\textsuperscript{650} and which have developed through participatory processes a PRSP. The triggers agreed upon with the country at the decision point include a continued track record of satisfactory performance on an IMF program, implementation for at least one year of the PRSP, and such other triggers as may be required to give donors sufficient confidence that debt relief will be used well (e.g., relating to progress in social areas such as health and education, improved governance, and anticorruption efforts).

At the decision point, creditors (e.g., the IMF, the World Bank, MDBs, Paris Club donors, and bilateral creditors) commence to provide debt relief, but many reserve the right to revoke such relief if appropriate policy performance falters. The bulk of debt relief under the HIPC Initiative is provided at the completion point. To reach that point, a country must

1. be eligible to borrow from the World Bank’s International Development Agency, which provides interest-free loans and grants to the world’s poorest countries, and from the IMF’s Extended Credit Facility, which provides loans to low-income countries at subsidized rates.

2. face an unsustainable debt burden that cannot be addressed through traditional debt relief mechanisms.

3. have established a track record of reform and sound policies through IMF- and World Bank supported programs.

4. have developed a Poverty Reduction Strategy Paper (PRSP) through a broad-based participatory process in the country.”\textsuperscript{651}

\textsuperscript{646} IMF and IDA, \textit{Heavily Indebted Poor Countries (HIPC Initiative)}.


\textsuperscript{648} The annual per capita income of an eligible country had to be below the threshold for eligibility for concessional borrowing from both the IMF and the World Bank and external public debt had to exceed 150% of its exports (or in certain cases 250% of fiscal revenues).


\textsuperscript{651} Ibid.
After a country has met these criteria, it reaches the completion point, and debt relief becomes permanent and irrevocable.

In the case of the World Bank Group, the HIPC Initiative may provide relief for both IDA debt and IBRD loans. Debt relief from IDA resources is provided within 20 years after the decision point, until the required net present value is achieved. In addition, countries with a substantial amount of outstanding IBRD debt may receive service grants and credit from IDA resources to refinance the debt. Since IBRD cannot use its resources for such relief, financing can be provided only by donors or from IDA's internal resources.

As of October 2009, 26 of 40 HIPCs have reached the completion point, 9 countries have reached the decision point, and 5 remain eligible for debt relief. Most MFDIs, including all institutions studied here, support the HIPC Initiative, but organizations' funding modalities for the HIPC Initiative differ. For AfDB and World Bank, donors provided compensation regarding lost reflows. However, this has not been the case, or only partially so, for ADB, IADB, and IFAD. IADB provided funding for the HIPC Initiative through a combination of measures involving a write-off of FSO loans to Bolivia and Guyana, increased IFF interest subsidy payments and an allocation equivalent to $138 million in convertible currencies from the FSO general reserve to the IFF to fund such increased subsidy payments. Further to IADB’s board of governors approval of financing for IADB’s commitments under the Enhanced HIPC Initiative in 2001, IADB’s executive directors recommended in December 2006 debt forgiveness (of US$60.4 million in net present value terms) to Haiti which had reached the decision point. This recommendation was approved by IADB’s board of governors in 2007. Thus, IADB has fully participated in the (enhanced) HIPC Initiative. IFAD funded its participation in the HIPC Initiative through external contributions (paid either directly to IFAD or transferred through the World Bank-administered HIPC Trust Fund), transfers from its own resources approved by the executive directors, and investment income contributions (paid either directly to IFAD or transferred through the World Bank-administered HIPC Trust Fund). In the case of ADB, donors provided no compensation cost for debt relief to Afghanistan, having concluded that such cost can be “absorbed within the prudential financial margins of ADF IX without reducing assistance to other ADF countries.” Replenishment negotiations could address most of the debt service reductions that occur during the ADF XI period.

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652 A 2006 assessment of the HIPC Initiative states: “The Enhanced HIPC Initiative has reduced $19 billion of debt in 18 countries, thereby halving their debt ratios. But in 11 of 13 post-completion-point countries for which data are available, the key indicator of external debt sustainability has deteriorated since completion point. In eight of these countries, the ratios once again exceed HIPC thresholds.” According to the report, “[n]ew analyses present a more optimistic outlook for debt sustainability [as six] of eight post-completion-point countries have only a moderate risk of debt distress, but all remain vulnerable to export shocks and still require highly concessional financing and sound debt management. The report concluded for this reason that “Debt reduction alone is not a sufficient instrument to affect the multiple drivers of debt sustainability.” It also asserted that “Sustained improvements in export diversification, fiscal management, the terms of new financing, and public debt management are also needed, measures that fall outside the ambit of the HIPC Initiative.” World Bank (Independent Evaluation Group). 2006. Debt Relief for the Poorest. An Evaluation Update on the HIPC Initiative. p. vii. http://siteresources.worldbank.org/EXTDEBRELIPOOEP_IA/DEBT_RELIEF/DEBT_RELIEF_FOR_THE_POOREST.pdf


Multilateral Debt Relief Initiative

In 2005, the G8 countries proposed to augment debt relief to countries that had graduated (i.e., reached the “completion point”) from the Enhanced HIPC Initiative, leading to a 100% debt cancellation of monies owed by them to AfDF, IDA, and IMF. The MDRI deepened HIPC debt relief because it was added to the debt relief of countries under the Enhanced HIPC Initiative. The Development Committee welcomed this arrangement on 25 September 2005 and urged donors to ensure full compensation for foregone resource flows. On 10 March 2006, IDA deputies agreed to a financing package for the MDRI that stipulated additional donor contributions over time to ensure delivery of fresh resources for poverty reduction.

The MDRI called for 100% cancellation of debt to AfDF, IDA, and IMF by countries that reach the HIPC completion point. Eligible countries included 38 countries then classified as HIPC's and four potentially eligible countries that might qualify for debt relief under the so-called HIPC sunset clause. Debt stocks as of 31 December 2003 were eligible for debt relief under the MDRI.

The costs of debt relief under the MDRI were estimated in the aggregate at about $37 billion for IDA alone. Thus, the MDRI had massive financial implications for IDA and substantially increased IDA's dependence on donor assistance. The MDRI also substantially affected the resource flows to IDA countries as the annual amount of debt relief provided to countries was deducted from their IDA allocations and the additional resources provided by donors were allocated to all IDA-only countries according to IDA's PBA system. This practice was prompted by the concern to ensure equality of treatment between MDRI-eligible HIPC countries and low-income countries that were not eligible because they had accumulated unsustainable debt. Donors also sought to avoid the moral hazard of rewarding, “through high future aid flows, countries that had accumulated high and unsustainable debt in the past,” and did not wish to use debt relief as form of “incentive for countries to rapidly re-accumulate new debt.”

However, the decline in IDA allocations caused by MDRI netting out adversely affects 29 countries, 15 of them severely, and may have the effect in some cases that some countries receive little or no new fresh resources for development. Due to these circumstances, measures are being discussed during the IDA16 negotiations to address this problem.

While the AfDB Group and IDA implemented the MDRI in 2006, IADB did so in 2007. In the Haiti Declaration that was delivered in Port-au-Prince on 9 November 2006, several governors stressed that debt relief was an “absolute necessity and a responsibility that must be assumed by the international community.” They urged IADB to implement the MDRI before the end of 2006. Following the recommendation of the Committee of the Board of Governors, the IADB Board of Governors adopted

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661 Ibid.
664 Ibid.
665 Ibid.
667 Ibid.
668 Ibid., p. 4.
669 IADB. 2006. Debt Relief and Permanency of the Concessional Window of the IDB. Haiti Declaration (CA-478, 10 November 2006).
Resolution AG-09/06 (Agreement on Concessional Resources of the Bank)\textsuperscript{669} on 21 December 2006, which stated that:

(a) The Bank shall provide for 100\% relief of eligible FSO debt for Bolivia, Guyana, Haiti, Honduras and Nicaragua, effective 1 January 2007.

(b) FSO countries (other than Haiti) will continue to have access to concessional resources via a blending of loans from the FSO and Ordinary Capital (the “OC”) (“parallel loans”).

(c) Haiti will have access to an appropriate mix of loans and/or grants with adequate levels of concessionality.

(d) The Intermediate Financing Facility (the “IFF”) shall be extended to 2015 via a blending of FSO resources and OC loans (“parallel loans”).

(e) Annual nonreimbursable technical assistance shall be provided in the amount of $30 million.

(f) No additional internal (OC) or external (Donor) resources will be required to provide debt relief under the structure herein.\textsuperscript{670}

Consistent with the above decision, all new funding under the IFF was discontinued. The projected yearly allocation of FSO resources to the aforementioned FSO countries, including Haiti, was $108 million for the period from 2007 to 2015.

Further to the above resolution and Resolution AG-3/07,\textsuperscript{671} the IADB executive directors adopted a new debt sustainability/PBA framework in early 2007, as mandated by the Board of Governors.

**Special Facilities and Multipurpose Vehicles**

The special facilities and multipurpose vehicles established by MFDIs are particularly interesting in the context of this study. They are distinguishable from other trust funds because they often are substantially funded by allocations of accrued net income or surplus from organizations’ hard windows and may be relevant in the context of replenishments of organizations’ regular concessional windows. As already shown, they were established to provide debt relief and arrears clearance. They also served as bridging arrangements when an interruption of financing from regular windows was threatened. In addition, they may supplement regular concessional resources for special purposes and/or provide assistance to nonmember countries or countries in post-conflict situations. This will be exemplified using the case of the World Bank.

**Special Action Account and African Facility**

The European Economic Community (EEC) Special Action Account and the African Facility are two interesting instruments providing financing on terms and conditions similar to IDA.

**European Economic Community Special Action Account**

The EEC Special Action Account\textsuperscript{672} is one of the World Bank’s earliest multipurpose vehicles. It was created in 1978, when developed countries at the Conference on International Economic Cooperation

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\textsuperscript{670} IADB Board of Governors Resolution AG-09/06. “Agreement on Concessional Resources of the Bank” (21 December 2006) http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=889665


\textsuperscript{672} IDA. 1978. EEC Special Action Account (IDA/R78–29, 13 March 1978). The following is substantially based on the report from the President of the World Bank mentioned above which sets out the details of the EEC Special Action Account.
decided to provide $1 billion for a special action program to benefit low-income countries. Under an agreement between EEC and IDA, IDA administered a Special Action Fund totaling $385. This amount was to be allotted to quick-disbursing assistance and meant to be committed within six months after the agreement with the EEC became effective.

A core requirement of EEC assistance was that the amount allocated to the Special Action Account should be additional to the $2.6 billion commitments from IDA's Fifth Replenishment planned for FY79. Most of the 48 countries that were eligible for assistance from the Special Action Account were among the poorest, with a per capita income under $280 in 1976. In addition, some IDA-eligible countries with higher per capita incomes qualified for assistance on the grounds that they had particularly acute foreign exchange needs. The EEC was to be consulted regarding the application of eligibility criteria.

Special Action credits were to have the same terms and conditions as IDA credits. However, since EEC members made contributions to the Special Action Account in their national currencies, Special Action Account credits were expressed in the currencies of the nine contributors, in proportion to their share of the total EEC contribution. This was to ensure that upon completion of all disbursements all borrowers would be committed to repay the same proportionate mix of currencies and each contributor would be entitled to repayment of its contribution in the same amount and currency as paid to the Special Action Account. In order to facilitate quick disbursement, the Special Action Account allowed countries to finance the local costs of projects and programs, thus providing beneficiary countries with foreign exchange. Where foreign procurement was involved, competitive bidding was conducted among EEC members and DMCs eligible to receive assistance under the Special Action Account.

**African Facility**

Established on 21 May 1985 by Resolution No. 85–1 of the executive directors of IDA, the Special Facility for Sub-Saharan Africa (the African Facility) was another multipurpose vehicle that benefited the poorest countries.

The African Facility was created in response to a need for additional “IDA-type” resources to provide adequate funding to Africa. Its establishment “not only increased the real size of IDA between IDA6 and IDA8, but also permitted a rapid growth of resources through IDA to Africa.” It had been proposed by the Joint Program of Action of Sub-Saharan Africa and endorsed by the Development Committee in September 1984. At a special meeting in Paris in January 1985, 14 countries and the World Bank agreed to provide substantial financial assistance to a Joint Program for Africa for the next three years. Part of the funds allocated for that purpose was contributed to the African Facility and part was provided through special joint financing (SJF) in association with the facility. SJF resources were normally provided as parallel financing with IDA and joint financing with the Facility, for operations qualifying for the African Facility on terms and conditions equivalent to those of IDA and subject to the special procurement arrangements applicable to the African Facility. Only sub-Saharan African countries eligible for IDA credit could benefit from the African Facility, provided that they committed to implementing a medium-term program of structural or institutional reforms agreed upon with IDA or IMF.

IDA was designated as administrator of the African Facility and given the authority to determine its operational activities. The funding modalities of the African Facility and the terms and conditions of African Facility credits were modeled on those of IDA. Donors paid their contributions to the African Facility in installments. African Facility credits were denominated in SDRs and did not bear any interest.

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673 The background of the establishment of the African Facility is set out in a memorandum of the World Bank's regional vice presidents for Eastern and Southern Africa and Western Africa of 5 July 1985 entitled “Special African Facility and Special Joint Financing Operational Guidelines.” The following discussion is substantially based on that memorandum.


675 See African Facility Guidelines for Processing of Lending Operations.

676 IDA Resolution No. IDA 85–1 adopted on 21 May 1985.
The terms of repayment were the same as those that applied to IDA credits (i.e., credits were repayable over 50 years, with a grace period of 10 years). Moreover, IDA was authorized to require borrowers under an African Facility credit to pay charges (e.g., a service charge and a commitment charge) similar to those charged by IDA. SJF resources were utilized in association with the resources of the African Facility for operations qualifying for such facility and on terms and conditions at least equivalent to those provided by IDA. Nevertheless, there were several distinguishing features.

While envisaging that African Facility and SJF funds would be used in association with IDA's resources, it was intended that “the African Facility and SJF Funds should be additional to IDA funds already programmed for the beneficiary country.” Thus, to the extent that IDA's funds were replaced by operations of the African Facility, such funds were to be retained in the country's lending program. Moreover, there were special consultative procedures (donor meetings, in which SJF donors participated, were held on a quarterly basis) and approval procedures. Finally, special procurement arrangements were agreed upon for the African Facility. While IDA's procurement policies and practices were followed for the African Facility and SJF funds, procurement under the facility was open only to Part II members and contributors to the facility and SJF.

The Special Facility for Sub-Saharan Africa was established as a one time facility, as “donors felt that allocations in IDA should reflect the special needs of the African region that the Facility had been designed to address. There was broad agreement therefore that high priority in IDA's allocations should be given to Sub-Saharan Africa and that attempts should be made to increase resource flows to Africa in IDA especially in support of policy reform programs if the size of the replenishment was sufficient.”

**Fragile and Conflict-Affected States**

Particular problems arise in case of fragile and conflict-affected countries where more than 600 million people live; such countries are defined by weak institutions and are seriously affected by the impact of warfare. “A fragile state can be defined as a state that does not have the will and/or capability to carry out the core functions associated with being a—developed state.” Conflict results in large-scale destruction, causes serious suffering for the civilian population, and significantly affects a country’s ability to achieve the MDGs. “Addressing the problems of fragile states ... is central to the development agenda and to furthering progress toward the MDGs [as underlined by the fact that] [n]ine percent of the population, and about 27 percent of the extreme poor in developing countries live in fragile states.” The World Bank has been providing grants from IDA resources to fragile and conflict-affected countries through concessional loans and grants (the latter since 2005 based on their risk of debt distress), has committed in 2008 to progress on human reforms and has granted debt relief to fragile and

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678 A brief memorandum from the president to the executive directors was prepared indicating the amount of the proposed credit and explaining how the borrower or project met eligibility requirements. This memorandum was circulated to the Loan Committee of the board. Subsequently, an African Facility Credit Agreement was agreed upon with the borrower following as closely as possible the IDA’s Development Credit Agreement and the president's memorandum was circulated to the Executive Directors on a no-objection basis. See World Bank and International Finance Corporation. 1985 African Facility Guidelines for Processing of Lending Operations. Washington, DC.

679 IDA, Additions to IDA Resources: Eighth Replenishment, para. 4.4.


conflict-affected countries under MDRI. In addition, several facilities have been established which benefit fragile and conflict-affected countries.

Two very interesting special facilities are the Trust Fund for Gaza and the Trust Fund for Bosnia-Herzegovina. IDA acts as administrator and trustee for both funds. Both funds also provide concessional loans. Trust fund and special facilities have also been important instruments of arrears clearance, as shown by the Low-Income Countries under Stress (LICUS) Trust Fund and other trust funds established to allow the World Bank to engage with countries in arrears. Finally, recipient-administered trust funds have increased rapidly as sources of concessional financing for post-conflict and fragile situations.

Trust Funds for Gaza and the West Bank, East Timor, and Bosnia and Herzegovina

The World Bank’s assistance to the West Bank and Gaza (Territories) raised numerous legal issues due to the complexities surrounding the legal status of the Territories. Since the West Bank and Gaza is not a sovereign state, it cannot apply for membership in the IMF or the World Bank Group and is not eligible for the sources of financing normally available to member states. Therefore, trust fund arrangements compatible with IBRD’s purpose and functions were put in place to provide assistance, based on the assumption that peace in the Middle East would benefit members of the World Bank.

After Israel and the Palestine Liberation Organization (PLO) signed a “Declaration of Principles on Interim Self-Government” on 11 November 1993, IBRD and IDA boards of governors jointly approved the transfer of a $50 million grant from IBRD surplus to a Trust Fund for Gaza, subsequently renamed the Trust Fund for Gaza and West Bank (TFGWB).

Although IDA, as trustee of the TFGWB, was authorized to accept contributions other than from IBRD, the TFGWB was substantially funded from IBRD surplus. All amounts credited to the TFGWB from the IBRD grant had to be used exclusively for rehabilitation projects in Gaza in the form of IDA credits. Repayment of such credits at standard terms for IDA-only borrowers (i.e., 40-year maturity, a 10-year grace period, and no interest) accrues to IDA as part of its resources.

The TFGWB was first replenished in 1995 and its scope was extended to permit financing operations in the West Bank. Since 2002, all projects have been approved as grants. The TFGWB has been replenished on a regular basis, the last being in June 2010. In replenishing the TFGWB, the World Bank recognized that economic developments in the West Bank could have significant consequences for its member countries.

The World Bank was appointed the trustee for the Trust Fund for East Timor (TFET), which was established as an IDA trust fund by joint resolution of the IBRD and IDA boards of governors, with

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688 IDA. 1996. Memorandum to the Executive Directors. Subject: Replenishing the Trust Fund for Gaza and the West Bank (R96–251, 2 December 1996).
an initial allocation of $10 million from IBRD surplus. Including that contribution, TFET has leveraged contributions exceeding $176 million, using them for emergency reconstruction and recovery assistance in the form of grants.\textsuperscript{690}

The Trust Fund for Bosnia and Herzegovina (TFBH) was established to finance an emergency reconstruction program in Bosnia and Herzegovina, with IDA acting as both administrator and trustee. The TFBH was substantially funded by a $150 million allocation from IBRD surplus.\textsuperscript{691} As trustee, IDA was authorized to administer the fund for the benefit of its members and accept donor contributions other than the IBRD’s for specific programs, on terms to be agreed between IDA and contributors. Except for $25 million dedicated to grants, all other IBRD amounts credited to the TFBH had to be used “exclusively for the purpose of financing emergency construction projects … in the form of credits” on standard IDA terms.\textsuperscript{692}

**Post-Conflict Fund and Low-Income Countries Under Stress Trust Fund**

The Post-Conflict Fund was established in 1997 to restore the lives and livelihoods of war-affected populations and, in partnership with other organizations, provide funding to governments and partner organizations in fragile and conflict-affected countries for “planning, piloting and analysis of ground-breaking activities.”\textsuperscript{693}

The Post Conflict Fund receives its resources from the World Bank’s Development Grant Facility (which is substantially funded by the World Bank’s administrative budget)\textsuperscript{694} and donors and provides, in partnership with other funding organizations, financing in the form of grants. Governments, regional and international bodies and a wide range of other institutions including “transitional authorities, nongovernmental organizations, …, universities and civil society institutions [may apply for PCF grants, which] can range from $25,000 to 1 million, and in multi-year programs may exceed 1 million.”\textsuperscript{695}

In addition, the LICUS Trust Fund and other trust funds have been important instruments for engaging with members in arrears, most of which are fragile or in a post-conflict situation. The LICUS Trust Fund targets primarily countries in non-accrual [status], allowing the World Bank to provide modest support, that would assist them as they initiate the kinds of reforms that would set the stage for arrears clearance and subsequent access to IDA financing and debt relief.\textsuperscript{696} LICUS funding is supplemented by other trust funds, such as the Trust Fund for Liberia.\textsuperscript{697}

In 2008, World Bank management proposed to establish a State and Peace-Building Fund (SPF) as a new multi-donor trust fund to replace the PCP and LICUS trust funds.\textsuperscript{698} The primary rationale of establishing this new fund is to “consolidate the Bank’s strategic approach to conflict and fragility and streamline related processes and procedures [and its overarching goal is] to address the needs of state and local governance and peace-building in fragile and conflict-prone and –affected situations.”\textsuperscript{699} While in

\begin{itemize}
\item[690] For details see World Bank. \textit{What is TFET?} http://go.worldbank.org/GD8ZISKFH0
\item[691] Resolution No. IDA 96–1 authorizes IDA to accept contributions from contributors other than IBRD for the general purposes of the TFBH, or for specific programs.
\item[692] IDA Resolution No. 96–1.
\item[694] See Chapter 2 (G. Droese, Organizational Structures).
\item[698] These trust funds are scheduled to close on 31 December 2011.
\end{itemize}
principle all IBRD and IDA-eligible and countries in arrears are eligible to receive funding, the SPF gives priority to countries with one or more of the following characteristics:

- Arrears to IBRD or IDA
- Fragile state or situation (reflecting poor governance and weak institutional capacity)
- Presence of a United Nations or regional peacekeeping or political mission
- Current violent conflict
- Violent conflict within the past 10 years
- Insufficient IDA grant allocations during a transition process when needs are high
- Deteriorating situations, including an escalating risk of falling into arrears or violent conflict.700

Since 2008, the State and Peace-Building Fund has been the World Bank’s “primary vehicles for supporting state and local governance and peace-building efforts in fragile and conflict-affected regions.…”701

Trust Funds for Afghanistan, Aceh, and Nias, and Other Recipient-Administered Multidonor Trust Funds

Trust funds were also established in countries requiring emergency assistance in the form of advisory work, technical assistance, and large-scale multilateral construction arrangements (e.g., the Afghanistan Reconstruction Trust Fund,702, the Multi-Donor Fund for Aceh and Nias,703 the Sudan Multidonor Trust Funds,704 and other post-crisis multidonor trust funds).705 The World Bank has transferred these recipient-executed trust funds to third-party recipients. In these cases, the World Bank generally plays an operational role, including appraisal and supervision of funded activities, for which the only provision for financing projects or programs comes from grants.706

Proposed New Aid Delivery Mechanisms

The heads of states and government gathered at the International Conference on Financing for Development held from 18–22 March 2002 in Monterrey, Mexico, called for a new partnership between developed countries and DMCs to achieve internationally agreed development goals, including MDGs, and agreed on boosting trade and providing aid opportunities to countries with sound policies.707 The Rome Declaration on Harmonization (2003) and the Paris Declaration on Aid Effectiveness (2005) were other important milestones in country-based aid delivery systems. In Rome, the donor community expressed

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703 See Multi-Donor Fund for Aceh and Nias website at www.multidonorfund.org/. Also see the websites of the Java Reconstruction Fund for Earthquake Affected Yogyakarta, Central and West Java. www.javareconstructionfund.org/about/about_jrf.html


its concern regarding unproductive transaction costs generated by “the totality and wide variety of donor requirements and processes.” They also emphasized the high importance attached “to partner countries’ assuming a stronger leadership role in the coordination of development assistance” while undertaking “necessary reforms to enable progressive reliance by donors on their systems as they adopt international principles or standards and apply good practices.”

In Paris, world leaders committed to taking “far-reaching and monitorable actions” to reform aid delivery mechanisms and aid management, based on “ownership” of developing countries exercising leadership in developing and implementing their national development policies and strategies through a broad consultation process, translating donor alignment with such policies and strategies, and a focus on development results and mutual accountability. They acknowledged “that enhancing the effectiveness of aid is feasible and necessary across all aid modalities” and envisaged the increased use of program-based aid modalities. In conformity with these principles, discussions about changes to current aid delivery systems and proposals for new modalities are based altogether on direct budget support, pooling of funds, and direct aid delivery systems.

Financial support may be channeled to the central government budget in the form of direct budget support “using the government’s own allocation and accounting systems, with any conditionality focused on policy measures related to growth, poverty reduction, fiscal adjustment, and strengthening institutions, especially budgetary processes.” The latter modality is particularly popular among donors “because it lends itself well to a complementary role, along with other aid instruments [and] provides them the opportunity to focus on strengthening sector performance while using the donors’ sectoral expertise.” Other proposed new modalities include arrangements that pool donor funds earmarked for the activities in a specific sector with the government’s accounts and then managed by the government, “preferably using standard budget procedures indistinguishable from those used for government revenues.”

In the Accra Agenda for Action, donors further confirmed their commitment to develop country systems “to the maximum extent possible.” Consistent with the above, MFDIs have taken action to align their operations with the clients’ strategic planning cycles. In the future, the importance of programmatic modalities of concessional financing will increase further for the MFDIs studied here, as organizations design new instruments for providing budget support/development policy lending and pooling arrangements for certain sectors and/or countries.

The FTI, which is rooted in Paris Declaration principles and supporting the use of country systems through a single country-led education program, is one such instrument. The cornerstone of the financing framework for the FTI Catalytic Fund is the education sector plan which is developed by each DMC which wishes to be part of the FTI partnership. Such a plan needs to be agreed by the DMC with

709 Ibid.
710 Ibid.
712 Ibid., p. 2.
713 Ibid., para. 32.
714 Ohno and Niiya, Good Donorship and the Choice of Aid Modalities, p. 3. Box 2.1.
716 Ohno and Niiya, Good Donorship and the Choice of Aid Modalities, p. 3. Box 2.1.
donors who in turn undertake to align their support with this plan: “The particular implementation arrangements and choices on using budget support, ear-marking, pooling funds, use of country systems, conditionalities, mitigating measures, flow of funds etc. need to support the sectorwide approach while taking the particular country and sector circumstances into consideration.”

FTI financing is to be channeled “through the most aligned modality as agreed upon by the local donor group in the education sector in the recipient country.” In the case of FTI, the most aligned modality is sector-budget support. Where such support is not feasible, pooling fund arrangements needs to explored as a second step. Project financing can only be explored if both instruments are not available.

Replenishment Processes and Bridging Arrangements

Offering highly concessional financing requires regular infusion of new resources. IsDB is unique because it was established as an endowment fund (conditional wafq) that will derive, after it is fully funded, the main resources for its concessional financing on a sustained basis from investment income. However, the other concessional windows studied here cannot rely on investment income of existing resources alone. They were structured as revolving funds supported predominantly by donor subscriptions and/or contributions for specific replenishment periods only (generally 3 or 4 years). To continue providing concessional financing, such windows require regular replenishments of their concessional resources, which must be negotiated with donors and are generally subject to legislative approval in donor countries. In cases where organizations disburse concessional financing predominantly in the form of soft loans, replenishments may increase the resource base of the revolving fund, enabling it to cover part of its operations from internal resources. In certain cases, organizations may reach a sustainable level of financing after a series of replenishments, where commitment authority derives exclusively from reflows from previous replenishments, investment income, and/or other internal resources. However, the internal resource basis generally is very limited when grants are the main or only modality of concessional financing, and organizations largely depend on external sources of financing.

Replenishment negotiations have evolved substantially and reflect the overall evolution of the development agenda. Because the negotiations offer an occasion for reviewing an organization’s policies and practices in general terms, they have become major guidance mechanisms.

An important distinction between organizations is whether members of organization’s governing bodies conduct replenishment negotiations or whether they occur through other channels (i.e., through bodies not foreseen in the organizational structure). In the first case, questions may arise regarding the role and scope of authority of governing bodies in replenishments. In the latter case, it is necessary to determine the extent to which the governing bodies are involved or consulted during replenishment negotiations, and then decide how to formally incorporate and adopt agreements or understandings reached during such negotiations into the organization’s governance structure.
To the extent that organizations or organizational groups jointly administer concessional and nonconcessional resources, another interesting measure for assessing replenishment negotiations of concessional financing windows involves whether an organization uses similar or different processes to increase authorized capital.

Replenishments reflect the evolution of the overall development agenda. While they previously focused primarily on operations, in the 1990s they increasingly became a forum for reviewing organizations’ operational policies and strategic objectives.

**Replenishment Practices**

The manner in which replenishment negotiations are conducted and their outcome is approved reflects an organization’s governance structures, policies, and practices.

In IADB and IFAD, members of the plenary body participate in replenishment negotiations. IADB represents the rare case of an organization that followed, as a matter of principle, the same procedures for general increases of OCR and FSO resources. The Committee of the Board of Governors has figured importantly in the internal guidance system of IADB, and the extent of its involvement in the affairs of IADB between annual meetings is a distinguishing factor in comparison with other international organizations.

In IFAD, replenishment negotiations are conducted by a consultation established by the governing council. Governors or alternate governors, or members of the executive board represent member states during replenishment negotiations. According to Article 4, section 3 of the AEI, ensuring continuity in the fund’s operations requires the governing council to periodically review the adequacy of resources available to the fund. If the governing council deems it necessary or desirable, it conducts a “consultation” on the replenishment of IFAD’s resources, inviting members to make additional contributions (replenishments) to the resources of IFAD. The governing council normally establishes this consultation one year before the conclusion of the existing replenishment period. The consultation includes all member states from Lists A and B, while List C countries select consultation representatives from its own membership. Upon conclusion, the consultation reports the results of its deliberation to the governing council, along with any recommendations, with a view to adopting any appropriate resolutions. The replenishment consultation also provides an important forum for member states to discuss and make recommendations on policy direction and consult with the management.

The ADF, AfDB, and IDA negotiate replenishments of their concessional windows outside their established governance structure, through meetings of deputies and donors. Their replenishment practices

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725 The IADB Committee of the Board of Governors was established in 1970 pursuant to Resolution AG-5/70 (24 April 1970); and Resolution AG-4/74 (3 April 1974) which extended the committee indefinitely, broadened its mandate so that it could attend to matters referred to it by the board of governors, and authorized it “to adopt its own rules of procedure which, among other things, shall provide that all members of the Board of Governors may participate by rotation in the work of the Committee.” In accordance with Section 1 of the Rules of Procedure currently in force, the committee is a “Working Group of the Board of Governors and as such performs the work entrusted to it by that Board and submits the pertinent recommendations and reports to it.” The committee is chaired by the same “Governor selected at each Annual Meeting to act as Chairman of the Board of Governors of the Bank” (Section 2 [b]). This governor maintains his status as the chairman of the board of governors and chair of the Committee of the Board of Governors until the following annual meeting of IADB and presides at all meetings of the Committee. While the number of members of the committee is equivalent to that of the executive directors, any member of the board of governors can participate in the meetings of the committee, which also the president of IADB, the executive vice president, the executive directors, and other officials of IADB, as the president deems appropriate, may attend (section 2 [a] and [c] and section 3 [c]). The Committee of the Board of Governors “shall meet as often as is necessary to complete its work.” The quorum for any meeting is a two-thirds majority of its members (Section 3 [a] and [b]), IADB. 1991. Rules of Procedure of the Committee of the Board of Governors, CCA-63-2, 6 March, www.iadb.org/leg/Documents/Pdf/CA-63-2%20(E).pdf

726 See Chapter 2 (G. Droesse, Organizational Structures).

and procedures differ from those followed for general capital increases of the nonconcessional arms of their groups which are conducted in case of ADB through the Board of Directors. For AfDB, this involves a committee of the Board of Governors, while in case of IBRD, it is through deliberations and endorsement of the Development Committee.

In IDA, the practice of convening deputies’ meetings began in connection with its second replenishment. At the 1967 Annual Meeting, the Netherlands governor expressed concern about the delays in reaching agreement with Part I countries, and suggested cutting the “Gordian knot” by convening a special conference of high-level representatives of Part I countries (preferably their responsible cabinet ministers), preceded, if necessary, by one or two meetings of their deputies. The first meeting was held in The Hague in November 1967. Since then, such meetings have occurred regularly and have become increasingly lengthy and complex over the years.

Since IDA9, replenishment negotiations have increasingly become a forum to review IDA’s role and functions and define its policy directions. A practice has grown that supports direct contact between the management and the deputies on financial matters regarding replenishment, without intermediation by the executive directors. While deputies “are not an organ of IDA in any formal sense” and their reports on IDA replenishments do not in themselves constitute IDA decisions, they have assumed an important practical role in directing IDA policies through their recommendations to the executive directors. The executive directors have regularly approved deputies’ reports containing such recommendations and submitted them to the governors along with a draft resolution for consideration and adoption.

The IDA replenishment process “typically begin[s] some 15 months prior to the end of the current replenishment period [and] entails both informal bilateral contacts between [World] Bank management and donors, as well as formal meetings of IDA donor country representatives (called deputies) and representatives of IDA recipient countries called Borrower-representatives.” Senior officials of member countries, who often have the rank of deputy minister or director general, generally conduct negotiations in four or five replenishment meetings. The World Bank’s management facilitates the discussion of deputies by preparing discussion papers and background materials for each of the replenishment meetings and reports after each meeting to executive directors on the discussions held. The report of the deputies sets out the replenishment arrangements, including the size of the replenishment and burden-sharing arrangements, and contains operational, policy, and financial recommendations, some regarding matters not directly related to the replenishment. IDA negotiations are an important guidance mechanism for the World Bank, giving the deputies the opportunity in certain cases to leverage decision making on IBRD matters as well. The executive directors approve the deputies’ report before it is submitted to the board of governors for adoption by a two-thirds majority of IDA’s total voting power.

Replenishment negotiations became more inclusive as deputies decided during IDA13 negotiations to invite six senior representatives of IDA borrowing countries from different regions to participate in the remaining IDA13 meetings. They further enhanced the transparency of their discussions by making their

728 See AfDB’s Capital Increase website www.afdb.org/en/topics-sectors/topics/capital-increase/
731 Shihata, World Bank Legal Papers, p. 567.
733 Regarding IDA15, please see IDA, Additions to IDA Resources: Fifteenth Replenishment.
735 Article III, Section 1(d) of the IDA Articles of Agreement.
background policy papers available to the public and by seeking public comments on a draft report prior to its finalization. Nevertheless, many consider that these changes are seen as not going far enough. The Development Committee stated that there "is a perception that, in discharging their responsibilities during the replenishment process, the IDA Deputies have become involved in IDA policy making, which is the responsibility of the [executive directors]." The report that a high-level commission submitted in October 2009 (the Zedillo Report) also expressed substantial governance concerns regarding the current system, under which IDA deputies "effectively have a final say on substantive decisions" as they consider that the "use of Deputies' meetings for substantive decision-making in IDA ... reduces transparency [and] lacks the formal voice and participation mechanisms established by the Charters of [IBRD and IDA]."

In AfDF, a resolution of the governors instructing AfDB management to mobilize resources for the next AfDF replenishment marks the beginning of the replenishment cycle. "Replenishment levels are then negotiated between AfDB management and representatives of the AfDF state participants (the AfDF deputies) [who submit their report to the AfDB board of directors for approval prior to submission to the board of governors for endorsement and adoption] its main conclusions and recommendations by resolution of an 85% majority of the total voting power of the participants to the AfDF... The fact that AfDB is a member of AfDF gives it a voice and the opportunity to actively participate in AfDF replenishment negotiations. The same is not applicable to the same extent in some other organizations. In ADB, the style of negotiations and the relationship with the Board of Directors have evolved substantially during the course of replenishment negotiations. The ADF Donors’ Report is incorporated, by reference, into the report of the Board of Directors to the Board of Governors and accepted as such by the Board of Governors. Unlike IDA and AfDF, a qualified majority is not required for adoption of the resolution of ADB’s board of governors. Similar to IDA, members of the ADB and AfDF boards of directors may attend negotiations as observers and have been consulted by deputies; however, they have no direct involvement in replenishments. ADB, AfDB, and IDA have invited representatives from borrowing member countries to attend recent replenishments.

Although the plenary body of the institutions mentioned above makes the final decision on approving a given replenishment, the CDB Board of Governors does not participate in replenishment negotiations, which are conducted by the board of directors. Every four years, the board of directors considers the status of SDF(U) operations before the close of the SDF(U) cycle, [and decides whether to invite its] member countries and potential contributors. The board of directors is substantially involved in replenishment negotiations, apprised of each negotiations meeting, and is offered the opportunity to provide comments. It notes the resolution of the contributors to the particular cycle of SDF(U) and approves the decisions set out in the report on the negotiations and attached to the resolution. CDB’s lending policies and the SDF(U) rules require these actions of the board of directors. The resolution, including the decisions in the report attached thereto, “constitute an agreement between CDB and the prospective Contributors.”

In the NDF’s two-tier structure, the executive directors played a decisive role in replenishment negotiations. Although the directors appointed deputies to conduct the replenishment negotiations, in practice the directors generally appointed themselves. Thus, the group of deputies conducting replenishment negotiations was composed in the same or a very similar manner as the board of directors.

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737 Ibid., p. 10.
738 World Bank, The Zedillo Report, p. xii.
739 Ibid.
741 See Chapter 4 (G. Droesse, ADB Concessional Financing).
The Nordic council of ministers, on the recommendation of the deputies, made the final decision on replenishments. Depending on the subject matter, the council could include different ministers. In accordance with established practice, the council of ministers of the development cooperation was competent to deal with issues regarding NDF replenishments.

Finally, there is an important distinction between replenishments of the GEF and the Global Fund. As trustee, the World Bank conducts replenishment negotiations for the GEF Trust Fund but not for the Global Fund, where its role is limited to that of a fiscal agent. The Global Fund has adopted a “tailor-made replenishment process … intended to be ‘lighter’ than [the] replenishment processes for other international institutions.”

Replenishment cycles generally cover either 3 or 4 years. While the length of replenishment negotiations may vary, they usually last from 12 to 18 months. Various systems for chairing the negotiations have been developed. The chair may be the president (IFAD); a senior official of the organization (e.g., in the World Bank, the managing director or a vice president); or an external coordinator (e.g., AfDF). ADB has explored various systems, and negotiations have been chaired, in turn, by external advisors to the president, the president, two co-chairs (an external adviser and a vice president of ADB), a chair and vice chair, and back to an external adviser to the president. The GEF and the Global Fund adopted systems that are somewhat different. GEF replenishments are chaired jointly by the chief executive officer and an individual elected from among the GEF participants, while Global Fund replenishments have been chaired jointly by a former secretary general of the UN and a former managing director of the World Bank. They involve participation from donor governments, civil society, the private sector, and UN partner organizations.

Donors increasingly provide policy guidance not only during replenishment negotiations but also between replenishments. In addition to negotiation meetings held every 3 or 4 years during replenishment negotiations, CDB conducts an annual meeting of contributors which reviews the progress of the SDF while special meetings may be held in connection with the midterm review of an SDF replenishment. ADB in recent years also adopted the practice of organizing annual ADF meetings in conjunction with the board of governors’ annual meeting. In addition, midterm negotiations may provide policy guidance on adjustments and changes to operational and legal frameworks regarding concessional resources. For example, ADB aligned its grant framework to that of IDA in response to policy guidance provided by

743 See Chapter 2 (G. Droesse, Organizational Structures).
745 At that time of the IDA’s first replenishment, there was no established framework for replenishment negotiations. Instead, representatives of France, Germany, Italy, the United Kingdom, and the US held three informal meetings in late 1962 and early 1963 where they concluded “that it would be easier to persuade parliaments to appropriate funds for a three-year period than for the five-year period” proposed by then World Bank President Eugene Black (IDA, The IDA Deputies: An Historical Perspective, p. 2; For the first replenishment, see also Mason and Asher, The World Bank Since Bretton Woods, pp. 406–408). Since then, IDA replenishments have generally followed three-year replenishment cycles. However, in certain cases special arrangements became necessary. AIDF and IFAD also generally follow three-year replenishment cycles.
746 While ADB followed the IDA’s practice of mobilizing resources over three-year replenishment periods during the initial resource mobilization and first ADF replenishment (ADF II), fund-raising difficulties led to a proposal for a four-year replenishment period during ADF III negotiations. See Chapter 4. CDB adopted a similar practice for SDF replenishments, as did the GEF, the Global Fund, and the NDF.
748 See Chapter 4 (G. Droesse, ADB Concessional Financing).
donors during the ADF IX midterm review, and changes to the ADF legal framework enabled ADB to provide debt relief to Afghanistan under the HIPC Initiative. Moreover, midterm reviews assess and review newly emerging issues of the evolving developing agenda and prepare thematic areas for the next replenishment cycle.

Ad Hoc Replenishments and Burden-Sharing Arrangements

Replenishments can be conducted through either ad hoc contributions or regularly scheduled multilateral replenishment negotiations. A further distinction depends on whether contributions are voluntary or burden shared.

Ad hoc replenishment processes may facilitate the establishment of new concessional financing windows and initial mobilization of resources for such windows. They give donors “the opportunity to see the added value” of concessional windows such as the Global Fund before committing additional resources and offer a feasible framework which may facilitate private sector participation. However, as shown by the experience of ADB (with Consolidated Special Funds) and CDB (with SDF[O]), such processes have serious shortcomings because they do not allow adequate planning and thus entail a strong risk of interrupted concessional financing. Additionally, they do not guarantee equitable burden sharing among donors. These problems are further aggravated when ad hoc contributions are earmarked for certain purposes and/or are made on a tied basis with attached procurement restrictions, as was the case for ADB’s Consolidated Special Funds.

Thus, most organizations providing concessional financing have adopted or moved to structured multilateral replenishment processes conducted at regular intervals (generally every three or four years) with the participation of several donors. In doing so, organizations have sought to adopt certain uniform terms and conditions regarding contributions to their concessional financing windows. Generally, replenishment processes are conducted in a burden-sharing manner. During restructuring of the GEF, donors modeled its replenishment arrangements and burden-sharing frameworks—with some adjustments—on those of IDA10. The Global Fund adopted an ad hoc contribution system at the outset. Because the timing and amount of donors’ contributions were unclear, this system lacked predictability and sustainability and thus did not allow any proper long-term planning. The Global Fund’s board decided to abandon the system, but did not opt for burden-shared replenishments, replacing them instead with periodic and voluntary replenishments, complemented by additional ad hoc contributions.

Burden-sharing principles under which donors target a total amount of concessional funds to be raised and undertake to contribute a specified share are an integral part of replenishment negotiations in most MFDIs studied here. While such principles provide “a disciplined framework of rules” for replenishment negotiations, their inflexible application tends to produce suboptimal solutions of

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750 During ADF IX midterm review, participants supported aligning the ADF grant framework with that of IDA14 in 2007 and encouraged ADB to participate in the joint debt sustainability analysis with the World Bank and IMF. ADB. 2006. Chair’s Summary. ADF IX Mid-Term Review Meeting. Frankfurt, Germany. 4–5 December 2006. www.adb.org/adf/Chairs-Summary.pdf. As a result of this policy guidance, changes to the framework of ADF grants were made and ADB decided to extend debt relief to Afghanistan under the HIPC Initiative.


752 See Chapter 4 (G. Droesse, ADB Concessional Financing).


756 Mistry, Multilateral Development Banks, p. 102.
modest ambition. In several cases, donors did not contribute to replenishments to their full potential, but rather limited their contributions based on burden-sharing considerations to the proportion of funds provided by one or more large contributors. A “structural gap” can occur between the amount of the proposed replenishment and the contributions pledged by members if some members reduce their share or do not contribute and other donors do not compensate for the reduction by increasing their share. Thus, burden shares do not necessarily total 100%. The structural gap may be closed through supplementary contributions of members (which are not considered for determining members’ burden shares) or contributions of new members or nonmembers, allocation of hard windows’ net income or surplus, or through allocation of internal resources such as additional income derived from the accelerated encashment of donors’ contributions.757

Regarding increases in FSO resources, there is a significant correlation between the proportion of its increases and increases in IADB’s OCR. While the proportion of contributions by IADB members to FSO replenishments has differed from contributions to capital increases, in many cases the proportion of FSO and OCR contributions has been same. This has not necessarily been the case in other organizations (e.g., ADB and CDB) that administer concessional and nonconcessional resources jointly under one legal personality. In CDB, contributors agreed during the second SDF(U) cycle that “burden should be shared on a fair and equitable basis considering the relative economic situation of contributors, the level of shareholding and other relevant matters. This position was confirmed during the fourth SDF(U) cycle.”758 Thus, the level of shareholding in CDB is only one of several factors considered in determining contributors’ burden shares.

To a certain extent, the situation is similar in ADB. When the ADF was established, relative shares in ADB’s subscribed capital were believed to indirectly reflect each member’s interest in the region and its capacity to pay. However, donor burden shares were sometimes set arbitrarily, based on contributor pledges or simply on contributions actually made. Subsequently, some donors reduced their share and others substantially increased such shares. Overall, the burden share of regional donors has increased substantially as new donors contributed to ADB and current contributors increased their contributions. While in some cases, donor contributions to ADF are proportionate or exceed the percentage of capital shares held in ADB, in other cases the difference between the proportion of shareholdings in ADB and contributions to the ADF is quite disparate.759

Moreover, concessional arms of groups (e.g., IDA) have generally adopted a pragmatic approach to determining members’ burden shares. When IDA was established, shares of donors in the initial IDA subscriptions were set “in line with the member’s subscription to the capital stock of the IBRD [which corresponded to member’s IMF quotas and, in turn, to] the ‘Bretton Woods’ formula that took into account macroeconomic variables that measure countries’ economic strength.”760 However, IBRD shareholdings, while remaining somewhat relevant to the first replenishment, subsequently ceased to be the basis for determining burden sharing among donors. Burden-sharing arrangement reflect changed circumstances, as some donors sharply reduced their burden shares while others substantially increased theirs. This was partially due to very substantial increases in the GNP of some countries. However, burden shares in IDA and the indicators mentioned above differ substantially because there was never an agreement that countries’ GNP (or any other indicators) would provide the only basis of IDA contributions. Thus, IDA deputies stressed that an adjusted GNP “remains a useful point of reference for IDA shares but it cannot

757 There have been substantial structural gaps in AfDF replenishments. As indicated in Chapter 5, a structural gap has existed between the replenishment level and donors’ contributions since AfDF VI. That gap was 3.9% for AfDF VI, 20.54% for AfDF VII, 20.22% for AfDF VIII, 19.3% for AfDF IX, and initially 27.92% for AfDF X. The structure was not filled in all cases (e.g., it remained for AfDF VIII). Structural financing gaps also existed in ADB, CDB, and IFAD. See Chapters 4, 6, and 7.


759 See Chapter 4 (G. Droesse, ADB Concessional Financing).

be followed rigidly as the basis for determining replenishment shares.”761 In essence, a country’s ability to contribute forms the basis of its contributions. Burden-sharing arrangements in IDA can “be best characterized as a pragmatic approach that is based on the revealed preference of individual donors, in which donors collectively seek to balance the demand for a sense of ‘fairness’ as measured by some burden sharing indicators and the desire for the largest possible replenishment size.”762 An “acceptable burden-sharing structure for a replenishment is not an exact science [but rather] is the art of the possible.”763 Since there were no compensating increases for reduced burden shares, donor shares often do not total 100%. In IDA13, basic burden shares of donors added up to 90.61% of total donor contributions764 and in IDA14, the actual amount of regular contributions that donors made available equalled 80.45 percent of the target amount.765 In IDA15, “most donors expressed support to scale up their HIPC burden shares to close the structural gap for financing arrears clearance operations in IDA15.”766

Similar considerations also apply to burden-sharing arrangements in AfDB. In AfDF,767 contributions of state participants have varied, influenced by factors such as shares in previous replenishments, relative economic capacity to contribute to a replenishment, aid volume relative to GNP, and vested interest in the region.

In IFAD, the replenishment resolutions regarding the first and second replenishments provided for a desirable burden share ratio of 60:40 between List A (OECD members) and List B (OPEC members). List C countries participated in negotiations for the first time during the third replenishment.768

Section 2 of the NDF Statutes provides that capital increases shall be distributed among the countries “according to the scheme of allocation for joint Nordic financing between the Nordic countries.” In accordance with that scheme, distribution of increases is made proportionately in relation to a GNP rate of the NDF members determined at the beginning of each replenishment period.

The GEF’s burden-sharing arrangements used the framework adopted for the Tenth IDA Replenishment (IDA10) as a starting point, but adjusted it to meet the needs of the GEF Trust Fund. The Global Fund board “does not dictate who should donate money nor how much should be donated, but it does issue guidelines on how much will be needed to maintain funding and approve new grants,”769 seeking pledges from donors to meet a proportion of the estimated amount on a goodwill basis.770

Resource Constraints and Bridging Arrangements

Most of the organizations studied here had to struggle with recurrent constraints on their resources. Organizations commonly face difficulties in funding operational activities from their concessional windows because pledged subscriptions and contributions are not forthcoming when needed and/or

768 Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development) provides details regarding IFAD’s burden-sharing arrangements.
in the amounts contemplated. In some cases, however, funding shortages became so acute that they threatened the operational activities of concessional windows (e.g., ADF, AfDB, and IDA).

IDA initiated bridging arrangements with trust funds to ensure uninterrupted provision of concessional financing. ADB, AfDF, and IADB also came close to situations where bridging arrangements might have been required, but they successfully avoided such action.

The Sixth Replenishment of IDA was negotiated at SDR9.15 billion and covered the period 1 July 1980 to 30 June 1983. Bridging arrangements become necessary in 1982, “after a long delay in legislative action by the United States and exacerbated by substantial accompanying reductions in the level of its first two payments for IDA6,” caused a 13-month delay in the effectiveness of IDA6, substantially reduced operational programs, and delayed the start of negotiations for IDA7. Several donors sought to address these problems by releasing their first installment payments under a collective arrangement for advance contributions. To avoid a complete cessation of lending activities, other donors agreed to modify and relax pro rata arrangements and eventually agreed to provide IDA with additional and special contributions totaling SDR1.8 billion through three mechanisms: the Financial Year 1984 (FY84) account, the Special Fund, and contributions to the FY84 account treated as Special Fund contributions.

IDA11 negotiations were again marked by a substantial crisis because the US could pay its share only for the second and third years of the IDA11 period from 1 July 1996 through 30 June 1999, preventing other donors from “agreeing on an adequate and fully burden-shared funding arrangement for the full IDA11 period.” Deputies met nine times before reaching an agreement. The IDA11 replenishment framework allowed the establishment of an interim trust fund to provide funding for concessional financing during FY97. “However, the Interim Fund had a legal and accounting status separate from IDA and [it used] different project approval procedures.”

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773 Approximately $2 billion at the then applicable exchange rates.

774 The FY84 account and the Special Fund had certain common characteristics which were underlined by the fact that donors could switch between these schemes. The differences between the IDA’s regular practices and procedures and those applicable to the FY84 account were minimal, as the proceeds of the FY84 account were added to the general resources of the IDA. Thus, allocation by country and sector followed the IDA’s normal pattern and contributions to the FY84 account qualified for additional voting rights. The Special Fund expressly provided that programs and projects would be negotiated in accordance with regular IBRD and IDA procedures. All countries receiving IDA resources were eligible to receive Special Funds resources and projects financed by the special funds would be considered by the full IDA board of executive directors in accordance with normal board procedures. However, there were marked differences relating to the legal status of the Special Fund, the resources of which were held by the IDA in trust and had to be kept separate and apart from all other accounts and assets of the IDA. Thus, initially no voting rights were attached to contributions to the Special Fund (and contributions to the FY84 account that were treated as Special Fund contributions). Moreover, the proceeds of Special Fund credits could only be used to finance expenditures for goods and services from (i) all Part II members of IDA; (ii) members contributing to the Special Fund; and (iii) members contributing to the FY84 account, but who have indicated that they are willing to defer receipt of voting rights on account of special funds contributions on the same footing as contributors to the Special Fund. See Chapter 2 (G. Droese, Organizational Structures); IDA. 1984. Additions to IDA Resources: Seventh Replenishment [IDA/SecM84–188/1, 7 June] pp. 9–13.


777 IDA, The Interim Trust Fund for FY97. The Interim Trust Fund was a bridging arrangement which allowed IDA to continue its concessional financing during FY97. It was established for the pursuit of poverty reduction and thus had the same objective as IDA.

778 IDA, Additions to IDA Resources: Eleventh Replenishment, p. 1.
On 26 June 1996, the IDA Board of Governors approved the establishment of the Interim Trust Fund (ITF) by Resolution No. 184 (26 June 1996). All countries eligible for IDA credits were also eligible for ITF financing. While operations financed by the ITF followed IDA policies and procedures, they were subjected to a separate approval process by a committee composed of the contributors and eligible IBRD and IDA borrowers. Procurement eligibility for credits financed by the ITF was limited to nationals of donor countries that contributed to the Fund in a timely and adequate manner, and to nationals of member countries eligible to borrow from IBRD and IDA. Nationals of donors that had not contributed by 15 April 1997 were excluded from procurement from all future ITF credits until the contribution had been fully paid. Such procurement restrictions were lifted in autumn of 1997 after the US passed legislation to clear its arrears and fully pay the first tranche of the US pledge to IDA11. The ITF was terminated after the credits it financed were substantially disbursed. Upon termination, fund assets and liabilities were transferred to the IDA and ITF credits were treated as part of IDA’s regular lending portfolio. Voting rights were allocated to contributing countries on account of their contributions to the ITF at that time.

Several situations constrained ADB’s ability to provide financing due to a lack of resources. Against the background of the US decision not to participate in a regular IDA11 replenishment and the establishment of an IDA emergency fund, ADB found itself “in the course of ADF VII negotiations close to a situation where bridging arrangements—or other exceptional measures to ensure continuation of ADB’s concessional financing operations—might [have] become necessary.” However, no such action was taken because ADF V arrears, loan cancellations, loan repayments, and net income and exchange rate fluctuations enabled ADB to extend the ADF V period by 1 year.

In IADB, issues arose during the Fifth General Increase in Resources when the difficulties encountered by the US in completing its internal requirements delayed the effectiveness of that increase. Therefore, the board of governors had to extend the submission deadline for countries subscribing to the increase in resources.

AfDF also experienced delay in concluding the consultations on its Ninth Replenishment. The AfDF deputies agreed in principle to contribute to an interim financing arrangement to be established by the fund that would facilitate continued operations, pending the conclusion of the consultations on the Ninth Replenishment. The interim financing arrangement consisted of additional individual voluntary subscriptions by state participants to the resources of the Fund, pursuant to Article 7 of the AfDF Agreement.
Implementation of Replenishments

Contributors

While it is a common feature of all concessional financing windows that the main contributors generally are the members themselves, there are substantial differences regarding the extent to which less-developed members or borrowing member countries participate in the financing of concessional resources.

There is a basic distinction between MFDIs where all members (including borrowing members) contribute to their concessional resources and those that were established (like most of the MDBs) to enable resource transfers from OECD countries to developing nations. Through the Eighth General Increase in Resources approved by the IFAD Board of Governors in 1994, IADB represented the first case, because all of its members, including regional members, had been contributing to the FSO since its establishment. A corollary of that system was that IADB’s regional and borrowing member countries contributed in local currencies that IADB could not convert without their consent. However, following the recommendation of the Committee of the Board of Governors, the IADB board of governors approved the conversion of a substantial part of local currency resources in 1999. Brazil made 80% of its local currency contributions, equivalent to $718 million, available for conversion, while most other regional countries made 65% of their local currency contributions, equivalent to $1,435 million, available. The agreement approved by the IADB Board of Governors on 22 February 1999 marked an important development in the history of the FSO. It implied the adoption of a new concept to fund the FSO through conversion of existing local currency resources of regional members rather than through a multilateral replenishment. It also introduced a lending concept under which FSO commitment authority derived de facto only from internal resources, with no further replenishments having been approved for some 15 years, i.e. during the period from 1994 until the recent FSO replenishment in 2010.

The ISFD “was conceived as a ‘solidarity fund’ to combat poverty in [member states of the Organization of the Islamic Conference] whereby all [IsDB] members would contribute to its capital resources.” Similarly, in CDB, in addition to nonregional members and a nonmember, also the regional members regularly contribute to SDF replenishments. However, the situation is different in AfDF, ADB (regarding the ADF and other special funds), and IDA.

In AfDF, the participation of several nontraditional nonregional donors (e.g., Brazil, India, and the PRC) has created “new opportunities for South-South cooperation.” Currently, regional members contribute to AfDF only to the extent that they are state participants (e.g., South Africa). The High Level Panel suggests that, in the future, regional countries should contribute directly or through their borrowings to an AfDB having “at its disposal an appropriate array of instruments and increased financial resources including an enlarged A[f]DF,” which should be merged with AfDB. However, considering the necessary and far-reaching changes to the organizational structure and institutional and legal frameworks of AfDB and AfDF, the chances of implementing this proposal are quite remote.

Initially, only OECD countries provided funding for ADB and IDA replenishments. Currently, however, non-OECD countries, including middle-income and other developing countries, are emerging as contributors to concessional windows and as donors for the provision of ODA. While such contributions allow MFDIs to mobilize additional resources, they also entail “new challenges for harmonization and..."
alignment,” due to the heterogeneous nature of that group. In CDB, nonregional donors contribute regularly to SDF replenishments. However, most MFDIs have not made any major efforts to attract funding from foundations or private sector for their concessional windows, which continue to be structured largely or exclusively by ODA. The Global Fund illustrates another trend aiming at mobilizing resources for concessional windows from nonstate donors and through innovative funding mechanisms.

**Instrument of Commitment or Contribution**

Replenishment resolutions or decisions adopted by governing bodies authorize the acceptance of general increases in resources, subscriptions, or contributions, and determine the terms and conditions of such acceptance. They do not contain a legal obligation to make subscriptions or contributions in the amount pledged in the resolution, nor do they entail an obligation for contributors to participate in future replenishments. This is due to the fact that most countries’ replenishment commitments are subject to parliamentary approval and other technical and administrative requirements. In order to commit resources, managements of MFDIs require legally binding commitments. Contributors formalize their commitments by depositing an instrument of commitment or contribution (IoC), in which a contributor undertakes to contribute to a given replenishment in an amount and on terms and conditions specified in the resolution or decision of the governing body authorizing the replenishment.

With the establishment of the ADF in 1974 and the adoption of the Uniform Rules for the SDF in 1983, ADB and CDB discontinued their previous practice of giving donors to ADB’s Consolidated Special Funds and the SDF(O) maximum flexibility in structuring their contributions under individual contribution agreements. Thus, contribution to the ADF and SDF(U) are governed by general terms and conditions set forth in the replenishment resolutions and the regulations regarding these funds.

To avoid the unilateral reduction of pledges, ADB replenishment resolutions authorize ADB to accept an IoC only in an amount not less than that specified in the resolution of the Board of Governors. Lower amounts may be accepted by ADB only if the governors authorizing the member country concerned approve an amendment to the replenishment resolution reducing its pledge. However, this has not been the case for all MFDIs studied here.

In certain cases, IoCs may include amounts earmarked for specific purposes or channeled to other funds. In ADB, general TASF replenishments normally occur in conjunction with the ADF replenishments, while IDA replenishments have served as a channel for allocations to the HIPC Trust Fund. The IDA14 deputies expressed strong support for the HIPC Initiative and recommended that IDA14 should cover the cost for such debt relief. Donors were given the opportunity to submit an IoC including the amount of their HIPC-related contribution, or separate IoCs for regular contributions and HIPC-related contributions.

The IoC deposited by donors contains their commitment to subscribe or contribute funds to the concessional window concerned in the amount specified in the IoC. Legally, an IoC is a contractual obligation, and IoCs are not recognized as assets in the financial statements of MFDIs.

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793 See Chapter 4 (G. Droesse, ADB Concessional Financing).
794 ADF V, ADF VI, ADF IX, and ADF X.
795 IDA, *Additions to IDA Resources: Fourteenth Replenishment*.
796 Alternatively, donors could make HIPC contributions directly to the HIPC Trust Fund by signing contribution agreements with the IDA, as administrator of the HIPC Trust Fund, specifying the contribution amount and payment modalities.
IoCs generally specify the total amount of a member's subscriptions and/or contributions. In most cases, donors submit unqualified IoCs in which they commit to make an installment payment in each year of the replenishment period. In consideration of budgetary constraints and legislative procedures, however, members were given the opportunity to qualify the payment arrangements set forth in the replenishment resolution. The practice of members issuing qualified IoCs began during IDA5, when the US adopted the practice of providing an unqualified commitment only with respect to payment of the first installment, with payment of the remainder subject to enactment of the necessary appropriations legislation. Since then, qualified contribution commitments have become a standard feature of replenishments of concessional windows in the ADF, AfDF, CDB, IDA, and IFAD. The government providing a qualified commitment or contribution generally is required to seek budgetary appropriation in each year of the replenishment period. However, there is no guarantee that all installment payments will be made during the replenishment period. Effectively, there have been many cases where this was not the case, and donors were in arrears for substantial periods, even beyond the end of the replenishment period.

Particular problems regarding IoCs arose in the context of the implementation of the MDRI, which entailed 100% cancellation of debt owed by eligible HIPCs to AfDF, IDA, and IMF. For IDA alone, the financial implications of that initiative totaled approximately $37 billion, which were written off IDA's balance sheets. While it was broadly agreed that IDA's cost should be fully compensated by additional donor resources over the 40-year time span of the MDRI following regular procedures for IDA replenishments, formalizing that agreement proved difficult because the ability to provide binding financial commitments for the entire duration of the MDRI varied from donor to donor. Thus, it proved to be necessary to go beyond the normal scheme of IDA replenishments whereby donors make a firm commitment regarding the total amount of their contribution while being given the opportunity to qualify the time of all installment payments except the first as being subject to budgetary appropriations. Participants “discussed the challenges of securing parliamentary or legislative approvals for contributions that span such long periods.” While stressing the importance of unqualified commitments for the first decade of the MDRI period, it was recognized that many donors would be able to provide qualified contributions only for the second, third, and fourth decade subject to “necessary parliamentary or legislative approvals.” Since debt relief under the MDRI was immediate while donors' compensation for such relief could be qualified as mentioned above and thus is subject to the political approval and allocation processes in member countries, this involved substantial problems for IDA. Provision was made that donors should exercise their best efforts to obtain the necessary parliamentary and legislative approvals; IoCs confirm that, except for such approvals, all other necessary approvals have been obtained and that the IoC constitutes a binding obligation of the member country in accordance with the terms of the resolution. However, while the notion of the IoC as a legal commitment remained intact, the nature of that commitment is uncertain, and its enforcement may entail challenges if the “necessary parliamentary and legislative approvals” are not forthcoming. Effectively, there was a substantial financing shortfall.

799 IDA, IDA's Implementation of the Multilateral Debt Relief Initiative, p. 4.
800 The proposals made by IDA in 2005 foresaw that “[a]s in past replenishments, donors with annual appropriation procedures [would] be able to provide for a portion of their subscriptions and contributions under a “Qualified Instrument of Commitment,” that is subject to adoption of the necessary appropriation legislation. IDA. 2005. The Multilateral Debt Relief Initiative: Implementation Modalities for IDA. (18 November). http://siteresources.worldbank.org/IDA/Resources/MDRI.pdf. p. 9. They highlighted that “[t]he strength of the commitments made over the entire period of 40 years – in relation to the estimated total costs to IDA – [would] be a factor to be considered by the Executive Directors in assessing the extent of the impact of the debt cancellation on IDA’s finances. Due to the long-term nature of the commitments undertaken by IDA donors, each member’s IoC [would] provide confirmation that all necessary approvals [had] been obtained and that the IoC constitute[ed] a binding obligation of the member country.” Ibid., p. 10.
801 Ibid., Addition to IDA Resources: Financing the Multilateral Debt Relief Initiative, p. 6.
802 Ibid., p. 5.
803 Ibid.
during the IDA15 period as donors made firm commitments only regarding 58% of projected MDRI costs, with another 33% of forgone credit reflows being covered by qualified financing commitments. Due to that shortfall, “IDA’s Executive Directors agreed to count 85 percent of qualified commitments for commitment authority and cover the remaining shortfall in IDA15 with internal resources.”804

Replenishment practices for the GEF are substantially modeled on the practices of IDA. Similarly, GEF donors formalize their commitments by submitting an IoC to the trustee, with the option of submitting a qualified IoC that is subject to budgetary appropriations.805 Donors contribute to the Global Fund based on contribution agreements that are recorded as assets and income in the Global Fund’s financial statements prior to the date on which payment is received.806

Implementation Arrangements

Implementing concessional window replenishments involves two competing objectives. On the one hand, it is necessary to ensure adequate burden sharing among donors, not only in determining the size of replenishments but also in their implementation. This provides mutual assurance to contributors that replenishment funds will be made available within the multilateral framework agreed upon during negotiations. On the other hand, donors are acutely aware of the need to avoid interruption in providing concessional financing. Therefore, conditions have been framed to consider the need of continuing commitment authority. The resolutions and decisions of governing bodies regarding replenishments of concessional windows reflect the aforementioned objectives, which tend to be in conflict.

Effectiveness

While donors’ IoCs specify the members’ total contribution for the entire replenishment period, MFDIs found it convenient to make operational commitments only on an annual basis. Depending on their financial management frameworks, they do so in installment payments (in cash or by promissory note) or by making an annual tranche (i.e., a proportionate share of members’ subscriptions or contributions committed in the IoC) available for operational commitment. One measure adopted by donors to ensure proper burden sharing involved introducing conditions for the effectiveness of replenishments. These imply that the subscriptions and/or contributions made by donors cannot be used, or only to a limited extent, for operational commitment before the donors deposit IoCs in a specified amount.

No common standard applies to all organizations. While no conditions have been incorporated for the SDF(U) regarding the effectiveness of the replenishment as such, but only provision regarding the date on which individual contributions take effect,807 effectiveness conditions in other organizations may apply not only to the first tranche of donors’ contributions, but also to subsequent tranches. There are also substantial differences regarding the effectiveness requirements of MFDIs. For the tenth replenishment of AfDF (AfDF10), replenishment became effective upon deposit of at least 30% of the total intended subscriptions by the state participants listed in the resolution.808 The same effectiveness condition applied to AfDF’s next replenishment (AfDF11). On the other hand, ADB and IDA require a substantially higher percentage of contribution commitment before replenishments take effect.


807 The Resolution and Report of Contributors to SDF 6 provides, “Each Contribution or portion thereof shall become effective on the date of deposit with the Bank of the relevant Contribution Agreement in the form of an unqualified Instrument or Instruments of Contribution.” www.caribank.org/titanweb/cdb/webcms.nsf/AllDocSearch/7F766BC3383483ED04257504060A1CB/$File/Resolution_ReportOfContributorsSDF6_final-1.pdf?OpenElement

808 See AfDF. Resolution of the Board of Governors regarding the Tenth Replenishment of the AfDF, para. 4.
ADB traditionally requires the deposit of unqualified contribution commitments equivalent to 50% of all pledged contributions for a replenishment to become effective. In the past, certain conditions stipulated the effectiveness of second installment payments.

All IDA replenishments have been subject to certain conditions regarding effectiveness. IDA12 (and previous IDA replenishments) required a deposit of 80% of total contribution commitments before a replenishment goes into effect. In essence, this meant that IDA replenishments could not become effective unless the US deposited its contribution. However, IDA changed its practice during the IDA13 negotiations because the delay in concluding this round of negotiations had resulted in budget process difficulties for some donors. To accommodate those difficulties and at the same time avoid delaying the replenishment’s effective date, the trigger for IDA13 effectiveness was lowered to the deposit of IoCs by countries whose subscriptions and contributions total 60%, rather than 80%, of total contributions. IDA14 and IDA15 adopted the same approach.

The provisions regarding GEF replenishment were modeled on those of the World Bank, thus providing for conditions regarding the effectiveness of replenishments.

**Payment and Encashment Arrangements**

MFDIs have experimented with various payment schemes for donor contributions. While in principle, donors should make equal installment payments for each year of the replenishment period, various approaches have given them flexibility in making payment arrangements. Thus, donors were given the opportunity to make installment payments in ascending amounts, to adopt alternative payment arrangements, or to postpone installment payments in certain cases. While such arrangements make it easier for contributors to participate in the replenishment exercise and meet their payment obligations, they may represent a departure from the principle of equitable burden sharing and entail the additional risk of imposing constraints on the provision of concessional financing.

Organizations generally accept promissory notes in lieu of payment. Such notes constitute nonnegotiable obligations, payable on demand and recognized as assets in organizations’ balance sheets. Organizations draw upon such notes in a uniform manner over a specified period (e.g., 9–10 years). However, some donors have agreed to accelerated encashment arrangements and in some cases have been given credit of the income derived from such accelerated encashment as part of their contribution.

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810 See Chapter 4 (G. Droese, ADB Concessional Financing).
811 Up to and including the Fourth Replenishment, the effectiveness requirement was that members, including at least 12 Part I members whose contributions aggregated an amount equivalent to 80% of the replenishment, had formally notified the IDA that they would make the contributions authorized for them. Under the Fifth Replenishment, these traditional effectiveness requirements were changed by authorizing contributors to qualify their second and third installment payments as being subject to appropriate legislative action.
813 IDA. *Additions to IDA Resources: Fourteenth Replenishment*, p. 39.
814 E.g., in IDA5, Resolution No. 102, 4 (d) of the IDA’s board of governors.
815 The comprehensive funding policy of the Global Fund expressly states in para. 4, “The Global Fund shall consider as assets for the purposes of entering into grant agreements, both cash and promissory notes or similar obligations issued by the government of a sovereign state (or its designated depository) which shall be non-negotiable, non-interest bearing and payable at par value to the account of the Fund in the designated depository on demand or in accordance with an encashment schedule agreed between the contributor and the Secretariat.” See The Global Fund. Comprehensive Funding Policy and Related Board Decisions. www.theglobalfund.org/documents/comprehensive_funding_policy.pdf
816 In the IDA, donors were given the option to receive a payment discount for accelerated encashment of their contributions (IDA, *IDA15 Financing Framework*, p. 18. Similar arrangements also apply in the case of ADB, where donors agreed under ADF IX and ADF X to an accelerated note encashment program. Under this program, donors could use the investment income derived from accelerated encashment to meet their burden shares or to be treated as additional contributions. ADB. 2008. *Asian*
Modalities of Multilateral Concessional Financing

Unlike the MFDIs studied here, the Global Fund thus far has made only very limited use of promissory notes. However, new mechanisms for the Global Fund, including increased use of promissory notes, have been suggested and may be implemented in future.  

If the effective date of replenishment is delayed, concessional financing may be interrupted. To address this situation, replenishment resolutions include a provision for using contributors’ advance payments for operational commitment prior to the effectiveness of the replenishment. Some organizations (e.g., AfDF and IDA) have institutionalized such advance contribution schemes.  

IDA donors agreed to an advance contribution scheme during negotiations for IDA7. In view of expected delays in the effectiveness of IDA7 and to avoid “a hiatus” in IDA’s lending operations, the IDA7 replenishment resolution provided that one-third of members’ contributions would become available before the effective date of the replenishment, subject to notification of aggregate contribution commitments equivalent to 30% of the total replenishment amount. Since then, advance commitment schemes have become a regular feature of IDA replenishments, subject to the proviso that donors’ IoCs may specify that they do not wish to participate in such a scheme.  

Under the IDA15 Resolution, IDA “may deem, prior to the Effective Date, one third of the total amount of each subscription and contribution” as an “Advance Contribution” unless the contributing member specifies otherwise. IDA allocates voting rights on behalf of such advance contributions. A resolution by the AfDF Board of Governors regarding the 11th Replenishment of AfDF contains a similar advance contribution scheme, authorizing AfDF, when the level of subscriptions received aggregates 20% of total pledges, to use for operational commitments “an amount equivalent to the first commitment tranche of each subscription for which an Instrument of Subscription has been deposited by a State participant as an advance subscription, unless the State participant specifies otherwise in its Instrument of Subscription” in order to avoid an interruption in the Fund’s operations. An advance contribution scheme was also implemented for GEF and may be adopted by the Global Fund in the future. ADB members can make advance commitments voluntarily prior to the effectiveness of the replenishment.  

**Pro Rata Rights and Trigger Mechanisms**

The acceptance of qualified contributions, with all installment payments except the first subject to budgetary appropriations, implied that some members would not make an installment payment (in the form of a promissory note) in each year of the replenishment period. To ensure adequate and fair burden sharing in the implementation of replenishments, the resolutions authorizing replenishments generally

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819 Para. 7 (a) of the IDA13 Resolution of the Board of Governors provides that in order “to avoid an interruption in the Association’s ability to commit financing to eligible recipients” and “upon receipt of subscriptions and contributions aggregate not less than SDR 1,816 million, the Association may deem, prior to the Effective Date, one third of the total amount of each subscription and contribution for which an Instrument of Commitment has been deposited with the Association as an ‘Advance Contribution,’ unless the Contributing Member specifies otherwise in its Instrument of Commitment.” Similar provision has been introduced in the IDA14 Resolution, which made that scheme also applicable to transfers to contributions to the HIPC Trust Fund.

820 Para. 7 (a) of IDA15 Resolution.


gave members the right to delay or reduce the size of their annual installment payments or restrict the availability of such payments for operational commitments on a pro rata basis in the event that one member did not make installment payments in any of the years of the replenishment period.

Donors could exercise pro rata rights whenever a donor who had submitted a qualified IOC failed to make its installment payment in any given year of the replenishment period. The IDA Board of Governors restricted the operational commitment of second and third installment payments in 1977, through Resolution No. 102.824 Since IDA7, donors’ contributions and subscriptions under the pro rata provision have been restricted if a shortfall of contributions exceeded 20% of the total. The board has regularly incorporated similar provisions into its replenishment resolutions.825 Similarly, ADB, AfDB, CDB, and IFAD have regularly incorporated pro rata provisions in their replenishment resolutions.

As discussed during the IDA13 negotiations, the usefulness of pro rata provisions in encouraging timely contributions was very limited because they generally only achieved “the lowest common denominator approach to the management of soft-window commitment authority.”826 Even though such provisions generally did not achieve the desired result, the IDA13 deputies nevertheless decided to maintain a pro rata provision because some donors felt that it was “an important element of equity and burden sharing among IDA donors.”827 However, IDA15 deputies discontinued pro rata provisions in 2008 “to ensure predictability of resources and protect the interests of IDA recipients.”828 Similar changes should be contemplated by all MFDIs studied here.

Arrears

While countries submitting qualified contribution commitments are generally required to seek budget appropriations from their legislature for installment payments each year, in practice installment payments are often received with substantial delay and often only during later replenishment periods. This leads to a buildup of arrears that, together with the added effect of countries exercising pro rata rights, seriously constrains MFDIs’ ability to provide concessional financing. These effects are particularly severe for concessional windows with very limited internal resources (e.g., the GEF). Arrears prevention mechanisms were a very important matter during the GEF’s third replenishment. The GEF Trust Fund Replenishment Document contained a provision (“Timely Availability of Resources”) that required contributors to provide a written explanation for their continuing delays in paying their installments or unqualifying their commitments and explain the steps being taken to resolve it. The same resolution based voting power on actual cumulative contributions to the GEF. MFDIs generally impose no sanctions for arrears in payment. However, IFAD829 reduces the voting rights of members who have paid their contribution by deposit of a promissory note but are unable to encash such notes in full or in part; any member state

824 Resolution No. 102, Additions to Resources: Fifth Replenishment, adopted 16 June 1977.
825 In the IDA13 Resolution, members were given the right to defer the second installment of their subscription and contribution if a member that had deposited a qualified instrument of commitment and whose subscription and contribution represented more than 20% of the total amount of the resources to be contributed pursuant to this resolution had not unqualified at least 66% of the total amount of its subscription and contribution by 15 January 2004, or 31 days after the effective date. While an equivalent provision was maintained in para. 8(c) of the IDA14 Resolution of the Board of Governors, such provision effectively did not apply as none of the donors was expected to account for 20% of total donor contributions. IDA. Additions to IDA Resources: Fourteenth Replenishment. p. 38.
826 Mistry, Multilateral Development Banks, p. 104.
827 IDA, Additions to IDA Resources: Thirteenth Replenishment, p. 36.
828 IDA, Additions to IDA Resources: Fifteenth Replenishment, p. 34.
in arrears of its contribution payment and against which an accounting provision exists at the time of elections is ineligible for election or appointment to the executive board.\textsuperscript{830}

\section*{Standard of Value and Maintenance of Value}

In some organizations, concessional resources were or still are subject to maintenance of value (MOV) provisions. The initial contribution of IDA members was expressed in US dollars of the weight and fineness in effect on 1 January 1960.\textsuperscript{831} In agreement with this provision, initial subscriptions by original IDA members and subscriptions and contributions to the first three replenishments were expressed in terms of 1960 US gold dollars.\textsuperscript{832}

As a matter of policy, the resolutions of the IDA Board of Governors regarding the first three replenishments\textsuperscript{833} applied the MOV provisions of the IDA Articles to subscriptions and contributions under those replenishments. However, during IDA4 negotiations members decided that, in view of the unsettled monetary situation at the time, their contributions and subscriptions should not be subject to any MOV obligations; rather, each Part I member would make its contribution in a stated amount in its own currency, provided it is “freely convertible,”\textsuperscript{834} with no obligation to maintain the value of these payments if the exchange value of the currency involved changed.

On 30 June 1987, executive directors of IDA, pursuant to Article X of the IDA Articles, adopted a formal interpretation of the Articles deciding that the term “United States dollars of the weight and fineness in effect on January 1, 1960” meant the “special drawing right” (SDR) introduced by the IMF.\textsuperscript{835} Concurrent with that interpretation and as an integral part of resolving the issue of the valuation of initial subscriptions and related matters, IDA decided (i) to apply the same standard of value to IDA replenishment and membership resolutions and (ii) to defer settlement of MOV obligations until the executive directors decide to resume such settlements.\textsuperscript{836}

The IADB Charter contains general provisions regarding MOV that require payments from members to IADB or from IADB to members in the event that the value of a member’s currency has, in the opinion of IADB, significantly appreciated or depreciated.\textsuperscript{837} Based on this provision, MOV provisions were and remain applicable to contributions of members during the first five general increases in FSO resources. However, a different approach was adopted during the Sixth General Increase, consistent with the IADB Charter,\textsuperscript{838} authorizing members to make contributions in any one of IADB’s convertible currencies.\textsuperscript{839} A similar approach was adopted for the seventh and eighth general increase in resources.

\begin{itemize}
  \item \textsuperscript{831} IDA Articles, Article II, section 2(b).
  \item \textsuperscript{832} IDA Articles, Article IV, section 2 contains provisions regarding payments from members to the IDA and from the IDA to members which may be required in certain circumstances to maintain the value of the portion of members’ initial subscriptions in terms of 1960 dollars. It provides for the MOV in terms of 1960 US gold dollars of that amount of the 90% portion of the initial subscriptions of original Part I members paid in by the member in its own currency, so long as and to the extent that such currency has not been initially disbursed or exchanged.
  \item \textsuperscript{833} IDA Board of Governors Resolutions nos. 48, 66, and 77.
  \item \textsuperscript{834} As defined in the IDA Articles, Article II, Section 2(f). See also IDA Board of Governors Resolution No. 92 (1973–1974), “Additions to Resources, Fourth Replenishment.”
  \item \textsuperscript{835} As of 1 July 1974, 1 SDR = $1.20635. See IDA. 1987. Decision of the Executive Directors under Article X of the Articles of Agreement regarding Article II, section 2 (B) of the Articles of Agreement, adopted on 30 June 1987.
  \item \textsuperscript{836} Ibid.
  \item \textsuperscript{837} IADB Charter, Article V, sections 3(a) and (b).
  \item \textsuperscript{838} IADB Charter, Article V, section 3(d).
  \item \textsuperscript{839} IADB Committee of the Board of Governors, Resolution AG-5/70, Sixth General Increase in the Resources of the Bank. Draft Report to the Board of Governors, p. 39.
\end{itemize}
The AfDF Agreement contains provisions regarding the valuation of AfDF resources and MOV.\textsuperscript{840} Prior to the second general replenishment of AfDF, subscriptions were denominated in fund units of account and subject to Article 13 of the AfDF Agreement, which provides that whenever the par value in the International Monetary Fund of the currency of a State participant is reduced in terms of the unit of account or its foreign exchange value has, in the opinion of [AfDF], depreciated to a significant extent within that participant’s territory, that participant shall pay to the Fund within a reasonable time an amount of its currency required to maintain the value, as of the time of subscription, of the amount of such currency paid into the Fund by that participant.\textsuperscript{841}

Conversely, if the currency of a state participant had increased in par value or appreciated in its foreign exchange value within that participant’s territory, AfDF had to return to that participant within a reasonable period of time an amount of such currency equal to the increase in the value of AfDF’s holding of the currency.\textsuperscript{842}

However, the resolutions of the AfDF Board of Governors regarding the second and the subsequent AfDF replenishments expressly excluded the applicability of Article 13.\textsuperscript{843} Thus, subscribers to the second and the subsequent AfDF replenishments fixed the amount of their subscriptions payable in national currencies in terms of agreed parities ruling at the date these replenishments came into force. Gains or losses arising on translating these subscriptions upon receipt into the AfDF’s UA are applied against subscriptions; the offsetting debits or credits apply to the cumulative exchange adjustment.

**Procurement**

Multilateral concessional financing is largely used to procure goods and services. For this reason, guaranteeing effective and efficient procurement is core to organizations’ development effectiveness and to achieving the MDGs. Implementation of projects concessionaly financed by MFDIs and the awarding and administration of project contracts rests with the fund recipients. However, in accord with their constituent instruments, MFDIs must ensure that that financing provided by them is used for the purposes for which it was granted. Therefore, MFDIs have adopted operational policies, guidelines, and procedures to guarantee the integrity of the procurement processes and ensure that contractors and subcontractors observe the highest ethical standards. Moreover, MFDIs seek to guarantee economy and efficiency in project implementation. They define procurement methods and review procurement processes and documents to ensure their compliance with applicable procedures and the terms of the financing agreements that contain provisions on procurement. Special procurement arrangements apply to the GEF, which relies on the procurement systems of its executing and implementing agencies, and to the Global Fund, which relies on national procurement systems.

MFDIs give importance to supporting the management and reform of public procurement systems in their member countries and seek to enhance the capacity of developing countries and strengthen their often weak procurement systems.\textsuperscript{844} From 2003 to 2004, further to the Rome Declaration on Harmonization,\textsuperscript{845} MFDIs sought to develop tools and good practices in a roundtable process.\textsuperscript{846} In the Johannesburg

\textsuperscript{840} AfDF Agreement, Articles 12 and 13.
\textsuperscript{841} AfDF Agreement, Article 13.1.
\textsuperscript{842} See AfDF Agreement, Article 13.2.
\textsuperscript{845} See Rome Declaration on Harmonization.
\textsuperscript{846} The Round Table process was launched in Paris, France from 21 to 23 January 2003 and subsequent Round Table meetings were held in Kampala, Uganda from 4 to 6 February 2004 and Johannesburg, South Africa from 30 November to 2 December 2004. See
declaration, they confirmed their commitment to mobilizing financial support for implementing tools that are moving "towards greater reliance on national systems that conform to internationally recognized standards [for aid-funded procurement], or are moving successfully in this direction." Further to the Paris Declaration on Aid Effectiveness, donors attending the Third High Level Forum on Aid Effectiveness (hosted by the government of Ghana in Accra [2–4 September 2008]), and in the Accra Action Plan, undertook to "promote the use of local and regional procurement by ensuring that their procurement procedures are transparent and allow local and regional firms to compete."

Accordingly, MFDIs have taken action to expand the use of country systems for procurement by weighing the enhancements of aid effectiveness and development outcome of such systems against the fiduciary and reputational risks which the use of such systems may involve. As the standards of national procurement systems vary widely, MFDIs face substantial challenges in implementing such policies.

In some cases, donors provide resources for concessional windows on the condition that they are used to finance procurement in donor countries. While such tied procurement arrangements are still used in certain cases, aid is increasingly provided on untied terms even in the case of bilateral assistance, where tied procurement arrangements once were very common. Generally, concessional resources are provided to international organizations on an untied basis, based on the understanding that competition is the basis for efficient public procurement. However, procurement of goods and services may be limited to suppliers of goods and services from member countries of an organization or from countries that contribute to the concessional window of an organization. While such provisions may create an incentive for donors to participate in an organization and/or contribute to its concessional windows, they may increase transaction costs. Thus, there is an increasing tendency to move to global procurement.

**Tied Procurement Arrangements**

Subscriptions or contributions to concessional financing windows may be made by donors on a tied basis for procurement in their own country. For example, the World Bank accepted ad hoc procurement arrangements during IDA’s second replenishment, under which a pro rata share of drawdowns of the contribution by a large donor had to "represent identifiable procurement" in the territory of that donor under second replenishment credits. Several organizations have used tied procurement, particularly

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851 In 2001, the members of the OECD’s DAC agreed to the objective of “untying their bilateral official development assistance (ODA) to the Least Developed Countries,” to “foster co-ordinated, efficient and effective partnerships with developing countries,” “strengthen the ownership and responsibility of partner countries in the development process” and “demonstrate responsiveness to the requests from partner countries and others to increase the use of untied aid in order to promote aid effectiveness” and “contribute to broader efforts with partner countries to promote their integration into the global economy.” (OECD. 2001. DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries. DCD/DAC(2001)12/FINAL. www.oecd.org/dataoecd/14/56/1885476.pdf) The above recommendation was updated in 2008 to add some additional provision and extend the coverage of the recommendation to HIPCs. (OECD. 2008. DAC Recommendation on Untying ODA to the Least Developed Countries and Heavily Indebted Poor Countries. July 2008. www.oecd.org/dataoecd/61/43/41707972.pdf).

when initiating concessional financing operations or providing supplementary financing for special purposes (e.g., CDB’s SDF(O) and OSF and ADB’s Consolidated Special Funds). For the SDF(O), CDB deemed tied procurement arrangements acceptable.\textsuperscript{853} Similarly, donors making contributions to ADB’s Consolidated Special Funds were given significant liberty in structuring the terms of their contributions, including tied procurement arrangements. SDF(U) and ADF regulations generally do not permit tied procurement arrangements, largely due to operational problems faced by both ADB and CDB regarding such restrictions. However, CDB still allows such arrangements for the OSF when the contribution agreement provides for them. Moreover, tied procurement arrangements may still apply to MFDI-administered trust funds in some circumstances.

Over time, tied contributions have become increasingly undesirable,\textsuperscript{854} particularly for the NDF, whose very rationale of existence was linked to tied procurement. When the NDF was still in its preparatory stages, it was assumed that “concessional financing provided would to a large extent return to Nordic countries in the form of the purchase of goods and services.”\textsuperscript{855} Although contributions of the Nordic agencies to multilateral organizations were generally untied, the Nordic countries mandated the NDF to pursue Nordic development objectives in its operations, and Article 1 of the NDF Agreement was interpreted as implying that the bulk of NDF procurement must come from Nordic countries.\textsuperscript{856} This was still reflected in the NDF Procurement Guidelines of June 2000 under which “an eligible bidder for contracts of goods, works and services to projects under NDF funding [had to be] either a citizen, a permanent resident or a registered company of a Nordic country,”\textsuperscript{857} or such other bidder as further specified in the procurement schedule of the credit agreement. Under “Nordic competitive bidding” arrangements, Nordic countries and suppliers in developing countries were generally eligible for procurement while other developed countries were not eligible. However, tied procurement arrangements have increasingly become an undesirable donor practice. Initially perceived as a strength, this reliance on Nordic contractors was increasingly viewed as a weakness, substantially complicating the NDF’s cooperation with other international organizations. This partially contributed to the 2005 decision to terminate the NDF, a decision that was reversed in 2009. As no amendments to Article 1 of the NDF Agreement have been approved at that time, such provision still applies as to the purpose of the NDF to provide concessional financing for “projects of interest to the Nordic countries.” The NDF General Procurement Guidelines of December 2009\textsuperscript{858} applicable to NDF credits are still based on Nordic competitive bidding and are overall consistent with the above principle and the eligibility requirements defined in the Procurement Guidelines of 2000. However, the 2009 NDF Procurement Guidelines adopted a different approach for procurement under NDF grants,\textsuperscript{859} which have been chosen in 2009 as the NDF new modality of concessional financing. Said Guidelines state with regard to eligible bidders,

\begin{quote}
2. Eligible Bidders.

“In general, firms from any country shall be eligible for award of contract for goods, works or services to projects under NDF grant funding.
\end{quote}

\textsuperscript{853} SDF Rules, Article 2, section 5.


\textsuperscript{855} Haralz, Nordic Development Fund, 10 Years of History, p. 21.

\textsuperscript{856} In accordance with Article 1 of the NDF Agreement, the NDF “is to promote economic and social development in developing countries through the participation in financing on concessional terms of projects of interest to the Nordic countries.”


\textsuperscript{859} Ibid.
“In cases defined in the guidelines of the Lead Agency, domestic preference may be applied to firms of the Recipient country.”

Thus for procurement under grants, the NDF has moved to global procurement, with domestic preference only given to firms of the recipient countries. This constitutes a major departure from NDF’s previous procurement policies and confirms the trend toward global procurement further described below.

**Restrictions of Procurement Eligibility**

A possible advantage of membership in an international organization may entail eligibility for procurement financing. Based on the rule of origin, some organizations studied here have limited their pool of suppliers of goods and services to the organization’s member countries.

The ADB Charter provides that the proceeds of any loan, investment, or other financing undertaken in the ordinary operations of the bank or with Special Funds established pursuant to Article 19.1 (i) (i.e., by setting aside part of ADB’s unimpaired paid-in capital)

shall be used only for procurement in member countries of goods and services produced in member countries, except in any case in which the Board of Directors by a vote of the Directors representing not less than two-thirds of the total voting power of the members, determines to permit procurement in a non-member country or of goods and services produced in a non-member country in special circumstances making such procurement appropriate, as in the case of a non-member country in which a significant amount of financing has been provided to the Bank.

While procurement restrictions based on the rule of origin apply primarily only to OCR operations under the ADB Charter, they also apply to special funds under the agreement or instrument establishing such funds and/or under ADB’s Special Operations Loan Regulations, procurement guidelines and consulting guidelines, which contain similar restrictions for all funds administered by ADB (including special funds and trust funds).

IFAD limits procurement to firms, contractors, and consultants from its member countries unless the IFAD president decides otherwise.

Eligibility for procurement under organizations’ concessional windows may provide an incentive for donors to contribute to concessional windows. CDB, where all members contribute to the SDF(U), gives this incentive to all members and also to nonmembers who make substantial contributions to the SDF(U). CDB limits procurement from SDF(U) resources to SDF members and substantial contributors (which have been accepted as such at the relevant replenishment negotiation meeting) unless the board of directors permits procurement from other sources in exceptional circumstances. However, members of

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860 Ibid.
861 ADB Charter, Article 14 (ix).
862 Amounts allocated to ADB’s former Multi-Purpose Special Fund from ADB’s unimpaired capital and subsequently transferred to the ADF amount to only a small fraction of total ADF resources. See Chapter 4 (G. Droese, ADB Concessional Financing).
863 The instruments of various special funds (Asian Tsunami Fund, Pakistan Earthquake Fund, Regional Cooperation and Integration Fund, Climate Change Fund) and those of ADB’s partnership facilities refer expressly to ADB’s procurement and consulting guidelines, which limit the procurement of goods and services and recruitment of consultants to ADB member countries. See Chapter 4 (G. Droese, ADB Concessional Financing).
864 Section 1.1., footnote 1 of the aforementioned Procurement Guidelines clarifies that for the purpose of these guidelines, financing by ADB includes ADB-administered funds. Para. 1.8 of the cited Consulting Guidelines contains a similar clarification stipulating that such guidelines “apply to all contracts for consulting services financed in whole or in part from loans, TAs or other grants or ADB-administered funds implemented by ADB or a borrower.” (emphasis added)
other organizations (e.g., ADB and IADB) are eligible for procurement under special funds only if they contribute to those funds.

Generally, all IADB members participate in general increases of capital resources and increases in FSO resources. Accordingly, all members are eligible in principle for IADB procurement, provided, however, that with respect to any increase of the resources of the Bank the question of restriction of procurement by the Bank or any member with regard to those members which do not participate in an increase under the terms and conditions specified by the Board of Governors may be determined by the Board of Governors.\footnote{IADB Charter, Article III, section 9.}

In practice, no such determination has taken place to date.

ADB limits procurement eligibility from ADF resources to developing member countries and developed countries that contribute to the ADF.\footnote{IFAD applied similar restrictions to some special programs (e.g., the “Special Program for Sub-Saharan African Countries Affected by Drought and Desertification”) that limited eligibility to program contributors and developing countries. See Chapter 7 (V. Weill-Hallé, C. Licul, and I. Villanueva, Multilateral Concessional Financing of the International Fund for Agricultural Development).} In current practice, such restriction of procurement eligibility has only limited relevance because all nonregional countries contribute to the ADF, both through new contributions to current ADF replenishments and through reflows financed by their contributions to previous replenishments.

Finally, the limitation of procurement eligibility may also apply to trust funds. One of the special features of trust funds is that the procurement arrangements attached to trust funds may differ from those that apply to an organization’s regular concessional windows. Effectively, some special facilities and multipurpose vehicles established by the World Bank Group have adopted special procurement arrangements. Bridging arrangements for the IDA6 Special Fund and the IDA11 Interim Trust Fund ensured that concessional financing would continue when no agreement could be reached on burden-shared replenishment arrangements. These arrangements were particularly controversial in IDA11 because the firms, contractors, and consultants of a large contributor became ineligible for procurement financed by the IDA11 Interim Trust Fund.

**Global Procurement**


Currently, the eligibility requirement for IBRD loans and IDA credits is identical.\footnote{IBRD and World Bank. 2004. Guidelines: Procurement under IBRD Loans and IDA Credits, May 2004 (Revised on 1 October 2006).} As the World Bank Group views “open competition as the basis for efficient public procurement … firms and individuals from all countries are eligible to offer goods, works and services for Bank-financed projects.” Any conditions for participation are “limited to those that are essential to ensure the firm’s capability to fulfill the contract in question.”\footnote{Ibid.} Thus, procurement eligibility is not directly linked to membership in IBRD or IDA.
The AfDF Agreement previously contained stringent requirements limiting procurement using AfDF resources to state participants, member states of AfDB, and other states that do not fall into those categories but have contributed to AfDF. Unlike the AfDB Agreement\(^{872}\) and the agreements of other organizations (e.g., ADB, CDB, and IFAD), the AfDF Agreement did not allow the board of directors to waive such requirements, adversely affecting donor coordination and harmonization, effective project implementation, and AfDF’s participation in sector-wide approaches and other multidonor instruments.\(^{873}\) For that reason, the AfDF Board of Governors adopted an amendment in 2008 that deleted, by an amendment requiring acceptance by three-fourths of the participants having 85% of the voting power,\(^{874}\) the procurement-related provision contained in the AfDF Agreement and Rule of Origin (Article 15 [4]), thereby permitting global procurement. However, in case of AfDB and NTF, bidders from nonmember countries offering goods, works and related services (including transportation and insurance) are not eligible, even if they offer these from AfDB member countries. Any waiver in special circumstances making procurement of goods and services in nonmember countries appropriate needs to be authorized by the AfDB Board of Directors.\(^{875}\)

ADB is currently reviewing its procurement arrangements, which some member countries consider overly restrictive, including a possible move to global procurements.\(^{876}\)

**Special Procurement Arrangements of the Global Environment Facility and the Global Fund**

Different arrangements apply to procurement under GEF and Global Fund financing. The GEF partner agencies have their own legal frameworks regarding procurement, but to the extent that the World Bank acts as a GEF implementing agency, the World Bank’s procurement and consultant guidelines apply and are incorporated by reference in grant agreements. However, this practice does not apply where GEF projects are carried out by other implementing or executing agencies. In that case, procurement is covered by the rules of the agencies concerned, which incorporate and reflect various different standards of accountability. Addressing this problem in 2007, the GEF Council approved minimum fiduciary standards for procurement operations, among others.\(^{877}\)

The 2007 evaluation of the GEF concluded that the GEF has not “adequately seized on opportunities for increasing decentralization and using country systems.”\(^{878}\) In contrast, the Global Fund relies largely

\(^{872}\) AfDB Agreement, Article 17(1)(d).

\(^{873}\) In accordance with a Legal Note of the General Counsel, the “restrictions under Article 15(4)(a) of the AfDF Agreement do apply to Sector Wide Approaches (SWAPs), defined broadly as projects or programmes that cover entire sectors and sectoral projects involving co-mingling of funds among multiple donors. Thus the Fund must require that certain arrangements are put in place to ensure compliance with Article 15(4)(a), such as ring-fencing or segregating the Fund’s resources or providing parallel financing to augment the resources of other donors, and insisting on the application of the procurement rules to such ring fenced or parallel financing.” See AfDF 2007. Procurement Rules of Origin. Discussion Paper. AfDF11 Second Consultation Meeting, June 2007, Tunisia, para. 2.4

\(^{874}\) AfDF Agreement, Article 51(1).


on country systems for procurement and most other operations. Principal recipients are responsible for ensuring that all procurement and supply management conducted under its grant(s), including that conducted by other entities (such as sub-recipients) conforms to Global Fund requirements. They must submit a procurement and supply management (PSM) plan that describes how they will implement the Global Fund’s PSM policies and identifies the implementing agencies. The PSM plan is assessed by the local fund agent and is also used to monitor project activities.

Financial Management

In some organizations, investment of concessional resources follows the same principles that apply to nonconcessional resources. This approach has been adopted for the management of ADF, FSO, and Nigeria Trust Fund (NTF) resources. IDA created a special investment authority for its resources in 2001, even though IBRD’s finance complex conducts the financial management. Under that authority, “IDA assets are invested so that their duration closely matches the duration of net liabilities, defined as projected net cash outflows.” For that purpose, IDA divides its liquidity into tranches. AfDF classifies securities that it intends to hold until maturity as “held to maturity” on the date of purchase and reports them at amortized cost; all other securities are carried at market value.

In investing concessional resources, MFDIs seek to maximize return while providing a ready source of liquidity and managing risk exposure. Organizations have adopted different approaches in striking a balance between these competing objectives, as reflected in IFAD’s financial regulations, which require the IFAD president to be “guided by the paramount considerations of security and liquidity [and to seek within] these constraints the highest possible return in a non-speculative manner.” In compliance with these objectives, IFAD holds a small percentage of its resources in cash and the remainder in government bonds, diversified fixed-interest instruments, and inflation-indexed bonds.

CDB has adopted “very conservative investment guidelines which are applied to the management of surplus cash in the SDF(U)” and substantially limit the return on investment of SDF(U) resources. IDA seeks to control the overall market risk of its portfolio through a stop-loss limit, which triggers a return to a passive investment strategy.

The financial management of concessional resources figures importantly in maximizing commitment authority from existing resources. Rather than making commitments only on the basis of existing resources, organizations seek to match future commitments with future reflows. In doing so, they consider the fact that loans (or credits, in the case of IDA) tend to be disbursed over a period of 10 to 11 years.

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882 Ibid., p. 29. “Tranche 1 (the cash flow immunization portfolio) is ‘constructed to ensure IDA is able to cover its projected net cash requirements as defined by IDA’s financial projections. The size of Tranche 1 is set to equal the present value of IDA’s future net cash outflows. Tranche 1 is invested to immunize IDA from interest rate risks relating to the projected draw-down of IDA’s liquid assets due to IDA’s financing commitments. . . . Tranche 2 (the return maximization portfolio’), which represents the difference between IDA’s total liquid assets and the amount of liquidity that is required to cover IDA’s projected net cash requirements (Tranche 1). Its investment objective is to maximize investment returns subject to risk and loss constraints . . . .”

883 IFAD, Financial Regulations of IFAD, Regulations VIII.

In early 1988, IDA’s executive directors authorized the organization to begin making commitments against future repayments. Since then, several other organizations (e.g., ADB, AfDF, CDB, and IFAD) have authorized advance commitment of concessional resources.

Through an advance commitment authority, IFAD mainly intends to fill the gaps that may occur during any fiscal year. Thus, advance commitment authority “may only be used if the resources available for commitment are insufficient to complete the approved lending program in any given year.”

However, advance commitment authority is a very important feature of all replenishments of other organizations. This is particularly the case for ADB. More than half of the ADF’s total commitment authority derives from existing resources under its expanded advance commitment authority. Through its advance commitment scheme, IDA was “able to maximize the volume of available funds for new credits and grants, lowering the need for donor funds.” However, the MDRI and the introduction of grants substantially impacted IDA’s ability to provide concessional financing from existing resources and increased its reliance and that of poor countries on future donor contributions. The same applies to AfDF, which introduced an advance commitment authority in AfDF 10.

Conclusions

Aid architecture has become substantially more complex due to the multilevel proliferation of channels of concessional financing. In addition to MFDIs, there are an ever-increasing number of vertical funds, including many types of trust and administration arrangements, and a great variety of alliances, facilities, and multiactor funds. MFDIs are also fragmented internally, as they provide financing through a variety of trust funds, and other cofinancing arrangements characterized by a great variety of different terms and conditions, replenishment processes, administrative arrangements, and governance structures which are not well coordinated with their regular concessional and nonconcessional windows and/or their operations in the recipient countries of their financing.

There are increasing calls for a review of the development taxonomies. Because allocating resources based on per capita income gives insufficient consideration to the multidimensional nature of poverty, current eligibility requirements and resource allocation processes are increasingly being challenged. Questions have also arisen regarding the adequacy of designing universally applicable performance indicators, because it “assumes a common development model which leaves little room for country-owned development strategies and continental diversity” and constrains organizations’ ability to adopt tailored solutions that respond to the specific needs and requirements of each region.

Thus far, the MFDIs and other channels of concessional financing studied here still rely on donor grants from their members as their main source of funding, based on the concept of a revolving fund, the resources of which are provided by donors in the form of grants and are passed on to recipients at a rate of 1:1. Unlike for the Global Fund, contributions of foundations and the private sector, if any, do not account for a substantial part of their concessional resources. These funding structures are no longer in

887 See Chapter 4 (G. Droesse, ADB Concessional Financing).
888 IDA, IDA15 Financing Framework, p. 4.
accord with the fact that private sector flows to developing member countries have increased dramatically since these MFDIs were established and that philanthropy has become a major source of development financing. While the recent financial crisis has made mobilizing resources from the private sector difficult in the short run, that modality likely will become more attractive over the middle to long term.

At present, MFDIs generally do not accept loans and cannot issue bonds for their concessional operations. In addition, MFDIs have not yet explored the full potential of new and innovative financing mechanisms that Global Fund and IFFIm, among others, have already experimented with and discussed in various international forums. MFDIs should explore further the potential of these new techniques and ways of leveraging resources for their concessional operations on capital markets for enhancing resource flows to developing member countries and helping them meet the MDGs and alternative uses of concessional resources, as in the waterfall mechanisms discussed in this study.

Trust funds have become very important channels of concessional financing and have joined the mainstream of organizations’ operations. They can be created for any of an organization’s statutory purposes, and the governance structures attached to trust funds can differ from those provided for by the constituent instrument of an organization acting as administrator. The substantial overlap between activities financed by regular concessional windows and trust funds increases the fragmentation of aid architecture. Moreover, synergies between organizations’ regular concessional windows (e.g., ADF, AfDF, and IDA) and trust funds—all administered on different terms and conditions, with different replenishment processes and administrative arrangements and, partially, with different governance structures—have not been exploited sufficiently thus far, resulting in additional transaction costs and lessening the development impact of concessional windows.

Donor fragmentation occurs when a large number of donors provide a small percentage of aid to a given country, and is exacerbated when donors providing such financing are internally fragmented as well. MFDIs have established in addition to their regular concessional windows a wide range of trust funds, facilities and multi-purpose vehicles which each provide only a small percentage of their concessional financing, often on terms and conditions and with governance structures and replenishment procedures which a different from those of their regular concessional windows and without ensuring proper coordination between their various concessional windows and also between their concessional and nonconcessional windows.

One solution for addressing such internal fragmentation involves creating coherent conceptual frameworks and umbrella operational arrangements for concessional and nonconcessional resources, trust funds, and other cofinancing arrangements.

Current MFDI systems emphasize the separation of resource allocation processes for concessional and nonconcessional windows, except for a few blend countries that are eligible to borrow from both windows. This separation leaves a large middle ground that lacks adequate coverage and produces unwarranted results (e.g., the AfDB Group, where less than one-third of the African states are eligible to borrow from AfDB). Close cooperation between concessional and nonconcessional windows is warranted, not separation. Attempts should be made to enhance the different synergies and find solutions tailored to the needs of member countries, involving all types of resources.

Thus far, MFDIs can offer only limited modalities of concessional financing. Initially, concessional loans and technical assistance were often the only concessional products MFDIs could offer, a situation that changed substantially only in the last decade, when grant financing of projects, programs, and debt relief became regular modalities of concessional financing. However, MFDIs currently offer only a few concessional risk management products, if any. They generally remain constrained from using concessional resources for equity investments, and trade financing is not yet a regular modality of concessional financing. These modalities warrant further exploration. Organizations should further diversify their existing concessional products (e.g. by giving borrowers the opportunity to choose between concessional loans denominated in SDR and US$ and to opt for floating rates for concessional loans and for concessional products in national currencies). They should also seek to offer additional risk mitigation and debt management instruments. In particular, trade financing on intermediate terms between those organizations’ hard and soft windows
Modalities of Multilateral Concessional Financing

may be seen as a natural progression of financing arrangements, wherein creditworthy blend countries can conduct limited transactions in capital markets. Trade financing is viewed by OFID as a “natural progression” of other concessional products offered by it. Concessional financing may support such progression. MFDIs can provide such financing either from their regular concessional windows, from trust funds, or under framework agreement with national development institutions. As many states are actively involved in trade financing, in particular the latter solution deserves consideration. Concessional financing may support this process. MFDIs might substantially expand their role in trade financing by establishing special facilities for that purpose and by mobilizing additional resources for that purpose under framework agreements or other co-financing arrangements with development partners. In addition, new aid delivery systems involving, among others, sector-wide approaches merit further consideration, and budget support may supplement current modalities of concessional financing.

One solution for expanding the modalities of concessional financing involves enhancing cooperation and aligning organizations’ terms and conditions for regular concessional windows (e.g., ADF, AfDF, and IDA) as well as trust funds and other cofinancing arrangements. Doing so would allow organizations to enhance their development impact by offering a consistent product rather than scattered arrangements with different terms and conditions, replenishment processes, and governance structures.

All concessional resources—including trust funds and other cofinancing arrangements—should be included in umbrella operational arrangements and administered on the same or similar terms and conditions. By implication, this suggests that organizations should standardize, to the extent possible, terms and conditions of their concessional windows under umbrella operational arrangements that apply to their own resources and trust funds alike. Replenishment procedures of the various concessional windows could be linked and/or coordinated. The same templates could be used for both types of resources. Under umbrella operational arrangements approved by organizations governing bodies, supplementary governance structures (e.g. annual donor meetings, steering committees and other bodies) could be created which are composed in a different manner than organizations’ regular governing bodies and are applicable to all types of resources administered by organizations.

A similar system would imply changes to how organizations conduct their business. It also might imply that comprehensive financing and operational arrangements for certain countries or sectors, including (where appropriate) concessional and nonconcessional resources, trust funds and other cofinancing arrangements, could be submitted to governing bodies for approval. Organizations’ governing bodies might focus on the overall purpose, scope, and direction of operational activities in a country or sector rather than on specific projects, yielding a stronger strategic focus. Within the general parameters established by governing bodies, management could decide operational matters and accept trust funds from donors.

The replenishment processes of the organizations studied here evolved from ad hoc replenishments to regularly scheduled replenishment exercises. In most cases, replenishments are conducted on the basis of burden sharing. However, contributions to the Global Fund remained voluntary even after the fund adopted regular replenishment processes. Currently, replenishments processes are open and transparent. In addition to senior officials of donor countries, the meetings include donor representatives and involve a dialogue with civil society. However, a link to the private sector is still missing. Organizations should consider inviting private sector representatives to attend replenishment negotiations as observers or contributors.

These changes would enable organizations to mobilize additional resources to assist developing member countries in meeting their development challenges, reduce transaction costs resulting from the current internal fragmentation of MFDIs, and enable organizations to expand their modalities of concessional financing in areas such as equity investments, trade financing, and risk management products. By doing so, MFDIs would enhance their development impact and increase the transparency of their concessional financing.

Chapter 4

Concessional Financing of the Asian Development Bank: The Asian Development Fund and Other Channels of ADB Concessional Financing

Gerd Droesse*

Channels of Concessional Financing

Concessional financing through “soft loans”1 or other modalities is among the most important instruments used by the international community to reduce poverty. The Asian Development Bank (ADB) uses its Special Funds resources, which are predominantly funded by contributions of ADB members, made on a grant basis, and administered together with ordinary capital resources (OCR).2

Unlike the Agreement Establishing the Inter-American Development Bank (IADB), whose charter provides for a built-in concessional window (i.e., the Fund for Special Operations),3 the ADB Charter4 contains only a general authorization for mobilizing concessional resources through the establishment of special funds. Since ADB’s special funds are not established by intergovernmental agreement, they lack legal personality under international law.

ADB created three Consolidated Special Funds shortly after its establishment in 1966, when the very limited debt-serving capacity of several of its members highlighted the importance of a special financing facility. Two of these funds—the Agricultural Special Fund (ASF) and the Multi-Purpose Special Fund (MPSF)—were superseded in 1974 by the Asian Development Fund (ADF), which presently is ADB’s major source of concessional financing. The Technical Assistance Special Fund (TASF) was created in

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1 A soft loan is defined as a “loan on terms less onerous than prevailing market rates [which] may take various forms. A loan may carry a low rate of interest, the start of interest payments may be deferred, repayment may be spread over an unusually long period, it may be easy to arrange deferment of interest or redemption payments, or the debtor may be allowed to make interest or redemption payments in soft currency.” (A Dictionary of Economics. J. Black, N. Hashimzade, and G. Myles. 2009. Oxford Reference Online. Oxford University Press. Asian Development Bank. www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t19.c2908. Last accessed 31 Oct 2010.)


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3 IADB. Agreement Establishing the Inter-American Development Bank (as amended hereinafter, IADB Charter), Article IV. www.iadb.org/leg/Documents/Pdf/Convenio-Eng.Pdf


299
1967 to finance technical assistance and other related activities. It still exists, although substantially modified from its initial legal framework.

ADB has other special funds, including the Japan Special Fund (JSF) and the ADB Institute Special Fund, both funded exclusively by the Government of Japan. The JSF was established in 1988 to supplement ADB’s resources for funding technical assistance and equity investments; the Institute Special Fund was established for the sole purpose of funding the operations of the ADB Institute, a subsidiary body of ADB established in Tokyo.

In 2005, ADB established two additional special funds to provide emergency assistance to member countries afflicted by natural catastrophes: the Asian Tsunami Fund (ATF) and the Pakistan Earthquake Fund (PEF). In 2009, ADB created another special fund, the Asia Pacific Response Fund, to provide immediate assistance to countries impacted by natural disasters.

ADB also administers a number of bilateral and multilateral trust funds. Since 2006, ADB has pursued financing partnership facilities that may combine both Special Funds resources and trust funds as new “operational mechanisms for strategic, long-term, and multi-partner cooperation.” Such facilities are umbrella operational arrangements, without legal personality, that seek to enhance administrative coordination and efficiency by linking “various forms of assistance in a coordinated manner for a well-defined purpose.” Financing partnership facilities may include (i) special and/or trust funds for grants to be administered by ADB; (ii) project-specific financing (i.e., grants, concessional loans, or guarantees) on a joint or parallel basis through framework agreements and letters of intent with development partners; (iii) cooperation arrangements for knowledge provision and exchange; and (iv) any other form of cooperation that partners and ADB may agree upon for a defined program of activities—all provided alongside ADB’s own assistance in the sector or theme.

**History**

When ADB was established in 1966, the International Bank for Reconstruction and Development (IBRD) had been operating for over 20 years and the International Development Association (IDA)—the concessional arm of the World Bank Group—had been functioning for about 6 years. The ADB Charter was prepared in a series of conferences, working groups, and committee meetings under the auspices of the Secretariat of the United Nations Economic Commission for Asia and the Far East (ECAFE). The process began in March 1963, when ECAFE adopted a resolution and the report of a working group appointed pursuant to that resolution recommended the establishment of a regional development bank. The resolution constituted a “landmark in ECAFE’s consideration of regional economic cooperation …”.

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6 Ibid.

7 Ibid.


9 “Since the size of the market is small, a degree of coordination of industrial development is necessary if resources are not to be wasted through duplication of industrial capacity. This coordination would be furthered by the establishment of a regional development bank.” ECAFE. 1963. *Measures for Economic Co-Operation in the ECAFE Region*. Report by a working group of experts. Bangkok. para. 107.

Following that report and a preparatory meeting in October 1963, the First Ministerial Conference on Asian Economic Cooperation agreed to convene ad hoc committees “to undertake the necessary studies . . . . and to suggest institutional arrangements [regarding inter alia the] establishment of an Asian Development Bank.” While the ministers accepted in principle the idea of a bank, they did not discuss that idea in detail and it “remained far down on the list of priorities.” Details regarding the role, organizational structure, and establishment of the proposed bank were reviewed during the meeting of the Ad Hoc Working Group of Experts (Ad Hoc Working Group), which convened in Bangkok in October 1964.

The structure of ADB was among the crucial issues debated by the Ad Hoc Working Group, which supported a broadly drawn charter that would “allow it considerable flexibility in its membership, capital resources, and operations.” Specifically, they believed that ADB should endeavor to “mobilize the maximum additional resources, both from within the region and outside,” “strive to harmonize the needs of the individual member countries of the region with the broad objective of promoting regional co-operation and development,” “give particular attention to the needs of smaller developing countries of the ECAFE region,” and “not seek to disturb existing bilateral or development multilateral arrangements for aid to the developing countries of the region.”

The debate centered on two possible structures: a separate soft loan institution (e.g., IDA) or a special fund similar to IADB’s Fund for Special Operations, which had been established with initial resources of $150 million through contributions from the original IADB members in accordance with specified quotas. The founding members of IADB had chosen to administer OCR and Special Funds resources entirely separate from each other with one organization and under one legal personality. The Agreement Establishing the African Development Bank (AfDB Agreement) provided equally for the administration of special funds in accordance with special rules and regulations adopted by

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11 ECAFE. 1963. *Report of the Preparatory Meeting for the Special Conference on Asian Economic Cooperation*. Bangkok. pp. 7–8. Most members of the Preparatory Meeting recognized in principle the need for establishing a regional development bank which could assist in mobilizing and directing resources for regional projects and joint ventures and promoting intra-regional trade. A suggestion was made in this [connection] that the resources of the bank should, in the first instance, be used for the expansion of intra-regional trade and markets and for financing joint ventures. The Meeting considered it necessary therefore to have the project studied in detail by a group of experts for a more precise definition of the organization and functions of the regional development bank. Questions relating inter alia to capitalization, the contributions of regional members, the contributions and loans from non-regional members, and the types of projects to be financed by the bank, would require thorough examination. The Meeting accordingly recommended that an expert group be constituted to study those questions, with the assistance of the International Bank of Reconstruction and Development, and to furnish a report. (Ibid.)


14 “It appears to this Group that the justification for, and consequently the role of, an Asian Development Bank lie in three directions: (1) The attraction of additional funds to the region; (2) The financing especially of those projects and those facilities for social and economic development of the region which at present are not financed or not adequately financed through existing resources or agencies; (3) The possibility of acting as a focal point for, and a stimulus to the other measures for regional economic co-operation which are at present being studied.” ECAFE. 1964. *Report of the Ad Hoc Working Group of Experts on the Asian Development Bank*. Manila: ADB. p. 2.

15 The 10-member Ad Hoc Working Group of Experts was established on recommendation of the executive secretary of ECAFE to examine issues relating to the establishment of a development bank, including its objectives and functions, scope of operations, management, and possible financial resources and structure. The group met in Bangkok on 20–30 October 1964 and reached consensus regarding the report that it submitted on 30 October 1964 (ECAFE, *Report of the Ad Hoc Working Group of Experts*), but did not have time to discuss the Tentative Draft Charter attached to their report (Annex D), which had been prepared by the ECAFE Secretariat and some members.


17 Ibid.

18 IADB Charter, Article IV, section 3 (c).

19 IADB Charter, Article III, section 3.
the African Development Bank (AfDB) and for the separation of ordinary and Special Funds resources.\(^{20}\) This separation was considered necessary for enabling AfDB (and IADB) to “appeal to the capital markets and other institutions operating on a commercial basis ….”\(^{21}\)

Although the Ad Hoc Working Group recounted the advantages inherent in “having a formally separate fund for soft loans purposes” and recalled that the World Bank had established a new subsidiary (i.e., IDA) for that purpose,\(^ {22}\) the group did not consider it necessary to create a similar subsidiary with proper legal personality for the provision of concessional financing. “Having regard to the fact that, at least in the initial years, the soft loan operations may not assume large dimensions, [the Working Group felt that] for some time at least there [was] no need to have any separate soft loan institution.”\(^ {23}\) However, the group felt that soft loan operations “should be carried in a distinct fund.”\(^ {24}\)

The Ad Hoc Working Group further “endeavored to meet a part of the need for ‘soft’ loans by suggesting the allocation of a small proportion of [ADB’s] resources to a special Fund ….”\(^ {25}\) The group considered that “non-regional members might be persuaded to make a higher proportion of the funds they supply available to the Special Fund.”\(^ {26}\) Based on the IADB pattern, the group anticipated that aid-giving countries might ask ADB to administer trust funds intended to provide soft loans.\(^ {27}\) However, the tentative draft charter did not address either matter specifically.\(^ {28}\)

On 25 March 1965, ECAFE Resolution 62 (XXI) appointed a high-level committee, the ECAFE Consultative Committee on the Asian Development Bank (hereinafter, “Consultative Committee”), whose responsibilities included

- consulting with governments of regional and developed countries and also with financial institutions,
- reporting on the results of its consultations,
- preparing a draft charter, and
- advising and assisting in the formulation of further measures regarding the establishment of ADB.\(^ {29}\)

Seeking possible models for ADB, committee members studied the constituent agreements of IBRD and IDA (referred to jointly as the World Bank) and also studied the agreements that had established the AfDB


\(^{23}\) Ibid.

\(^{24}\) Ibid.

\(^{25}\) Ibid.

\(^{26}\) Ibid., p. 8.

\(^{27}\) Ibid., para. 23.

\(^{28}\) Article 19 of the Tentative Draft Charter (see footnote 14) regarding “Special Funds” states that “(1) [t]he Bank may establish or be entrusted with the administration of special funds which are designed to serve its purpose and come within its functions. It may receive, hold, use, commit or otherwise dispose of, resources appertaining to such special funds. (2) The resources of such special funds shall be kept separate and apart from the ordinary capital resources of the Bank in accordance with the provisions of Article 10 of this Agreement. (3) The Bank shall adopt such rules and regulations as may be required for the administration and use of each special fund.”

and the IADB. The committee also considered issues related to the area and scope of ADB operations, the rationale for soft lending, funding, and lessons learned from the IADB and AfDB experience.

The question of whether a portion of the subscribed capital should be set aside to provide special funds financing was discussed at the initial meeting of the Consultative Committee in Bangkok on 25–29 June 1965. Japan and the United States (US) adopted the position that up to 25% of subscribed capital might be allocated to special funds. Subject to congressional approval, the US offered to provide up to $100 million for soft loans. Thus, when it held consultations with potential ADB members,
the committee “had this initiative of the United States Government with respect to special funds and trust funds and therefore did its best to explore actively the possibilities of attracting contributions to such funds from the developed countries outside the region…..”

In its 30 August 1965 report, the committee emphasized that

Although many countries in the region are in great need of soft loans for their national development, there is also a strong need for the Bank to build up its credit standing. Once the credit standing of the Bank is well established the flow of funds available for soft and other loans will increase. Taking this long view, the Committee believes that the share capital should not, unless necessary, be used for soft loan purposes, especially during the early stages. The possibility of extending soft loans should not be ruled out but the proportion of the share capital earmarked for soft loan operations should be very modest.

The committee also adopted a very prudent approach for determining the maximum proportion of share capital available for soft loan operations, concluding that “the Charter should specify 10 per cent as the maximum proportion of the paid-in capital which can be set-aside for soft loan purposes.” It also recommended requiring a special resolution of the Board of Governors, “[a] ADB operation by using the share capital or to change the proportion earmarked for the purpose is a matter of major policy….” Moreover, since earmarking a portion of share capital for soft loan operations reduces funds available for normal loan operations, the committee recommended that ADB should “augment its resources by accepting and creating trust and other special funds, which may be used for soft loans.”

The committee and the working group agreed that “in the initial years of soft loan operations a separate institution may not be required, in which case an entirely separate set of operating rules and accounts must be maintained.” However, it did formulate detailed guidelines regarding trust funds...
that could be accepted from members and recognized their value “as a major device for augmenting the financial resources of the Bank.” Moreover, the committee supported ADB’s ability to borrow for Special Funds resources, as reflected in Article 20(b) of the draft charter.

However, ADB’s Preparatory Committee, which finalized the Charter, adopted a different approach regarding the points mentioned above.

Determining whether the guidelines on trust funds (and special funds) set forth by the Consultative Committee should be incorporated into the Charter was a central issue of discussion by the Preparatory Committee. Although some representatives favored this position, others thought it would introduce unwarranted rigidity. India’s delegate said that “it would not be necessary to spell out the guidelines in the Charter because to do so would preclude for the management the degree of flexibility required in their negotiations with donor countries.” In the end, the prevailing view was against including detailed guidelines. Instead, the drafters of the Charter “left the acceptance, administration and use of such Special Funds to subsequent determination once the Bank had become fully established and was in a position better to appreciate its needs and those of its developing member countries.”

Neither did the Preparatory Committee support ADB borrowing from capital markets for special funds. The committee’s legal counsel believed that the purpose of ADB’s callable capital was to secure obligations incurred on borrowing funds for inclusion into OCR and not funds borrowed for placement in special funds. Therefore, the committee decided to amend the wording of Article 20(b) of the Charter regarding Special Funds resources to make it clear that it did not envision borrowing by ADB in capital

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(h) All kinds of trust funds should be available to provide for reimbursable and non-reimbursable technical assistance;
(i) It would be very useful that the Bank be endowed, as far as possible, with enough flexibility as to finance specific projects and programmes, using, when appropriate, a combination of funds in trust and funds from the Bank’s own resources;
(j) It would be desirable that the Bank be allowed to retend funds which have been repaid on the same terms and conditions used for the original loans;
(k) It would be of great benefit if the governments providing funds in trust allow them to be used not only to buy goods and services from the donor countries, but also from the country to which the loan is granted.
markets for inclusion in special funds. However, no final conclusion was reached on the question of permitting long-term borrowings from ADB members.\(^{50}\)

The Preparatory Committee also deliberated whether ADB should permit repayment of soft loans in local (i.e., nonconvertible) currency, as was the practice of IADB. Lacking support for the proposal, the committee left it for Management to make provisions regarding the matter in connection with the rules to be established.\(^{51}\)

### ADB’s Special Funds Resources

#### Consolidated Special Funds

ADB’s first president, Takeshi Watanabe, aimed primarily to establish ADB as a creditworthy lending institution capable of raising funds for Asian development. At the same time, Watanabe made every effort to secure supplementary resources from ADB’s developed members to finance projects on more liberal terms, giving particular attention to agricultural development in its regional member countries. Following a proposal by Japan in January 1967, the ADB Board of Directors accepted in principle the establishment of a special fund for that purpose in April 1967.\(^{52}\)

On 17 September 1968, the rules and regulations for special funds took effect, by which ADB accepted the administration of three Consolidated Special Funds: the ASF, the TASF, and the MPSF. The MPSF was intended to serve as the principal vehicle for mobilizing resources for ADB’s concessional lending operations, with the ASF serving as a supplementary source for agricultural lending and the TASF serving as ADB’s vehicle for funding technical assistance operations.\(^{53}\) In order for ADB to

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\(^{50}\) The question under what circumstances ADB might be able to borrow for special funds from ADB members and/or from capital markets raises many questions of law and policy which so far have not been addressed. In particular, any borrowings on capital markets for the Asian Development Fund (ADF) would require substantial changes to the ADF legal framework including possibly the establishment of the ADF as an affiliate of ADB with proper legal personality by intergovernment agreement and/or an amendment to the ADB Charter.

\(^{51}\) The Canadian delegate stressed that, if repayment in local currency would be permitted, ADB could ‘rapidly reach a situation in which Special Fund resources were of limited value for the purpose for which they were set out.’ Because the Charter already provided for soft terms and conditions, it really was “not necessary to add a further softening by permitting repayment in local currency which may in some instances really be unusable for Special Funds operations.” (Preparatory Committee on the Asian Development Bank. 1965. Verbatim Record. Preparatory Meeting. 25 October 1965. pp. 89–90). Japan recalled that the general consensus of the Consultative Meeting at that point was that the Special Funds derived from the capital stock should not be softened by allowing repayment in local currency, which could accumulate currency that may not be of much use for ADB (ibid., p. 92). This point was endorsed by the delegate from India (ibid., pp. 93–94).

\(^{52}\) ADB. 1967. Special Fund(s) for Agriculture. Manila (R9–67, 29 March). pp. 1–2: “In a letter of January 13, 1967 . . . the Japanese Ambassador to the Philippines requested the Bank to deliberate on the establishment of a Special Fund for financing, on liberal terms, agricultural development projects in South East Asia, ‘giving due consideration to the views of participating countries of the [Agricultural] Conference [in Tokyo in December 1966 at which Japan was host country] as well as of other interested parties such as developed countries or international organizations.’ Since the Bank’s receipt of this letter from the Japanese Ambassador, the President of the United States of America has proposed in his Foreign Aid message of February 9, 1967 to put before the United States Congress this year a $200 million U.S. contribution to new special funds of the Asian Development Bank . . . to be contributed over a number of years with matching arrangements and balance of payments safeguards.” It has been indicated that a substantial portion of the proposed U.S. contribution to ADB special funds would be available for agricultural development. These initiatives, as well as the prospect that the Bank’s response thereto is likely to be solicited at the forthcoming Meeting of South East Asian Economic Ministers at Manila in the last week of April, make it desirable that the Bank reach a judgment on the major issues involved.”

\(^{53}\) Section 4.02 of the ADB Special Funds Rules and Regulations (1968) stipulated that ADB “may carry out its special operations financed from Special Funds resources: (i) by making or participating in loans of high development priority, with longer maturities, longer commencement of repayment and/or lower interest rates than those established by the Bank for its ordinary operations. (ii) by providing technical assistance on a reimbursable basis, or on a non-reimbursable basis from any resources available for financing on such basis. (iii) by providing development assistance from contributed resources in any manner and on any terms and conditions not inconsistent with the purpose of the Bank and with the relevant contribution agreement.”
Concessional Financing of the Asian Development Bank

contribute to Special Funds resources, its Board of Governors set aside a portion of the paid-in capital for the MPSF.\(^{54}\)

From September 1968 to June 1972, the ASF received contributions totaling $23.1 million from three donors, while the MPSF received $152.5 million from eight donors.\(^{55}\) Although ADB approved its first concessional loan in 1969, it had granted only 32 concessional loans, totaling $125 million, by June 1972, due to limited donor commitment.\(^{56}\) Contributions were made entirely on the initiative of certain donors, "without any specific pattern in the amounts and timing of various contributions in relation to each other or to the specific needs of the Bank for funds."\(^{57}\) It became increasingly apparent that the legal framework for the administration of Special Funds resources was inadequate and deficient.

The deficiencies resulted essentially from the fact that the Special Funds Rules and Regulations sought to accommodate all member contributions, including tied contributions linked to procurement in donor countries and contributions earmarked for special purposes. Since the regulations gave donors maximum flexibility in structuring the terms of their contributions, this resulted in substantial problems in the administration of the Consolidated Special Funds. Although the regulations contained provisions regarding the use and allocation of Special Funds resources, most donors used the opportunity to exclude the application of the regulations to the contribution agreements, or to provide for exceptions to special funds principles.\(^{58}\) For example, donors could opt to

(i) allocate their contributions to any of the three Consolidated Special Funds;\(^{59}\)
(ii) for any of the Consolidated Special Funds selected by them, designate a particular usage of their contributions, within the overall purpose of the selected fund;\(^{60}\) and
(iii) restrict the area of procurement financed by their contributions.\(^{61}\)

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\(^{54}\) On 10 April 1969, the ADB Board of Governors adopted Resolution No. 26, *Action to Set Aside Capital for Special Funds*. Pursuant to the provisions of Article 19.1(i) of the ADB Charter, the Board of Governors resolved to set aside 10% of the unimpaired paid-in capital, paid by members pursuant to Article 6.2(a) of the Charter, to be used as part of the Consolidated Special Funds of ADB. Resolution 26 also indicated that "the resources so set aside shall be used primarily to finance loans of high development priority in accordance with Article 19, paragraph 2 [of the Charter] but may also be used in special circumstances to finance technical assistance on a reimbursable basis in accordance with the Rules." The Special Funds resources set aside were allocated to the MPSF. Moreover, by ADB Board of Governors Resolution No. 41 (17 April 1971), and Resolution No. 61 (28 April 1973), both entitled *Action to Set Aside Capital for Special Funds*, further action pursuant to article 19.1(i) of the Charter was approved by the ADB Board of Governors and the Special Fund resources set aside were again allocated and transferred to the MPSF. On 26 April 1975, the ADB Board of Governors adopted Resolution No. 85 (26 April 1975), *Transfer of Set-Aside Resources to the Asian Development Fund*, authorizing the transfer of all resources set aside to the ADF.


\(^{56}\) Ibid., p. 3.

\(^{57}\) ADB, *Sixth Annual Meeting*, para. 5.

\(^{58}\) In accordance with section 1.03 of the Special Funds Rules and Regulations, such regulations applied to all contributed and accrued resources "unless otherwise provided in the relevant contribution agreement." In addition to the amount of the contribution, contribution agreements could contain the terms under which the contributions were to be made and the procedure for drawing them down, along with "such other matters as the parties may agree." (Ibid. section 3.03)

\(^{59}\) In the absence of such allocation, contributions were held as part of the MPSF (Special Funds Rules and Regulations, section 3.04).

\(^{60}\) ADB, 1967. *A Framework for Handling Special Funds*. Manila (R48–67, 15 December). In accordance with section 3.04(b) of the special funds regulations, a contributor could provide that "the Bank in using its contribution in a particular Special Fund give emphasis to particular uses consistent with the purpose of such Special Fund." Moreover, Article 4, section 4.02 of the Special Funds Rules and Regulations gave far-reaching flexibility regarding the special operations financed by Consolidated Special Funds; in addition to making or participating in loans of high development priority, and providing for judicial assistance, section 4 states that ADB could provide development assistance "in any manner and on any terms and conditions not inconsistent with the purpose of the Bank and with the relevant contribution agreement."

\(^{61}\) Special Funds Rules and Regulations, Article III, section 3.05.
In this regard, the wide range of permissible restrictions of procurement eligibility provided the most “striking illustration” of the different terms and conditions that governed financing from ADB’s Consolidated Special Funds.

During this period of substantial and growing demand among developing member countries, the fact that contributions to the Consolidated Special Funds were made entirely on the individual initiative of donors seriously hampered ADB operations. Lacking an organized system for acquiring Special Funds resources, ADB had “no assurance that resources [would] be available on the scale and at the times required by it to carry out future concessional lending operations [making it difficult to assess the adequacy of such resources] to meet any given level of commitments.” In “a situation where total resources [were] inadequate to meet the Bank’s overall requirements, the earmarking of certain resources for use only in particular types of projects [increased ADB’s] difficulties in giving concessional assistance where it [was] most needed [leading to] a situation in which Special Funds resources [were] not available, or only available to a limited extent or in certain circumstances, to finance certain types of expenditures…. These deficiencies made it “difficult to develop and implement techniques for using different contributed resources in conjunction with each other and with other available resources.”

Finally, it entailed “formidable problems in that the terms of the Special Funds Rules and Regulations and contribution agreements required ADB [to maintain, within each Special Fund, the separate accounting identity] of each individual contribution, of set-aside resources, and of resources derived from each of these types of resources, and to trace every transfer from one Fund to another.”

After Resolution No. 46 (1971) of the Board of Governors authorized ADB’s first general capital increase (GCI) in November 1971, discussions regarding a new structure for special funds entered a decisive phase. In 1972, Management proposed a program to “remedy the existing defects.” It recommended transforming the existing MPSF into a permanent unified fund, and asked ADB and its developing member countries to agree on a scheme for mobilizing new resources. Established to address the shortcomings of the Consolidated Special Funds, the ADF became the most important channel of ADB’s concessional financing.

**Asian Development Fund**

**Initial Donors’ Meetings (1972–1973)**

On 7 August 1972, President Watanabe invited all ADB developing member countries to attend a meeting in Washington, DC on 30 September 1972 to discuss proposals for restructuring and replenishing the special funds. That meeting established a firm groundwork for the ADF. Representatives at the meeting almost unanimously favored the concept of establishing “a permanent and unified Special Fund (an ‘IDA-type’ fund, as several speakers put it) serving as the source for financing of the Bank’s concessional lending operations.”

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62 ADB, *Review of Special Funds Resources*, p. 3. “Some resources are available only to finance goods procured in the contributor’s country; others, only for goods in the contributor’s country and developing member countries (DMCs); others to finance goods procured in contributor countries with ‘no less liberal’ procurement terms and in DMCs; and others to finance goods produced in all member countries. Within the first and third groups, some resources are further limited to use only for agricultural purposes.”
63 Ibid., p. 6.
64 Ibid., p. 7.
65 Ibid.
66 Ibid., p. 8.
67 Ibid., p. 15.
69 Ibid., p. 3.
The representatives concurred with President Watanabe’s assessment that ADB was ready for a new phase in its lending operations. While there was widespread support for not tying contributions to the new fund to procurement in specific donor countries, some participants emphasized that any such untying of contributions needed to be done on the basis of reciprocity.70

The features of the proposed new fund differed substantially from those of the scheme for the Consolidated Special Funds. The new fund was “designed to be a unified Fund, multilateral in character and governed by uniform terms and conditions.”71 Provisions allowed for organized and multilateral mobilization of contributions and for uniform drawdown of contributions, regardless of whether the contribution was available in cash or in promissory notes. Finally, a principal characteristic of the new fund allowed such drawdown for financing procurement in contributor countries and developing member countries for goods procured in and for services supplied from the contributors and developing member countries.72 However, convincing members to give up tied procurement arrangements proved difficult.

A second meeting, held in London in March 1973, accepted the proposed concept of the new fund in principle, and meeting participants took the position that an untied fund was in the best interests of ADB and its members.73 However, it was still necessary to provide a mechanism for accepting transitional arrangements that would allow a US contribution on a tied basis. Meeting participants agreed that this could best be achieved by subdividing three-year funding proportionately into two parts. The first part would cover only the first two years and have a traditional tying provision, while the second part would cover the third year and have no provision for tied contributions.

The Board of Directors terminated the ASF on 18 April 1973 and transferred its resources (in agreement with the concerned contributors) to the MPSF;74 which in turn was terminated in March 1980.75

Second Series of Donors’ Meetings (1973)

In accordance with the principles agreed upon during the London meeting, Shiro Inoue, the second president of ADB, proposed a two-phase initial resource mobilization for the ADF at a meeting held in Manila on 26–27 April 1973, prior to ADB’s Sixth Annual Meeting.76 Although a large majority of participants favored the proposal, the US required more time to complete internal consultations, and no decision was made regarding burden-share allocations.

During the Sixth Annual Meeting of the ADB on 28 April 1973, however, the Board of Governors adopted Resolution No. 62 (Establishment of the Asian Development Fund). The resolution contained fundamental principles for ADF resources and authorized the establishment of the ADF by a subsequent resolution of the ADB Board of Governors. In doing so, ADB considered the fact that the context of development had “broadened beyond the limits of purely (or narrowly-defined) economic projects as [was] amply demonstrated by the International Development Strategy for the Second United Nations Development Decade adopted by the General Assembly of the United Nations in 1970.”77

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70 Ibid.
73 ADB. 1973. London Meeting on Special Funds, Statement of Vice President at Board Meeting. Manila (Sec. M46–73, 28 March).
74 ADB. 1973. Termination of the Agricultural Special Fund. Manila (R34–73, 6 April), para. 2.
76 Meeting of Developed Member Countries to Review the Special Funds, 26–27 April 1973, Manila.
After consulting with the developing member countries, President Inoue proposed a mobilization of ADF resources consisting of “two stages.” Donors adopted a pragmatic approach for determining individual burden-share allocations. Basically, the relative share capital that “reflects relative voting power, and consequently potential influence on decision-making in the Board of Directors [was seen to reflect indirectly] each member’s own assessment of how much weight should be given to factors such as shareholders’ interest in the region,” its desire to assist developing member countries, and its capacity to pay. Therefore, the three regional contributors—Australia, Japan, and New Zealand—that together held 45% of ADB’s relative subscribed capital would provide 40% of the targeted amount, reflecting a modest adjustment in their shares and taking into account relative gross national product (GNP). Also, the subscribed capital of the US was only slightly larger than its initial ADF burden share. However, while the relative GNP and relative subscribed share capital in ADB of most potential contributors were considered, in certain cases donor shares were fixed arbitrarily, based on either contributor pledges or contributions actually paid.

After further consultations with developing member countries in Bonn on 12 October 1973, and based on detailed discussion and substantial modifications to the initial draft, the ADB Board of Directors adopted the Regulations of the Asian Development Fund (ADF Regulations) on 18 April 1974.

**Initial Resource Mobilization (Asian Development Fund I)**

The mobilization of resources for the ADF was covered by Resolution Nos. 67 and 68, which were both adopted by the ADB Board of Governors on 20 November 1973. Resolution No. 67 provided for an initial resource mobilization of $350 million for the ADF, and required the 18 countries pledging contributions to deposit instruments of contribution in an aggregate amount of $260 million before 30 June 1974 for the ADF to become effective. Resolution No. 67 also allowed the Board of Directors to accept tied contributions. Resolution No. 68 provided for an additional $175 million in contributions for the second stage of initial resource mobilization. It also did not allow ADB to accept contributions for

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80 There was a broad correlation between the relative shares of four groups of member countries in ADB’s subscribed capital and their relative shares in the initial ADF resource mobilization (ADB, *Working Paper on Allocation of Shares*, para. 10 and annexes 1–2).


82 ADB. 1973. *Regulations of the Asian Development Fund*. Manila (Revision 1, 4 April 1974; Revision 2, 17 April 1974; Revision 3, Final, 18 April 1974). The original regulations referenced in this document were amended on various occasions, the last time in 2009.

83 As the initial resource mobilization for the ADF is counted as ADF I, ADF II refers to the first replenishment of the ADF, ADF III refers to the second replenishment, ADF IV refers to the third replenishment, ADF V refers to the fourth replenishment, and so on.


85 Para. 5(b) of the resolution allowed members to request the Board of Directors to waive in whole or in part “the application to the contribution of the procurement formula referred to in paragraph 5(c) of Resolution No. 62.” Under para. 8, members were also given the opportunity to declare that their MPSF contributions be credited to the ADF, giving authority to transfer these amounts.

86 Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, The Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom, and United States.

87 ADB Board of Governors Resolution No. 67, paras. 3 and 9.

88 Under ADB Board of Governors Resolution No. 67, para. 5, the Board of Directors could, if a member so requested when or before depositing an instrument of contribution and the board was satisfied that there was adequate justification for such a request, “in whole or in part, waive the application to the contribution of the procurement formula referred to in paragraph 5(c) of Resolution No. 62, and in lieu thereof may accept another appropriate formula.”
the second stage from members that had not contributed to the first stage. Although Resolution No. 68 did not allow tied contributions, it did ensure that individual contributions could not become effective unless a large donor had deposited an instrument of contribution.

ADB faced substantial challenges in ensuring payment of pledged resources. Resolution No. 67 had given members the opportunity to attribute their MPSF amounts toward their contribution to the ADF. Still, a large donor was unable to make its initial contribution of $150 million pledged in Resolution No. 67, but instead could offer a contribution of only $50 million. Consequently, the ADB Board of Governors passed Resolution No. 71 at the Seventh ADB Annual Meeting in Kuala Lumpur on 16 April 1974, allowing ADB to accept from that donor an initial contribution of $50 million, followed by an additional $50 million before 31 December 1974. Resolution No. 71 also lowered the minimum amount for establishing the ADF from $260 million to $225 million. In accordance with Resolution No. 67 (para. 9), the ADF was formally established on that basis on 28 June 1974, when initial contributions from the first 10 contributors became effective. Similar problems arose regarding the $175 million pledged for the second stage of the initial resource mobilization under Resolution No. 68. Resolution No. 88 lowered the minimum aggregate amount required for the second stage of the initial resource mobilization arrangements to become effective, and Resolution No. 105 authorized the large donor to contribute only $25 million plus an additional $25 million by 30 September 1977, rather than its pledged contribution of $50 million for the second stage, in 1976.

The ADF began operations at a time when developing member countries faced serious economic difficulties. In 1974 most ADB members were anxious because

The sharp increase in oil prices was reinforced by slower economic growth in the industrialized countries, continued shortage of foodgrains and worldwide inflation to retard the 1974 economic growth of developing countries in Asia. It was an unusual combination of circumstances, aggravated in several countries by natural disasters which together placed unprecedented pressures on the region's economy.

While ADB's ability to assist its members with ADF concessional financing initially remained seriously constrained by limited resources, the establishment of the ADF is an important milestone in ADB's special funds history. The ADF became the most important instrument of ADB's concessional financing operations. It has been replenished nine times, most recently in 2008.

**Technical Assistance Special Fund (TASF)**

ADB's Charter provides for technical assistance as one of ADB's major functions. Established in 1967, the TASF is the oldest of ADB's current special funds. In the past, the TASF has been the main vehicle

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89 See ADB Board of Governors Resolution No. 68, paras. 3 and 7.
90 ADB Board Resolution No. 67 (1973), para. 8. Seven contributors of untied MPSF contributions also accepted ADB's proposal for an outright transfer of their contributions (totaling about $223 million) to the ADF. These MPSF contributions were transferred to the ADF based on “Standard Conditions” agreed upon with donors, which provided that “the Multi-Purpose Contribution [of each donor] shall be governed by the Regulations of the Asian Development Fund to the same extent as if it had been contributed directly to the Asian Development Fund and the provisions of the agreement under which such contribution was originally made available to the Bank shall no longer apply thereeto.” The MPSF was terminated in 1980 (ADB, Termination of the Multi-Purpose Special Fund).
91 From $130 million to $94 million. ADB Board of Governors. Resolution No. 88 (1975).
93 Wilson, A Bank for Half the World, p. 71. President Inoue “told international bankers in Washington in March 1974 that the direct costs of the oil price increases in that first full year of the oil crisis would be far greater than any aid given by the Bank in past years.” Ibid.
95 ADB Charter, Article 2 (iii) and (iv) and Article 21 (vi).
for funding ADB's technical assistance operations.\textsuperscript{96} In the last decade, however, TASF financing “has fallen significantly in real and percentage terms to about 42% of [ADB’s technical assistance] program in 2007”\textsuperscript{97}; financing from other special funds and trust funds has filled the gap.

In 1967, Canada, the United Kingdom (UK), and the US offered to contribute to ADB’s Special Funds resources for technical assistance.\textsuperscript{98} Also in 1967, the Board of Directors adopted a resolution authorizing ADB to undertake the administration of the TASF and to accept for inclusion in the fund the resources offered to ADB for that purpose.\textsuperscript{99} Subsequently, ADB’s Special Funds Rules and Regulations were made applicable to the TASF on 17 September 1968. The Guidelines on Technical Assistance Operations of 1969\textsuperscript{100} emphasized the provision of technical assistance as a chief function of ADB that may comprise grant or loan assistance for both technical assistance regarding specific loan projects and technical assistance not directly related to such projects.

As already mentioned, one deficiency of the Special Funds Rules and Regulations governing ADB’s consolidated special funds was that they allowed procurement restrictions. Accordingly, various tied procurement provisions were included in TASF contribution agreements. The rules and regulations focused primarily on the MPSF, and there was no systematic way of mobilizing contributions to the TASF. Although the TASF was relatively successful in mobilizing resources on an untied basis, ADB agreed in 1981 to move toward a more systematic approach for mobilizing and replenishing TASF resources. The new approach involved periodic review of the utilization of TASF resources, and donors were urged to contribute to the TASF on an untied basis. Nevertheless, the Regulations of the Technical Assistance Special Fund, which became effective on 17 September 1981\textsuperscript{101} and are still in force, did not rule out procurement restrictions.\textsuperscript{102} The 1983 review of the TASF recommended to move the process of untying further ahead so that all TASF contributions would be available for procurement from all member countries.\textsuperscript{103}

The revised TASF Regulations sought to “standardize, to the extent possible, terms and conditions for contributions to the TASF...”\textsuperscript{104} As defined in section 1.01, the TASF aims to finance ADB’s “technical assistance and related operational activities.” ADB can use TASF resources alone or combined

\textsuperscript{96} As at 31 December 2008, TASF resources totaled $1,403 million (ADB, \textit{Annual Report 2008}, p. 4).


\textsuperscript{98} The US made $250,000 available for use on a grant or reimbursable basis, on terms agreed upon with ADB in exchanges of letters in June and August 1967. At the 19 April 1967 Board meeting, the UK offered to assist in the provision of consultant and specialist services. Canada offered a contribution for technical assistance up to $600,000 ($100,000 on a grant basis for the provision of individual experts and training programs, and $500,000 in the form of 50-year no-interest development loans) to finance preinvestment feasibility studies and the identification and preparation of suitable projects (ADB, 1967. \textit{Technical Assistance Special Fund}. Manila [R46–67, 13 December] p. 1; ADB. 1967. \textit{Special Funds Resources for Technical Assistance}. Manila [R46–67, Revision 1, Final, 19 December]) p. 1.

\textsuperscript{99} Ibid.


\textsuperscript{101} ADB, 1981. \textit{Regulations of the Technical Assistance Special Fund}. Manila (R80–81, Revision 1, 10 September). An amendment to the Regulations of the Technical Assistance Special Fund (hereinafter, TASF Regulations) was adopted in 2000 pursuant to Article 14 (ix) of the Charter for the sole purpose of providing consulting services for technical assistance to Timor-Leste (then East Timor) and for extending procurement eligibility to goods produced in or supplied from Timor-Leste. (ADB. 1999. \textit{Amendments to Technical Assistance Special Fund and Japan Special Fund to Permit Provision of Technical Assistance for East Timor}. Manila [R246–99, 21 December]).

\textsuperscript{102} Section 3.04 (b) of the TASF Regulations provided that a contributor may, notwithstanding the provisions regarding freedom of resource from restrictions, “in its contribution agreement, provide for restrictions on the source countries for procurement, as to the initial use of its contribution, to such an extent as is permitted by the Board of Directors, provided that (i) any such restriction shall be subject to periodic review by, and consultation with, the Bank; and (ii) no restriction shall be placed on the Bank’s use of contributed resources to finance transportation and insurance costs associated with the supply of services and facilities.”


\textsuperscript{104} ADB, \textit{Regulations of the Technical Assistance Special Fund}, para. 4.
with other available resources to finance on a grant basis foreign exchange costs and a reasonable portion of local expenditures for expert services and related facilities required for technical assistance or related operational activities.\textsuperscript{107} Thus, essentially the TASF was established for funding the services of international experts; it cannot finance major capital expenditures or major local expenditures on a stand-alone basis. This restriction substantially constrains the scope of technical assistance that may be funded by the TASF. The appropriateness of separating technical assistance grants from grants for other purposes and restricting financing for local expert services on a stand-alone basis is questionable. The strong emphasis on financing foreign expert services reflects the concepts of the 1960s, when ADB relied on technical assistance by foreign experts due to the limited capacity of its developing member countries to implement such assistance. However, the situation changed dramatically as many governments developed substantial capacities for implementing technical assistance.

Resource mobilization for the TASF has evolved substantially since the regulations were adopted in 1981. Initially, contributions to TASF were voluntary. However, TASF's dependence on annual voluntary contributions made advance planning difficult.\textsuperscript{107} Therefore, donors sought new ways of mobilizing resources for the TASF to meet the urgent need for regular and increased contributions.\textsuperscript{107}

France's proposal for a multilateral replenishment of the TASF through burden-sharing arrangements had not been accepted by 1981.\textsuperscript{108} However, during the negotiations for ADF V donors agreed to a similar proposal by the US to earmark a proportion of periodic ADF replenishments for financing ADB's technical assistance operations.\textsuperscript{109} Resolution No. 182 of the ADB Board of Governors—\textit{Replenishment of the Asian Development Fund and the Technical Assistance Special Fund}—incorporated provisions to that effect.\textsuperscript{110} Since then, the TASF has been replenished on various occasions in conjunction with ADF replenishments.\textsuperscript{111}

General replenishments of the TASF resulted in most donors ceasing to make direct contributions, and the resources provided by donors were effectively segregated from other TASF resources (including transfers of OCR net income, voluntary contributions, and TASF income), resulting in operational implications at two levels.

\textsuperscript{105} TASF Regulations, sections 3.01 and 3.03.

\textsuperscript{106} ADB, \textit{Review of the Technical Assistance Special Fund}, Manila (R89–83, 1 July).


\textsuperscript{108} ADB. 1997. \textit{Technical Assistance Special Fund, Review of Policy on Procurement Restrictions}. Manila (R291–97, 23 December), p.8, footnote 2: “France made such a proposal in 1981. However, several concerns were raised about the implications of the funding of TASF through a burden-sharing arrangement. In November 1980 a majority of the Board had opposed any change to compulsory TASF contributions. Moreover, considerable adjustments were required to bring TASF contributions of some donor countries to the proportionate level of their contributions to ADF. While it was considered premature to discuss such a proposal at that time, it was suggested that the annual TASF procedure would provide the opportunity to focus ‘on the need for further improvement in resource mobilisation arrangements,’ which might include multilateral replenishment under a burden-sharing arrangement.” Thus, Resolution No. 154 (1982) of the ADB Board of Governors regarding the third replenishment of the ADF contains no reference to a multilateral replenishment of the TASF under burden-sharing arrangements.

\textsuperscript{109} The US delegation presented a proposal for a regularized mechanism at the ADF replenishment meeting in Rome in 1985 and again at the replenishment meeting in Tokyo in October 1985 (ADB. 1985. \textit{Technical Assistance Special Fund: Earmarking of Funds from ADF Replenishments}. Manila [IN.222–85, 31 December]).

\textsuperscript{110} ADB Board of Governors Resolution No. 182, \textit{Replenishment of the Asian Development Fund and the Technical Assistance Special Fund} (1986) Para. 3(c) of that resolution provides: “Allocation between ADF and TASF. From the first installment payments of all contributions made under this Resolution, an aggregate amount equivalent to US$72,000,000 shall be set aside in proportion to the total amount of each such contribution and shall be allocated to the TASF. Except for the portion so allocated to the TASF, all contributions made under this Resolution shall be used and administered in accordance with the Regulations of the Asian Development Fund (ADF Regulations) of the Bank. The portion allocated to the TASF shall be used and administered in accordance with the Regulations of the Technical Assistance Special Fund (TASF Regulations) of the Bank, except that any such resources shall be used exclusively for technical assistance to poorer developing member countries of the Bank and for regional technical assistance undertaken by the Bank.”

First, all general TASF replenishments are on an untied basis regarding the source of countries for procurement of goods and services. In principle, section 3.04 of the TASF Regulations still allows procurement restrictions, but the vast majority of TASF resources are provided through general replenishments on untied terms. To the extent that some countries (e.g., India and Pakistan) still contribute directly to the TASF, contributions during the last decade generally have been untied as well. Thus, for all practical purposes the issue of contributions tied to procurement of goods and services in donor countries is no longer relevant.

On the other hand, the Board of Governors has adopted specific eligibility criteria for TASF resources provided through general TASF replenishments, and those criteria differ from those applicable under the TASF Regulations. Although in accordance with the TASF Regulations all developing member countries are eligible in principle to receive TASF resources, the use of TASF resources provided in conjunction with ADF replenishments has been confined to developing member countries in ADB groups A and B and to technical assistance for research and development that benefits ADF countries. Thus, the TASF currently comprises two categories: “(i) the TASF-IV, which has been replenished through a TASF regularized replenishment in conjunction with ADF X and (ii) the TASF-other sources (TASF-others), which are replenished through voluntary contributions, OCR net income transfer, TASF income, and savings and cancellations.” ADB ensures that resources of the fourth regularized replenishment (TASF-IV) are used for the benefit of Group A and B countries. Research and development technical assistance “is assumed to benefit ADF countries, regardless of inclusion of ADF countries in the TA activities, because they will benefit indirectly or directly through improved ADB operations from the knowledge generated.” This constrains the use of the TASF resources for funding technical assistance projects in non-ADF countries.

112 ADB. 2009. Annual Report 2008. Note F to Financial Statements 31 December 2008 and 2007. “Contributions and Uncommitted Balances. Since inception [of the TASF] in 1967, direct contributions have been made by 29 member countries. India and Pakistan made direct and voluntary contribution in 2008 of Rs10,000,000 ($250,000 equivalent) and $70,000 respectively…. Some of the direct contributions received can be subject to restricted procurement sources, while some are given on condition that the technical assistance be made on a reimbursable basis. The total contributions received for the years ended 31 December 2008 and 2007 were without restrictions.” www.adb.org/Documents/Reports/Annual_Report/2008/tasf06.asp


"Par. 3(d) Use of Contributions. Except for the portion allocated to the TASF, all contributions made under this Resolution shall be used and administered in accordance with the Regulations of the Asian Development Fund, as such Regulations may be amended from time to time by the Board of Directors (the ADF Regulations). Article V of the ADF Regulations shall not be applicable to grants used pursuant to this Resolution to provide financing for projects and programs of high development priority. The portion allocated to the TASF shall be used and administered in accordance with the Regulations of the Technical Assistance Special Fund, as such Regulations may be amended from time to time by the Board of Directors (the TASF Regulations), except that any such resources shall be used exclusively for technical assistance to those developing member countries of ADB eligible for ADF, and for regional technical assistance for the benefit of such developing member countries of ADB.”

In the ADF X Donors’ Report, Donors emphasized that

“ADB must ensure their contributions are directed to support only ADB countries and regional technical assistance for the benefit of ADB countries, following the practice in previous TASF replenishments. Donors also noted that Management will develop explicit guidelines and criteria for the allocation of resources in the TASF to go into effect in January 2009. Such guidelines will detail the purposes for which TASF resources can be used, allocation criteria, and process by which TASF resources will be provided to TA programs in ADB countries. Donors agreed that a comprehensive review of TASF operations will be prepared for the ADF X midterm review. This will include the origin of the TASF, the sources of financing, and effectiveness in utilizing TASF resources.” ADB. 2008. Asian Development Fund X Donors’ Report: Towards an Asia and Pacific Region Free of Poverty. pp. 21–22. www.adb.org/Documents/Reports/ADF/X/ADF-X-Donors-Report.pdf


Japan Special Fund

Established in 1988 by a letter agreement between ADB and the Government of Japan, the Japan Special Fund (JSF) aims to help developing member countries restructure their economies and broaden the scope for new investments in their territories. The JSF was intended to support the efforts of developing member countries toward industrialization, natural resource development, human resource development, and technology transfer. The JSF also aims to finance or cofinance “on a grant basis, technical assistance projects, whether in the public or private sector, including project preparations, advisory services and regional activities.” In addition, it was envisaged that ADB would use the JSF financing “to finance or cofinance private sector development projects through equity investments and, in special cases, and on a grant basis, technical assistance components of public sector development projects financed under loans from the Bank.” In practice, however, JSF resources have been used exclusively to fund technical assistance operations. All sectors are eligible for TA grants financed by JSF. These grants should fall under the following types: (a) capacity development technical assistance, (b) policy and advisory technical assistance, (c) research and development technical assistance, and (d) project preparatory technical assistance. Periodically, ADB seeks the approval of Japan regarding batches of technical assistance projects proposed for financing by the JSF. Subsequent to approval by Japan, processing of the technical assistance projects follows standard ADB procedures.

In 1998, the Government of Japan launched, under the so-called New Miyazawa Initiative, a package of support measures aimed at assisting affected Asian countries to recover from the financial crisis precipitated by the mid-1997 currency turmoil. In the context of this initiative, the Asian Currency Crisis Support Facility (ACCSF) was established in 1999 for a 3-year period as a special purpose component of the JSF. Until its termination on 25 March 2002, the ACCSF provided technical assistance grants and also provided grants to assist with loan- and bond-related interest payments.

The technical assistance grant modality of the ACCSF was directed toward activities that “support policy dialogue, human resource development, institutional strengthening, and other relevant efforts focusing on bank restructuring and corporate debt restructuring; creation or development of sound financial monitoring, supervision, and regulation; enhancement of public sector and corporate governance; development of social safety nets; and protection of the environment.” ACCSF grants were also applied to part of the related interest payments for ADB’s OCR loans for social and environment purposes, and approved during the 3-year period following the establishment of the facility or during such

117 As of 31 December 2008, regular and supplementary contributions of Japan to the JSF totaled $974 million (ADB, Annual Report 2008, p. 4).
119 Ibid.
120 Ibid., p. 3.
122 For further details regarding the JSF, see www.adb.org/jsf/default.asp; See also ADB. ADB Processing Procedures for TA Proposals. www.adb.org/JSF/processing.asp
126 ADB. Establishment of a New Facility in the Existing Japan Special Fund.
extended periods as agreed upon by the Government of Japan and ADB. Part of the ACCSF could also be used to finance the provision of guarantees with appropriate fees, to support the raising of resources which shall include government loans, bonds and commercial loans with government counter guarantees denominated in either Japanese yen or other major currencies, to finance projects and programs in the Asian currency-crisis affected member countries of ADB. Effectively, ACCSF financing as used for interest payment assistance and technical assistance.

**Asian Tsunami Fund and Pakistan Earthquake Fund**

In 2004, ADB’s Disaster and Emergency Assistance Policy recognized the importance of addressing disaster and emergency assistance in an integrated fashion and set forth that ADB should provide financing not only for long-term disaster reconstruction programs but also for disaster risk management and disaster risk reduction activities. However, ADB’s ability to respond quickly to the disasters that afflict Asia and the Pacific was constrained because ADB then lacked a facility dedicated to channeling disaster relief funds. For that reason, in 2005 the Board of Directors needed to establish the Asian Tsunami Fund (ATF), a new special fund, to assist developing member countries affected by the tsunami that struck on 26 December 2004. The ATF was governed by the Asian tsunami grant regulations applying to investment projects and the Asian tsunami technical assistance grant regulations applying to technical assistance operations. Some special features of the ATF are highlighted below.

While other ADB special funds are funded predominantly or exclusively by contributions of donors, the ATF was predominantly funded by the largest-ever allocation of OCR net income and surplus to a special fund. In 2005 the Board of Governors approved a total allocation of $600 million in two tranches to the ATF, enabling ADB to respond quickly to disasters that had affected its member countries. The Board authorized ADB to receive commitments from multilateral, bilateral, and individual sources including companies and foundations. However, consistent with the purpose and functions of the ATF, any commitments had to be received in the form of an instrument of contribution during the initial 9 months of the ATF, and payment of contributions relating to such commitment had to be made in the subsequent 12 months. In view of the foregoing, contributions by donor governments to the ATF remained very limited.

The ATF was not designed to address long-term economic rehabilitation investments or sector or institutional problems unrelated to the tsunami disaster. Rather, ATF resources were available only to finance, as a matter of priority,

(i) immediate pre-reconstruction efforts;
(ii) medium-term reconstruction projects;
(iii) rehabilitation investments associated with the tsunami damage; and
(iv) goods, services, and consultants from ADB members.

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127 Ibid.
131 See ADB’s Tsunami Response website: www.adb.org/Tsunami/default.asp
132 The Board of Governors authorized by Resolution No. 305 of 4 March 2005 Transfer of OCR Surplus to the Asian Tsunami Fund and Resolution No. 308 of 6 May 2005 Allocation of Net Income allocation of a total amount of $600 million from OCR net income and surplus. See also ADB, 2005. Transfer of OCR Surplus to the Asian Tsunami Fund. (R66-05, 11 February).
No provision was made for concessional loans, and financing was provided exclusively in the form of grants for technical assistance and investment projects that were processed on an accelerated basis.

Unlike the ADF, donors had no opportunity to submit promissory notes allowing periodic drawdowns. All contributions were payable in cash, in a freely convertible currency. Although donors could submit a qualified instrument of contribution, they could not qualify their payments, but only indicate preference that ADB use their contribution to benefit certain sectors or developing member countries.

ATF projects were processed on an accelerated basis. Thus, while the Board of Directors approved the projects, project proposals were formulated in a fairly generic manner. Eligible recipients needed to submit their requests for allocation of ATF financing and were required to execute with ADB all legal documents within 18 months from the date on which the fund was approved. ATF resources were available to central governments and other eligible recipients, including nongovernment organizations (NGOs), of tsunami-affected countries (including India, which is not eligible for ADF loans). Because the ATF was created for a specific purpose, it would terminate on the earlier of the date 5 years from Board approval or when the ATF funds had been fully disbursed. Undisbursed funds, including any investment income, had to be returned to contributors.

On 14 November 2005, the ADB Board of Directors approved the establishment of the Pakistan Earthquake Fund (PEF), which was patterned on the ATF. The PEF was substantially funded by an initial ADB grant contribution of $80 million drawn from the original $600 million from the ATF and by contributions of some member governments. Norway and Belgium contributed through an innovative debt-for-development swap by converting $20 million worth of outstanding loan repayment obligations from Pakistan into an ADB-administered grant.

In 2009, ADB established the Asia Pacific Disaster Response Fund (APDRF) “to provide, in a timely fashion, incremental grant resources to DMCs affected by a natural disaster.” The APDRF aims to augment aid from other donors by providing “quick-disbursing grants to assist DMCs in meeting immediate expenses to restore life-saving services to affected populations following a declared disaster” bridging the gap between existing ADB arrangements that assist developing member countries in reducing disaster risk through hazard mitigation loans and grants as well as longer-term post-disaster reconstruction lending. While initial funding for the APDRF was provided by transferring $40 million from the ATF, provision was made for accepting contributions from bilateral, multilateral, and individual sources, including companies and foundations, in a minimum amount of $500,000. APDRF assistance will be extended if three conditions are met: a natural disaster has occurred, a statement of national emergency has been officially declared by the affected developing member country, and the UN humanitarian/resident coordinator has confirmed the scale and implications of the disaster and indicated a general amount of funding needed. For that purpose, the power to approve grants up to $3 million per event

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133 In case of emergency assistance, Board consideration can be sought within 1 week pursuant to special abbreviated procedures set forth in the ADB Disaster and Emergency Assistance Policy. ADB. 2004. Disaster and Emergency Assistance Policy. www.adb.org/Documents/Policies/Disaster_Emergency/default.asp


135 From this amount, $40 million was allocated from the surplus of ADB’s OCR. The remaining $40 million was from unused ATF funds, which were returned first to OCR surplus and then reallocated to the PEF.


137 See also ADB, Annual Report 2008, p. 29.


139 Ibid. Such aid can take the form of “purchase of water purification and sanitation systems, transitional shelter, personal hygiene kits, emergency communication equipment, and aviation fuel as well as debris sifting, site clearance, and safe disposal of useless rubble.” Ibid.

140 ADB, Establishment of the Asia Pacific Disaster Response Fund, p. 5; ADB. 2010. Amendment to Condition for Assistance of the Asia Pacific Disaster Response Fund (R48-10, 26 March). Manila.
was delegated to the President.\textsuperscript{141} Provision was made that ADB’s procurement guidelines do not apply. Rather, procurement procedures suitable for emergency response were adopted. Moreover, to enable ADB to work with other international organizations and facilitate work with potential cofinancers, the procurement of goods, works, and services was permitted from both ADB members and nonmembers.\textsuperscript{142}

## Trust Funds and Special Facilities

### Bilateral and Multilateral Trust Funds

In addition to, and in connection with organizations’ regular concessional windows, trust funds have emerged as key elements in the wider aid architecture and as important channels of concessional financing. Trust funds have proliferated at all levels due to their great versatility and because special governance structures can be attached to them.\textsuperscript{143} Essentially, organizations can establish trust funds and use them for any of their statutory purposes.

The ADB Charter is silent regarding trust funds because as mentioned above the guidelines proposed by the Consultative Committee were not incorporated. However, Article 2 (i) and (v) provide a general basis for ADB to establish and administer trust funds. Moreover, it is widely accepted that the competence to establish trust funds is inherent in any international organization.\textsuperscript{144} Thus, even in the absence of an express authorization, international organizations have established trust funds as part of their implied powers.\textsuperscript{145} Trust funds are externally funded and administered by ADB on behalf of donors. While ADB is the legal owner of amounts held in trust, trust funds are a third category which is different from ADB’s ordinary capital resources and special fund resources which together comprise ADB’s capital resources.\textsuperscript{146} They can be established either by agreement between ADB and contributors or by a constitutive act of ADB; ADB has used both techniques. In 2008, ADB mobilized a total of $154.2 million in grant cofinancing comprising $84.2 million for 76 technical assistance projects and $70.0 million for 17 investment projects.\textsuperscript{147}

### Channel Financing Agreements

ADB has established various bilateral and multilateral trust funds, and has concluded channel financing agreements with several member countries. Under channel financing agreements, donors may indicate their preferred sectors and recipient countries and enter into a comprehensive agreement with ADB, by which they provide an untied grant fund for administration by ADB. Importantly, the fund so established does not become part of ADB’s own resources. Channel financing agreements support ADB’s poverty reduction strategy (PRS) and social development activities\textsuperscript{148} and its environmental

\textsuperscript{142} Ibid., p. 4.
\textsuperscript{143} See Chapter 2 (G. Droese, Organizational Structures, Institutional Frameworks, and Decision Making Procedures of Multilateral Concessional Financing, hereinafter, Organizational Structures).
\textsuperscript{146} Thus, Article 7(v) of the ADB Charter is not applicable to trust funds.
\textsuperscript{148} Information about the special multi-donor poverty funds administered by the ADB can be found at ADB. Special Poverty Funds. Funding Innovations for Poverty Reduction. www.adb.org/poverty/special-funds.asp. See also ADB. The Cooperation Fund in Support of Formulation and Implementation of Poverty Reduction Strategies. www.adb.org/documents/policies/nprs/default.asp
activities. In addition, trust funds support ADB’s activities in the fields of governance and financial sector development and are established for a variety of other purposes.

Among the bilateral trust funds administered by ADB, the Japan Fund for Poverty Reduction (JFPR) is an important instrument to fund interventions related to poverty reduction. Japan and the Republic of Korea have both funded ICT projects and ADB has engaged in various environmental initiatives. In addition, the Government of Japan has funded the Japan Scholarship Program. Along with ADB’s partnership facilities and other innovative facilities administered by ADB, these trust funds require further consideration.

**Japan Fund for Poverty Reduction (JFPR)**

Established in 2000, the JFPR has the clear objective of providing “grants in support of innovative poverty reduction and social development activities to help alleviate poverty in ADB developing member countries (DMCs).” In accordance with the fund’s guidelines and operating procedures of 2007, the JFPR grants should be compatible with the development objectives of the poverty reduction elements of ADB’s sector strategies and focus on activities which: (i) respond directly to the needs of the poorest and most vulnerable groups through new and innovative methods; (ii) support initiatives that lead to rapid, demonstrable benefits with positive prospects of developing into sustainable activities; or (iii) build ownership, capacity, empowerment and participation of local communities, non-governmental organizations (NGOs) and other civil society groups to facilitate their involvement in operations financed by ADB.

The same criteria were reiterated in the Policy Guidelines of 2010 which further clarified, among others, that JFPR grants should promote collaboration with local and international NGOs.

The JFPR strongly and successfully supports ADB’s PRS and, as a complement of ADB’s loan program, has become a valuable means of poverty reduction. JFPR grants may be capacity-building or project grants that range from $200,000 to $2 million; they can reach $3 million in exceptional circumstances. JFPR resources can also be used as seed money to assist ADB staff in designing grants and hiring international and local consultants. JFPR projects generally have been “distinctive components

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153 Ibid.
154 Ibid.
157 The Japan Fund for Poverty Reduction defines the two types of JFPR projects that may be considered for grant financing: 

(i) **Project grants.** These include activities that provide direct support for improving services and facilities for the poor, reinvigorating social safety nets, and testing new approaches that are replicable on a larger scale or lay the groundwork for future ADB operations.

(ii) **Capacity building grants.** These support building the capacities and improving measures to bolster local communities and NGOs; expanding the capabilities or coverage of social fund-type institutions; and promoting positive interaction among local governments, NGOs, and communities for the benefit of the poor.”

linked to ADB investment projects and span various sectors – health and social protection; education; agriculture and natural resources; water supply and other municipal infrastructure and services, energy, finance, etc. [and] have all aimed to provide direct assistance to poor communities and households.”

An amendment to the JFPR operational framework in 2009 paved the way for the adoption of a more comprehensive approach to the use of JFPR resources by combining Japan's project grant support and technical assistance support under one umbrella.

**Information and Communication Technology**

As “[i]nformation and communication technology (ICT) has become a powerful tool in the fight against world poverty, [ADB is committed to helping] bridge the growing digital divide and reap digital dividends within and across its [DMCs].” ADB-administered trust funds contribute to ICT activities in various sectors.

The Japan Fund for Information and Communication Technology (JFICT) was established in 2001 to support through grant financing activities related to information and communication technology (ICT), including software development and the purchase of ICT equipment and services. The JFICT was meant to enhance the effectiveness and impact of ADB’s poverty reduction and financial strategies by creating an enabling environment, building human resources, and developing ICT applications.

The e-Asia and Knowledge Partnership Fund was established by ADB and the Republic of Korea in 2006 with an initial contribution of $20 million to strengthen the capacity of DMCs by providing knowledge and sharing experiences, information and knowledge in the region for poverty reduction and social development. It finances “operational expenses related to stand-alone projects and components of loan projects agreed upon by the Government of the Republic of Korea” and ADB.

**Environmental Initiatives**

ADB has embarked on various initiatives to address key environmental problems in its region. The Cities Development Initiative for Asia (CDIA) is a regional partnership program jointly financed by ADB (through JSF-funded regional technical assistance), by Sweden and Spain through contributions to ADB-administered trust funds, and by Germany through parallel cofinancing arrangements. CDIA seeks to assist medium-sized Asian cities “to bridge the gap between their development plans and the implementation of their infrastructure investments [and] uses a demand driven approach to support the identification and development of urban investment projects…”

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159 Ibid., para. 5.


162 The JFICT was originally scheduled to close by 31 July 2004, but was extended to accommodate new proposals. In 2006, ADB approved for implementation two projects totaling $0.97 million, bringing total commitments to $10.43 million. While the JFICT has been fully committed, most of the projects are still under implementation. See Japan Fact Sheet. www.adb.org/Documents/Fact_Sheets/JPN.pdf


164 Ibid.


166 See Cities Development Initiative for Asia (CDIA) website: http://cdia.asia/


The Poverty and Environment Program\textsuperscript{169} is a regional technical assistance project/activity financed by the Poverty and Environment Fund, a multi-donor trust fund administered by ADB. The program aims to accelerate learning about poverty–environment linkages and effective approaches for poverty reduction.\textsuperscript{170}

\textit{Japan Scholarship Program}

The Japan Scholarship Program was established in 1988 to provide opportunities for well-qualified citizens of ADB’s developing member countries to pursue post-graduate studies in economics, management, science and technology, and other development-related fields at academic institutions in Asia and the Pacific. About 300 students enroll annually in 20 academic institutions in 10 countries.\textsuperscript{171}

\textbf{Partnership Facilities of the ADB}

\textit{General Characteristics}

A recent and very interesting phenomenon has been the emergence of partnership facilities that

(i) constitute a new and innovative approach of mobilizing additional resources for special purposes through coordinated cofinancing arrangements, and

(ii) involve replenishment and decision-making processes and implementation arrangements that differ from those applicable to ADB’s special funds and other traditional types of trust funds.

\textit{Strategic Long-Term Multidonor Platforms}

ADB’s financing partnership strategy (2006) prepared the conceptual groundwork for ADB to engage in financing partnerships without legal personality between various parties that “aim to generate and undertake shared financing for a specific project or program [and] combine knowledge and resources to ensure coordinated financing in a sustained and mutually beneficial manner with agreed objectives.”\textsuperscript{172} Partnership facilities “represent strategic, long-term, multi-partner cooperation platforms that tie together various forms of assistance in a coordinated manner for a well-defined purpose.”\textsuperscript{173} They may comprise special funds as well as pooled and bilateral grants under trust funds administered by ADB. Special funds established under partnership facilities may comprise resources allocated from the net income and/or surplus of ADB’s OCR. Pooled grants are administered by ADB through multidonor trust funds; bilateral grants are administered through single-donor trust funds established under the partnership facilities. In addition, such facilities may cover other types of concessional resources, such as project-specific loans, grants, and guarantees negotiated with financing partners under framework agreements, cofinancing on a joint or parallel basis, and cooperation agreements for knowledge provision and exchange and other forms of cooperation. Such modalities have not been defined as yet.

The coordinated and cooperative arrangements applicable under partnership facilities express ADB’s increased emphasis on joining forces with other partners and realizing economies of scale by harmonizing procedures and aligning operations. An important feature of such arrangements is that funding from different sources (e.g., special funds, trust funds and other cofinancing arrangements) is provided under the same terms and conditions and through uniform implementation arrangements. From an accounting

\textsuperscript{169} ADB. 2010. Poverty and Environment Program. www.adb.org/Projects/PEP/

\textsuperscript{170} See the overview of all initiatives on the ADB website "Environmental Initiatives": www.adb.org/Environment/initiatives.asp

\textsuperscript{171} ADB. Asian Development Bank—Japan Scholarship Program. www.adb.org/JSP/default.asp


perspective, special funds (which are part of ADB’s own resources) and trust fund resources (which are not) are fundamentally different. Viewed from an operational perspective, however, the distinction between these funds blurs (e.g., in the context of partnership facilities).

Partnership facilities have their own governance structures. ADB and its financing partners jointly steer the implementation of the partnership facilities and meet annually to review progress. These annual consultation meetings are very important because they allow ADB to engage the donors and jointly determine matters regarding administration, annual work programs, and strategic direction. ADB manages and administers the partnership facilities. Steering committees that involve directors general were established to provide high-level guidance regarding the accomplishment of activities.

**Implementation**

Seeking to ensure uniform terms and conditions for contributions to special funds and trust funds, ADB has adopted special governance structures and implementation arrangements. Relevant provisions are modeled on those of the ATF and PEF. ADB also wishes to seek funding for partnership facilities from nonstate donors (including foundations and the private sector) but so far has not yet received contributions from such sources; donor contributions are voluntary. There is no burden-shared replenishment. All contributions to special funds or trust funds under partnership facilities are made as untied cash grants in a freely convertible currency. Thus, donors cannot submit promissory notes that allow drawdowns. Contributions to special funds and trust funds are accomplished through standardized forms and agreements, and not through individual agreements with contributors. ADB submits semiannual and/or progress reports to donors. The report templates that incorporate results frameworks are agreed upon with donors. Generally, annual meetings with donors take place to discuss implementation arrangements and resource requirements of partnership facilities. ADB charges a service fee for the incremental cost of managing, supervising, and operating trust funds. Consulting services and procurement follow ADB’s guidelines. Thus, any services or procurement must be sourced from ADB members. However, developed countries are not required to contribute to a specific facility in order for their companies to be eligible for consulting services or procurement under such facility.

**Water Financing Partnership Facility**

In response to the enormous and unmet water needs of Asia and the Pacific and the recommendations of international forums, ADB established the Water Financing Partnership Facility (WFPF) in 2006 (Appendix 1). The WFPF “aims to provide additional financial and knowledge resources from development partners for the implementation of ADB’s water financing program,” particularly in the three key areas of rural water services: (i) improving health and livelihoods in rural communities, (ii) promoting health in cities, and (iii) integrating water management for river basins.

The WFPF provides resources from partners “through project-specific loans, grants, or guarantees under framework agreements to be negotiated with each financing partner; pooled grants through the WFPF trust fund component; or other forms of assistance.” Such resources are used to support demonstration projects under the water financing program in DMCs (about 70%) and to support the quality of the water financing program (about 30%) through knowledge, capacity, and innovation services; engaging civil society; and regional cooperation.

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174 Ibid., para. 12. For further details regarding the WFSF, see the WFSF website: www.adb.org/water/wfpf/default.asp
176 ADB, Establishing the Water Financing Partnership Facility, p. 3.
177 Ibid.
The WFPF includes a multidonor water trust fund; single-donor water trust funds; framework agreements for cofinancing (i.e., parallel or joint financing of lending or nonlending assistance to developing member countries), knowledge sharing, and risk sharing (e.g., credit enhancement, performance guarantees); and other forms of assistance. The WFPF has two windows. All DMCs are eligible for project support, and program quality support may be implemented in DMCs or other countries as needed. The governance structure of the WFPF comprises a steering committee (composed of ADB department heads) and a water committee. The facility manager organizes an annual consultation meeting with WFPF partners to discuss the annual work program and other arrangements concerning the WFPF partners. As of the end of 2009, the WFPF has provided grants for 11 approved investment projects, thus leveraging a total of $1.5 billion in ADB investments.

Clean Energy Financing Partnership Facility

The Clean Energy Financing Partnership Facility (CEFPF) was established in 2007 (Appendix 2) to improve energy security and decrease the rate of climate change through increased use of clean energy. Its structure is similar to the WFPF (Appendix 1). The CEFPF has a trust fund component that comprises a multidonor fund, the Clean Energy Fund, and single-donor clean energy trust funds. In addition, the CEFPF provides for framework agreements to be concluded with partners for cofinancing, knowledge and risk sharing (through credit enhancements or performance guarantees), and other forms of assistance. In this context, ADB has offered to explore the implementation and management of innovative mechanisms that develop further the clean financing market in developing member countries if donors will fund such mechanisms.

The CEFPF provides assistance from the Clean Energy Fund and the energy trust funds (which may be combined with assistance from ADB resources and/or other forms of bilateral and multilateral assistance) through untied grants for investment project components and technical assistance. In addition

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178 See the Multi-Donor Trust Fund website: www.adb.org/Water/WFPF/Multi-Donor-Trust-Fund.asp


180 Project support (about 70% of the WFPF) is given for key areas of ADB’s Water Financing Program. Program quality support (about 30% of the WFPF) facilitates reforms and strengthens capacity (ADB. 2008. Water Financing Partnership Facility. Annual Work Program January–December 2008. Manila).


183 ADB. 2007. Clean Energy Financing Partnership Facility: Establishment of the Clean Energy Fund and Clean Energy Trust Funds, Appendix 3: “If these mechanisms are feasible . . . ADB will put forth a proposal for consideration by ADB’s Management and Board of Directors for the following:

(i) Risk-sharing mechanism to catalyze local financing of smaller clean energy investments. ADB will provide new credit enhancement products to support financing of clean energy projects. The first main product will be partial credit guarantees or risk-sharing mechanisms (RSMs) offered to local financial institutions (LFIs). RSMs have broad application, in conjunction with sovereign, subsovereign, and non-sovereign ADB investments, and will support financing of many clean energy projects that are too small for ADB to finance directly; the LFI will act as the aggregator. Strong interest in such RSMs has been expressed by numerous LFIs in consultations to date. The Clean Energy Financing Partnership Facility (CEFPF) funds will be used in a first loss position within the structure of new ADB credit enhancement products; this is an innovative structure and will allow ADB to offer more effective, attractive risk-sharing instruments, at lower pricing, to its LFI clients to meet clean energy finance market development goals.

(ii) Subordinated contingent loan to facilitate technology deployment. The CEFPF funds will [be] used to lower capital costs and risks associated with deploying new technologies, where there is a justification and rationale for such subsidies; funds will be offered in some combination of grants and “contingent finance” instruments, meaning the investments are repaid under certain conditions, but on a subordinate basis….“

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to maintaining consistency with countries’ partnership strategies and results frameworks, project proposals for CEFPF support should

(i) introduce innovative solutions,
(ii) adopt a participatory approach,
(iii) be catalytic,
(iv) provide high demonstration value, and
(v) offer good potential for replication.\textsuperscript{184}

The CEFPF provides financing for new power plants as well as conversions and enhancements for existing plants, transmission and distribution systems and facilities using energy-efficient technologies, and manufacturing components of systems such as solar panels.\textsuperscript{185}

ADB manages and administers the Clean Energy Fund. The governance structure of the CEFPF includes a steering committee and a working group.\textsuperscript{186} An annual consultation meeting with CEFPF partners provides opportunities to discuss the annual work program and other matters in a comprehensive manner. As of 31 December 2009, an amount equivalent to $75 million has been allocated by donors to the Clean Energy Fund and two single-donor trust funds.\textsuperscript{187} In 2009, the CEFPF supported 19 projects estimated to reduce emission by 1.4 million tons of carbon dioxide per year and generate 41.7 gigawatt-hours of energy savings. Cumulatively, the CEFPF’s allocations to 37 projects in 23 developing member countries have generated clean energy investments of $528 million.\textsuperscript{188}

\textbf{Regional Cooperation and Financing Partnership Facility}

Article 1 of its Charter mandates ADB to “foster economic growth and co-operation” in its region. To fulfill this purpose, ADB “meet[s] requests from members in the region to assist them in the coordination of their development policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, in particular, intra-regional trade.”\textsuperscript{189} Consistent with the Charter, regional cooperation and integration (RCI) is a core element of ADB’s Strategy 2020\textsuperscript{190} and one of ADB’s main areas of focus.

To support regional cooperation, ADB follows a phased approach:

(i) Phase 1 focuses on increased understanding between ADB and DMCs.
(ii) Phase 2 identifies projects with regional implications.
(iii) Phase 3 mobilizes financing for projects that have a strong economic rationale and impact on poverty reduction.

\textsuperscript{185} Ibid.
\textsuperscript{186} The Clean Energy Steering Committee, which is chaired by the director general of the Regional and Sustainable Development Department and includes directors general of user departments and ADB’s chief economist, provides strategic direction for the CEFPF. The Clean Energy Working Group reviews and makes recommendations on project proposals for assistance from the CEFPF, and makes policy and procedural recommendations to the Clean Energy Steering Committee (ADB, \textit{Multidonor Clean Energy Trust Fund}).
\textsuperscript{188} Ibid., pp. 2 and 3.
\textsuperscript{189} ADB Charter, Article 2(iii).
The Regional Cooperation and Integration Financing Partnership Facility (RCIFPF) was established in 2007 “to enhance regional cooperation and integration in Asia and the Pacific by facilitating the pooling and provision of additional financial and knowledge resources to support RCI activities.”

Established as an ADB Special Fund, the Regional Cooperation and Integration Fund (RCIF) provides pooled grants. ADB allocated $40 million from its OCR net income to the RCIF. As a multidonor platform, the RCIFPF also includes trust funds for RCI activities, project-specific grants under framework agreements to be negotiated with financing partners, knowledge provision and exchange, and other forms of assistance (Appendix 3).

RCIFPF resources may support cross-border infrastructure and related software, trade and investment, monetary and financial cooperation, and other regional public goods. RCIF assistance targets “[technical assistance] TA, including advisory, project preparatory, and regional TA,” while RCI Trust Funds provide assistance “for components of investment projects and TA, as well as for any other activities that may be agreed upon between contributors and ADB.” Contributory and implementation arrangements under the RCIFPF resemble those applicable under the WFPF and CEFPF.

Other Initiatives and Innovative Financing Schemes

Carbon Market Initiative, Asia Pacific Carbon Fund, and Future Carbon Fund

ADB’s Carbon Market Initiative represents another innovative financing scheme to support the development of clean energy, energy efficiency, and greenhouse gas abatement projects in Asia and the Pacific that are eligible under the Clean Development Mechanism of the Kyoto Protocol. Two pillars of the Carbon Market Initiative are technical support to project sponsors, provided through the technical support facility, and marketing support provided through a credit marketing facility. The third component of the initiative is the Asia Pacific Carbon Fund, which was established in 2006 as an ADB-managed trust fund to provide up-front cofinancing until 2012 for clean energy projects against future carbon credits. In addition, the Future Carbon Fund, established by ADB in 2008, will use carbon credits.
generated beyond 2012 to provide urgently needed financing for clean energy projects in Asia and the Pacific. This fund offers an opportunity to take long-term action on climate change.

**Climate Change Fund**

The Climate Change Fund (CCF) was created in 2008 to support technical assistance activities, grant components of investment projects, and any other activities agreed between financing partners and ADB. The CCF was established as a special fund of ADB. Like the RCIF, the CCF was funded by allocation of $40 million from ADB’s OCR net income. The CCF supplements the CEFPF as it “expands the resources available to address [climate change] from only mitigation activities … to a more holistic program that includes activities in mitigation and adaptation as well as financing projects.”

It also complements the climate investment funds designed to support low-carbon and climate-resilient development through scaled-up financing and jointly managed by the ADB, AfDB, EBRD, IADB, and the World Bank Group. The CCF is a “key mechanism to pool resources within ADB to address climate change through (i) technical assistance (TA), and (ii) grant components of investment projects.” The CCF receives strategic direction by a steering committee and oversight by the external contributors who annually review its progress, administrative matters, annual work programs, and strategic directions. As of November 2009, the initial $40 million allocated to the CCF has been fully allocated to 41 projects.

As discussed above, ADB is making strong efforts to mobilize jointly with other MDBs and development partners for issues related to climate change, and mitigation and adaptation of climate change. ADB increasingly leverages private sector funds, the carbon markets, private insurance, and concessional finance for its DMCs beyond traditional loans and grants to support climate-friendly economic growth [and seeks to encourage the spread of transformative technologies] by investing in both ‘hard infrastructure’ and ‘soft’ capacity building measures.

ADB is also one the seven executing agencies of the Global Environment Facility and plays an important role in managing jointly with the World Bank the Climate Investment Funds, the two Climate Investment Funds (CIFs) established in 2008 (i.e., the Clean Technology Fund [CTF] and the Strategic Climate Fund [SCF]) with its three targeted programs.

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206 Ibid., paras. 3–7.


208 For an overview of all funds and initiatives of ADB related to climate change, see: ADB. 2010. Climate Change, Mobilizing Resources. Manila. www.adb.org/Climate-Change/mitigation-funds.asp#other


210 See Chapter 2 (G. Droesse, Organizational Structures) and Chapter 3 (G. Droesse, Modalities of Multilateral Concessional Financing).
Membership in international organizations has far-reaching implications for a number of issues. For regional developing countries, membership is a prerequisite for access to ADB’s loans and other types of financing. Membership affords all member countries the opportunity for representation in ADB’s governing bodies and participation in ADB’s decision-making processes. In addition, membership allows access to ADB’s knowledge products and participation in ADB’s RCI activities. It also has implications regarding eligibility for procurement and consulting services and ADB recruits its staff from among ADB members.

A main reason for establishing regional development banks was that regional countries wanted to participate in and have power over their own affairs. To ensure the control of regional countries, AfDB and IADB initially did not grant membership to nonregional countries. However, the same restriction did not apply to ADB, because it was conceived as an international partnership from the outset to channel additional financing to the Asia and Pacific region. Thus, since its establishment, nonregional countries have been members of ADB. ADB was “unique [in its organizational process] in that the participation of the US, a country outside the region, was sought from the beginning.” The US was one of the founding members of ADB, as it realized in the midst of the Viet Nam war “the advantage of supporting the proposal for a multilateral development institution … [which] Japan had already opted to support.” However, the ADB Charter ensured that the percentage of capital stock held by regional members could not be less than 60%.

Membership in ADB is open to members and associate members of the UN Economic and Social Commission for Asia and the Pacific (ESCAP) and “other regional countries and non-regional developed countries which are members of the United Nations or of any of its specialized agencies.” ADB’s region comprises the “territories of Asia and the Pacific” included in UNESCAP’s terms of reference.

The classification of countries as developed or developing cannot properly be captured by any single indicator, but “is measured across a range of parameters, among them economic, social, health, educational, political and trade factors” leading “different international institutions [to] employ different criteria to measure development.” ADB has not adopted a comprehensive definition of the terms “developing” and “developed.” However, when the ADB Charter was drafted, there was an implicit agreement that all countries (except Australia, Japan, and New Zealand) listed in Annex A to the Charter as regional countries eligible to become signatories would also be regarded as “developing” countries. It was not

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211 Wilson, A Bank for Half the World, p. 9 (quoting ADB President Masao Fujioka).
212 For the principle of additionality, see ibid., paras. 12ss.
213 Ibid., para. 8.
214 ADB Charter, Articles 5.1 and 5.3.
215 Previously known as the United Nations Economic Commission for Asia and the Far East.
216 ADB Charter, Article 5.
envisaged that the Board of Governors, acting under Article 28.4 of the Charter,\(^\text{220}\) would classify all members generally into “developed” and “developing,” because the articles were understood as providing a method of resolving doubts that may arise in particular cases.\(^\text{221}\)

Generally, regional countries are classified as developing member countries in the resolution of the Board of Governors admitting the country concerned to membership in ADB. In accordance with the ADB Charter,\(^\text{222}\) the term “country” may include a dependent territory that is an associate member of UNESCAP;\(^\text{223}\) said territory may gain membership in ADB when an ADB member responsible for the applicant’s international relationships presents its application and assumes responsibility for all obligations incurred by the applicant until the applicant itself assumes such responsibility. To join ADB, nonregional countries must be classified as developed countries by the resolution of the ADB Board of Governors admitting them to membership. In this regard, ADB applies its own criteria and is not bound by the classification of member countries in the World Bank Group or other international organizations.\(^\text{224}\)

In accordance with established practice, all nonregional countries are required to make a contribution to the ADF when joining ADB.

### Separation of Ordinary Capital Resources and Special Funds Resources

The drafters of the ADB Charter considered it crucial that ADB administer OCR entirely separately from ADB Special Funds resources.\(^\text{225}\) This principle of strict separation is presented in Article 10, in wording nearly identical to Article III, section 3 of the IADB Charter. Article 10.1 states that

> The ordinary capital resources and the special funds resources of the Bank shall at all times, and in all respects be held, used, committed, invested or otherwise disposed of entirely separate from each other. The financial statements of the Bank shall show the ordinary operations and special operations separately.

Article 10.2 of the ADB Charter strictly prohibits using OCR to cover losses and discharge liabilities arising from special operations or activities for which special funds were originally used or committed.

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\(^{220}\) In accordance with Article 28.4 of the ADB Charter, “the Board of Governors may, by a vote of two-thirds of the number of Governors representing not less than three-fourths of the total voting power of the members, from time to time determine which countries or members are to be regarded as developed or developing countries or members, taking into account appropriate economic consideration.”

\(^{221}\) No regional country of ADB has ever been classified as a developed country pursuant to the provision mentioned previously. The four regional countries that have graduated from ADB assistance (i.e., Hong Kong, China; Republic of Korea; Singapore; and Taipei,China) remain classified as developing countries.

\(^{222}\) ADB Charter, Article 3.3.

\(^{223}\) In most cases, associate members of UNESCAP are dependent territories. However, this is not applicable in all cases, as may be seen inter alia from Art. 5 of the UNESCAP Terms of Reference above. Where an associate member of UNESCAP is responsible for the conduct of its international relations, it may present application for membership in ADB in its own right under Article 3.1 of the ADB Charter; or, where the associate member was previously admitted to ADB membership pursuant to Art. 3.3 of the ADB Charter (e.g., Cook Islands), the sponsoring country ceases to be responsible for the obligations of the associate member.

\(^{224}\) When Turkey joined ADB in 1991, it was not included in the territories of Asia and the Pacific of ESCAP and was considered a developing country in the World Bank Group. ADB members were nevertheless prepared to support Turkey’s application for membership as a nonregional country, as it joined ADB on similar terms and conditions as other nonregional countries, including the requirement that it contribute to the ADF. While the terms of reference of ESCAP were subsequently changed in 1996 to include Turkey among the regional territories of ESCAP, the ADB Board of Directors adopted pursuant to Article 60 a formal interpretation of the ADB Charter to the effect that a change in the ESCAP Terms of Reference affecting the regional or nonregional status of a country “shall not affect the status of such country as a member of the Bank unless and until the Board of Governors of the Bank amends the terms and conditions of such member’s admission to the Bank on the request of the country concerned or another member.” Thus, Turkey is currently still classified as a nonregional member of ADB. ADB. 1996. *Turkey—Status of Membership After Becoming a Regional Member of the Economic and Social Commission of Asia and the Pacific*. Manila (R212–96, 26 September).

\(^{225}\) See discussion herein on ADB’s history.
Article 10.3 further stipulates that expenses pertaining directly to special operations must be charged to Special Funds resources. ADB has adopted various allocation formulas for allocating administrative expenses between ordinary and special operations. While it previously followed an output-oriented approach (i.e., allocating administrative expenses based on the number of OCR and special funds loans), ADB’s current system seeks to allocate administrative expenses to the extent possible directly to OCR and the ADF. Thus it has both input-oriented and output-oriented elements.226

The main purpose for separating OCR and Special Funds resources is to ensure that special operations cannot prejudice ADB’s capacity to raise funds for ordinary operations. Since buyers of ADB bonds rely on the assurance that proceeds will fund OCR lending rather than soft lending,227 the separation of ordinary and special funds is functionally necessary when one institution administers both types of funds. Nevertheless, the separation principle is not absolute and does not prohibit the allocation, in some cases, of paid-in capital or OCR (net) income to Special Funds.

When the ADB Charter was drafted, it was understood that, in order to attract donor contributions, ADB should itself contribute to special funds. Partly for that reason, Article 19.1(i) provided for the setting aside of resources from unimpaired paid-in share capital to establish special funds. Moreover, starting in 1992, the ADB Board of Governors regularly authorized allocations of OCR net income or surplus, initially only to the TASF but subsequently also to the ADF and other special funds such as the ATF, CCF, PEF, and RCIF. Such allocations were made pursuant to Article 40.1, which states that “The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to Special Funds, shall be allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the members.”

Article 21(vi) of the ADB Charter also authorizes ADB to “provide technical advice and assistance which serve its purpose and come within its functions and, where expenditures incurred in furnishing such services are not reimbursable, charge the net income of the Bank therewith;” and gives ADB

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226 In 1971, the Board of Directors approved a formula by which administrative expenses not identifiable as pertaining directly to either ordinary or special operations would be apportioned between OCR and Special Funds resources based on a five-year “experience rate,” derived from the average of the amount and number of ordinary and special operations loans made in each year (ADB. 1971. Allocation of Administrative Expenses between Ordinary and Special Operations. Manila [R70–71, 28 October]). The formula also provided for expenses allocated to Special Funds resources to be covered only out of income from the “service fee” levied on special operations loans and collected from borrowers. In 1973, it was proposed that nonidentifiable administrative expenses be apportioned on the basis of amounts only of ordinary and special operations loans approved in any particular year. Following Board discussion, the revised proposal adopted the “incremental costing concept” then in use by the World Bank Group (ADB. 1973. Review of the Formula for Allocation of Administrative Expenses between Ordinary and Special Operations. Manila [R110–73, Addendum 1, 15 January]).

Under this revised formula, as approved by the Board of Directors, administrative expenses pertaining to the Board of Governors, the Board of Directors, the Offices of the President and Vice President, the Office of the Secretary, and the Office of the Financial Adviser were charged wholly to OCR. The allocation of remaining nonidentifiable administrative expenses was based on the combined average of the number and amount of loans approved in each year out of OCR and Special Funds resources. A further revision of the formula was approved by the Board in 1978 (ADB. 1978. Review of the Formula for Allocation of Administrative Expenses between Ordinary Capital Resources and ADF Manila [R73–78, 7 August]).

This revised formula required proportional division of nonidentifiable administrative expenses between OCR and the ADF, respectively, based on the number of ordinary and special operations loans approved in each year. The main justification for this revised formula, based on the number of loans, was that the amount of a loan was not sufficiently significant with regard to the time required to identify, appraise, process, and administer the loan; and that special operations had become an integral part of ADB’s normal business, requiring the Board as well as Management and staff to handle both ordinary and special operations loans.

This formula was reviewed in 1982 (ADB. 1982. Allocation of Administrative Expenses Between Ordinary and Special Operations. Manila [R.75–82, 24 June 1982]), and remained in force until 2003, when an input–output approach was adopted by allocating departmental operating expenses to OCR and ADF as they were associated with OCR and ADF, with the remaining nonidentifiable administrative expenditures based on a 3-year cumulative number of OCR and ADF approved projects (ADB. 2003. Review of Allocation of Administrative Expenses between Ordinary Capital Resources and Asian Development Fund. Manila [R195–03, 15 October]). Cost relating to ADB’s field offices is not allocated to special funds.

authority to use in the first five (5) years of its operations, “up to two (2) per cent of its paid-in capital for furnishing such services on a non-reimbursable basis.” ADB never availed of the authority given to it by Article 21(vi) for the first five years of ADB operations to use its paid-up capital for furnishing technical assistance, but it has used OCR income for that purpose. It appears that the drafters of the Charter inadvertently intended a different meaning for the term ‘net income’ when used in Article 21(vi) as compared to the meaning as used in Article 40.1 (which refers to allocation of net income by the Board of Governors). Pursuant to Article 21(vi), ADB had complemented its TASF resources during some periods by charging nonreimbursable technical assistance as “services to member countries” in the OCR statement of income and expenses. Thus, technical assistance operations funded pursuant to Article 21(vi) were financed by current OCR income (i.e., ADB’s gross revenues). On the other hand, transfers to TASF derive from ADB’s net income or surplus. There is a fundamental difference between these methods of funding technical assistance, even though they serve the same purpose. In the former case, the cost of technical assistance provided by ADB is considered a business expense, while in the latter, technical assistance is funded by an allocation of net income or dividend.

Initially, ADB addressed only the permissibility of allocating OCR net income to the TASF. Subsequently, a further question arose about whether Article 40.1—together with Article 10.1—allows transferring OCR net income or surplus to the ADF. In 1997, and pursuant to Article 60, the ADB Board of Directors adopted a formal interpretation to the effect that

(a) pursuant to Article 40.1 of the Charter, the allocation to ADF by the Board of Governors of current year OCR net income, in excess of such reserves as the Governors shall consider necessary or appropriate and which would otherwise be available for distribution to members, is justified within the context of the Bank’s purpose and functions and is consistent with the Charter; and (b) a reasonable legal basis exists for concluding that such net income transfers to ADF may be made consistently with the provisions of Article 10.1 of the Charter, which require the separation of the Bank’s OCR and Special Funds operations. …

In addition to transfers to the ADF, ADB has made OCR net income or surplus transfers to other special funds (ATF, PEF, APDRF, RCIF, CCF). Unused amounts previously allocated to ATF were returned to OCR surplus and subsequently reallocated to the PEF and earmarked for other purposes.

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228 ADB Charter, Art. 21(vi).
230 From 1967 to 1991 ADB charged nonreimbursable technical assistance as services to member countries to OCR current income. While such practice was abandoned in 1992, it was resumed in 2002, as due to the Asian financial crisis ADB’s projected net income was nil and ADB was unable for that reason to make net income transfers to the TASF. As donors did not favorably receive ADB’s request that they contribute to the TASF, during the ADF VIII negotiations, donors endorsed as a compromise solution the use of current OCR income to finance technical assistance operations in lieu of OCR net income transfers (ADB, 2003. Review of the Asian Development Bank Income Outlook and Allocation of 2002 Net Income. Manila [R62-03, 11 April], paras. 95 and 97). The above practice was again discontinued during the ADF IX period. Currently, ADB does not charge technical assistance expenditures to current income.
231 ADB, 1992. Use of OCR Income for TA Grants. Opinion Regarding the Legality of Distributing OCR Net Income to the Technical Assistance Special Fund under the Agreement Establishing the Asian Development Bank. In his legal opinion, the general counsel also concluded that “Article 40.1 of the ADB Charter does not preclude distribution of OCR net income to TASF by the Governors on behalf of members.” (para. 18)
232 ADB, Legality of OCR Net Income and Surplus Transfers to the Asian Development Fund.
Governance Structure

ADB’s Governance Structure

Governors elect

President chairs

Directors, Alternates directs

Vice-President(s) recommends

Staff serves


Governing Bodies

ADB has a three-tier governance structure (i.e., a Board of Governors, a Board of Directors, and a President), modeled on that of the AfDB Group, IADB, and the World Bank.234

In accordance with Article 27.1 of the Charter, each member is entitled to appoint one governor and one alternate “who shall serve at the pleasure of the appointing member.” Alternates can vote only in the absence of the principal, except when a governor acts as chairman. The Rules of Procedure of the Board of Governors allow the appointment of a temporary alternate governor, who may vote only in the absence of both the governor and the alternate.235 Since the ADB Charter makes no reference to a temporary alternate governor, the drafters recognized that the Charter “strictly implemented may not support some of the propositions in the rules of procedures” the language of which was adopted as a “compromise between legality and expediency.”236 Thus, the position of temporary alternate governor, which has been “sanctified in Section 1(a) of the Rules of Procedure [may be viewed as] an extra Charter appointment.”237

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237 Ibid., p. 55.
Determining the number of ADB directors was “among the most contentious and time consuming issues” discussed by the Consultative Committee and Preparatory Committee. After considering various proposals, the Preparatory Committee finally agreed that the Board should consist of 10 members—7 elected by the governors representing regional members and 3 by the governors representing nonregional members, as provided in Article 30.1 of the Charter. The underlying principles of the decision were that the Board of Directors, as a policy-making body, should be as small as possible and that representation of regional members should be large enough to adequately reflect the regional character of ADB. While representation of members should generally be in accordance with their voting power, the agreed arrangements also sought to ensure adequate representation of smaller, less-developed countries on the Board of Directors.

In accordance with Article 30.2, ADB’s second annual meeting reviewed the size of the Board of Directors and increased it to 12 members, 8 elected by governors representing regional countries and 4 by governors representing nonregional members. Since any further increase would require an amendment to the Charter, the composition of the Board of Directors has remained unchanged. The election of directors may either be conducted at the annual meeting or, pursuant to the special procedure in Section 3 of the Bylaws, in accordance with rules approved by the Board of Governors.

The directors, who are elected by the governors in accordance with the principles set out in Annex B of the Charter, hold office for 2 years, and may be reelected. Each director appoints an alternate, “with full power to act for him when he is not present.” Similar to the Board of Governors, the Rules of Procedure for the Board of Directors allow the appointment of a temporary alternate director, an arrangement not provided in Article 30. If a director represents more than one country, the appointment of directors and alternates is governed by constituency arrangements.

When the ADB Charter was drafted, the position of president was considered crucially important to the success of ADB. The 1964 report of the Ad Hoc Group of Experts and the 1965 report of the Consultative Committee both stressed that the success of ADB depended in large measure on

238 Krishnamurti, ADB—The Seeding Days, p. 64.
240 ADB Board of Governors Resolution No. 27, Board of Directors: Size and Composition, adopted on 10 April 1969.
241 Since 2003, all elections of directors have been conducted pursuant to the special procedure in Section 3 of the ADB Bylaws, the last time being in 2009. In 2009, the Rules of Procedure for the Election of Directors were transmitted to the board of governors by the board of directors with their report and a proposed resolution. In accordance with such rules of procedure, nominees of regional countries shall not be deemed to have been elected if they have received less than eight percent of the total voting power of the regional members and nominees of nonregional countries if they have not received less than 17 percent of the total voting power of the nonregional members. Special arrangements apply in the event that not all directors have been elected after the second ballot. ADB. 2009. Procedures for the Election of Directors, Appendix 3 (Sec.M22-09, 16 March). The proposed procedures were adopted by the Board of Governors by Resolution No. 340 (16 May 2009). Next regular elections will be held by June 2011.
242 The rules for the election of Directors were crafted by the Preparatory Committee and were adopted by the Board of Governors by Resolution No. 6 at the inaugural meeting on 24 November 1966. Since then, the approval of rules of procedures has been sought on a regular basis either at the Annual Meeting or by postal vote pursuant to the Special Procedure in Section 3 of the By-Laws. Since 2004, all election of directors have been conducted by postal vote.
243 ADB Charter, Article 30.3.
244 ADB Charter, Article 30.2.
245 Rules of Procedure of the Board of Directors of the Asian Development Bank (hereinafter, Rules of Procedure of the ADB Board of Directors), Section 2(a).
246 The members represented by each director can be seen at www.adb.org/bod/
247 ECFAE, Report of the Ad Hoc Working Group, para. 62 provides, “The success of the Bank lies largely in the hands of the person appointed to be the President. We earnestly recommend that the member Governments should give special consideration to the qualifications and calibre of the President.”
the person to be appointed president. The Consultative Committee stated that “the President should be a person of the highest competence possible and should be a national of a member country [and concluded that] to endow the President with the necessary power and prestige, he would be elected by the Board of Governors for a term of five years subject to re-election.” This recommendation was accepted and is reflected in Articles 34.1 and 34.2. ADB Management currently consists of the President and five vice-presidents who are appointed by the Board of Directors upon recommendation of the President and thus are not members of ADB staff. The ranking Vice-President exercises the authority and performs the functions of the President in the absence or incapacity of the President. In addition, ADB’s management team consists of a managing director general appointed by the President. ADB seeks to provide to communities affected by ADB projects the opportunity to voice and seek solutions to their problems and to report alleged noncompliance with ADB operational policies. ADB’s Inspection Function, which was established in 1995 as a formal channel for local groups in developing countries to raise concerns about ADB’s involvement in certain development projects, was replaced in 2003 by the ADB Accountability Mechanism. Such a mechanism, which was designed to be independent, transparent, and “responsive to the concerns of project-affected people and...fair to all stakeholders,” is intended to “enhance ADB’s development effectiveness and project quality” so that ADB will “reflect the highest professional and technical standards in its staffing and operations.” It has two separate but related functions of assisting people “who are adversely affected by ADB-assisted projects to find solutions to their problems” and establishing “ADB’s accountability in its operations by providing a forum” to accept requests for compliance review. The efficacy and effectiveness of this mechanism is currently undergoing review. To enhance the independence and effectiveness of ADB’s evaluation function, the Operations Evaluation Department was renamed the Independent Evaluation Department, based on a review conducted in 2008 by a working group established by the ADB President. Based on that review, the organization structure of ADB is set out in ADB. 2010. Organization Structure (as of 7 June 2010). www.adb.org/About/ADB_Organization_Chart.pdf

249 Article 35 of the ADB Charter regarding vice-presidents provides that:

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. Vice-President(s) shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, the Vice-President or, if there be more than one, the ranking Vice-President, shall exercise the authority and perform the functions of the President.

2. Vice-President(s) may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that the Vice-President or ranking Vice-President, as the case may be, shall cast the deciding vote when acting in place of the President.

250 ADB Charter, Article 35.1.


provision was made that the director general of the Independent Evaluation Department reports to the Board of Directors and is appointed by the Board on the recommendation of the Development Effectiveness Committee and in consultation with the President for a 5-year nonrenewable term. The Independent Evaluation Department is charged with helping ADB to become a “learning organization that continuously improves its development effectiveness and is accountable to its stakeholders.”

**Board of Governors and Board of Directors**

In accordance with Article 28.1 of the ADB Charter, all powers are vested in the Board of Governors. Certain matters, such as approving ADB’s audited financial statements, are viewed as so fundamentally important that they can be accomplished only at the annual meeting or at another meeting convened specifically for that purpose by the Board of Governors. Moreover, in accordance with Article 28.2 of the ADB Charter, the Board of Governors cannot delegate certain powers. As to the extent that the Board of Governors must decide such matters between annual meetings, the decisions are conducted by postal vote, pursuant to the special procedure described in Section 3 of the By-Laws. Otherwise, and excepting those powers expressly reserved to the Board of Governors by Article 28.2 and other provisions of the Charter, Section 8 of the By-Laws gives the Board of Directors a general delegation to exercise all the powers of the bank. Since the By-Laws are “intended to be complementary to the Charter” and to be construed accordingly, the delegation of powers described above does not relate to powers conferred directly to the President by the Charter.

In accordance with Article 28.3, the Board of Governors retains “full power to exercise authority over any matter delegated to the Board of Directors.” Moreover, Section 7 of the Rules of Procedure of the Board of Governors provides that the Board “may at any meeting establish such committees as may be necessary for the proper discharge of the Board’s responsibilities and duties.”

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258 ADB. Strategic Principles for Evaluations. www.adb.org/Evaluation/about/principles.asp
259 Ibid.
260 ADB Charter, Articles 28.2 (viii) and 31 (iii), and ADB By-Laws, section 15.
261 There are several other activities that must be conducted at the annual meeting of the Board of Governors or another meeting of the board convened for that purpose. These activities relate, in particular, to the presentation to the governors of the annual report (ADB Charter, Article 39.2; ADB By-Laws, section 13); submission to the governors of ADB’s administrative budget (ADB Charter, Article 31.4; ADB By-Laws, section 15); the review of rules and regulations adopted by the Board of Directors (ADB By-Laws, section 11); and the election of the chairperson and vice-chairpersons of the Board of Governors (Rules of Procedure of the Board of Governors, section 5). Decisions on certain other matters may be made and often have been made at the annual meeting of the Board of Governors, such as election of the president (ADB Charter, Article 34.2); election of directors (ADB Charter, Article 28.2[vi] and Annex B of the Charter); allocation of net income (ADB Charter, Article 40.1); and determination of place and date of future annual meeting (Rules of Procedure of the Board of Governors, section 2). However, there is no legal requirement to do so.
262 Article 28.2 of the ADB Charter provides: “The Board of Governors may delegate to the Board of Directors any or all its powers, except the power to:
(i) admit new members and determine the conditions of their admission;
(ii) increase or decrease the authorized capital stock of the Bank;
(iii) suspend a member;
(iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;
(v) authorize the conclusion of general agreements for co-operation with other international organizations;
(vi) elect the Directors and the President of the Bank;
(vii) determine the remuneration of the Directors and their alternates and the salary and other terms of the contract of service of the President;
(viii) approve, after reviewing the auditor’s report, the general balance sheet and the statement of profit and loss of the Bank;
(ix) determine the reserves and the distribution of the net profits of the Bank;
(x) amend this Agreement, xi. decide to terminate the operations of the Bank and to distribute its assets; and
(xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.”
263 See preamble of the ADB By-Laws. In the case of the World Bank, the former general counsel reached a similar conclusion, emphasizing that “the powers of one organ (the Board of Governors) delegated to another (the Executive Directors) do not include those conferred directly by the articles to a third organ of the Bank.” (I.F.I. Shihata. 2000. World Bank Legal Papers. The Hague: Martinus Nijhoff. p. 705).
necessary or appropriate to facilitate its work and such committees shall report to the Board.” However, the ADB Board of Governors has not assumed through its committees (the Procedures Committee and the Remuneration Committee) a direct role in policy formulation, thus distinguishing itself from equivalent bodies in organizations such as IADB, where a committee of the Board of Governors conducts replenishment negotiations and other important matters.264 The Procedures Committee makes recommendations to the Board of Governors on procedural matters (e.g., agenda, schedule, and election of chair and vice-chair of Board of Governors) and provisions regarding the conduct of the annual meeting. On the other hand, the Remuneration Committee determines the remuneration of the president, vice-presidents, and executive directors.

The distribution of responsibilities between the Board of Governors and the Board of Directors generally has not given rise to problems. However, two matters are of particular relevance to concessional financing.

First, Article 19.1 of the ADB Charter does not specify how special funds come into existence, and Article 19.4 does not specify which board is responsible for adopting the special rules and regulations required for the establishment, administration, and use of each special fund. Considering the authoritative nature of a determination by the Board of Governors, and the fact that the ADF was to absorb set-aside resources transferred by a resolution of that board, it was decided in the case of the ADF that an organized multilateral mobilization of resources for the ADF would be conducted under the overall authority of the Board of Governors, leaving the Board of Directors to adopt regulations on the administration of ADF resources. Still, although the Board of Governors established the ADF’s legal framework, the ADF was not established due to any direct action taken by ADB. Rather, it was triggered “by actions of contributors in committing a certain amount of money for administration in the Fund.”267 In the case of the ADF, Resolution No. 67 of the Board of Governors authorized the Board of Directors to adopt regulations concerning the ADF and the administration of its resources.

Second, the ADF donors’ reports are incorporated by reference into the report of the Board of Directors to the Board of Governors and accepted as such by the Board of Governors.268 They may contain specific commitments, terms and conditions, and undertakings that form the basis of subsequent policy formulation by the Board of Directors. Changes to such undertakings, terms, and conditions may require, in certain cases, the agreement of donors and approval by the Board of Governors.

264 See Chapter 2 (G. Droesse, Organizational Structures).
265 For the establishment of the Procedures Committee, see Resolution No. 66 “Amendment of Sections 5 and 7(B)(A) of the By-Laws of the Bank and Establishment of a Committee on Remuneration of Directors and Alternate Directors” adopted on 21 September 1973. The above Resolution was amended by Resolution No. 155 adopted on 23 December 1982 “Amendment of Section 7(B)(a) of the By-Law and Amendment of Resolution No. 66” and by Resolution No. 175 adopted on 9 December 1985 “Amendment of Resolution No. 66, as amended by Resolution No. 155.” Resolution No. 175 reads as follows:

“i) A Committee on Remuneration shall be established to examine the adequacy of the remuneration of the President and the Directors and Alternate Directors of the Bank and to report to the Board of Governors of the Bank, making such recommendations for any changes in such remuneration or for any other action by the Board of Governors relating thereto as the Committee shall deem appropriate.

ii) The Committee shall consist of a Chairman and two other members with experience of the Bank, to be appointed from time to time by the Chairman of the Board of Governors.

iii) The Committee shall meet at the request of the Chairman of the Board of Governors as often as necessary, but at least once every two years.”

266 E.g., Resolution No. 333 of the Board of Governors, para. 2.
267 ADB, Mobilization of Resources, p. 7.
In accordance with the resolutions of the Board of Governors and the ADF Regulations, the Board of Directors is responsible for deciding matters regarding the acceptance of supplementary resources, additional contributions (not listed in the Board of Governors resolution), contributions received after the cutoff date specified in the resolution of the Board of Governors, and also regarding matters such as ADF loan criteria, terms and conditions, and procurement arrangements. However, the Board of Governors has sole authority to accept an amount lower than that pledged in the Board resolution.

**Board of Directors and President**

Articles 31 and 34 of the ADB Charter, respectively, delineate the division of responsibilities between the ADB Board of Directors and the President. Responsibility for the general operations of ADB rests with the Board of Directors, while the President serves as chairman of the Board, legal representative of ADB, and chief of staff. As such, the President conducts ADB’s current business under the direction of the Board of Directors.

The drafters of the ADB Charter considered the experience of IADB and the World Bank Group, whose first president had resigned in frustration “at having responsibility but no authority for stewardship of the institution.” Against this background, they sought to strengthen the position of the President. Thus, while the articles of agreement of the International Bank for Reconstruction and Development (IBRD) lack any reference to the function of the president as legal representative, Article 34 of the ADB Charter underscores the executive function of president. Moreover, while IDA’s executive directors are responsible for the conduct of IDA’s general operations, Article 30 of the ADB Charter refers only to directors (not executive directors) and Article 31 states that the Board of Directors will direct ADB’s general operations. This is viewed as a substantive difference and not merely as a difference in terminology.

While the ADB Charter and By-Laws do not contain policies and procedures of a general nature regarding decision making by the Board of Directors, they define a two-stage process for two of the most important areas of ADB’s operations (loan decisions and budget approval). In the first stage, ADB management and staff who “owe their duty entirely to the Bank and to no other authority,” conduct an impartial study and formulate proposals before the Board of Directors determines the subject matter at the second stage. Since the Charter prescribes a specific procedure for loan approvals, the Board of Directors cannot entirely delegate such decisions. The approval procedures of ADF grants for projects or programs

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269 Resolution No. 62 of the Board of Governors, adopted on 28 April 1973, provided in para. 3 that ADB may receive for the ADF “supplementary resources on appropriate terms to be determined by the Board of Directors.” ADF Regulations, section 2.06.

270 The resolutions of the Board of Governors regarding ADF replenishment regularly contain provisions to the effect that the acceptance of contributions not specified in the annex to the resolution requires acceptance by the Board of Directors. Moreover, the resolutions generally specify a cutoff date by which instruments of contribution must be submitted. The acceptance of any instruments received after that date must be approved by the Board of Governors (e.g., Resolution No. 300, *Eighth Replenishment of the Asian Development Fund and Third Regularized Replenishment of the Technical Assistance Special Fund*, paras. 3 [a] and 5 [b]).

271 Para. 5 (a) of Resolution No. 62 of the Board of Governors; section 3.08 of ADF Regulations.


273 ADB Charter, Article 34.5.


275 IDA Articles, Art. VI, sec. 4(a).

276 The Ad Hoc Working Group had proposed in its report (ECAFE, Report of the Ad Hoc Working Group, para. 60) that the “The Board of Directors of the Bank should be made responsible for the general day-to-day operations of the Bank...” Consistent with the above, Article 30 of the draft attached to their Report defined the responsibilities of the directors in line with the IDA Articles: “The Board of Directors shall be responsible for the conduct of the general operations of the Bank...” However, this was changed by Consultative Committee which did not envisage an executive role for the Board of Directors and accordingly provided that the Board of Directors should be responsible for the “direction of the general operations of the Bank” (ECAFE, Report of the Consultative Committee on the Asian Development Bank, para. 74). In doing so, the Consultative Committee sought to strengthen the position of the President who is responsible for the day-to-day operations of ADB (Ibid., para. 77).

277 ADB Charter, Article 14(iv); ADB By-Laws, section 15, para. 2.

278 ADB Charter, Article 36.3.
are the same as those applicable to ADF loans. However, delegation is possible, and has been agreed upon, regarding technical assistance grants.\(^{279}\)

While the power to approve loans rests exclusively with the Board of Directors, since 1980 ADB has sought Board approval of smaller loans and technical assistance operations without Board discussion.\(^{280}\) Such procedure has been revised and streamlined over the years,\(^{281}\) and it was applied to ADF grants for (investment) projects in 2005.\(^{282}\) Therefore, in certain cases, both ADF loans and grants are eligible for approval following the summary procedure, which is subject to certain requirements.\(^{283}\) For a number of other matters (e.g., for the TAs which are subject to Board approval), ADB seeks Board discussion on a no-objection basis. In January 2010, ADB introduced “sweeping changes” to streamline its business process to make them more efficient and lower transaction costs, thereby helping ADB to realize the development goals set out in its Strategy 2020.\(^{284}\)

The delineation of competences between the Board of Directors and the President is not clear in all cases. Overall, management is responsible for developing operational strategies and for the current business of ADB, while the Board of Directors decides all matters of policy. In the context of this chapter, the following issues are particularly important.

\(^{279}\) The President has the authority to (i) approve technical assistance financed on a grant basis from ADB’s own resources and/or other sources provided that the highest financing amount from any one source (ADB or cofinancing funds) does not exceed $1.5 million; and (ii) report such approval to the Board. The President may delegate such authority. Currently, the president has delegated to the vice-presidents the authority to approve technical assistance up to $750,000 for policy and advisory technical assistance and research and development technical assistance, and $1.5 million for project preparatory technical assistance. The vice-presidents have been delegated the authority to approve a major change in the scope of a technical assistance where the cost of the change is $1.5 million or less. The Board of Directors has retained authority to approve technical assistance and changes in scope of technical assistance exceeding $1.5 million. Grant-financed technical assistance proposals exceeding that amount are circulated to the Board on a no-objection basis (ADB, Technical Assistance, Operations Manual, paras. 24, 25, 26 and 28). Special arrangements have been made for technical assistance approved by the director general of the Operations Evaluation Department.


"All projects and programs financed by sovereign and sovereign-guaranteed loans are approved by the Board on the recommendation of the President. Some projects undergo full Board discussion before approval, others follow the summary procedure process for approval.* Under the summary procedure process, although full loan documentation is submitted to the Board, financial assistance (a loan** or ADF grant) is not normally discussed by the Board unless any Board member shall so request. To be eligible for Board consideration under summary procedure, the financial assistance [the loan, guarantee, ADF grant, or equity investment proposal] must be consistent with the relevant [country program and strategy] CPS and must meet all the following conditions.

(i) The amount of ADB financial assistance should not exceed $200 million for sovereign and sovereign-guaranteed operations.

(ii) The project should not involve any exception to an existing ADB policy.

(iii) The financial assistance should not be for a program, a sector development program, or a project with a major policy reform component.

(iv) The project should not involve an important new approach for ADB in the developing member country concerned.

(v) The project should not have the potential for significant adverse environmental, economic and/or social impact, particularly on vulnerable groups that may be unable to absorb such impact.

(vi) The project should not involve use of a complementary financing scheme or a novel financing arrangement."


** Including a technical assistance loan. Emergency projects that meet the above criteria may also be considered under summary procedure. ADB. 2010. Processing Sovereign and Sovereign-Guaranteed Loan Proposals.


As mentioned previously, the drafters of the ADB Charter deliberately left the decision regarding how (and by which organ) Special Funds are established for subsequent determination by ADB Management and the Board of Directors. Since Article 28.2 does not list the powers required to accept the administration of special funds or to establish such funds among the powers vested solely in the Board of Governors, the general principle set forth in section 8 of ADB’s By-Laws applies, authorizing the “Board of Directors to exercise all the powers of the Bank with the exception of those expressly reserved to the Board of Governors by para. 2 of Article 28 and other provisions of the Agreement.” Thus, the Board of Directors can accept and establish special funds. ADB has done this in various instances (e.g., ATF, CCF, JSF, PEF, and RCIF) based on delegation stipulated in the By-Laws and consistent with Article 19.4 of the ADB Charter, which authorizes the adoption of “special rules and regulations for the establishment, administration and use of each Special Fund.”

In contrast to the World Bank Group, whose president decides matters regarding member classification, authority for such decisions under ADB’s graduation policy is vested in the Board of Directors.

The ADB Board of Directors performs a strategic role in the context of the multitranche financing facility (MFF), which was approved as a pilot in 2005 and entered the mainstream of ADB’s financing instruments and modalities in 2008. The MFF was introduced to enable ADB to invest programmatically by targeting (i) discrete, sequential components of large stand-alone projects; (ii) slices (or tranches) of sector investment programs over a longer time frame than the current norm; (iii) financial intermediary credit lines; and (iv) guarantees. It functions “like a standby letter of credit” because the Board approves a maximum amount for each MFF under specific terms and conditions. Based on the Board’s approval, Management “then converts this facility amount into a series of loans, guarantees or credit lines as and when the investments are ready and the client requests financing.” Only the converted loan, guarantee, or portion of a credit line—not the overall facility—is recorded as a legally binding commitment.

Following MFF approval, the Board of Directors continues to perform an important oversight function. For that purpose, it is provided with comprehensive information through monthly and quarterly performance reports and a consolidated report that lists the MFF approved for each country. The MFF scheme is available for all sectors and may be funded by OCR or ADF resources. In the case of ADF, however, there are resource constraints due to “the short ADF availability cycle, the small amounts of funding for each country, and the changes that might come from the annual performance-based allocation exercise.” Approval processes as in the case of the MFF might be given wider application, for example in the context of umbrella operational frameworks approved by the Board of Directors under which different types of resources are administered by ADB (e.g., special funds, trust funds, and other cofinancing arrangements) on the same terms and conditions.

Similar to most other international organizations, the ADB Charter contains no reference to trust funds. Unlike other international organizations, in ADB the acceptance of all trust funds, including single-
donor channel financing agreements, generally requires approval by the Board of Directors. In principle, this also applies in the case of ADB’s partnership facilities. While the Board of Directors did not approve the financing partnership facilities as such, it approved the establishment of trust funds and the acceptance and administration of contributions thereto by bilateral, multilateral, and individual sources that are “substantially in accordance with the terms and conditions” set forth in the Board paper that established the financing partnership facility. 294 A wider delegation of authority to the President regarding the acceptance of trust funds and the conclusion of cofinancing arrangements should be considered, e.g., in the context of umbrella operational arrangements approved by the Board of Directors. There is nothing in the Charter to preclude such a delegation which would further sharpen the strategic focus of the Board of Directors.

**Allocation of Shareholding, Voting Rights, and Qualified Majorities**

When the ADB Charter was drafted, two of the “most complicated and delicate questions” 295 involved the allocation of capital subscriptions and the distribution of voting rights among member countries. These issues are directly related. The allocation of capital subscription determines the percentage of share capital held by regional member countries. Thus, Article 5.3 of the Charter reflects ADB’s regional character, ensuring that regional members’ capital stock cannot be less than 60% of the total. 296

Members’ voting power consists of the sum of their basic votes and proportionate votes. 297 As regards the distribution of voting rights, it was deemed necessary to strike a balance “between the principle of proportionality, whereby votes are allocated in proportion to the amount subscribed to the capital of the Bank, and the desirability of providing some measure of equality in voting as between small and large countries in order to minimize wide differences in voting powers.” 298 Within ADB’s region, most countries favored a 20% proportion for basic votes, while several nonregional countries wanted to limit basic votes to a proportion ranging from 10% to 15%. 299 As indicated by Krishnamurti, “the discussions on voting in the Preparatory Committee were extremely lengthy and lively.” 300 In the end, the nonregional countries accepted the proposed 20% proportion, but they stressed the importance of “preserv[ing] as far as possible the integrity of the Report of the Consultative Committee in all its major aspects.” 301 The number of proportional votes is equal to the number of shares of the capital stock held by the member, while basic votes such “consist of such number of votes as results from the equal distribution among all the members of twenty (20) per cent of the aggregate sum of the basic votes and proportional votes of all the members.” 302 Mathematically, basic votes, which corresponds to 25% of proportionate votes, can be expressed as

\[
x = 20\% (x + y) \\
x = 0.2x + 0.2y \\
0.8x = 0.2y \\
x = 0.25y \text{ or } 25\% \text{ of } y
\]

where “x” is the total basic votes and “y” is the total shares of all members.

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294 Provision to that effect was among other things incorporated in the case of the CEFPF (ADB, *Clean Energy Financing Partnership Facility: Establishment of the Clean Energy Fund and Clean Energy Trust Funds*, para. 43 [iii]).


296 The term “region” relates to the territories of Asia and the Pacific included in the Terms of Reference of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), previously referred to as United Nations Economic Commission for Asia and the Far East.

297 ADB Charter, Article 33.1.


299 Ibid.

300 Krishnamurti, *ADB—The Seeding Days*, p. 78.

301 Ibid., p. 79.

302 ADB Charter, Article 33.1 (i) and (ii).
Some organizations (e.g., the International Monetary Fund [IMF], and the IBRD) specify the number of basic votes in their constituent agreements. In that case, the percentage of basic votes has been diluted in the context of general capital increases (GCIs). Since the above formula avoids that consequence, provisions for voting rights in the ADB Charter represent an example for institutional reform in other organizations (e.g., the IMF).303

ADB combines within one institution (based on its Charter) the power to make conventional IBRD-type OCR loans and IDA-type soft loans. A corollary, in the case of ADB, is that its Board of Governors and Board of Directors decide on ADF and OCR matters using the same procedures.304 The same quorum and voting rights structures apply in both cases. Thus, there is no direct correlation between donor contributions to the ADF and voting rights. While in some cases, donor contributions are generally proportionate to their percentage of shares held—or, as in the case of Japan, substantially exceed that percentage—in other cases, the difference between shareholdings in ADB and contributions to the ADF is quite disparate. Under the current legal framework, all ADB members—including members who do not contribute to the ADF—have the same voting rights in approving or rejecting projects or programs, irrespective of whether these are financed by Special Funds resources or by OCR. In both cases, voting rights are determined on the basis of nominal capital subscription, without consideration of whether such subscription is in a usable currency305 or whether ADB has actually made use of the payment provided by the member in cash or promissory note.

Article 32.2 of the ADB Charter states that “[a] majority of the Governors shall constitute a quorum for any meeting of the Board of Governors provided such majority represents more than two-thirds of the total voting power of the members.” Article 32 contains an equivalent provision for the Board of Directors.

Under Article 33.2, “each Governor shall be entitled to cast the votes of the member he represents.” Article 33.3 further provides that “each Director shall be entitled to cast the number of votes that counted

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“A key objective of the amendment, as set forth in paragraph 4(b) of the Resolution, is to ensure that this new ratio, by being expressly provided for in the Articles, will not decline as a result of any quota increases that may take place after the amendment becomes effective. As discussed in the staff paper that proposed consideration of this feature, the Charter of the Asian Development Bank . . . contains a provision requiring that basic votes in the [ADB] remain a constant ratio of the total voting power in the AsDB, and the mechanism proposed in Resolution 61-5 effectively draws on that approach.” IMF. 2006. Quotas and Voice—A Possible Package of Reforms, and the Chairman’s Concluding Remarks. 4 August. para. 17: “It is also proposed that an amendment on basic votes include a mechanism for safeguarding the proportion of basic votes in total voting power to prevent future erosion of the voting share of low-income members. Including a mechanism to maintain a desired ratio between basic votes to total voting power as quotas increase would also avoid the need for further amendments of the Articles each time quotas are increased. An example of such a mechanism is the voting allocation of the Asian Development Bank, which since its formation in 1966, has maintained a constant ratio of basic votes to overall votes” (emphasis in original omitted). www.imf.org/external/np/pp/eng/2006/080406a.pdf; also IMF. 2008. Reform of Quota and Voice in the International Monetary Fund—Report from the Executive Board to the Board of Governors. 28 March 2008. www.imf.org/external/np/pp/eng/2008/032108.pdf

304 ADB. 2006. Regulations of the Asian Development Fund (hereinafter, ADF Regulations). section 1.03(a). www.adb.org/Documents/Reports/Regulations-of-ADF/Regulations-adf.pdf “Subject to the express provisions of these Regulations, the respective functions of the Board of Governors, the Board of Directors, the President and the staff of ADB in carrying out the responsibilities and exercising the powers of ADB with respect to the Fund [ADF], and the procedures to be followed in the exercise of such functions, shall be the same as those which apply in similar circumstances in the ordinary operations of ADB.”

305 ADB has adopted different approaches for allocating voting rights to members regarding GCIs under Article 5.2 of the Charter and regarding special increases in capital subscription under Article 5.3 of the Charter. In the case of general capital increases, members are immediately allocated all voting rights pertaining to their capital subscription. The shareholding of subscribing members increases by the number of shares specified in the instrument of subscription from the date on which such instrument becomes effective (ADB. 2009. Information on Subscription for the Fifth General Capital Increase. para. 9. www.adb.org/Documents/Brochures/Fifth-General-Capital-Increase/general-capital-increase.pdf). If there are delays in installment payments, the number of shares subscribed and corresponding voting rights may be reduced accordingly (ADB. 1998. Fourth General Capital Increase: Delays in Completing Installment Payments and Related Encashment Action. Manila [R66–98, 23 April]). In the case of special increases in capital subscription, the capital subscription becomes effective only in stages and pro rata, as and when payment for the paid-in shares is made pursuant to the resolution of the Board of Governors.
Concessional Financing of the Asian Development Bank 341
toward his election which votes need not be cast as a unit.”306 Unlike the executive directors of IDA, ADB directors may cast their votes separately for the various countries within their constituency. In practice, however, there are only a few cases in which directors formally cast their votes pursuant to Section 5 of the Rules of Procedure for the ADB Board of Directors. However, directors also vote if they provide comments on proposals submitted to them. In such a case, the President, as chairman of the Board, ascertains and announces the sense of the meeting based on the Board’s discussion.307

In accordance with Articles 33.2 and 33.3 and except as provided otherwise in the Charter, all matters before the ADB Board of Governors and Board of Directors “shall be decided by a majority of the voting power represented at the meeting.” Unlike the IBRD Articles,308 Article 33.3 of the Charter refers to the majority of voting power represented at the Board meeting.” (emphasis added). The votes of an abstaining member are, therefore, counted towards the total number of votes cast rather towards the proportion of votes required for the adoption of a proposal. Thus, as a matter of law, an abstention has the same effect as a vote against a proposal even though it may convey a different emphasis. The ADB Charter provides for qualified majorities regarding certain matters of particular importance.

Decision making by the Board of Governors involves four qualified majorities:

(i) Regarding the election of the ADB President309 and for certain other matters,310 decisions are made by “a vote of a majority of the total number of Governors, representing a majority of the total voting power of the members.”

(ii) To increase the number of directors, as decided by the Board of Governors at ADB’s Second Annual Meeting, the required majority was a vote of the majority of the total number of governors representing not less than two-thirds of the total voting power of the members.311

(iii) Several fundamentally important matters require decision by two-thirds of the total number of governors, representing not less than three-fourths of the total voting power of the members.312 While such a qualified majority does not confer a veto right to any single shareholder, it implies that certain matters can be decided only with the consent of a vast majority of both regional and nonregional members. Thus, in the case of ADB membership applications, the Board seeks an informal consensus among shareholders before processing any application for membership.

306 According to a literal interpretation of this provision, the number of votes of members whose governor abstained from voting or did not vote in the election would not be counted. Thus, certain members could not be represented in voting before the Board of Directors. The ADB Board of Directors formally interpreted the ADB Charter pursuant to Article 60 to mean that “in the event of any member abstaining to vote or otherwise failing to vote in an election of the Directors, the votes of such member shall be deemed to be counted towards the election of the Director subsequently chosen by such member to represent it on the Board of Directors.” (ADB. 1969. Application of Article 33, Para. 3 of Articles of Agreement in Respect of Voting Rights of Member Whose Governor Did Not Vote in Last Election of Directors. Manila [R81–69, 22 December], para. 14).

307 Rules of Procedure of the Board of Directors of the Asian Development Bank, Sec. 5.

308 Article V, Section 3 (b) of the IBRD Articles provides: “(b) Except as otherwise specifically provided, all matters before the Bank shall be decided by a majority of the votes cast.”

309 ADB Charter, Article 34.1.

310 ADB Charter, Article 5.4, regarding a decision that shares of stock other than those initially subscribed by members shall not be issued at par, and Article 11(iii), regarding investment of funds in equity capital.

311 ADB Charter, Article 30.1(ii).

312 Such a qualified majority is required for admission to membership (ADB Charter, Article 3.2), decision to increase the authorized capital stock of ADB (ADB Charter, Article 4.3), decision to set aside a portion of the unimpaired paid-in capital to establish one or more special funds (ADB Charter, Article 19.1 [i]), determination of the development status of countries (ADB Charter, Article 28.4), termination of the office of the President (ADB Charter, Article 34.2), suspension of a member and restoration of a suspended member to good standing (ADB Charter, Articles 42.1 and 42.2), termination of the operation of ADB and distribution of assets (ADB Charter, Articles 45.1 and 47.1), and amendment of the Charter (ADB Charter, Article 59.1).
(iv) Finally, any amendment of the Charter that modifies the right to withdraw from ADB or concerns limitation of members’ liabilities requires the unanimous agreement of the Board of Governors.313

Regarding the Board of Directors, the Charter prescribes that, for procurement of goods and services in nonmember countries (Article 14(ix)), a “vote of the Directors representing not less than two-thirds of the total voting power of the members” is required. Article 24.4 requires the same type of majority for currency conversions that are not made in the ordinary course of ADB’s business (i.e., at the spot rate).

In addition, qualified majorities are applicable in accordance with ADF Regulations, which stipulate two types of qualified majorities. Certain matters (i.e., accepting contributions from nonmember governments and amending the ADF Regulations)314 can be decided only by special resolution by a majority of the directors representing not less than two-thirds of the total voting power of the members. Moreover, unanimous consent of all contributors is required for any amendment that specifies or concerns

(i) the manner in which ADB may use ADF resources in its operations,
(ii) the use and drawdown of contributions,
(iii) provisions on charging of administrative expenses,
(iv) the rights of a contributor upon withdrawal from the ADF or in case of the termination of the ADF
(v) the arbitration procedure for settling disputes between ADB and contributors.315

Additional unanimity requirements may result from the fact that the ADF donors’ reports regarding ADF replenishment may contain certain terms and conditions regarding the use of ADF resources. Necessary changes to such terms and conditions may require the agreement of all contributors to the given replenishment.

Organizational Structure, Policies, and Decision Making

Policies

The fact that ADB special funds and OCR are administered under one institutional roof and one legal personality has substantial implications for the policy leverage of donors. It also makes it possible for ADF donors to influence ADB’s decision-making processes on OCR operations. Policy directions agreed on with donors in the context of ADF replenishments tend to apply to ADB operations funded by OCR, and policies and strategies approved in the context of GCIs may apply to ADB’s special funds operations as well.

For example, negotiations over the Fifth Replenishment of the ADF (ADF VI) and the Fourth General Capital Increase (GCI IV) of ADB clearly support the above. Specifically, ADF VI donors urged ADB in the ADF VI Donors’ Report to focus to a greater extent on investments in the social sectors and particular strategic objectives and operational priorities (poverty reduction, economic growth-oriented policies, environmental improvement, the role of women in development, and population

313 ADB Charter, Article 59.2(i) The other two matters referred to in paragraphs (ii) and (iii) of this Article concern amendments to Article 5.6, which limits members’ liability on shares “to the unpaid portion of their issue price,” and Article 5.7, which provides: “No member shall be liable, by reason of its membership, for obligations of [ADB].”
314 Section 1.02 (c) of the ADF Regulations defines a special resolution as “a resolution which is approved by a majority of Directors, representing not less than two-thirds of the total voting power of the members of ADB.” Furthermore, a special resolution of the Board of Directors is required for any acceptance of supplementary resources from any nonmember government or from any national or international entity, public or private (ADF Regulations, section 2.06(a), and for any amendment to the ADF Regulations (ADF Regulations, section 6.01).
315 ADF Regulations, Article VI, section 6.01.
issues). This emphasis also applied to ADB’s OCR operations, underlined by the fact that members subsequently pursued this policy agenda during negotiations for ADB’s GCI IV.

The ADF VII Donors’ Report recognized that the strategic directions identified in ADF VI and GCI IV negotiations had “led to a major refocusing of operations and development policy regeneration in the Bank.” They stressed that ADB should emphasize the implementation of these policy and operational changes, and consolidate the considerable achievements. While donors noted that the understandings contained in the ADF VI Donors’ Report relate primarily to the ADF, they stated that such understandings “also involve issues which should apply, where relevant, to ordinary capital resources (OCR) operations of the Bank.”

In subsequent replenishments, policies agreed upon during ADF negotiations affected the ADB as a whole. The ADF VIII Donors’ Report, for example, recognized poverty reduction as the “overarching goal” of all ADB operations and affirmed that this “fundamental shift must affect every aspect of ADB operations”; they further stressed that ADF “is not a distinct or legally separate entity within ADB,” and that it is “broadly governed by the same policies and practices as ADB’s non-concessional resources.”

Finally, the ADF IX and ADF X Donors’ Reports addressed many issues (e.g., internal governance, management systems, and results frameworks) that necessarily apply to all ADB operations, and not only its Special Funds resources.

This illustrates that ADF negotiations give donors substantial leverage on OCR operations. Since ADF VI, replenishment negotiations have affected ADB’s overall vision, functions, policies, and operational priorities and have become an important part of ADB’s internal guidance system.

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317 Following the end of the ADF VI negotiations, the negotiations regarding ADB’s GCI IV entered a decisive phase. Discussions regarding GCI IV had commenced following the adoption of Resolution No. 179 by the Board of Governors at its Nineteenth Annual Meeting in 1986 on the future resource requirements of the bank. Subsequent to such resolution, the Board of Directors undertook a detailed review of the ADB’s OCR and examined the need for a further increase in capital stock.

Following the ADF VI negotiations, a working paper outlined the basic features of ADB’s overall operational agenda during the GCI IV period (ADB. 1992. *Operational Agenda for the GCI IV Period [1994–1998]*. Working Paper 7-92 (26 June 1992) and Corrigendum 1 (30 June 1992) Manila [June]). The paper reviewed in general terms ADB’s operational agenda, role, and functions. In this context, the authors placed particular emphasis on emerging needs and sector strategies, and stated that it was necessary for ADB to strengthen its efforts to address poverty issues in its future operations, to pay particular attention to gender issues and the support of women in development, and to ensure proper integration of environmental considerations in its operations. Moreover, the working paper addressed various sector issues, recognizing the importance of private sector development, and highlighted the importance of country-specific strategies and the importance of performance-based lending.

The report of the Board of Directors to the Board of Governors in 1994 (ADB. 1994. *Fourth General Capital Increase [GCI IV]: Draft Report of the Board of Directors to the Board of Governors*. Manila [R40–94, 14 March 1994 and Corrigendum 1, 29 March 1994]) reflects these issues. It recommended a capital increase equivalent to 100% of the number of allocated shares. Attachment 1 of this report contained detailed indications on the role of ADB and the activities initiated by ADB “to transform itself into a broad-based development institution with a strong regional perspective.” It confirmed the centrality of poverty reduction to ADB’s developmental mandate, and contained an action plan for effective cooperation. Among other things, the plan foresaw strengthened planning processes, the incorporation of cross-cutting concerns, a review of policies and procedures, and action by ADB to address new policy issues such as good governance, disclosure of information and the establishment of an inspection function. Such new policies applied largely to ADB’s special funds operations as well. Moreover, the report called for management action on good governance, disclosure of information, and the establishment of an independent inspection function.

The report and resolution of the Board of Directors were approved by the Board of Governors by Resolution No. 247 (1997).


319 Ibid.


**Decision-Making Procedures**

Article 33 of the ADB Charter does not make any distinction between matters relating to ADB’s OCR and special funds resources. In addition, Article 19, which authorized the establishment of the ADF as a special fund, provides that the rules and regulations adopted by ADB for each special fund “shall be consistent with the provisions of this Agreement, excepting those provisions expressly applicable only to ordinary operations of the Bank.” In compliance with the aforementioned provisions, the ADF Regulations stipulate that “the respective functions of the Board of Governors, the Board of Directors, the President and the staff of ADB in carrying out the responsibilities and exercising the powers of ADB with respect to the Fund, and the procedures to be followed in the exercise of such functions, shall be the same as those which apply in similar circumstances in the ordinary operations of ADB.”

Given the specific wording of Articles 33 and 19, it is not possible under the Charter to allocate to members special voting rights on ADF matters in proportion to their ADF contributions. Doing so would require an amendment to the Charter or, alternatively, the creation of an affiliated organization of ADB with its own legal personality (similar to the African Development Fund [AfDF] or IDA). In the case of an affiliated organization, the constituent document would determine the voting rights allocated to members, which could then differ from those applicable under Article 33.

Therefore, under ADB’s current institutional and legal framework, member contributions to the ADF could be considered only indirectly, either by taking account of contributions in determining the eligibility of a member to receive a special increase in capital subscription, or by establishing an upstream approval process—by which donors are consulted on proposals for specific ADF projects prior to submission to the Board of Directors. Since both options would have far-reaching implications for the internal governance of ADB, they have not been pursued.

While no ADB member can claim a special increase in capital subscription as a matter of right, ADF contributions potentially could be considered as one element in determining a member’s eligibility to receive a special increase in its capital subscription. Pursuant to Article 33.1 of the Charter, any such increase would result in a corresponding increase in voting power and, thus, a proportionate reduction of the relative subscription status of other members. This is the real significance for ADB members of an increase in capital subscription approved by the Board of Governors, and the reason why an increase, if approved for one member, affects all other members.

In the 1980s, the Board of Directors extensively discussed possible criteria for approving special increases in subscription. Particularly for nonregional countries, an important factor involved the

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322 ADB Charter, Article 19(4).
323 ADF Regulations, section 1.03(a).
324 Article 5.3 of the ADB Charter states: “The Board of Governors may, at the request of a member, increase the subscription of such member on such terms and conditions as the Board may determine; provided, however, that no such increase in the subscription of any member shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below sixty (60) per cent of the total subscribed capital stock. The Board of Governors shall pay special regard to the request of any regional member having less than six (6) percent of the subscribed capital stock to increase its proportionate share thereof.”
325 From 1966 (Resolution No. 4), the Board of Governors on various occasions approved increases in members’ subscription pursuant to Article 5.3 of the Charter. In the case of regional members, these requests were based on Article 5.3 of the Charter, which provides that “the Board of Governors shall pay special regard to the request of any regional member having less than six (6) percent of the subscribed capital stock to increase its proportionate share thereof.” Moreover, requests were motivated by changes in the relative economic position of concerned countries and differences between the proportion of ADF contributions and the proportion of share capital. (A good overview of the criteria applied is contained in ADB. 1985. Special Increases in Capital Subscriptions: Appropriate Criteria. Manila [Working Paper No. 6–85, 29 August].)

While prior to 1982, requests for special increases in subscription were processed for submission to the Board of Governors more or less as a matter of course, detailed studies were undertaken afterward to determine the eligibility of members to receive a special increase in capital subscription. In this context, procedural guidelines for dealing with these requests were prepared in 1982 (ADB. 1982. Special Increases in Capital Subscriptions: Procedural Guidelines. Manila [R37–80, Revision 1, 27 January]).

In these guidelines, among other things, ADF contributions of countries seeking a special increase in subscription were discussed as one possible criteria: “Any special support given to the Bank by the member country seeking a special increase has
proportion of the total amount of a member’s ADF contribution compared to the proportion of the member’s capital subscription.326 However, the Board did not reach agreement regarding the criteria for determining a member’s eligibility to receive a special increase in subscription. Thus, the Board of Governors has not approved a special increase in capital subscription since 1988.

The only other way of indirectly taking into account donors’ ADF contributions would be to establish an upstream clearance mechanism. Similar mechanisms have been established in the context of various bilateral agreements between ADB and its members in terms of administering Special Funds resources or trust funds. However, these mechanisms are rather more problematic in the case of funds such as the ADF, where ADB administers resources contributed by multiple donors. Any requirement for donor consensus regarding specific projects or programs to be financed from ADF resources would likely cause substantial administrative complications and delays in the provision of concessional financing. Therefore, in the case of the ADF, an approach has been adopted to define understandings and terms and conditions applicable to replenishments in general terms in the donors’ report that forms the basis for the resolution on the replenishment, while leaving it to the Board of Directors to decide new policies and approve specific projects and programs.327

Withdrawal and Termination

Chapter VII of the Charter contains provisions regarding the withdrawal, suspension (and termination) of membership, and temporary suspension and termination of ADB operations. Article 41.1 provides that any member may withdraw from ADB “at any time by delivering a notice in writing to the Bank at its principal office.” Withdrawal shall become effective and membership shall cease on the date specified in the notice of withdrawal, but in no event less than 6 months after the date of that notice.328 Effectively, no member has ever withdrawn from ADB. Thus, the above provision has never been applied in practice.

Similarly, Article 42.1 of the Charter, which provides that the ADB Board of Governors may suspend a member that fails to fulfill any of its obligations to ADB by a vote of two-thirds of the total number of governors, representing not less than three-fourths of the total voting power of the members, has never

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326 In 1985, a working paper proposed that, for nonregional countries, the “size of [their] ADF contributions [might] be considered as a major, but not predominant, factor.” It was contemplated that, in order to take into account all other relevant factors, including economic size, a weight of 50% [might] be given to ADF contributions and the remaining 50% weight [might] be assigned to the present capital subscription level…” ADB. 1985. Annex (Note from Secretary to Executive Directors and Alternate Executive Directors) SB/83/7. Special Increases in Capital Subscriptions: Appropriate Criteria (Working Paper 6-85, 29 August), para. 4. 23 May. As shown in Table B of the said working paper, application of the above formula would have resulted in an increase in share allocation for several nonregional countries.

327 ADB never adopted an upstream clearance mechanism as a regular modus operandi of the ADF. It was considered a possibility once during the ADF VII negotiations, due to exceptional circumstances. Due to the uncertainty of US participation—and the amount of such participation—in ADF VII, donors considered at the time various funding options, including the establishment of an upstream preclearance mechanism for linking ADF VII shares with certain decisions on ADF resource allocation (ADB. 1996. ADF VII Replenishment Framework and Burden Sharing, Asian Development Fund Donors’ Meeting, Copenhagen. 30–31 October [document dated 14 October]). However, the donors ultimately decided not to pursue that option.

328 ADB Charter, Article 41.2.
been applied in practice. In accordance with Article 42.2, a member so suspended automatically ceases to be a member 1 year from the date of its suspension unless restored to good standing by the Board of Governors with the same majority as indicated above.

Finally, the Charter provided mechanisms for the settlement of accounts with countries that have ceased membership, temporary suspension and termination of operations, treatment and discharge of the liability of members, payment of claims, and distribution of assets.329

Regarding the ADF and other special funds, it is important to note that the Charter does not link withdrawal from a special fund or settlement of accounts with termination of membership in ADB. The situation of ADB is different in this regard from that of IADB.330 Resolution No. 62 of the ADB Board of Governors expressly provides in para. 7(a) that any “contributor may at any time withdraw from the [ADF and in such case] shall be entitled to recover a proportionate share [of ADF resources] not exceeding the amount of its contribution.” Similarly, while the ADF331 (as any other special fund) would “automatically terminate upon termination by ADB of its operations,” such a termination is not required for the termination of the ADF, which can be decided by the Board of Governors in consultation with ADB and the contributors.332

The entitlements of contributors in the case of withdrawal of the ADF are set forth in Article V, section 5.01 of the ADF Regulations, which provides that withdrawal “shall become effective at the end of the calendar quarter following the quarter in which the withdrawal notice is received by ADB, or on such later quarterly date as may be specified in such notice.”333 Upon withdrawal, ADB proceeds with a settlement of accounts according to the principles set forth in section 5.01(c). The ADF Regulations require “prior consent in writing” of every contributor for any amendment to the ADF Regulations modifying the rights of a contributor upon withdrawal from the ADF or upon termination of the ADF.334

Legal Framework of Asian Development Fund Resources

The legal framework governing ADF resources is defined by the ADB Charter and the other basic documents of ADB,335 resolutions of the Board of Governors establishing the ADF and authorizing its replenishments, ADF Regulations, Special Operations Loan Regulations, and Special Operations Grant Regulations, as well as policies, strategies, guidelines, and/or instructions applicable to the ADF.

The Charter

Purpose

According to Article 1 of the ADB Charter,

The purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East (hereinafter referred to as the “region”) and to contribute

329 ADB Charter, Articles 43–47.
330 Article IV, section 11 of the IADB Charter provides: “No country may withdraw its contributions and terminate its relations with the Fund [for Special Operations] while it is still a member of the Bank.” See Chapter 2 (G. Droessee, Organizational Structures).
331 ADF Regulations, section 5.02 (b).
332 ADF Regulations, section 5.02 (a).
333 ADF Regulations, section 5.01(a).
334 ADF Regulations, section 6.01 (d).
to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually. Wherever used in this Agreement, the terms “region of Asia and the Far East” and “region” shall comprise the territories of Asia and the Far East included in the Terms of Reference of the United Nations Economic Commission for Asia and the Far East.336

That definition of ADB’s purpose “is rather more precise, and therefore, perhaps more restrictive than the equivalent articles of the Inter-American and African banks.”337 While Article 1 makes no reference to social development, ADB has espoused poverty reduction as its overarching purpose. Moreover, as ADB evolved from an institution for project financing to a full-fledged development bank, it sought to mainstream various crosscutting issues such as good governance, gender, environmental sustainability, anticorruption efforts, and anti–money laundering in its operations. In addition, ADB espoused various other crosscutting issues, such as assistance to developing member countries relating to core labor standards and combating drug trafficking. The expansion of aid priorities shows on the one hand that ADB seeks to be responsive to the demands of donors and other stakeholders, but it entails risk of an “increased goal congestion,”338 which could have adverse implications for the success rate of ADF operations. ADF donors took account of this fact. Thus, ADF IX and ADF X negotiations resulted in a certain consolidation of the ADF policy agenda, which had expanded substantially, particularly during ADF VIII negotiations.

Established in 2006 to provide views on the future of the region and recommendations on the role of ADB, the Eminent Persons Group concluded in its report that ADB had to change radically and adopt a new paradigm of development banking. The group envisaged “a dramatically transformed Asia which will have conquered widespread absolute poverty in most countries” by 2020.

Under its Strategy 2020,339 ADB pursues its vision and mission to help its DMCs reduce poverty and improve living conditions and quality of life by focusing on three complementary strategic agendas (inclusive growth, environmentally sustainable growth, and regional integration), five drivers of change (private sector development and private sector operations, good governance and capacity development, gender equity, knowledge solutions, and partnerships) and five core specializations (infrastructure; environment, including climate change; regional cooperation and integration; financial sector development; and education).340 While pursuing its strategic priorities through operations in sectors where it has a proven track record and comparative strength, ADB needs to maintain some flexibility and capacity to selectively deliver quality assistance in a few other sectors, such as health, and agriculture and natural resources, which are important for both inclusiveness as well as sustainability of growth. As ADB’s low income countries continue to rely heavily on official development assistance, differentiated approaches have to be considered in view of the diversity of these countries. “For some, the priority is to reinforce recent strong growth and to make it sustainable. For others, it is to assist with managing the sustainability and continuing economic benefit from their natural resources. For still others, it is to establish and begin the process of robust growth.”341 Accordingly, the corporate strategy mentioned above mandates ADB to configure its assistance to fit the circumstances of each country, so as to enable ADB to meet the MFG targets by 2015 and to enable ADB member countries to graduate as soon as possible.

336 Presently known as the UN ESCAP.
340 Ibid.
341 Ibid., p. 17.
from concessional assistance and, in case of fragile countries and situations, to “seek innovative means to strengthen the effectiveness of country-led models of engagement.”

One of the greatest successes in Asia and Pacific is reduction of “the number of people living on less than $1.25 a day from 1.5 billion to 947 million.” While the region is on track for the poverty goal, “in many areas, the region’s progress is far too slow. Almost 2 billion live without basic sanitation and nearly half a billion without safe drinking water. In many areas, the region’s progress is far too slow. Almost 2 billion live without basic sanitation and nearly half a billion without safe drinking water. … Womans are still far too often deprived of the benefits of growth. The region’s environment, too, faces daunting threats.” Also the recent dramatic increase in food prices is causing severe hardship to the poorest populations.

Thus, to achieve the MDGs, Asia must overcome substantial challenges. As issues regarding non-income Millennium Development Goals targets are “inexorably intertwined with poverty,” most of ADB’s developing member countries also face problems in achieving these targets. For low-income countries, access to concessional finance continues to be a matter of utmost importance. The ADF and ADB’s other concessional resources (special funds and trust funds) are ADB’s main instruments to help its member countries in meeting these challenges.

Functions

Article 2 of the ADB Charter lists the functions of ADB in order to fulfill its purposes. Fundamentally important, Article 2 (ii) provides that

> to utilize the resources at its disposal for financing development of the developing member countries in the region, giving priority to those regional, sub-regional as well as national projects and programmes which will contribute most effectively to the harmonious economic growth of the region as a whole, and having special regard to the needs of the smaller or less developed member countries in the region. (italics added)

Based on the above and various related Charter provisions, financing from ADB resources in the form of loans, grants, and/or equity investments may be used only for the benefit of ADB’s developing member countries.

Article 2 (iv) of the ADB Charter, which empowers ADB “to provide technical assistance for the preparation, financing and execution of development projects and programmes, including the formulation of specific project proposals” and the other provisions set forth in Article 2, do not restrict ADB’s activities to its developing member countries. Since ADB’s area of concern extends to “fostering economic growth


346 Article 8 of the ADB Charter states that “the resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth respectively in Articles 1 and 2 of this Agreement.” The reference to “resources” in Article 8 relates to Article 2 (ii), which is the only provision of that article dealing with resources. The conclusion that loans, equity investments, and guarantees can be used only for the benefit of ADB’s developing member countries is supported by Article 11, which deals with these three financing techniques that constitute “operations” of ADB. It provides that ADB resources may be used only to provide or facilitate “financing to any member, or any agency, instrumentality or political subdivision thereof, or any entity or enterprise operating in the territory of a member, as well as to international or regional agencies or entities concerned with economic development of the region.” (emphasis added). Also, Article 14 (ii) of the Charter mandates that ADB be guided “in selecting suitable projects” by the provisions of Article 2 (ii), while Article 15.2 establishes guarantee requirements for “the member in whose territory the project is to be carried out, or a public agency or any instrumentality of that member....” (emphasis added)
and co-operation” throughout Asia and the Pacific, ADB can have an interest in nonmember countries and countries in its region that are not classified as developing countries. This enabled ADB to provide technical assistance to Timor-Leste on an exceptional basis, before it became a member of ADB.

**General Financing Principles**

Article 14 of the Charter sets out general principles applicable to all ADB financing. ADB’s operations should “provide principally for the financing of specific projects,” including those that are part of a national, subregional, or regional development program. Moreover, in accordance with the principles under Article 2, ADB is prohibited from financing any undertaking in the territory of a member if the member objects to such financing. The Charter provides for a two-stage approval process for loans requiring, before a loan is granted, that “the applicant shall have submitted an adequate loan proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal together with his recommendations, on the basis of a staff study.” It also directs ADB to “pay due regard to the ability of the borrower to obtain financing or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors.” Pursuant to the principle that its role as a financing institution should not supplant other available financing, ADB has defined criteria for the eligibility of countries to receive concessional financing and their graduation from such financing. The ADB Charter mandates ADB “to pay due regard to the prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract.”

In addition, Article 14 contains a wide range of other principles, including procurement rules. ADB is mandated “to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency,” and through its Anticorruption Policy—a core element of ADB’s operational policies—and other relevant policies, ADB effectively seeks to ensure that ADB financing is not used for other purposes. The Charter also provides that ADB “shall pay due regard to the desirability of avoiding a disproportionate amount of its resources being used for the benefit of any member” and shall be “guided by sound banking principles in its operations.”

**Special Funds Resources**

Article 19 of the ADB Charter mentions two funding modalities for Special Funds resources. Article 19.1(i) specifically gives ADB the power to set aside a portion of its unimpaired paid-in capital for the establishment of one or more special funds. A vote of two-thirds of the total number of governors representing at least three-fourths of the total voting power of the members is required for that purpose.

347 ADB Charter, Article 1.
348 ADB Charter, Article 14(i).
349 ADB Charter, Article 14(iii).
350 ADB Charter, Article 14(iv).
351 ADB Charter, Article 14(v).
352 ADB Charter, Article 14(vi).
353 ADB Charter, Article 14(ix).
354 ADB Charter, Article 14(xiii).
356 ADB Charter, Article 14(xii).
357 ADB Charter, Article 14(xiv).
Such power enabled ADB to commence concessional financing shortly after its establishment. ADB has used this provision to allocate funds to its MPSF (subsequently transferred to the ADF). These funds can be used only for concessional loans “and on such other terms and conditions, not inconsistent with the applicable [Charter provisions] nor with the character of such Funds as revolving funds....”\(^{358}\) While the Charter does not preclude ADB from using income from set-aside resources for purposes other than loans (e.g., technical assistance), the wording of Article 19.2 underlines that “the capital of [set-aside] resources was clearly intended to remain intact” and hence cannot be used for grants.\(^{359}\)

A separate legal regime applies to Special Funds resources, the administration of which has been accepted by ADB pursuant to Article 19.1(ii). This provision gives ADB the power to accept the administration of special funds, “which are designed to serve the purpose and come within the functions of the Bank.” The drafters of the Charter wanted to leave the decision regarding the use of trust funds (and Special Funds) resources to the discretion of ADB Management and the ADB Board of Directors. While Article 11 contains certain fundamental provisions for recipients of Special Funds financing and the methods of ADB operations, the drafters decided not to incorporate detailed guidelines regarding the use of trust funds (and special funds) in the Charter. Unlike set-aside resources, the Charter provides that Special Funds resources accepted by ADB “may be used in any manner and on any terms and conditions not inconsistent with the purpose of the Bank and with the agreement relating to such Funds.”\(^{360}\)

Finally, the Charter empowers ADB to adopt “such special rules and regulations as may be required for the establishment, administration and use of each Special Fund,” with the proviso that any such rules and regulations shall be consistent with the Charter, except those Charter provisions that explicitly apply only to ADB’s OCR window.\(^{361}\) This was the basis for adopting the ADF Regulations.

In addition to the provisions mentioned above, various other Charter provisions are relevant to ADB policies and operations, specifically the operating principles in Article 14, which apply to special funds and OCR operations alike. These provisions are discussed below in the context of the individual policies.

**Principles Governing the Establishment of the Asian Development Fund and Its Replenishments**

In the absence of Charter provisions that provide for specific decision-making procedures applicable to ADB’s concessional financing, both the Board of Governors and Board of Directors are empowered to establish special funds. While the Board of Directors has made such determinations in a number of cases (e.g., JSF, ATF, PEF, RCIF, and CCF), the ADF was established with the approval and under the authority of the Board of Governors.

Resolution No. 62 of the Board of Governors sets out fundamental principles that define the legal framework of ADF resources. The resolution did not purport to establish a new fund, but rather “constituted an agreement in principle that the Fund [ADF] should be established, and an authorization to the Bank to settle with potential contributors arrangements for mobilizing resources for the Fund, and for the establishment of the Fund.”\(^{362}\) According to para. 3,

> [r]esources of the Fund shall principally be derived from contributions of members of the Bank, in such amounts and on such terms as may be authorized by the Board of

\(^{358}\) ADB Charter, Article 19.2.


\(^{360}\) ADB Charter, Article 19.3.

\(^{361}\) ADB Charter, Article 19.4.

Governors from time to time, provided that no such authorization shall obligate any member to make a contribution and that any contributor may at any time increase the amount of its contribution.

Thus, ADF contributions may be made only under authority of a resolution of the Board of Governors, but that resolution as such does not entail any legal obligation for ADB members to contribute to the ADF.

Paragraph 5(a) of Resolution No. 62 of the ADB Board of Governors states among other things that “[r]esources of the Fund shall be used for financing concessional loans for projects and programmes of high developmental priority” (emphasis added). The resolution did not foresee other forms of concessional financing. Para. 5(b) only gave ADB the authority to use ADF net income “to the extent annually authorized by the Board of Governors for financing the provision of technical assistance on a grant basis.” Thus, the resolution clearly did not contemplate using ADF grants for financing (investment) projects and programs. Para. 5(a) incorporates the “specific project” approach expressed in Article 14(i) of the Charter as it refers to financing provided for projects and programmes of high developmental priority. However, in terms of “criteria to be applied” in making ADF loans, it left it to the Board of Directors to make determinations “in conformity with the purpose of the Fund.”

Regarding procurement, Resolution No. 62 of the ADB Board of Governors, para. 5(c), states that “[e]xcept to the extent otherwise authorized by the Board of Governors, contributions to the [ADF] shall be drawn down to finance, on a reciprocal basis, procurement in all contributor countries and developing member countries of the Bank, of goods produced in and services supplied from such countries.” This stipulation clearly differentiates the ADF legal framework from Consolidated Special Funds, as it basically disallowed contributions tied to procurement in specific donor countries. Authorization for tied contributions rests solely with the Board of Governors, and such authorization was granted only during the initial resource mobilization of the ADF. However, paragraph 5(c) made for “developed countries” a contribution to the ADF a condition of their procurement eligibility under ADF loans.

Another fundamental principle is that “[a]ny contributor may at any time withdraw from the Fund.” A withdrawing contributor shall be entitled to recover a proportionate share of the resources of the Fund, not exceeding the amount of its contribution. In the event that the ADF is terminated, “the resources of the Fund shall be apportioned among contributors and the Bank in proportion to the amounts respectively made available by them to the Fund.”

The basic criteria in Resolution No. 62 have been supplemented and expanded by various resolutions of the Board of Governors regarding the ADF’s initial resource mobilization and fund replenishments, referred to here as ADF Resolutions. The ADF Resolutions define basic terms and conditions applicable to replenishments—such as the terms of contributions, payment modalities, and provisions regarding currencies; and trigger mechanisms for making replenishments effective and for operational commitment of donors’ contributions.

Since ADF contributions are mobilized multilaterally, the resolutions of the Board of Governors do not allow donors to unilaterally reduce contributions pledged during replenishment negotiations. Any

563 ADF net income has never been used for this purpose.
564 In accordance with Article 14(i) of the Charter, which provides that “The operations of the Bank shall provide principally for the financing of specific projects, including those forming part of a national, sub-regional or regional development programme.”
565 ADB Board of Governors Resolution No. 62 (1973), para. 7.
566 ADB Board of Governors Resolution No. 62, para. 7.
567 ADB Board of Governors Resolutions Nos. 67, 68, 88, 92, 101, 103, 105, 107, 121, 136, 145, 154, 156, 182, 214, 247, 276, 288, 300, 324, and 333.
reduction requires a revised resolution by the Board of Governors. The same is applicable to other changes to the resolution for which power has not been delegated to the Board of Directors.

The terms and conditions for ADF replenishments generally extend to all ADF resources, which include “reflows” from previous replenishments—repayments of principal and payment of charges under loans. One important exception to this principle was made under Resolution No. 300, which authorized ADB “to provide financing under the Replenishment in the form of grants for projects and programs of high developmental priority” (italics added). Thus ADF grants were initially introduced only in the context of ADF IX. However, a different approach was required when ADB decided to change the currency management of ADF resources. All previous resolutions of the Board of Governors regarding the establishment of the ADF and ADF replenishments required amendment to “authorize ADB to convert ADF resources held in various currencies into the currencies which constitute the Special Drawing Right (SDR).” Global amendment of all ADF resolutions also became necessary to authorize ADB participation in the provision of debt relief under the Heavily Indebted Poor Countries (HIPC) Initiative. Moreover, in 2009 the Board approved yet another global amendment to all resolutions, allowing the use of all ADF resources for ADF grants for (investment) projects and programs.

**Regulations**

Article 19.4 of the Charter does not specify which organ of ADB is entitled to adopt “special rules and regulations as may be required for the establishment, administration and use of each Special Fund.” This power follows that vested in the Board of Governors or Board of Directors to establish a special fund. However, it may be delegated, as in the case of the ADF, where Resolution No. 67, para. 5(a), authorized the Board of Directors to make regulations “to govern the Fund [ADF] and the administration of its resources” and stipulated that such regulations “shall be in conformity with the provisions of Resolution No. 62 and [of Resolution No. 67], and may contain such other provisions as may be necessary or appropriate for the efficient administration of the Fund.” The ADF Regulations adopted on 18 April 1974 constitute a statement by the Bank on the terms upon which it is prepared to administer contributions, which when accepted by a contributor (by the act of depositing an Instrument of Contribution), create a contractual obligation between the contributor and the Bank.

While “similar in certain respect to the system of bilateral contribution agreements” applicable to Consolidated Special Funds, this system is distinct in one important aspect: the “significant difference is that the terms governing all contributions [are] identical, except to the extent that the authorizing Resolutions of the Board of Governors permit variations from one contribution to another.”

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369 ADB Board of Governors Resolution No. 311 (2005). See also ADB Board of Governors Resolution No. 62, para. 2.
370 See ADB Board of Governors Resolution No. 329 *Providing Heavily Indebted Poor Countries Relief from Asian Development Fund Debt*, adopted by the ADB Board of Governors on 7 April 2008, which provided for an amendment to Resolution No. 62 and stated (para. 3): “The Resolutions relating to the initial contributions to ADF and the subsequent replenishments of ADF are hereby amended to authorize the use of such initial contributions and subsequent replenishments for the provision of debt relief under the HIPC initiative.”
373 Ibid.
The ADF Regulations incorporate and give effect to fundamental conditions in Resolution No. 62 of the Board of Governors and other ADF Resolutions. In particular, they contain provisions concerning ADF resources and operations, the administration and use of resources, and issues involving withdrawal and termination, amendments, arbitration and effectiveness, and transitional provisions.

Apart from the general requirement of consistency with the Charter, Article 19.4 provides no specific limitations regarding ADB’s power to adopt “special rules and regulations.” Thus, when adopting the ADF Regulations, the ADB Board of Directors was able to define two different types of qualified majorities. The decision on certain matters needs to be taken by a special resolution of the Board of Directors by a majority of directors representing not less than two-thirds of the voting power of ADB’s members.374 Such special resolution is required for the acceptance of supplementary resources and adoption of all amendments to the ADF Regulations. For amendments which entail fundamental changes to the ADF Regulations (i.e., regarding the right to object to substitution of a currency of repayment, the use of ADF resources, drawdown of ADF contributions, charging of administrative expenses, rights of a contributor upon withdrawal or termination of the ADF, and the arbitration procedure) the ADF Regulations require in addition “prior consent in writing of every Contributor.”375 There have been several major amendments of the ADF Regulations to date, the most recent in 2009.376

**Regulations for Special Operations Loans and Grants**

Special operations loan regulations for ADF loans were first adopted in 1969377 “to set forth certain terms and conditions generally applicable to loans made by ADB from its Special Funds resources.” The most recent of such regulations took effect on 1 January 2006.378

Following Resolution No. 300 of the Board of Governors of August 2004, the Board of Directors adopted the new Special Operations Grant Regulations,379 effective 7 February 2005, which set forth the terms and conditions generally applicable to ADF grants provided by ADB for financing projects and programs of high developmental priority.

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374 ADF Regulations, Article I, section 1.02 (c).
375 See ADF Regulations, Article VI, section 6.01 (a) to (c).
376 (i) On 26 August 1986, the Board of Directors amended the regulations to incorporate ADF V discussions on the allocation and transfer of a portion of ADF contributions to the TASF. This amendment added to section 1.02(a) specific words (in italics): “The Fund and the resources thereof shall be governed by, and such resources shall be received, administered, used and disposed of in accordance with, these Regulations, as amended from time to time pursuant to Section 6.01, unless the relevant authorizing Resolution of the Board of Governors provides otherwise.” (ii) On 15 April 1997, after reexamining the Charter, the Board of Directors further amended ADF Regulations to allow ADF resources to include “amounts transferred from ordinary capital resources net income or surplus with the approval of the Board of Governors, as provided by Section 2.07.” The revised section states, among other things, that the “net income and surplus so transferred shall be used in such manner, not inconsistent with these Regulations, as the Board of Governors in making such resources available to the Fund may direct.” (iii) The regulations were amended on 7 February 2005 following adoption of Resolution No. 300 of the Board of Governors, authorizing ADB to provide concessional financing in the form of grants. (iv) ADF Regulations were amended in December 2005 effective 1 January 2006 to implement a new ADF currency management system approved by Resolution No. 311 of the Board of Governors. (v) In 2008, a further amendment to the ADF regulations was approved to allow debt relief in accordance with the HIPC Initiative (ADB. 2008. *Policy for Providing Heavily Indebted Poor Countries Relief from Asian Development Fund Debt and Proposed Debt Relief to Afghanistan*. Manila [R39-08, 15 February]. www.adb.org/Documents/Policies/Policy-Providing-Heavily-Indebted-Poor-Countries-ReliefPolicy-Providing-Heavily-Indebted-Poor-Countries-Relief.pdf). Finally, (vi) in 2009, the ADF Regulations were amended to allow the use of reflows from previous ADF replenishments for grants.

377 All previous versions of the Special Operations Loan Regulations are listed in www.adb.org/Documents/Reports/loan-regulations/default.asp
Externally Financed Grant Regulations

In line with its Strategy 2020, ADB has set itself “an ambitious target for cofinancing [by 2012]: direct value-added (DVA) cofinancing equivalent to 20% of ADB loans and grants approved annually.”

As externally financed grants for ADB investment projects or components of such projects increasingly become an integral part of ADB’s concessional financing, ADB adopted in 2009 new regulations for such grants which are incorporated by reference in all grant agreements with recipients.

Policies and Procedures

The ADB Board of Directors adopted a number of operational and financial policies regarding ADF replenishments. ADF negotiations generally determine only the general policy direction. All new policies require a decision by the Board of Directors. Moreover, in accordance with the resolutions of the Board of Governors regarding initial resource mobilization and ADF replenishments and the ADF Regulations, the Board of Directors is competent to decide on a variety of matters regarding the administration of ADF resources.

Resources of the Asian Development Fund

Types of Resources

The ADF was structured as a revolving fund supported by contributions from ADB members. While acceptance of contributions from other sources (e.g., foundations) is permissible as a matter of law, ADB thus far has neither accepted nor attempted to mobilize contributions from such sources for the ADF.

Para. 3(a) of Resolution No. 62 of the Board of Governors states that the resources of the ADF “shall principally be derived from contributions of members of the Bank, in such amounts and on such terms as may be authorized by the Board of Governors...” Contributions by ADB members to the initial resource mobilization or upon joining ADB and contributions to ADF replenishments are the major source of ADF financing. In addition, the ADF may hold supplementary contributions of donors and “amounts initially allocated to other Special Funds of ADB and [subsequently] transferred to the [ADF].” These are contributions of members to the ASF and MPSF subsequently transferred to the ADF.

In addition to donors’ contributions, resources set aside from ADB’s unimpaired paid-in capital and amounts transferred from OCR net income or surplus have contributed substantially to the commitment authority of the ADF. As mentioned, set-aside resources can be used only on such “terms and conditions, not inconsistent with the applicable provisions of [the Charter] nor with the character of such Funds as revolving funds, as the Bank in establishing such Funds may direct,” according to Article 19.2 of the Charter and section 2.05 of the ADF Regulations. While interest may be used by

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381 ADB. 2009. Adoption of Externally Financed Grant Regulations (R46-09, 18 March). Manila.
382 The ADB Board of Governors agreed in para. 3(b) of Resolution No. 62 (1973) that ADB may receive for the ADF "supplementary resources on appropriate terms to be determined by the Board of Directors." These may be accepted from either members or nonmembers "or from any national or international entity, public or private" ADF Regulations, section 2.06 (a), though in the case of nonmembers or national or international entities a special resolution of the Board of Directors must be adopted by a majority of the Directors representing not less than two-thirds of the total voting power of the members in accordance with section 2.06 (a) and section 1.02 (c) of the ADF Regulations.
383 ADF Regulations, section 2.01(d).
384 See ADF Regulations, section 2.01(b) and (g).
ADB (e.g. for technical assistance), capital from these funds cannot be used for grants. Similar restrictions did not apply to amounts transferred to the ADF from OCR net income or surplus. Section 2.07 of the ADF Regulations previously stated that the “net income and surplus so transferred shall be used in such manner, not inconsistent with these Regulations, as the Board of Governors in making such resources available to the Fund may direct.” Under the amendment to the ADF Regulations approved in 2005, the use of such funds for grants was not precluded per se. However, section 3.01(b) of the ADF Regulations required express approval of the Board of Governors for any use of ADF resources as grants. A 2009 amendment to the ADF Regulations dispensed with that requirement.

Finally, repayments related to ADF loans and amounts accrued from income or otherwise derived from ADF operations are included as ADF resources (section 2.01(e) and (f) of the ADF Regulations). Such reflows from previous replenishments have become a major source of ADF resources. All ADF investment income has been retained in the fund.

Contributions, Installment Payments, and Pro Rata Rights

ADB has implemented various types of contributory mechanisms. In those cases where ADB provides grant assistance for rehabilitation efforts of its member countries afflicted by natural disasters (e.g., the ATF and PEF), it is essential that donors make funding available within a short time frame. Thus, in the case of the ATF and PEF, the Board of Directors provided when establishing these funds that instruments of contributions had to be submitted by contributors within 9 months after the establishment of the fund. The Board further required donors to make cash payments within 12 months after depositing an instrument of contribution.

Contributory mechanisms for the ATF and PEF have also inspired arrangements under ADB’s partnership facilities. However, given the budgetary constraints of ADB members, it is very difficult to mobilize on the basis of cash contributions the concessional resources for investment projects or programs, for which funding is provided by the ADF. Also given the disbursement profiles of ADF loans, immediate cash payment of donors is not required to finance project or program expenditures. Thus, in the case of the ADF, resources have been mobilized on the basis of

(i) instruments of contributions that specify the total amount of the ADF contribution to be made during the replenishment period (generally 4 years);
(ii) installment payments (generally in the form of promissory notes) made by members, in compliance with the legal commitment contained in their instruments of contribution;
(iii) and cash drawdowns on the installment payments (promissory notes), generally made over a period of 10 years.

385 It allowed such use only “in the event and to the extent that the relevant Authorizing Resolution of the Board of Governors provides for such grant financing.”
387 The Preparatory Committee drafted Article 20 of the ADB Charter to preclude ADB from borrowing from its capital market resources for use in special funds. While the drafters of the Charter reached no conclusion regarding potential long-term borrowings by ADB from member countries, proceeds from these borrowings are not currently considered a resource of ADF (ADF Regulations, section 2.01).
388 ADF X was financed from the following sources: (i) SDR2.6 billion from new donor contributions, (ii) SDR4.3 billion internal resources consisting of SDR3.2 billion reflow-based resources and SDR1.1 billion from liquidity drawdown, and (iii) SDR0.2 billion net income transfers from OCR, subject to annual approvals by the ADB Board of Governors (ADB, Asian Development Fund X Donors’ Report, para. 78).
389 In accordance with section 4.07 of the ADF Regulations, ADF net income may be “transferred from the fund and applied towards financing the cost of technical assistance provided by ADB on a grant basis.” However, ADF net income has not been used for that purpose.
So far, ADB has not accepted any concessional loans from its members or other sources for funding ADF operations. Moreover, under the current legal framework of ADF resources, ADB is not authorized to mobilize financing for the ADF on capital markets.

**Instruments of Contribution**

The legal commitment to contribute to the ADF is contained in the instrument of contribution submitted by members in accordance with the relevant authorizing resolution of the Board of Governors. The legal nature of that instrument is that of a contractual obligation. Thus, such instruments are not recognized as assets in ADB’s books of account. Generally, members submit unqualified instruments of contribution, wherein they undertake to pay the amount pledged in the resolution of the Board of Governors in four equal installments during the replenishment period. However, Resolution No. 92 (para. 3), which covered the first ADF replenishment (ADF II), gave donors the opportunity to deposit a qualified instrument of contribution “in special cases, where such qualification is required by the legislative procedures customarily adopted in the member’s country…. For such a case, provision was made that “the Board of Directors may accept an instrument containing a qualification that one or more installments of the contribution is subject to appropriate legislative action.” Since then, acceptance of qualified instruments of contribution has been a standard feature of all ADF replenishments and relevant provisions for such qualified contributions have been incorporated in all resolutions of the Board of Governors regarding ADF replenishments. Submitting this type of instrument implies that all installment payments, except the first, are subject to budgetary appropriations. While qualified instruments of members contain an “undertaking to seek the necessary appropriations” for each year of the replenishment period, the timing of the installment payments, except the first one, is uncertain, as it is subject to the volatility of national allocation processes.

**Effectiveness and Trigger Mechanisms**

ADB’s acceptance of qualified instruments of contribution resulted, in some cases, in members making substantially delayed installment payments of their ADF contributions—sometimes only after the replenishment period ended. Because such delays raised concerns about equitable burden sharing among donors, donors sought to ensure that as many donors as possible would participate in the replenishment process. All resolutions of the Board of Governors regarding replenishments contained a clause that stated conditions for the replenishment and/or instruments of contributions to become effective. Resolution No. 92 of 3 December 1975 regarding ADF II required in respect of the first installment contribution commitments in a minimum aggregate amount exceeding 50% of all pledged contributions to be reached for each instrument of contribution to become effective. Moreover, additional “trigger figures” were included for the second and third installment payments. Under ADB Board of Governors Resolution No. 121 (1978) regarding ADF III, 50% of unqualified contribution commitments had to be deposited for the replenishment to become effective. This became a standard feature of replenishment resolutions. Moreover, some of the subsequent ADF replenishment resolutions incorporated additional effectiveness

390 E.g., ADB Board of Governors Resolution No. 333, Ninth Replenishment of the Asian Development Fund and Fourth Regularized Replenishment of the Technical Assistance Special Fund (2008), para. 4 (c).

391 In respect of the second installment, instruments of contribution would become only effective after ADB had received instruments of contributions in an aggregate amount of $650,000,000 (out of a total of $850,000,000 of pledged contributions (Resolution No. 92 para. 4 [b]). This meant that instruments of contribution for the second installment could not become effective without the US having deposited its instrument of contribution. In respect of the third installment, instruments became only effective after ADB had received payments under instruments of contribution equivalent to at least $400,000,000 (Resolution No. 92 para. 4 [c]).
Concessional Financing of the Asian Development Bank

357

conditions and/or trigger mechanisms for second\textsuperscript{392} or third\textsuperscript{393} donor tranches allowing donors to exercise pro rata rights. These restricted ADB’s ability to use donor contributions for operational commitment of concessional financing if a member submitted a qualified instrument of contribution and then was unable to make an installment payment of 25% of its total contribution available in each year of the replenishment period.\textsuperscript{394} Pro rata provisions were generally not effective in inducing donors to avoid arrears in installment payments, and the combined effect of payment delays and trigger mechanisms repeatedly caused serious constraints for ADB in providing resources for concessional financing. Thus, the abolishment of such provisions should be contemplated in conformity with the practice of IDA, which discontinued pro rata rights in 2008 “to ensure predictability of resources and protect the interests of IDA recipients.”\textsuperscript{395}

Installment Payments

During the second replenishment (ADF III), donor contributions were divided into four equal tranches in terms of operational commitment.\textsuperscript{396} Depending on when the second (or third) tranche became effective, ADB could commit tranche funds before the actual receipt of a donor’s installment payments (promissory notes). This resulted from the pooling together of reflows from previous replenishments and new donor contributions. However, under the revised financial planning framework adopted in 1997, separate replenishment pools were established for prior replenishment reflows and new donor contributions. Resolution No. 276 (2000) of the Board of Governors (ADF VIII) aligned payment arrangements with the revised financial planning framework by providing that operational commitment of new contributions could no longer be made on a tranche basis, but only upon receipt of installment payments (promissory notes). Resolution No. 276 of the Board of Governors was structured accordingly to provide that contributions were available for use only on the date when payment was confirmed (i.e., deposit of a promissory note). Promissory notes constitute nonnegotiable obligations payable on demand that are recognized by ADB as assets in its balance sheet.

392 Starting with Resolution No. 182 (1986), resolutions of the Board of Governors regarding replenishments of ADB included conditions regarding the operational commitment of the second tranche of donors’ contributions. It was required that 80% of all pledged contribution commitments (both qualified and unqualified) had been deposited for the second tranche to become available for operational commitment. Provision to that effect was incorporated, respectively, in para. 9(a)(ii) of Resolutions Nos. 182, 214, and 247. Resolution No. 276 (para. 9 [c]) gave donors instead the right to exercise pro rata rights regarding the second, third and fourth installment payment in the event that a member which had made a qualified contribution was unable to pay one fourth of its contribution. Similar terms and conditions are contained in para. 9 (c) of Resolution No. 300 (para. 9 [c]) regarding the Eighth Replenishment of the Asian Development Fund and Third Regularized Replenishment of the Technical Assistance Special Fund which gave donors the individual right to excise pro-rate rights.

393 ADB Board of Governors Resolution No. 154 (1982), para. 9(a)(iii): the third tranche takes effect provided that each qualified contribution has become unqualified to the extent of one-half of its total amount.

394 Para. 9 (c) of ADB Board of Governors Resolution No. 333 regarding ADF X (adopted on 18 August 2008) states: “9(c) Exception Clause. Notwithstanding the foregoing provisions of this paragraph: (i) If a member which has made a Qualified Contribution is unable, in any year, to pay an amount equal to one-fourth of its total contribution, such member shall indicate to ADB the revised amount which will be paid and its intention as regards making up the shortfall in the next installment or installments. In such event, ADB shall promptly consult with all other contributing members. Each such contributing member may, within 31 days thereafter, notify ADB in writing that the availability for operational commitment by ADB of its installment payments shall be reduced as follows:

(A) in the case of the second payment of 25 percent of the member’s contribution, on a pro rata basis to the extent that payment of the first 25 percent of the Qualified Contribution has not been made;

(B) in the case of the third payment of 25 percent of the member’s contribution, on a pro rata basis to the extent that payment of the second 25 percent of the Qualified Contribution has not been made;

(C) in the case of the fourth payment of 25 percent of the member’s contribution, on a pro rata basis to the extent that payment of the fourth 25 percent of the Qualified Contribution has not been made;

The right of a contributing member shall be deemed waived if no written notice is received by the Bank within the aforesaid period.”


396 ADB Board of Governors Resolution No. 121 (1978), para. 6 (b).
Drawdowns

In accordance with section 4.04 of the ADF Regulations, ADB is required to make drawdowns of contributions in a uniform manner. Consistent with such requirements, ADB has adopted fixed schedules for encashment of donors’ promissory notes. While the normal encashment profile is over 10 years, since ADF IX, ADB members have been given credit for the accelerated encashment of their contributions.397

Asian Development Fund Replenishments

Since ADF makes its resources available to borrowers of highly concessional terms as loans or grants, donors must provide new resources periodically to enable ADB to maintain or increase its concessional operations. Unlike the ADB Consolidated Special Funds, where donors voluntarily provided individual contributions, the ADF follows an organized replenishment process by which donors provide contributions on the basis of burden-shared arrangements. ADF replenishment policies established with donor agreement reflect the evolving development agenda, the changing paradigms of development assistance, and the socioeconomic conditions of donors and recipients of special funds.

The size of the ADF replenishments has increased continuously and substantially (Appendix 4). Moreover, the sector focus of the ADF negotiations has shifted substantially (Appendix 5). While until ADF IV, ADF lending focused heavily on agriculture, the share of agriculture lending was increasingly reduced during subsequent replenishment periods. Instead, the focus of ADF financing increasingly shifted to other sectors such as infrastructure and transport, energy, finance, and health, and to projects comprising various sectors.

Over time, ADF replenishment negotiations have become increasingly complex as they afford ADB and donors an opportunity to review ADB’s role, vision, functions, and operational agenda in general terms, and also to examine and reorient ADB policies. This has also influenced how ADF negotiations are conducted and the institutional dynamics of negotiations.

ADF Replenishment Procedures

From the outset, ADF replenishment negotiations have differed substantially from ADB negotiations for GCIs. While both types of negotiations had a substantial impact on policies, strategies, and operational priorities, they are organized differently. Those regarding GCIs are conducted entirely at the Board of Directors level, based on Board papers and Board discussions, and involve all ADB members. A different approach has been adopted for ADF replenishments.

Since ADF’s initial resource mobilization, negotiations regarding replenishments have been held in a series of meetings between donors and ADB management (1–3 days) at various locations,398 generally

397 Members submitting an unqualified instrument of contribution may pay part of their contribution through the investment income derived from the accelerated encashment of their contributions, while members submitting a qualified instrument are given credit for an additional contribution for the enhanced investment income derived from the accelerated encashment of their installment payments (Paras. 7 [c] and [d] of ADB Board of Governors Resolution No. 300, Eighth Replenishment of the Asian Development Fund and Third Regularized Replenishment of the Technical Assistance Special Fund (2004); see also para. 7 [c] of ADB Board of Governors Resolution No. 333, Ninth Replenishment of the Asian Development Fund and Fourth Regularized Replenishment of the Technical Assistance Special Fund (2008)). Para. 7 (c) of ADB Board of Governors Resolution No. 333 (2008) states: “ADB will, at the request of a contributing member accelerate the encashment of the installment payments by the member. The member may make such request at the time of the submission of its Instrument of Contribution. The investment income expected to be earned as a result of such accelerated encashment, based on discount rates agreed between the contributing members and ADB, shall, at the option of the member, (i) be used as partial payment of the member’s contribution, or (ii) be credited as an additional contribution by the member.”

398 While negotiations occasionally have been held in conjunction with annual meetings of ADB, the location of donor meetings generally was chosen on the basis of offers from certain member countries to host a meeting.
over a period from 10 to 12 months. The donor representatives attending such replenishment meetings are an informal group not mentioned in the Charter; attendance, which initially was limited to developed member countries, but increasingly included representatives from developing member countries.\textsuperscript{399} Generally, a 1–3-person delegation represents each donor, usually headed by a senior government official. ADB is normally represented by senior staff and a small secretariat. Members of the Board of Directors may attend negotiations as observers, but are generally not part of donor country delegations. ADB management organizes the meetings, which in most cases are chaired by an external advisor.\textsuperscript{400} With donor guidance, ADB also prepares meeting documentation.

The relationship between donor representatives and the ADB Board of Directors has evolved considerably over the years in terms of institutional dynamics, particularly involving the manner in which negotiations are conducted. In preparation for negotiations regarding ADF II–ADF V, a working paper addressing the major policy issues to be discussed was circulated to the Board of Directors, along with the scope of replenishment. After the Board discussed the paper, it circulated a revised version to ADF donors. This, along with other papers prepared for the replenishment negotiations, was then discussed at various donors’ meetings. Since (revised) discussion paper(s) prepared in the context of ADF negotiations were generally first presented to the Board as a working paper before being forwarded to ADF donors, the Board maintained a certain level of involvement.

The process changed beginning with ADF VI, when the preparation of replenishment documents was completed under donor guidance, taking into account ADB midterm reviews and/or informal consultations conducted prior to or during the ADF replenishment negotiations. Over time, the overall style of negotiations has also changed substantially. ADF negotiations are now open and participatory, with the participation of ADF recipient countries. Members of the Board of Directors generally follow the negotiations closely and attend the negotiations as observers. During ADF IX, all the directors were present, and a special meeting was organized so that donor representatives could hear their views on relevant issues. Also during ADF X, members of the Board of Directors attended all replenishment negotiations.

The process for preparing the Board of Directors’ report to the Board of Governors has also evolved over time. During ADF I–ADF V, donor agreements on replenishments were reflected directly in the report of the Board of Directors to the Board of Governors (which was then accepted by the Board of Governors in relevant resolutions). At the ADF VI negotiations, however, donors requested for the first time that a “donors’ report” be prepared during negotiations, in accordance with the IDA negotiation process. These reports, which contain donor guidance on operational and policy matters, became a standard feature of all subsequent replenishment negotiations and a guidance mechanism not only for matters relating to special funds resources but for ADB in general. Since ADF VI, the ADB President transmits the donors’ report to the Board of Directors with a request that the Board incorporate it by reference in its own report to the Board of Governors. Once accepted by the Board of Governors, specific understandings and terms and conditions of the replenishment set forth in the donors’ report become part of the arrangements agreed upon by the donors and ADB.

\textsuperscript{399} Initially, participating countries were, exclusively, developing member countries of ADB. Subsequently, however, the group of participants increased. At the ADF IV negotiations, for the first time three regional countries (Hong Kong, China; Republic of Korea; and Taipei, China) participated in replenishment negotiations, and subsequently also other regional members of ADB (People’s Republic of China [PRC], Indonesia, Malaysia, Nauru, Singapore, and Thailand) became ADF donors for one or more ADF replenishments. With the exception of Nauru, these countries were represented at ADF negotiations. In the context of the ADF VIII negotiations, ADF donors held for the first time consultations with NGOs. Moreover, for the ADF IX negotiations, five representatives of borrowing member countries were invited to participate in the negotiations and donors’ representatives entered into a dialogue with the members of the Board of Directors represented at the meeting.

\textsuperscript{400} During ADF II to ADF VI, such negotiations were chaired by a special advisor to the president, appointed for that purpose. In the case of ADF VII, the negotiations were chaired by the then president of ADB, while ADF VIII adopted a co-chairman system involving an ADB Vice-President and an external advisor. During ADF IX, one chairperson and vice chairperson were appointed. The ADF X negotiations were again chaired by an external advisor.
By convention, the resolution of the Board of Governors addresses only specific issues relating to a given replenishment; the donors’ report addresses long-term issues. Overall, this structure has been very successful in mobilizing resources for concessional financing.

**ADF Replenishments II to IV**

Negotiations for ADF II, III, and IV were conducted through a series of donor meetings, with the Board of Directors discussing policy papers before making them available to donors. Negotiations focused on sectors and programs, as their main objective was to define a lending program for the replenishment period, which triggered the size of the replenishment. Unlike later ADF replenishments, ADF II, III, and IV did not focus on developing new policies, but rather sought to ensure the availability of required resources for ADB’s concessional financing. This proved very difficult, and ADB’s ability to assist DMCs during times of crises was seriously limited due to lack of resources.

For much of the world, 1975 was a very difficult year and developing member countries faced recession. In January 1975, ADB considered that “action for an ADF replenishment must take priority, in terms of timing, over action for a general capital increase.” ADB prepared an outline of procedural steps for the replenishment of ADF resources in the amount of $1 billion and proposed this target amount to donors. However, “negotiations for the replenishment proved tougher than the formation of the Fund itself,” as some donors questioned the need for a replenishment that was about twice as much as the initial ADF resource mobilization. The agreements reached during the replenishment negotiations were contained in Resolution No. 92 of the Board of Governors, which was based on the concept of multiyear commitments covering the full amount of each donor’s contribution and was intended to provide ADB with resources to finance a three-year concessional lending program (1976–1978). Resolution No. 92 allowed contributors, in special cases, to qualify their payment obligations as subject to annual legislative appropriation. The total size of ADF II approved by the Board of Governors was $830 million, but adjustments to contribution amounts reduced it to $809 million.

Held in 1978, negotiations for the second replenishment (ADF III) focused mainly on determining a 3-year lending program (1979–1982), since a “significant expansion” in the lending program was considered necessary for ADB to discharge its responsibility as the only financial institution specifically established to serve Asia. While the initial resource mobilization for the ADF and the first replenishment, following the IDA pattern, covered three-year periods, fundraising and implementation difficulties led to a proposal for a 4-year replenishment period (1979–1982). ADB donors agreed on a basic replenishment of $2.00 billion, and six donors indicated their intention to make supplementary payments toward a total of $0.15 billion.

In 1979, developing countries were hard-hit by the increased oil prices and cost of other imports. There was a significant slowdown in the growth of production, particularly in the industrialized countries, leading to a reduction of world trade. Inflation in most countries

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401 For the ADF Replenishments: www.adb.org/adf/reports.asp
405 See ADB Board of Governors Resolution No. 1 (1976).
407 ADB Board of Governors Resolution No. 121 (1978).
accelerated over the already high levels of 1979, and very large imbalances emerged in the
current accounts of major groups of countries.\textsuperscript{408}

Under the circumstances, ADF IV negotiations commenced in 1981 during a period of great
uncertainty. While most donors agreed that the proposed $4.1 billion\textsuperscript{409} replenishment was reasonable in relation to the needs of developing member countries, some donors expressed concern about supply-side difficulties in view of economic and fiscal constraints in their countries. As a result, and due to economic and financial difficulties faced by some donor countries, donors finally agreed to a replenishment level of about $3.2 billion.

The relative burden shares established in ADF IV (1983–1986) reflected some departure from earlier replenishments, as some donors were unable to maintain their shares beyond a certain replenishment size, while other donors agreed to increase their contributions. The burden sharing between nonregional donors became 55% and that for regional donors 45%. Furthermore, developing member countries participated in the replenishments for the first time by making modest contributions.\textsuperscript{410}

On 30 July 1982, the Board of Governors adopted Resolution No. 154.\textsuperscript{411} As in previous ADF resolutions, members, in special cases, were given the opportunity to submit a qualified rather than an unqualified contribution.

**ADF Replenishments V to VII**

ADB faced substantial funding constraints during ADF V, VI, and VII. Replenishment negotiations started to focus on policy review and ADB carried out a fundamental reorientation of its policies. The development agenda broadened and the overarching trend was “to embrace an ever growing ‘Christmas tree’ of priorities.”\textsuperscript{412}

During the ADF V negotiations, ADB’s policy directions became the subject of discussion for the first time, focusing on ADB’s role in facilitating private sector investments and the institutional development of ADF borrowers. To enable continuance of several operational policies that had been introduced or were under review in response to its program to enhance technical assistance operations, ADB Management proposed a replenishment of $5 billion.\textsuperscript{413} Donors requested a review and a possible hardening of ADF loan terms, stronger support for the private sector, an enhanced role for technical assistance, and the development of lending strategies of each ADF borrower.\textsuperscript{414} On 1 October 1986, the Board of Governors adopted Resolution No. 182, wherein donors agreed to a replenishment of about $3.6 billion, with donors’ burden shares remaining at the same level established under ADF IV. For the first time, the TASF was replenished in conjunction with the ADF. The resolution provided the equivalent of $72,000,000 for the allocation to TASF, drawn on a proportionate basis from the first installment payments of all contributions to ADF. Donors were given the opportunity to pay their ADF contributions in terms of special drawing rights (SDRs).


\textsuperscript{409} ADB’s proposals were contained in ADB. 1981. Third Replenishment of the Asian Development Fund (Working Paper, 3-81, 1 May).

\textsuperscript{410} For further details, see ADB. 1982. Third Replenishment of the Asian Development Bank (R52-82, 21 May) and Addendum 1, 9 June 1982.

\textsuperscript{411} ADB Board of Governors Resolution No. 154, *Third Replenishment of the Asian Development Fund*.

\textsuperscript{412} See Chapter 1 (P. McCawley, Concessional Resources and Development Thought).


The ADF VI negotiations, which commenced in 1990, were among the most lengthy and involved negotiations in the history of the ADF, and led to a fundamental reorientation of ADB’s role and vision, function, policies, and operational agenda. While ADF V was initially intended to provide resources during 1987–1990, the period was implicitly extended until the end of 1991, due to the fact that ADF resources including arrears and expected to become available due to changes in financial policies, totaling $2.7 billion could be available to ADB in 1991 and 1992. Donors eventually agreed in 1992 to recommend a replenishment total of $4.2 billion (SDR2,969 billion). Donors also supported Management’s recommendations to provide advance commitment authority (ACA) at the beginning of the ADF VI period in 1991 equivalent to 85% of projected reflows during the ADF VI period.

In adopting the ADF VI Donors’ Report, donors expressed the need for poverty reduction, economic growth-oriented policies, environmental improvement, the role of women in development, and population issues to merit stronger focus in ADB’s operations. Noting that mobilization of concessional resources was becoming more difficult, donors underlined the importance of establishing a link between allocation of ADF resources to individual developing member countries and the effective use of such resources. They also declared the importance of focusing on the post-evaluation process and ensuring better integration of the results of the process into ADB’s operations. Donors welcomed the decision of management to establish a strategic planning unit in the Office of the President.

Although agreements reached during previous replenishments had been reflected in a report of the Board of Directors, the first donors’ report was prepared during the ADF VI negotiations. The President forwarded the report to the Board of Directors on 20 December 1991, seeking adoption by reference as part of the Board’s own report and submission to the Board of Governors. This procedure for the adoption of donors’ reports has become standard for all subsequent negotiations. Resolution No. 214, which was adopted by the Board of Governors on 24 February 1992, follows the overall structure of Resolution No. 182 of the Board of Governors (ADF V Resolution). It provided for a replenishment in the total amount of $4.2 billion.

ADB incorporated the objectives and recommendations of ADF VI in its operations by integrating ADF VI priorities into its medium-term strategic framework. This action underlined that ADF VI priorities had become part of the guidance systems of ADB as they were applied to all ADB operations, including OCR.

Negotiations for the sixth replenishment (ADF VII) were influenced significantly by a review by a special task force, established by the Development Committee, of the operations of major multilateral institutions. The replenishment negotiations—which were dedicated largely to the ADF replenishment framework, burden sharing, matters relating to the financial architecture of ADB, and new modalities for

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Concessional Financing of the Asian Development Bank 363

concessional financing—were subsequently overshadowed by both the US decision not to participate in a regular IDA11 replenishment and the establishment of an IDA emergency fund.422

The ADF VII Donors’ Report highlighted priority areas for further policy review, particularly sector and thematic policies, such as those relating to poverty and women in development and environmental protection, as well as general policies relating to the ADF, such as access criteria, lending terms, graduation, performance evaluation, and resource allocation.423 Donors also noted with appreciation that ADB had made progress in addressing issues in borrowing countries including the adoption of a policy on governance, and was taking action to strengthen its internal governance.

Resolution No. 247424 covers January 1997 through December 2000. Following the interpretation of the Charter by the Board of Directors on 28 May 1997,425 the Board of Governors adopted Resolution No. 251, which allocated $230 million of OCR net income (previously allocated to surplus) to the ADF.

The allocation of burden shares accepted for ADF VII (1997–2000) represented a further evolution, and the overall regional share increased. The increase drew substantially from strengthened and broadened support by the region’s nonborrowing and higher-income borrowing developing member countries. Considering the wide differences in their relative levels of development, the burden shares of these donors, along with New Zealand, were derived from their relative subscribed capital, adjusted for their relative per capita incomes in 1994. This resulted in their burden shares in ADF VII being substantially greater than in ADF VI.

While the proposed burden sharing for ADF VII was 53% for nonregional and 47% for regional donors, the share of total contributions became 49.3% (nonregional donors) and 49.1% (regional donors) after including supplementary contributions. The cooperation extended by developing member countries was a key element in the overall success of ADF VII. The near parity between nonregional and regional members in total donor contributions to ADF VII was a milestone, as it showed that an Asian spirit of intraregional cooperation among developing member countries already existed, along with their recognition of ADB as a means of expressing that cooperation. With the planning for ADF VII commencing in mid-1995, the challenge was to channel that spirit and provide the higher-income developing member countries with greater opportunity to assist the poorer regional countries through ADF. A funding gap emerged between the planned size of the burden-shared replenishment ($2.7 billion) and total burden-shared contributions, a gap partially filled by some donors by pledging voluntary supplementary contributions.426

In March 1997, ADB responded to donor guidance by presenting the board of directors with policy papers regarding a new financial planning framework for ADF resources and a transfer of OCR surplus to the ADF.427 In September 1998, ADB management presented to the Board of Directors a further working paper regarding the review of ADF loan terms, followed on 23 November 1998 by a policy paper on the same subject and a proposal regarding a new graduation policy.428 Moreover, the adoption of ADB’s anticorruption policy in 1998 was another important milestone.429

422 See Chapter 3 (G. Droesse, Modalities of Concessional Financing).
ADF Replenishments VIII to X

The period covered by ADF VIII, IX, and X was characterized by expanding aid priorities and increasing emphasis on aid effectiveness. A consensus emerged among ADB members that grant-financed projects and programs should supplement ADB concessional loans funded by ADF resources. Moreover, debt relief became a modality of ADB’s concessional financing due to ADB’s participation in the Heavily Indebted Poor Countries (HIPC) Initiative.

The ADF VIII negotiations, which commenced in 1999 in the aftermath of the 1997–1998 financial crisis, focused on ADF and ADB policies and strategies relating to poverty reduction, governance, the private sector, and cooperation among developing member countries. There was a clear consensus on the need to mainstream gender considerations and for the support of pro-poor growth.

ADB presented to donors a medium-term agenda regarding governance matters and a time-bound action plan aimed at implementing that agenda. Management proposed to allocate $160 million of ADF VIII contributions to the TASF.430 While most donors supported this proposition, some wanted ADB to continue financing the TASF with transfers of net income or surplus. Other donors believed that ADB should demonstrate its support for ADF borrowers by transferring OCR income and/or surplus, therefore raising the question of transferring OCR net income and/or surplus to the ADF.

As a compromise solution,431 donors adopted the proposal to completely finance technical assistance operations during 2001–2004 from resources other than ADF VIII donor contributions, subject to the understanding that no transfers of OCR net income or surplus would be made to the ADF during that period. Donors also agreed on a formula regarding performance-based allocation (PBA) that was equivalent but not completely identical to the overall approach of IDA. However, the donors could not reach a consensus regarding a proposal to allow conversion of ADF resources in a currency-based equivalent to the currency composition of the SDR.

The ADF VIII Donors’ Report reaffirmed ADB’s vision for a region free of poverty. The reduction of poverty was no longer just one of five objectives; rather, it had become the overarching objective of all ADB activities and, thus, the very reason for ADB’s existence. Moreover, the report established a framework for poverty reduction based on pro-poor economic growth, social development, and good governance.433 Resolution No. 276 of the ADB Board of Governors aligned the legal and financial framework for the administration of ADF resources with the revised financial planning framework adopted in 1997 and provided that operational commitment of ADF resources could be made only on the basis of a promissory note, and not on the basis of a tranche. Thus, the condition for the effectiveness of the second tranche was no longer incorporated.

430 ADB. 2000. Planned Level of Lending and Technical Assistance in ADF VIII. Manila.
433 Donors expressed concern about the limited effectiveness of existing aid policies and practices, and emphasized the need for donor coordination and the importance of the concept of the comprehensive development framework, which they considered an effective set of principles for development partnerships. They also agreed that the latest concessional fund replenishments for AfDF 8 and IDA12 provided valuable guidance for the ADF VIII negotiations. Moreover, with the donors’ report they pursued a number of strategic objectives relating to the implementation of ADF VIII. In this context, donors requested ADB to submit proposals regarding a governance action plan and PBA system to the Board of Directors for approval and asked ADB to prepare a policy paper regarding combating money laundering. Finally, donors expressed the expectation that ADB would apply good governance principles of transparency, accountability, participation, and predictability also to its internal governance and consider them relevant to relationships between management and the Board, senior staff, and staff in ADB. They specifically recommended that the Board should be more closely involved in the process leading to the formulation of the CSP and that the Board formally endorse the CSP at a meeting of the Board. In addition, the donors’ report noted a number of measures taken by ADB Management to strengthen ADB’s internal governance and a paucity of requests for inspection.
The ADF VIII negotiations focused on

- strengthening ADB’s poverty reduction strategy (PRS),
- reinforcing accountability through an independent evaluation department, and
- strengthening ADB’s development impact through results orientation.

Donors agreed to a total replenishment size of $5.645 billion, comprising $2.905 billion in new donor contributions and $2.740 billion in commitment authority to be generated from existing resources. While it was expected during the ADF VII negotiations that nonregional and regional donors would assume equal burden shares for ADF VIII, most ADF donors maintained their ADF VII burden shares. Consequently, there was a structural gap of approximately $150 million between the burden-shared contributions of members and the agreed upon size of the burden-shared replenishment. Two countries (Portugal and Hong Kong, China) became new donors to the ADF. Some countries made supplementary contributions and Japan made a special contribution.434

The ADF IX negotiations consolidated ADB’s reform agenda. There was substantial support for the policy directions of ADF VIII and previous replenishments, and a realization that replenishment negotiations should focus on implementing agreed policies rather than establishing new policies. Thus, strengthening ADB’s development effectiveness became the main theme of the ADF IX negotiations. As a corollary of ADB’s commitment to development effectiveness, ADF donors discussed enhancements to ADB’s PRS and its policy on PBAs. Management provided donors with an indicative action plan to implement steps needed to develop a more comprehensive approach to managing development results, and with a status report regarding the plan. Donors also agreed upon principles for a revised PRS and enhancements to PBA at ADB.435

Donors also approved ADF grants for financing high-priority developmental projects and programs, a major innovation that required substantial changes to ADF’s legal framework. The donors initially failed to reach consensus about either the usefulness of grants in an Asian context or the percentage of the overall replenishment to be dedicated to grants. However, these issues had been discussed extensively among donors in the context of the AfDF and IDA replenishments. In the end, a decision was made to allocate up to 21% of the total replenishment to grants, of which 3% was allocated to the TASF in conjunction with ADF IX.

Resolution No. 300 of the Board of Governors was substantially similar to Resolution No. 276 regarding ADF VIII. One major innovation was that it entailed authorization for ADB to provide ADF grants for projects and programs.

Donors agreed to maximize internal resources to about $3.70 billion. This amount exceeded for the first time the amount of pledged new contributions of $3.30 billion consisting of $3.1 billion of basic burden-shared contributions, $0.20 million of supplementary contributions, $44.4 million of additional contributions from accelerated note encashments, and $162.9 million provided by donors to partially compensate ADB for the foregone interest on grants.436

The legal framework of the ADF changed substantially during the ADF IX replenishment period, including implementation of changes to the currency management of ADF resources and the alignment of the ADF grant framework with that of IDA in 2007. Further changes became necessary due to ADB’s participation in the HIPC Initiative.

434 ADB, ADF VIII Donors’ Report: Fighting Poverty in Asia, p. 34, Table 3.
436 ADB, ADF IX Donors’ Report, para. 87.
ADF X negotiations yielded an agreement that ADF should continue to focus on supporting the development plans of the poorest countries in Asia and the Pacific, within an evolving aid architecture. The donors’ report highlighted

- ADB’s strong track record of financing operations in a number of sectors;
- its contribution to poverty reduction by helping to remove major infrastructure bottlenecks;
- its support for education, especially regarding access, gender equality, and quality; and
- its help to governments in improving economic management, governance, and public finance and expenditure management through reforms, as well as financial and other sector programs.437

ADB had also played a special role in promoting regional cooperation. Certain refinements to ADB’s PBA system were agreed upon and donors concluded that the lost reflows from the provision of debt relief under the HIPC Initiative did not require an earmarking of donors’ contributions. The main focus was on the implementation of ADF X and ADB’s Strategy 2020. To this end, ADB adopted a results framework. Donors concluded that it would be necessary to assess ADB’s capacity and skill mix to deliver on ADF X targets.

In 2008, donors agreed to a replenishment of SDR7.1 billion ($11.3 billion at applicable exchange rates), consisting of SDR6.9 billion for ADF X and SDR0.2 billion for the fourth replenishment of the TASF. New donor contributions constituted about 37% of the replenishment; the remainder was funded by internal resources.438

In 2009 and 2010, ADF donors organized informal annual ADF meetings in conjunction with ADB’s annual meetings. Such meetings are additional instruments for donors to provide policy guidance during replenishment periods on new developments and monitor the ADF results framework.

During the ADF X mid-term review, donors noted with appreciation ADB’s significant progress in internal reforms and timely response to the global economic crisis. They supported proposed refinements to ADB’s corporate results framework and ADB’s strategic approach to climate change and support in fragile and conflict-affected situations, especially in Afghanistan, as well as ADB’s increased efforts in regional cooperation. There was agreement that ADF XI negotiations should aim at three meetings, two in Manila and one in an ADF recipient country, to be held during the second half of 2011 and the last meeting in March 2012.439

### Modalities of Concessional Financing

The MPSF and ASF—and their successor, the ADF—are the only ADB special funds established specifically for the provision of concessional loans. Other ADB special funds have not been established as channels of concessional loans. The same generally applies to the trust funds, administration of which has been accepted by ADB. Moreover, subsidy schemes under which Special Funds or trust fund resources are used to defray the cost of loans funded by OCR have not become a regular feature of ADB’s concessional financing.440 ADF loans have been the core of ADB’s concessional financing operations.

438 The increasing size of ADF replenishments is shown in Appendix 4.
440 A temporary subsidy scheme was established in the context of the ACCSF to assist ADB member countries affected by the currency crises, and subsequently were faced with severe social impacts and unable for that reason “to maintain the basic intake of food (a condition leading to malnutrition and disease), afford proper medication, or pay the costs of keeping children in school.” ADB. 1999. Establishment of a New Facility in the Existing Japan Special Fund to Assist Currency Crisis-Affected Member Countries.
Together with concessional loans, technical assistance traditionally has been one of the pillars of ADB’s concessional financing operations. Technical assistance operations are guided by Articles 2 (iii) and 2 (iv) of the Charter, which mandate ADB to assist its members “in the coordination of their development policies and plans” and in providing technical assistance “for the preparation, financing and execution of development projects and [programmes].”

Grants for (investment) projects or programs have become a very important modality of ADB’s concessional financing. In the case of the ADF, such modality was only introduced in the context of the eighth replenishment (ADF IX). However, other special funds established by ADB for the provision of concessional financing (e.g., ATF and PEF) provide assistance only in the form of grants. Moreover, grants for projects and programs may be financed through trust funds (e.g., in the context of the special financing partnership facilities established by ADB). In addition to concessional loans and grants, debt relief has become a modality of ADB’s concessional financing with the participation of ADB in the HIPC Initiative. However, the ADF does not provide guarantees, equity investments, or trade financing as a modality of concessional financing. Introduction of such modalities would require the agreement of donors and changes to the ADF legal framework similar to those made for grant financing of projects or programs and the use of ADF resources for debt relief under the HIPC Initiative. Also, ADB’s other special funds or trust funds currently do not provide for modalities, as indicated above. ADB might substantially expand its modalities of financing by using concessional resources from trust funds or under framework agreements with other development partners for offering additional risk management products, equity investments, trade financing or other new concessional products under one coherent conceptual framework and on terms and conditions which are aligned with those of ADB’s concessional financing. Externally financed grants have become of increasing importance for ADF operations, as underlined by the fact that new regulations were adopted for such grants in 2009.

ADB is a signatory of the Paris Declaration on Aid Effectiveness which was endorsed on 2 May 2005 by more than 100 countries and agencies making a commitment to “harmonise and align aid delivery” through a set of monitorable actions and indicators. ADB has also adhered to the Accra Agenda for Action which builds on the Paris Declaration and focuses the effectiveness agenda on the main technical, institutional, and political challenges. The Accra Agenda for Action seeks to enhance predictability of aid by strengthening the link between public expenditures and results, country ownership and the use of country systems, a switch from reliance on prescriptive conditions about how and when

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441 One purpose of establishing the JSF was to finance or cofinance private sector development projects through equity investments. However, the JSF has never been used for that purpose. The same also applies regarding the guarantee facility provided for under the ACCSF component of the JSF. It was envisaged that such a component would be used to provide guarantees, with appropriate fees, to support the raising of resources in conjunction with ADB loans for projects and programs. These resources would include government loans, bonds, and commercial loans with government counterguarantees, and be denominated in either Japanese yen or other major currencies. Priority would be given to projects and programs aimed at implementing structural adjustments in the financial and key real sectors, establishing social safety nets, and other measures to address social impacts of the crisis (ADB, Establishment of a New Facility). In practice, the guarantee component of the ACCSF has not been implemented.

442 In the case of the Water Financing Partnership Facility (WFPF), it is envisaged that resources of partners under the facility will be provided through, among others, project-specific concessional guarantees (ADB, Establishing the Water Financing Partnership Facility, para. 13). The same is applicable in the case of the RCIFPF (ADB, Regional Cooperation, para. 2). OECD. The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. www.oecd.org/dataoecd/11/41/34428351.pdf. For the implementation of the Paris Declaration and Accra Agenda for Actions, see with further references: OECD. Action Plans to Implement PD/AAA. www.oecd.org/document/6/0,3343,en_2649_3236398_18638150__1_1_1_1,00.html

aid money is spent to conditions based on the developing country’s own development objectives, and developing plans for the untying of aid.

A 2010 assessment\textsuperscript{445} of ADB’s progress concludes that ADB has met the targets on five of nine relevant Paris declaration indicators (aligning aid with national priorities, coordinating technical assistance, using country public financial management systems, reducing parallel project implementation units, and increasing joint missions) and is expected to meet the sixth target (joint analytical work) in 2010. However, there was room for improvement regarding the use of country procurement systems, the use of program-based approaches and aid predictability. In this context the report noted that ADB management had approved in 2009 $1.3 million in TA funds for the Asia Pacific Procurement Partnership Initiative DMCs to assist DMCs in reforming and carrying out procurement. The percentage of ADB’s aid disbursed through program-based approaches (about 55%) was lower than the Paris Declaration target of 66%, but the number of new projects using such approach had risen significantly. The decline of the aid predictability indicator was mostly the result of major assistance for financial and economic crisis response “that could not have been foreseen or included in the pipeline.”\textsuperscript{446}

The following sections review the modalities of concessional financing from ADF resources in further detail and also review eligibility and access criteria for ADF resources, as well as ADB’s PBA system and results framework. In addition, ADB’s concessional loans, technical assistance, grants for projects and programs, and debt relief funded by ADF resources will be analyzed in some detail.

\textbf{Eligibility and Access}

\textbf{Classification, Eligibility, and Graduation}

To ensure that ADB’s poorest member countries benefit from its concessional operations, ADB defines its eligibility and graduation criteria for concessional financing. Based on such criteria and consistent with Article 14 (v) and (vi) of the Charter, ADB classified its regional member countries into certain categories. In financing the development of its developing member countries, Article 14(v) requires ADB to consider alternative sources of financing, including borrowers’ ability to obtain financing or facilities elsewhere (i.e., borrower access to capital markets) and ability to attract capital on reasonable terms on a sustained basis. Article 14(vi) requires ADB to pay due regard to the “prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under a loan contract.” Article 2(ii) requires ADB to have “special regard for the needs of smaller or less developed countries in the region” in utilizing the resources at its disposal. These provisions form the basis of ADB’s graduation policy and country classification framework.

When ADB began making special funds loans in 1969, it made ADF resources available to developing member countries mainly on the basis of their overall economic situation, but also for certain types of projects. At the time, there was no predetermined country allocation, and the general guideline was that all developing member countries should be eligible to receive concessional loans.\textsuperscript{447} Later, it was increasingly accepted that the overriding consideration in deploying Special Funds resources should be the overall economic condition and specific needs of each developing member country. Para. 2 of Resolution No. 62 states that the purpose of the ADF is “to enable the Bank more effectively to carry out its purpose and functions by providing resources on concessional terms, having due regard to the economic situation of the borrowing member country.”

\textsuperscript{446} Ibid., p. 5.
\textsuperscript{447} ADB. 1971. \textit{Criteria for Special Funds Loans}. Manila (Section M 70–71, 16 December). p. 17. “It is suggested that, as a matter of principle, no DMC should be considered ineligible to receive Special Funds loan.”
of such countries and to the needs of the less developed members” (Emphasis supplied). The same wording was incorporated in Section 1.01 of the ADF Regulations\textsuperscript{448} which further stipulate in Section 3.01(c):

(c) Subject to the provisions of these Regulations, the policies and procedures to be applied by the Bank in making loans financed from the Fund shall be determined by the Board of Directors, giving particular recognition to the special responsibility of the Bank to assist the less developed of its developing member countries.

It may be derived from the cited provisions that “in the allocation of ADF resources, [ADB] should give primary weight to economic factors, and attach priority to assisting the less developed DMC's.”\textsuperscript{449}

Thus, in formulating a specific policy for ADF lending in 1974, the Board of Directors adopted criteria based on the economic situation of individual developing member countries—primarily per capita GNP and debt repayment capacity. As a basic guideline, the Board decided that a “DMC's eligibility for loans from ADF should be determined entirely on country considerations.”\textsuperscript{450} The basic features of the policy were confirmed when they were reviewed in 1977 and 1978, with certain adjustments.\textsuperscript{451} As of 1978, ADB used a three-tier classification system as the basis for determining developing member countries' eligibility for ADF borrowing, and for applicable limits on financing project cost.\textsuperscript{452} Group A which comprised “very poor” intermediate developing member countries were fully eligible for ADF, Group B “intermediate” developing member countries which were eligible for limited amounts of ADF, and Group C “[r]elatively advanced countries that [were] ineligible for ADF financing.”\textsuperscript{453} Despite higher per capita income levels, most South Pacific developing member countries were declared eligible in 1977 due to the special attention given to smaller and less-developed countries (Article 2(ii) of the ADB Charter). The basic features of the 1977 system remained essentially unchanged until 1998.\textsuperscript{454} Member classification was determined at the time of entry to ADB and remained essentially static as countries remained in the groups to which they were originally assigned. No borrowing country had ever been “formally reclassified or graduated from one group to the next. Also no DMC has formally graduated from Bank assistance, because [ADB’s previous policy did not] envisage a stage beyond Group C.”\textsuperscript{455}

Against this background, ADB adopted a graduation policy for DMCs in 1998. Taking account of donor suggestions during ADF VII negotiations, the policy created a systematic approach for applying two country criteria (per capita GNP and debt repayment capacity) and a multidimensional evaluation procedure for determining debt repayment capacity that combined quantitative and qualitative assessments.\textsuperscript{456}

\textsuperscript{453} Ibid., p. 18.
\textsuperscript{455} ADB. 2008. \textit{A Graduation Policy for the Bank’s DMCs} (R204-98, 23 November and Corrigendum 1, 26 November). p. 1.
\textsuperscript{456} Ibid., pp. 10 ss. Quantitative assessment of debt repayment capacity was based on (i) debt sustainability ratio, (ii) private capital inflow as a share of total capital inflow, (iii) gross domestic savings rate, and (iv) size of the economy. Qualitative assessment was based on the following indicators: (i) categorization as an HIPC by the IMF and the World Bank, (ii) volatility of export growth, (iii) main external financing source, (iv) degree of access to IDA funds, and (v) whether sovereign borrowing by the country is rated by Moody's and Standard and Poor’s.
The revised policy confirmed the basic tenets of country classification, and the notion of graduation confirmed country criteria rather than project criteria as the primary consideration for determining the source of funding. It defined triggers for graduating from one level of ADF access to the next. Once a developing member country achieved and retained criteria for entering the next level, it should graduate to that level. Movement between groups was bidirectional, and graduation was not necessarily irreversible. Finally, the policy also extended to allow graduation from regular ADB assistance, including financing from OCR.

Initially, the IDA operational per capita GNP provided the benchmark ($925 in 1997 dollars) applied to split developing member countries into two categories—those below and those above the benchmark. Each of the two income categories was then differentiated based on debt repayment capacity—weak, limited, or adequate. Using the two criteria created a 12-cell matrix that was categorized into four eligibility groups of developing member countries: ADF only (Group A), ADF with limited amounts of OCR (Group B1), OCR with limited amounts of ADF (Group B2), and OCR only (Group C).457

Based on a review of the graduation policy, the classification system was revised in 2008 and substantially realigned with the IDA system.458 In doing so, ADB shifted from debt repayment capacity to creditworthiness and adopted again a three-tier classification system (Appendix 6), using the World Bank’s gross national income (GNI) per capita estimates, based on the Atlas method and IDA’s operational cutoff for eligibility.459 Thus, the two main criteria for classifying developing member countries are (i) GNI per capita and (ii) creditworthiness.

In this context, ADB also adopted criteria for graduation from ADF lending identical to the World Bank, which uses a benchmark of $6,725 (in 2008 US dollars) to trigger the graduation process,460 based on (i) GNI per capita, (ii) availability of commercial capital flows on reasonable terms, and (iii) the attainment of a certain level of development by key economic and social institutions.461 As a result of this new classification scheme, ADB reclassified five blend countries as Group A or Group C countries.462 Under the new framework, country classification normally occurs at the same time as ADF replenishment. In addition, ADB classifies new developing member countries and reviews individual country classifications according to circumstances. Country classifications are generally submitted to the Board of Directors on a no-objection basis.463

While aligning its grant framework with that of IDA in 2007, ADB adopted IDA’s debt distress classification of countries464 that emerged from the joint IMF–World Bank debt sustainability framework for low-income countries. Under that framework, countries are classified as high, moderate, or low risk.465 This classification determines the extent to which countries can access ADF grants.

459 IDA’s current GNI per capita operational cutoff is $1,065 in 2006 US dollars, which is updated periodically (usually annually).
462 Nauru and Tonga were reclassified as Group A countries and the PRC, Cook Islands, and Indonesia were reclassified as Group C countries (the latter two countries remained eligible for ADF resources during the remainder of the ADF IX period). ADB, Review of the 1998 Graduation Policy.
463 Ibid.
465 See Appendix 6: Classification of Developing Member Countries and Chapter 3 (G. Droesse, Modalities of Concessional Financing).
Access to Asian Development Fund Resources

Classifying a country as Group A or B does not necessarily imply automatic access to ADF financing. In addition to the eligibility criteria (which are defined objectively), countries must meet access criteria defined by ADF donors. These criteria are reviewed regularly and adjusted during the ADF replenishment process.

Importantly, there were clear constraints at the outset in terms of resources available for concessional financing. Therefore, concessional financing from ADF resources was largely limited to Group A developing member countries during the early stages of the ADF. In addition to resource constraints, actual allocation was also influenced by project-related criteria, country performance, sector, and other considerations. Based on these constraints as well as policy considerations, actual allocation (especially to Group B countries) varied significantly.

In several cases, donors could not reach consensus on ADF allocations to Group A developing member countries. India, which began OCR borrowings in 1986, and the People's Republic of China (PRC), which began OCR borrowings in 1987, are particularly significant. Both countries were classified in 1988 as Group A developing member countries. Although the per capita incomes of PRC and India were relatively low, their capacity for debt repayment was considered strong enough to handle OCR terms. The question whether India and PRC should be given access to ADF resources was discussed extensively among donors. However, considering the large sums involved and the potentially overwhelming demand for ADF resources from both countries, the assistance available from other multilateral resources (especially the World Bank) and ADB's commitment to prioritize assistance to smaller developing member countries, donors were unable to achieve consensus about granting PRC and India access to ADF resources.

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666 Resource constraints were so severe in 1973 that ADB could make available only $118 million in ADF loans and was also obliged to introduce a special scheme (i.e., the special funds supplementation scheme) for blending several ADF loans with loans from OCR. Moreover, severe resource constraints in 1975 had the effect that no ADF loan could be made to-marginally eligible countries. During the 1978 review of the policy, the Board of Directors decided that Group A countries would receive at least 85% of ADF funds during ADF III, while Group B countries were limited to 15% and Group C countries would have no access. These guidelines were applied strictly as Group A countries received 92% of funds available during ADF III.

667 Project-specific considerations were introduced for the first time in 1980, when lending to Group B countries was limited to 10% of total ADF resources, with an emphasis on projects with high social content. On that occasion, lending priority was given to the least-developed countries and those seriously affected by adverse world economic developments (e.g., increasing oil prices), while Indonesia, which was considered to have good development prospects, was excluded. As a result of the renewed emphasis, Group A countries received 96% of ADF resources during ADF IV.

668 Lending arrangements in force during the period 1985–1992 envisioned that the least-developed member countries and smaller developing member countries would receive higher priority in lending. The ADF VI Donors' Report defined an additional set of sector considerations for concessional lending, Poverty reduction, environmental improvement, population, and the promotion of women's role and status were defined as priorities.

669 India initially did not request assistance form ADB. However, following a severe drought in 1979–1980, which resulted in a 16.8% decline in food production and a 5% decline in real GNP growth that year, India expressed in 1981 the desire to borrow from ADB; the request was made in the context of preparation for ADB's Third General Capital Increase and the ADF III. Subsequently, ADB commenced its operations in India in 1986. (ADB, 1986. Proposed Loan—Industrial Credit and Investment Corporation of India Limited (India), Manila [R29–86, 13 March]). The PRC joined ADB on 10 March 1986 and ADB commenced its operations there the following year. ADB. 1986. Proposed Loan and Technical Assistance Grant, China Investment Bank [Peoples Republic of China]. Manila.

670 See ADB, A Review of Arrangements for Lending from ADF, TASF Operations Funded by ADF Contributions and ADF Lending Terms, pp. 10 ss. The matter was discussed, in particular, the context of ADF VI. In January 1989, a panel appointed by the President of ADB recommended that "[i]n view of the eligibility, the Bank should provide [PRC and India] with access to ADF resources [to] support projects in these two DMCs for physical and social infrastructure, for protection and improvement of the environment, and for projects designed directly to improved the living standards of the poorer groups." ADB. 1989. The Asian Development Bank in the 1990s. Manila, p. 11. On 27 February 1990, a Working Paper (ADB. 1990. Fifth Replenishment of Asian Development Fund 1991–1994. Manila [Working Paper 1–90, 27 February] p. 13 and pp. 15–17) was circulated to the Board of Directors seeking a further ADF replenishment [ADF VI] to provide resources for ADB's concessional lending operations during 1991 to 1994. It outlined a proposed ADF lending of $10.4 billion, including for countries, such as India and PRC which previously had not been given access to ADF resources. The question whether India and PRC should be given access to ADF resources was subsequently discussed in replenishment meetings. In the replenishment meeting in Tokyo held in January 1991, the then President, Kinimasa Taramizu, made a statement that it was not his intention to propose to the Board of Directors a new policy regarding access of India and PRC to ADF resources until a new replenishment could be agreed upon. The matter was further discussed in ADF VII in the
In addition, the donors excluded developing member countries such as Afghanistan, the Lao People’s Democratic Republic, Myanmar, and Viet Nam—which would have been eligible for ADF financing by classification—from ADF access for various reasons and over certain periods of time.\(^{471}\)

Although not all developing member countries in Group A can access ADF financing, other countries were granted temporary access for specific periods, despite ineligibility due to classification. In cases where countries experienced short-term difficulties, ADB restored temporary access to ADF resources, rather than reclassifying the developing member country. ADB adopted this approach for Indonesia and the Philippines, where access to ADF resources was reestablished in 1987 and later confirmed with a reduced ceiling in 1989.\(^{472}\)

**Performance-Based Allocation**

In view of the scarcity of concessional resources, it is extremely important to ensure that they are devoted to activities that contribute most effectively to sustainable development and poverty reduction, and used by countries that utilize them most effectively. For that reason, ADB has increasingly emphasized PBA since ADF’s fifth replenishment.

ADF donors, which urged ADB in 1991\(^{473}\) to “emphasize performance as a criterion for allocating ADF resources to individual DMCs,” noted in 1997 that performance assessments had become “a standard feature of all country assistance plans.”\(^{474}\) However, even though performance then played a role in allocation decisions, such decisions were based largely on country considerations and were not concerted or transparent.\(^{475}\) Following adoption of ADB’s PRS in 1999\(^{476}\) and based on evidence\(^{477}\) that aid had been most effective in accelerating poverty reduction in countries whose policy and institutional context of ADB. 1995. *Issues Paper for the Sixth Replenishment*. Discussion Paper for Asian Development Fund Donors Meeting, Amsterdam 13–14 November 1995, Manila. pp. 7–8. However, no consensus on the access of India and PRC to ADF resources could be reached. The ADF VII Donors ADB Sixth Replenishment of the Asian Development Fund report states: “Based on current eligibility and access criteria, and given the large proportion of Asia’s poor that live in the People’s Republic of China (PRC) and India, access to ADF for these two low-income DMCs would be justified in the view of many donors. However, there was no consensus among donors on making ADF resources available for either of these two low-income DMCs. Also, given the needs of traditional ADF recipients and other eligible borrowers, donors concluded that it would not be possible to make ADF resources available to these two countries during the ADF VII period.” ADB. 1997. *Sixth Replenishment of the Asian Development Fund*. pp. 12–13.

\(^{471}\) In cases where subsequent donor consensus was during the replenishment period, a relevant amendment to the resolution of the Board of Governors was required. For example, Afghanistan was not listed as an eligible ADF country during ADF V–ADF VIII. However, following consultation and an agreement with ADF VIII donors, the Board of Governors agreed on 14 November 2002 to include Afghanistan in the list of developing member countries with access to ADF resources during the ADF VIII period. (Resolution No. 288, *Seventh Replenishment of the Asian Development Fund: Access of Afghanistan to ADF Resources*, adopted on 14 November 2002). The same process was followed in the case of Armenia, which also was not included in the ADF IX list of countries that may have access to ADF resources (Resolution No. 324, *Eighth Replenishment of the Asian Development Fund and Third Regularized Replenishment of the Technical Assistance Special Fund: Access of Armenia to ADF Resources*, adopted on 20 April 2007).

\(^{472}\) ADB. 1988. *ADF Eligibility of Selected DMCs during 1989–1990*. Manila (R201–88, 29 December and Corrigendum 1, 1 February 1989). Based on an assessment of the economic conditions of Indonesia and the Philippines, para. 6 stated that there was “no need to grant the two countries general eligibility for access to ADF resources....”

\(^{473}\) ADB, *Adoption of the Performance-Based Allocation System: Report of the Donors*.

\(^{474}\) *ADB, ADF VII: Report of the Donors*.

\(^{475}\) During ADF VII (1997–2000) allocations were determined in two steps. Based largely on historical considerations and the available ADF commitment authority, resources were allocated first on a regional basis through management’s planning directions. In each region, vice-presidents then decided on country allocations based on the recommendations of programs’ directors. Their recommendations reflected the information provided in “country performance assessments.” The format of these assessments differed across countries and regions. Even though recommended allocations emerging from these assessments in most cases included performance considerations, particularly portfolio performance, they were also influenced by “strategic” and operational considerations.


performance was strong, ADB acted to strengthen the link between country performance and resource allocation.

The basis for ADB’s PBA system was established during the negotiations for the Seventh Replenishment of the Asian Development Fund (ADF VIII), during which donors reviewed in detail ADB’s existing system allocating ADF resources against the systems developed in negotiations regarding the 12th replenishment of IDA (IDA12), the Eighth Replenishment of the African Development Fund, and ADB’s progress toward a formal PBA system. They endorsed specific criteria and weights for such a system, set out in Appendix 5 of their report, and “recommended that ADB prepare a policy on performance-based allocation for ADF resources [based on such criteria] and submit it to the Board of Directors before the end of 2000 with the expectation that the policies, associated staff instructions and guidelines [would] begin implementation and testing in early 2001, followed by full implementation… in 2002.” Allowing for the characteristics unique to ADB and the region, donors then agreed that it was not necessary for the PBA system to replicate entirely the systems of AfDF 8 or IDA. They also “agreed that the future system should be firmly grounded on the fundamental principle of a very robust relationship between performance—including performance on governance—and allocation of concessional resources and should not convey or support the concept of entitlement of ADF resources for ADF borrowers.”

Consistent with the criteria endorsed by the donors, the policy adopted by the ADB Board of Directors in 2000 was similar overall to that of IDA. Both systems determined allocations using “country policy performance, need, and portfolio performance [and both allowed] common criteria across countries to be modified by country-specific elements.” The PBA system evaluated country performance in terms of policy reform and implementation. Developing member countries’ needs were measured by per capita GNP and population size, and allocations were made based on performance and absorptive capacity for effective fund use.

Starting with the midterm review of ADF VIII and moving through the ADF IX negotiation period, extensive discussion took place among ADF donor shareholders, borrowers’ representatives, the AfDF, and IDA. These discussions resulted in several PBA policy enhancements that reflected stakeholder interests in strengthening policy reform and good governance through better performance and accountability for scarce concessional resources. Donors expressed a strong interest in increasing the weight of the governance factor in the formula of ADB’s PBA system for allocating resources and fully aligning ADB’s system with that of IDA. They stressed the congruence “needed between the PBA and the broader strategic interests of ADB [and] agreed that the allocation formula should be recalibrated to achieve a sharper focus on poor, small, and mid-size countries that are performing well.” They also recommended maintaining a separate pool of resources for the Pacific developing member countries. Consistent with the guidance given by

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479 Ibid., p. 19.
480 Ibid., p. 18.
482 Ibid., p. ii.
486 Ibid.
the donors, ADB revamped its PBA policy in 2004 (Appendix 7) by measuring country performance based on the country policy and the institutional assessment questionnaire of IDA.\textsuperscript{487} Although the switch to the revised PBA policy coincided with an increased volume of concessional resources from an annual average of less than $1.5 billion in ADF VIII to nearly $1.7 billion in ADF IX, [the revised PBA formula had the effect that] despite the larger pool of funds, the absolute volume of some countries’ allocations declined under the new system.\textsuperscript{488}

In particular, the share of some of the poorest countries declined while the share of the largest countries improved much more than their performance trends appeared to warrant.\textsuperscript{489} This trend “revealed an inherent tension between addressing the needs of the weakest countries and simultaneously upholding the principle of rewarding performance.”\textsuperscript{490} ADF X donors\textsuperscript{491} agreed to set an upper limit on allocations to the largest borrowers agreed during the ADF X mid-term review on further refinements of the policy.\textsuperscript{492} Nevertheless, the basic question arises on whether it is warranted and appropriate to apply universally applicable performance indicators to continents that are facing very diverse problems (e.g., Africa and Asia), or whether this unduly restricts the ability of ADB and AfDB to be responsible for the needs of their members.

### Results Framework Mid-Term Review

During the ADF IX negotiations, donors stressed that the ADF needed to improve its development effectiveness and the impact of ADF operations. The newly established results management unit was given the primary responsibility for designing and monitoring ADB’s results system. This involved developing results-based country strategies that aligned with national poverty reduction strategies and enhanced harmonization and division of labor across institutions to enable client countries to reduce transaction costs.\textsuperscript{493}

ADB’s Strategy 2020 was approved on 7 April 2008 by ADB’s Board of Directors. It called for the development and outlined the overall structure of a results framework to be used by ADB to monitor its effectiveness and the progress of its implementation.\textsuperscript{494} Such results framework was endorsed in the ADF X donors’ report\textsuperscript{495} of May 2008 and subsequently adopted by the board of directors on 18 August 2008.\textsuperscript{496} This framework, which is harmonized with the results measuring systems of IDA and the AfDF, has four levels. The first level “tracks the development progress of the region through selected regional outcomes to which ADB contributes.”\textsuperscript{497} The second level involves an assessment of ADB’s “contribution to country and regional outcomes by aggregating key outputs delivered to developing member countries

\begin{itemize}
  \item \textsuperscript{489} Ibid., para. 19.
  \item \textsuperscript{490} Ibid., para. 2.
  \item \textsuperscript{491} ADB, \textit{Refining Performance-Based Allocation}.
  \item \textsuperscript{493} ADB, \textit{Eighth Replenishment of the ADF: ADF IX Donors’ Report}, paras. 20–28.
  \item \textsuperscript{494} ADB, \textit{Strategy 2020}, pp. 25 and 26 and Appendix 2.
  \item \textsuperscript{495} ADB, \textit{Asian Development Fund X Donors’ Report}.
  \item \textsuperscript{496} ADB. 2008. \textit{ADB Results Framework}. Manila. www.adb.org/Documents/Policies/ADB-Results-Framework/s166-08.pdf
  \item \textsuperscript{497} Ibid. ADB, 2010. \textit{ADF’s Performance-Based Allocation System: Review of the Current System and the Post-Conflict Assistance Phaseout}. www.adb.org/Documents/Reports/ADF/X/Session-7-PBA-Postconflict-Phaseout.pdf
\end{itemize}
(DMCs) through ADB projects in priority sectors.” On the third level, ADB seeks to increase its contribution to country outcomes and overall development effectiveness by improving the performance of its operational portfolio. Finally, on the fourth level, ADB aims “to capture progress in increasing efficiency in the use of internal resources and implementing reforms that are considered essential to maintain ADB’s ability to remain a relevant and results-oriented institution and contribute to improving its development effectiveness.” ADB’s development effectiveness at all four levels is evaluated annually on the basis of the above results framework. The third such corporate performance assessment was completed in 2009 and confirmed its value as a corporate management tool for guiding ADB toward Strategy 2020 goals and helping ADB management in assessing performance, identifying challenges, and planning steps for improvement. During the ADF X mid-term review in November 2010, donors approved certain refinements to ADB’s Results Framework and welcomed the fact that a comprehensive review of the results framework will be conducted in 2012.

**Loans**

The ADF was established explicitly to finance concessional loans. Resolution No. 62 provided that ADF resources “shall be used for financing concessional loans for projects and programmes of high developmental priority.” The ADF Regulations contained the same restriction and stated that ADF resources could be used “alone or in combination with any other Special Funds resources of the Bank to provide financing under loans (including technical assistance loans) on concessional terms, for projects and programmes of high developmental priority.” Thus, concessional loans are the principal (and initially) the only modality of ADF concessional financing. To defray the cost of borrowing from ADB’s OCR, donors considered creating a subsidy scheme funded by ADF resources during ADF VII negotiations in 1996, but the scheme was not implemented at that time. Moreover, when a hard window for

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498 Ibid.
499 Ibid.
500 Ibid.
503 ADB Board of Governors Resolution No. 62 (1973), para. 5(a).
504 ADB Regulations, section 3.01.
506 The establishment of an interest subsidy scheme (ISS) similar to the Intermediate Financing Facility of the IADB was first reviewed in ADB in the context of the Sixth Replenishment of the ADF (ADF VII). The pros and cons for establishing such a facility were discussed at a donors’ meeting held in Manila on 28 April 1996. The idea was that under an ISS, a part of ADB’s concessional lending might fall under an OCR window at standard lending rates, thus enabling ADB “to augment donor resources by using OCR capital market borrowings to finance the principal of the OCR-assisted loans while drawing upon contributions only for the interest subsidy component.” (ADB. 1996. Financial Management and Funding of ADF VII: An Issues Paper. Asian Development Fund Donors’ Meeting. Manila [29 March 1996], p. 4.) To provide some concessionality, a portion of the interest payable to OCR would have to be subsidized by funds from a separate account, known as an interest subsidy fund. Two options were proposed to donors: (i) having interest subsidy fund lending as the only concessional lending arm of ADB, and (ii) allowing limited interest subsidy fund lending to supplement ADB’s concessional lending by extending intermediate lending terms to members not covered by the ADF. Donors agreed to neither proposal, and the ISS was not implemented for that reason (Ibid.).
concessional loans was established in 2007, ADB opted to establish a special facility for hard-term loans within the ADF, rather than subsidize the loans from ADB’s OCR. Thus, subsidy schemes currently are not a feature of ADF concessional financing. Nevertheless, such schemes have interesting features and may help ADB to leverage additional concessional financing, and may be a potentially valuable additional modality of ADB’s concessional financing.

Terms

Before June 1973, ADB determined specific terms of each special funds loan, based primarily on the country’s economic situation and taking into account the specific project. Similar to the practice of IADB at that time, ADB used four different interest rates during this period,507 in an attempt to “make a somewhat finer distinction to reflect the needs of the recipients of Special Funds loans”508 and varying both amortization and grace periods.509 Thus, loan terms were a matter of considerable complexity. While this allowed ADB substantial flexibility in adjusting the terms of special funds loans according to the economic condition of borrowing developing member countries, the complexity made it difficult to negotiate with borrowers. Creating uniform terms became a priority.

Beginning in March 1974, the ADF’s approved loans had standardized terms, including an annual service charge of 1%, a 40-year maturity period, a 10-year grace period, and an annual principal repayment of 2% for the first 10 years following the grace period and 4% thereafter. ADF VIII revised the loan terms for investment loans financed from ADF resources holding 32-year maturity and an 8-year grace period, a 1% interest charge during the grace period, and 1.5% during the amortization period, with amortization repaid equally. Program loans from ADF resources have a 24-year maturity, a grace period of 8 years, and a 1% interest charge during the grace period (1.5% during the amortization period), with equal amortization repayments.510 The aforementioned changes reduced to some extent the concessionality of ADF loans. To enhance its project financing capability and make it more consistent with market practice, ADB liberalized its rules on cost sharing and local cost financing in 2005.511

During ADF IX, ADB decided to align its practices with those of IDA by establishing a new ADF hard-term lending facility funded by a 20% volume discount applied to the grant portion of a country’s performance-based ADF allocation. Under this new facility, “[b]lend countries with active OCR lending programs and [GNI] per capita that has not exceeded the IDA operational cutoff for more than 2 consecutive years”512 are eligible to receive hard-term loans. Such loans have a longer grace period and “a fixed interest rate based on the OCR fixed-rate lending terms less 150 basis points or the current ADF rate, whichever is higher.”513 Other terms are similar to those of regular ADF loans.

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507 1.5%, 2%, 2.5%, and 3% per annum.
509 Ibid., para. 4: “Amortization period varied from 12 to 40 years, including grace period from 3 to 10 years. For the determination of these periods both country considerations and the nature of the project were taken into account.”
510 The terms of loans committed from ADF resources may be adjusted to reflect significant changes in the economic circumstances of individual countries. Accordingly, if (i) the per capita GNP of the country has remained above the ADF eligibility threshold for 5 consecutive years, and (ii) the country has achieved the capacity to repay debt on OCR terms, ADB may modify the terms of repayment of the loan or charge a higher interest rate. For details, reference is made to ADB. 2007. Lending and Grant Policies (Asian Development Fund). Operations Manual. OM Section D2/BP Manila. www.adb.org/Documents/Manuals/Operations/OMD02.pdf. See with further details regarding the ADF lending terms. ADB. Asian Development Fund. www.adb.org/ADF/about.asp
512 ADB. Revising the Framework. para. 19.
513 Ibid., Executive Summary. ADB set the interest rate for hard-term loans approved in 2010 at 2.22%. This rate is applicable to all hard-term loans approved in 2010 and is fixed for the life of the loans. ADB. 2011. Revised Lending Rates and Funding Cost Margins for Asian Development Bank’s Loan Products. www.adb.org/Documents/Others/secm3-10.pdf
Currency Features

When the ADF was established, Resolutions No. 67 and 68 of the Board of Governors on initial resource mobilization explicitly provided that member contributions should be made in the national currency of the donor. This measure was adopted in the absence of a general maintenance of value requirement, so ADB could maintain the overall resource value of ADF resources at a reasonably constant level. Since the Third Replenishment of the ADF,514 ADF contributors have been given the opportunity to denominate contributions in either their national currency, SDRs, or US dollars. Effectively, few countries denominated their contributions in SDRs or US dollars.515 Thus, until 2005, most donors effectively contributed in their national currency. A basic principle governing the administration of ADF resources was that ADB maintained donors’ contributions in the various currencies contributed by donors.

Currency preservation for ADF contributions was part of the arrangements relating to the administration of ADF resources agreed on between ADF contributors and ADB pursuant to Article 19.3 of the Charter. Borrowers were obliged to repay the principal and pay loan charges in the currency or currencies withdrawn from the loan account, unless the required currency was not available in the ADF liquidity pool. If ADF resources were converted at the spot rate to provide the borrower with a particular currency or currencies, the loan principal had to be repaid in the currency (liability currency) or currencies that had been converted.516

Under that system, ADF borrowers had to manage as many as 15 currencies. More important, because of the uneven distribution of foreign exchange risks associated with the various liability currencies—chosen at ADB’s discretion for disbursement—ADB was only able to offer to borrowers an inconsistent loan product. This significantly hampered borrowers’ debt management and planning capability. Thus, in 2005, ADB sought donor agreement to introduce a full-fledged SDR system—similar to IDA—that would authorize ADB to convert ADF resources into the basket of currencies that constitute SDRs. This allowed ADB to value disbursements, repayments, and charges under loans from ADF resources in SDRs. It required not merely the agreement of ADF donors, but substantial changes to the legal framework governing ADF resources as well. The Board of Governors accepted the proposal on 28 November 2005.517 In December 2005, the Board of Directors subsequently adopted necessary changes to the ADF Regulations and the Special Operations Loan Regulations, which were required to implement the new currency management scheme.518 In this context, ADB offered borrowers the opportunity to convert their existing liability (i.e., the disbursed and outstanding balance of ADF legacy loans in various currencies) into SDRs.

Technical Assistance

The first guidelines for technical assistance were adopted in 1969 as provided in the Charter. Since then, the development community in general and ADB in particular have witnessed several stages of technical assistance reform. The 1970s witnessed the emergence of participatory and process design, while the 1980s emphasized domestic capacity building and decreased reliance on foreign expertise. The 1990s “highlighted the need to understand the complex socioeconomic, cultural and political context that TA is often trying to influence” and, more recently, “the Paris Declaration and Monterrey Consensus have emphasized alignment with national strategies, ownership, mutual accountability, managing for

515 Germany denominated its contribution in SDRs during ADF V and ADF VI (see Resolution No. 182 adopted on 1 October 1986 and Resolution No. 214 adopted on 24 February 1992).
516 ADF Regulations, Article III, section 3.8(b) and Special Operations Loan Regulations, Article IV.
development results and harmonization.”

Against this background, ADB has made various reform efforts and currently seeks to increase the development effectiveness of technical assistance “through (i) synergy between ADB lending and nonlending products at country and regional levels; and (ii) stronger DMC involvement and ownership at all levels, and greater use of national systems.”

ADB provides two types of technical assistance: “(i) direct TA for project preparation, policy analysis, and capacity building, which is designed, financed, and implemented based on country and subregional strategies agreed upon by ADB and its [developing member countries] DMCs; and (ii) indirect TA to address region-wide development challenges, which is part of ADB’s wider role of advancing and disseminating knowledge about development issues in Asia and the Pacific.”

ADF resources are not meant to directly finance technical assistance. While general TASF replenishments have occurred in conjunction with ADF replenishments, the amounts allocated to the TASF in connection with such replenishments are governed by TASF, not ADF, regulations. The TASF and other ADB Special Funds (e.g., JSF, ATF, PEF, RICF, and CCF) have been ADB’s major channels for financing technical assistance operations. In addition, ADB’s technical assistance operations have been funded through (concessional) loans, or pursuant to Article 21 (vi) of the Charter, from current OCR income as services to member countries or through trust funds and ADB’s partnership facilities.

Grants

A major issue at ADF IX involved determining whether grants for (investment) projects should be provided from ADF resources. Donors agreed to “establish a grant program to meet broad development objectives:

(i) reducing the debt burden of development finance in the poorest countries in the region;

(ii) assisting poor countries in accelerating their transition from post-conflict situations to peace and stability;

(iii) combating HIV/AIDS and other infectious diseases; and

(iv) undertaking priority technical assistance.”

519 ADB, Increasing the Impact, Appendix 2.
520 Ibid., Executive Summary. For previous reform efforts, see Ibid., Appendix 1.
521 Ibid. Executive Summary. ADB’s operations manual distinguishes four types of technical assistance: (i) Project preparatory technical assistance may be approved “for single projects, a series of subprojects, a program or sector loan, or a grant [and] may be used to develop a pipeline of projects suitable for financing by ADB or other external sources, or both”; (ii) policy and advisory technical assistance is “usually extended in a sector- or economy-wide context [either on a stand-alone basis or accompanying a project and may assist in] preparing national or sector development plans and programs and [in] carrying out sector-, policy-, and issues-oriented studies”; (iii) capacity development technical assistance assists in “establishing or strengthening organizations and institutions in DMCs, [in] implementing, operating and managing ADB-financed projects [and in] enhancing knowledge management.” Research and development technical assistance seeks to address global or regional development issues which require further analysis and cooperation (ADB, Technical Assistance, Operations Manual, paras. 14, 17, 18, and 19). It is further specified therein (para. 22) that technical assistance may be in the form of a technical assistance cluster comprising a series of subprojects over an extended period to address constraints in developing member countries through a comprehensive and holistic approach.
522 Resolution No. 62 of the Board of Governors and section 4.07 of the ADF Regulations make this clear. They state that a portion of annual ADF net income may be transferred by the Board of Governors “from the Fund [to the TASF] and applied towards financing the cost of technical assistance.” In practice, such transfers of ADF net income to the TASF have never occurred, as the ADF investment income was used, together with reflows from previous ADF replenishments, to fund ADB’s (expanded) ACA.
523 ADB Board of Governors Resolution Nos. 182 (adopted on 1 October 1986), 214 (adopted on 24 February 1992), 300, and 333 provided for a regularized replenishment of the TASF.
524 See Chapter 2 (G. Droesse, Organizational Structures).
525 ADB, Eighth Replenishment of the Asian Development Fund.
Since this type of concessional financing clearly had not been contemplated when the ADF was established, the introduction of grants required major changes to ADF’s legal framework. Two basic questions arose. First, should grants become a general ADF option, or be limited to ADF IX?

As a general option, all resolutions of the Board of Governors regarding the establishment of the ADF and ADF replenishments would have required amendment. Because the introduction of grants concerned the manner in which ADB may use ADF resources and had substantial implications for the entitlement of contributors if they withdrew from the ADF \(^{526}\) or if the ADF was terminated, amendments to the ADF Regulations required “prior consent in writing of every contributor,” \(^{527}\) as well as a special resolution of the Board of Directors (approved by a majority of the directors representing not less than two-thirds of the voting power of the members). It was unclear whether it would be possible to obtain unanimous approval by ADF contributors—both past and present—if reflows from previous replenishments were used for ADF grants.

The decisive consideration was that ADF grants did not require the use of reflows from previous replenishments, because funds used for grants would be substantially less than new ADF contributions under ADF IX. Therefore, it appeared prudent to introduce grant financing initially only in the context of ADF IX. \(^{528}\)

The second fundamental question debated during ADF IX negotiations involved whether to provide ADF grants on the basis of the economic situation of countries or to regard project considerations as secondary criteria. As stated in a background paper prepared for the September 2003 ADF IX meeting in Copenhagen, “[g]rants could be effectively and selectively used to leverage the full range of ADB’s institutional strength and resources to reduce poverty without adding to the debt burden of poor countries and their peoples.” Grants would be directed to “priority areas” (e.g., social sectors) that are not revenue earning, but nonetheless have major socioeconomic benefits. Grants were contemplated as a “good instrument” for greater involvement of civil society in decision-making processes and service delivery at the local level. \(^{529}\) Also, the discussion paper prepared for the second ADF IX Donors’ Meeting in Tokyo \(^{530}\) proposed a grant framework that focused on specific use—based on country and project considerations. \(^{531}\) However, donors did not support the proposal, as they viewed the issue of providing grants mainly from the perspective of reducing the debt burden of grant recipients.

The ADF IX Donors’ Report \(^{532}\) stated that the introduction of grants under ADF IX did not commit future replenishments to continue offering grant assistance. Donors further agreed that ADF should provide grants in a manner that (i) is consistent with its mandate as a broad-based development institution, (ii) harmonizes with activities of development partners, and (iii) draws on ADB’s comparative strengths. Donors also agreed to amend the ADF Regulations, particularly section 3.01, authorizing ADB to use ADF resources for financing projects and programs of high developmental priority from grants “in the event and to the extent that the relevant authorizing Resolution of the Board of Governors provides for such grant financing.”

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526 ADF Regulations, section 6.01 (a) and (d).
527 ADF Regulations, section 6.01.
528 Preamble (D) of Resolution No. 300 (2004) of the ADB Board of Governors authorized ADB “to provide financing under the Replenishment in the form of grants in addition to loans.” Moreover, para. 3(b) of that resolution authorized ADB “to provide financing under the Replenishment in the form of grants for projects and programs of high developmental priority.” An aggregate amount of SDR149,990,684 was set aside from the installment payments of all contributions, in proportion to the total amount of each contribution and allocated to the TASF (para. 3[c]). Resolution No. 333, Ninth Replenishment of the Asian Development Fund and Fourth Regularized Replenishment of the Technical Assistance Special Fund (2008), contains similar provisions, and set aside SDR213,338,706.
531 ADB, Eighth Replenishment of the Asian Development Fund and Third Regularized Replenishment of the Technical Assistance Special Fund.
532 ADB, ADF IX Donors’ Report: Development Effectiveness for Poverty Reduction, para. 79.
Grants represented up to 21% of total ADF IX operations, including 3% for priority technical assistance. Contributors agreed to finance grants in ADF under the “Belgian Option,” which previously had been proposed during the IDA14 discussions.533

The introduction of grants under ADF IX did not alter the overall character of ADF, which continues to promote sound policy implementation and development effectiveness in support of poverty reduction. ADF IX grant financing adhered to the same terms and conditions and fiduciary standards (i.e., good governance, sound financial management, and fiscal responsibility) that apply to all ADF loans. Grant financing was generally contingent on the satisfaction of certain criteria. ADF grants do not carry a repayment obligation; however, the agreement under which the grant is provided can be suspended, cancelled, or terminated if the grant is used in a manner inconsistent with its terms and conditions.534 Approval procedures for grants for projects and programs follow those applicable to concessional loans. Unlike ADF loans, grants are denominated and disbursed in US dollars rather than in SDRs. If requested, payment for goods and services in other currencies may be arranged by ADB on behalf of beneficiaries. In that case, however, beneficiaries are responsible for shortfalls in the grant amounts caused by exchange rate fluctuations.

ADB’s grant framework for ADF IX aligned with that of IDA13, which was substantially revised by donors during IDA14 negotiations to help low-income countries restore or maintain external debt sustainability. Unlike IDA13, the IDA14 framework was grounded in the debt sustainability framework of the IMF and the World Bank (i.e., a country’s eligibility for grants was based solely on debt sustainability criteria). Since the framework provided a stronger analytical basis for grant eligibility and greater flexibility in responding to changing country circumstances, during the ADF IX midterm review meeting ADF donors supported a proposal to align the ADF IX grant framework with that of IDA14.535 Accordingly, grant eligibility was limited to ADF-only countries and grant financing for HIV/AIDS and other communicable diseases was discontinued. ADB adopted the same debt distress classification as IDA, i.e., “(i) no grants for low risk of debt distress, (ii) 50% grants for moderate risk of debt distress, and (iii) 100% grants for high risk of debt distress.”536

The revised framework, which determined grant assistance from ADF resources on the basis of the debt sustainability framework jointly developed by the IMF and the World Bank, applied a 20% volume discount to the grant portion of PBA “to offset the risk of perverse incentives and moral hazard in replacing loans with grants for countries with poor debt management.”537 This volume discount was transferred to the newly established “hard-term ADF facility,” the reflows of which were meant to offset the net present value of charge income foregone in switching from loans to grants.538 “Blend countries with active OCR lending programs and gross national income per capita that has not exceeded the IDA operational cutoff for more than 2 consecutive years [are] eligible for this facility.”539 ADF-only countries can gain access “in individual cases for high-revenue earning projects that generate net foreign exchange beyond the debt-service requirement.”540

In 2008, ADB approved grant projects totaling $707.4 million funded from ADF IX.541 The lack of a general authorization for ADF grants, along with the fact that such grants required authorization

533 Under this option, the grant financing is to be approached in two segments: segment 1 consisting of foregone interest charges to be compensated by ADF IX contributions, and segment 2 consisting of foregone principal reflows to be financed on a pay-as-you-go basis. The ADF IX Donors’ Report and the above provisions contained therein were incorporated by the Board of Directors by reference in their report to the Board of Governors and accepted as such by the Board of Governors.


535 ADB, Revising the Framework.

536 Ibid., p. 6.

537 Ibid., p. 7.

538 Ibid.

539 Ibid., p. 8.

540 Ibid.

for each ADF replenishment and funding by resources of that replenishment, resulted in “cumbersome administrative systems,” because it was necessary to monitor the funding source of each ADF grant. As the new grant framework was based on the assumption that resources would continue to be used for grants, depending on the debt distress of the recipient ADF countries, the Board of Directors proposed the creation of an enabling framework authorizing the use of all reflows from previous replenishments for grants. To streamline the administration of ADF resources, a global change to the ADF Resolutions allowing the use of reflows for grant financing of projects and programs was approved in 2009. Also, the ADF Regulations were amended accordingly to remove all references to the restriction that required an authorizing resolution of the Board of Governors for the use of grants. As for the introduction of grants in 2005, the above changes required the agreement of all donors. Thus, ADF grants became a general feature of ADB’s concessional financing when the Board of Governors allowed the use of all ADF resources for grant financing of projects and programs in 2009.

Debt Relief

With ADB’s participation in the HIPC Initiative launched by IDA and IMF, debt relief became a modality of ADB’s concessional financing in 2007. Based on certain net income and indebtedness criteria, the HIPC Initiative seeks to provide relief to poor countries that have levels of external debt that severely burden export earnings or public finance. During the initial discussion regarding ADB’s participation in the HIPC Initiative (during ADF VIII), donors concluded that there “may be minimal or no request for ADB” for financing debt relief under that initiative. Although no ADB members qualified for HIPC debt relief during ADF VIII, some countries met indebtedness criteria during the ADF IX period. Among them, only Afghanistan reached the decision point and became eligible for debt relief under the HIPC Initiative. Allowing debt relief from ADF resources under the HIPC Initiative required an amendment to both Resolution No. 62 and the ADF Regulations. Although many AfDB and IDA

542 ADB, Establishing the Legal Framework, para. 4.
543 Ibid.
544 Section 3.01(a) of the ADF Regulations was amended to read: “(a) The resources of the Fund may be used by ADB, alone or in combination with any other Special Funds resources of ADB, to provide financing under loans (including technical assistance loans) on concessional terms, for projects and programs of high developmental priority. The term ‘project’ as hereinafter used refers equally to a program. ADB may also use the resources of the Fund, except the set-aside resources mentioned in Section 2.05, for the provision of debt relief as envisaged in the Heavily Indebted Poor Countries Initiative introduced by the International Development Association and International Monetary Fund, and to provide grants to finance projects of high developmental priority.” Equivalent changes were made to sections 3.03 and 3.06 of the ADF Regulations.
546 For a discussion on debt relief, see Chapter 3 (G. Droesse, Modalities of Concessional Financing).
548 ADB, Policy for Providing Heavily Indebted Poor Countries Relief from Asian Development Fund Debt.
549 Ibid. To reach the decision point, a country must have a proven record of macroeconomic stability, have prepared an interim PRS paper, and have debt burdens above the HIPC thresholds.
550 The ADB Board of Governors authorized ADB, by Resolution No. 329, Providing Heavily Indebted Poor Countries Relief from Asian Development Fund Debt (2008), “to participate in the provision of debt relief under the HIPC initiative to ADF borrowers that have reached the decision point as described in the HIPC initiative documents” and amended para. 5 (a) of Resolution No. 62, Establishment of the Asian Development Fund (1973), as follows:

5(a) Resources of the Fund shall be used for financing concessional loans for projects and programmes of high developmental priority. Such loans shall principally be for foreign exchange costs, but may, in appropriate cases, include a reasonable portion of expenditures in local currency. The criteria to be applied in making such loans shall be as determined by the Board of Directors, in conformity with the purpose of the Fund. Resources of the Fund may also be used for the provision of debt relief under the Heavily Indebted Poor Countries Initiative established by the International Development Association and International Monetary Fund to such countries as may be determined by the Board of Directors.

551 Since ADF Regulations only allowed the use of ADF resources for loans—and to the extent authorized by the Board of Governors, grants—providing debt relief from ADF resources under the HIPC Initiative required amendments to the ADF Regulations.
countries qualified for debt relief under the HIPC Initiative, Afghanistan was the only ADB country to receive relief under that initiative. Thus, the cost implication of such debt relief remained rather limited.

**Procurement**

Among the major benefits of membership in an international organization, procurement may also create an incentive for contributors to provide concessional resources. In certain cases, procurement sanctions may be imposed on countries that do not contribute, or cease to contribute, to concessional resources.\(^{552}\) On the other hand, any limitations of the pool of possible suppliers tend to adversely affect the impact of (concessional) financing provided by an organization, as they may prevent most suitable procurement arrangements, increase the procurement cost of recipients, and cause problems in cofinancing arrangements and in harmonizing rules and procedures among international organizations. Moreover, the value of procurement restrictions or sanctions for inducing members to contribute to concessional resources is rather questionable. For that reason, there is an increasing tendency to provide for global procurement.\(^{553}\)

While the responsibility of projects funded by ADB rests with the borrower, ADB has an obligation under Article 14 (xi) of the Charter to ensure that the proceeds of ADB loans “are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency.” Consistent with the above, ADB has taken action to protect the integrity of its procurement operations and requires in its Procurement Guidelines\(^{554}\) borrowers (including beneficiaries of ADB financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, to observe the highest standard of ethics. As Article 14(ix) does not apply to the ADF or ADB’s other special funds, special funds regulations may allow financing expenditures in nonmember countries. To a limited extent, an extension of procurement eligibility to nonmember countries has effectively been recognized by the TASF Regulations and the ADF Regulations currently in force for supplementary contributions, but has not been applied in practice.

In its Procurement Guidelines, which apply to all contracts for goods and works financed in whole or in part by ADB, ADB has defined five basic procurement principles regarding:

(a) the source of ADB procurement;
(b) the need for economy and efficiency;
(c) ADB’s interest in giving all eligible bidders from developed and developing countries the same information and equal opportunity to compete;
(d) ADB’s interest in encouraging the development of domestic contracting and manufacturing industries in the country of the borrower; and
(e) the importance of transparency in the procurement process.\(^{555}\)

As open competition is deemed to be the basis of efficient public procurement, “in most cases, international competitive bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods and, where appropriate, for domestic contractors for works under prescribed conditions is the most appropriate method.”\(^{556}\) However, other procurement methods, such as limited international bidding, national competitive bidding, shopping and direct contracting are permitted by the Guidelines.\(^{557}\) Special procedures apply to emergency operations.

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\(^{552}\) See Chapter 3 (G. Droesse, Modalities of Concessional Financing).
\(^{553}\) Ibid.
\(^{555}\) ADB. Procurement Guidelines, para. 1.2.
\(^{556}\) ADB. Procurement Guidelines, para. 1.3.
\(^{557}\) ADB. Procurement Guidelines, paras. 3.2, 3.3, 3.5, and 3.6.
The Paris Declaration and Accra Agenda for Action mandate ADB to resort to national procurement systems wherever feasible. Adoption of country procurement systems is beneficial to ADB’s borrowing countries as it gives them greater flexibility and seeks to accommodate country-specific needs, especially those of middle-income countries. However, a move away from the traditional model of applying aid agency policies to procurement to a system which supports the development and implementation of effective government procurement policies entails challenges as the standards of country procurement systems vary widely and their use “must not reverse or weaken agency-developed standards.” While ADB does not have a Board-approved policy regarding the use of country systems and has not applied such systems in case of specific projects, it uses national competitive bidding largely as a proxy of country systems. ADB allows for national competitive bidding under most project procurement plans (within approved country thresholds for goods and works). While under national competitive bidding, foreign firms may participate if they so wish, generally this procurement method attracts only local bidders. On a case-to-case basis, ADB’s Board may approve the use of particular country procurement procedures including, for example, waivers for opening up procurement eligibility. For consulting services, ADB does not have a procedure which is the equivalent of national competitive bidding. While ADB may permit the application of government-approved procedures for selection of individual consultants, ADB’s Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers apply to the selection of all consulting firms, except where the Board of Directors in specific cases decides otherwise.

In ADB, procurement restrictions apply at two levels. First, general procurement restrictions—based on the rule of origin of goods and services—are applicable under the ADB Charter, the agreements or instruments establishing special funds, and/or ADB procurement guidelines. Second, in certain cases procurement eligibility may be linked to contributions made by donors to special funds. These two issues will be discussed further below.

Article 14 (ix) of the ADB Charter ties procurement eligibility to membership in ADB as it provides that “the proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank or with Special Funds established by the Bank pursuant to para. 1(i) of Article 19, shall be used only for procurement in member countries of goods and services produced in member countries.” The Board of Directors may waive this requirement with a majority of two-thirds of the total voting power and in special circumstances making procurement of goods and services in nonmember countries appropriate. When the Preparatory Committee discussed this provision, there was a clear realization that it might prevent a borrower of ADB from buying in the most competitive market. Indeed, at times the provision made it difficult for ADB members to resort to the most suitable procurement arrangements (e.g., in Central Asia, where most ADB members procure goods and services from the Russian Federation, which is not an ADB member).

Under the ADB Charter, the restriction listed above applies primarily only to OCR operations. While Article 14 (ix) also refers to special funds established pursuant to Article 19.1 (i), i.e., setting aside a portion of unimpaired, paid-in capital, existing special funds were not established on that basis. Thus,
Article 14 (ix) does not apply to the ADF or ADB’s other special funds. Similar to the TASF Regulations, ADF regulations may allow financing expenditures in nonmember countries.\textsuperscript{563} However, such provision has not been used in practice. Rather, procurement restrictions based on the rule of origin apply under the agreement\textsuperscript{564} or instrument\textsuperscript{565} establishing special funds and/or under ADB’s procurement guidelines and consulting guidelines.\textsuperscript{566} Moreover, under the above guidelines, similar restrictions also apply to all funds administered by ADB, including trust funds.\textsuperscript{567}

A different regime applies to the ADF. Section 3.07 of the 1973 ADF Regulations stated that “[p]rocurement arrangements and procedures to be followed by borrowers shall be determined by the Board of Directors from time to time, having regard in particular to the availability of Contributions for financing such procurement.” Pursuant to this provision and consistent with Resolution No. 62, para. 5(c), the Board of Directors set out procurement and drawdown arrangements in 1977, which still apply.\textsuperscript{568} The Board agreed that as “a general policy, and except in special cases, procurement under ADF loans should be open only to developing member countries of the Bank, and to those developed member countries whose contributions to the ADF are liable to be drawn upon to finance such procurement.” Thus, the “procurement eligibility of a developed member country which has contributed to a pool of reciprocally-untied resources should be co-extensive with the period of commitment of such pool, and should be suspended when the resources of the pool have been fully committed . . . .”\textsuperscript{569} The above policy was predicated on the assumption that developed countries that join ADB become eligible sources for ADF procurement on the date they submit an instrument of contribution, and that their procurement eligibility would cease if they fail to contribute to subsequent ADF replenishments.

\textsuperscript{563} Section 2.06(c) of the ADF Regulations provides: “Notwithstanding the provisions of paragraph (b) of Section 4.03 [regarding the use of ADF resources for procurement of goods and services in ADB member countries], Supplementary Resources accepted from a non-member may be used to finance procurement, in the territories of the donor of such Resources and of all member countries of ADB, of goods and services supplied from such territories.” In accordance with section 3.04 (iii) of the TASF Regulations, TASF resources may be used to finance expenditures in ADB member countries and in case of supplementary resources accepted from nonmember countries, also for services and facilities supplied from such territories (emphasis added) (ADB, Regulations of the Technical Assistance Special Fund).

\textsuperscript{564} The letter exchange between the Government of Japan and ADB regarding the establishment of the JSF states expressly that the JSF shall be used for “goods, services and consultants which will be procured or employed, as the case may be, from member countries of the Bank . . . .” ADB, Japan Special Fund.

\textsuperscript{565} The instruments of various special funds (ATF, CCF, PEF, and RCIF) and those of ADB’s partnership facilities refer expressly to ADB’s procurement and consulting guidelines, which limit the procurement of goods and services and recruitment of consultants to member countries of ADB.


\textsuperscript{567} Section 1.1, footnote 1 of the aforementioned Procurement Guidelines clarifies that for the purpose of these guidelines, financing by ADB includes ADB-administered funds. Similar clarification is contained in para. 1.8 of the cited Consulting Guidelines, which provides that such guidelines “apply to all contracts for consulting services financed in whole or in part from loans, TAs or other grants or ADB-administered funds implemented by ADB or a borrower.”


\textsuperscript{569} Restrictions of procurement opportunities to developing member countries that actually contribute to ADF on the basis of section 4.03(a) of the regulations were held as reasonable since “it is the contributors alone which are sharing the effort of providing the funds, it is only fair that they alone among the developed members should share the benefits arising therefrom. Furthermore, the restriction serves as an incentive to other developed members to participate in providing the resources needed for the Bank’s concessional lending operations. This is all the more significant because, as the ADF is structured, there is no other concrete incentive which the Bank can offer to encourage such participation. A member's voting rights in the institution relative to those of other members are not increased if the member contributes to the Fund, nor reduced if it does not so contribute. This makes it particularly important that the Bank should have, and be prepared to exercise, the power to grant or withhold access to procurement opportunities under its ADF loans, depending on whether a developed member country has or has not contributed to ADF.” Ibid.
Concessional Financing of the Asian Development Bank

However, there were no reflows from previous replenishments when the policy was adopted in 1977; currently, such reflows represent a very substantial part of total commitment authority. Therefore, a country that contributed to the ADF on a long-term basis contributes substantially to ADF commitment authority through reflows from previous replenishment contributions. Thus, delaying contribution commitments made under a particular replenishment does not automatically interrupt procurement eligibility, and members can exercise pro rata rights to ensure adequate burden sharing. Situations where developed member countries have ceased to contribute to the ADF or specific ADF replenishments occurred only in early ADF replenishments. Moreover, while certain “bridging” arrangements were considered during the ADF VII negotiations, procurement sanctions were not proposed at the time.

ADB’s current procurement policies are under review as some donors consider them to be unduly restrictive. OCR-financed operations are governed by procurement restrictions based on the rule of origin as set forth in Article 14 (ix) of the Charter. The Board of Directors may give a blanket authorization for certain types of projects to waive such requirements; however, dispensing with these requirements would require an amendment of the Charter. On the other hand, moving to global procurement for ADB operations funded by special fund resources, including the ADF, would not require an amendment to the ADB Charter, but only substantial changes to ADB procurement and consulting guidelines and other legal acts such as the Special Operations Loan Regulations.

While during the entire period “from 2003 to 2009, there were 20 requests to the Board of Directors for waivers of the procurement restrictions [there] will be a steep increase in 2010, with five requests for waivers already approved and five more requests planned.” This is indicative of the fact that current procurement arrangements are increasingly seen as overly restrictive and as a constraint to ADB’s collaboration with other development partners. Under the circumstances, the following options have been outlined during the ADF X mid-term review in 2010.

- “A full-fledged removal of procurement restrictions under the Charter” allowing procurement on a fully untied basis in the most competitive market
- Introducing universal procurement for special funds by amending their rules and regulations
- Removing restrictions from ADB policies (through amendments to ADB’s Procurement Guidelines and Guidelines on the Use of Consultants) and allowing universal procurement for trust funds
- Waiving procurement restrictions (waivers on a case-by-case basis and blanket waivers for projects in specific countries (e.g., Central and West Asia), for blended projects (to ensure uniformity at the project level for project components funded by OCR and ADF), or for cofinancing operations.

Unlike a full-fledged removal of procurement restrictions, moving to global procurement for ADB operations funded by special funds resources or trust funds would not require an amendment of the ADB Charter but only amendments to ADB’s Procurement and Consulting Guidelines and other legal acts governing such funds.

570 ADB. 1979. Eligibility of Finland as a Procurement Source under ADF Loans. Manila (R84–79, 30 August). As indicated in this document, Finland contributed to ADF I, but failed to contribute to ADF II. As at the time, there were still tied resources contributed by Finland to ADF I that had not been committed, no action was taken to interrupt the procurement eligibility of Finland, which, however, undertook to untie the resources it had committed to ADF I. Moreover, Finland subsequently contributed to ADF III.

571 Section 5.01 (b) of the Special Operations Loan Regulations provides: “Except as ADB and the Borrower shall otherwise agree, no withdrawals shall be made on account of...(ii) expenditures in the territory of any country which is not a member or for goods produced in, or services supplied from such territory.” ADB. 2006. Special Operations Loan Regulations, www.adb.org/Documents/Reports/Special-Operations/Special-Operations.pdf


573 Ibid., pp. 8–9.
Financial Management of Asian Development Fund Resources

The financial management of the ADF has evolved over time. Two very important features of ADF financial management include (i) the new currency management of ADF resources introduced in 2005;\textsuperscript{574} and (ii) the financial and planning frameworks for ADF resources that have been put in place by ADB to enhance commitment authority.\textsuperscript{575}

Currency Management

Conversion of ADF resources from 15 currencies to the 4 currencies (euro, pound sterling, US dollar, and yen) that constitute SDR substantially streamlined ADF currency management and operational planning and simplified the financial management of concessional portfolios for ADF borrowers.

Previously, ADB could offer only an actual inconsistent loan product to its borrowers, as borrowers’ repayment obligations differed in each case depending on the currency or currencies in the ADF liquidity pool that had been used, or converted, to provide financing to the borrower. Under the new system, all borrowers are treated equally in terms of currency denominating the loans. The introduction of a full-fledged SDR system substantially reduced the volatility that ADF borrowers had experienced when they repaid loans in one or more national currencies. The major benefit for ADB was that operational planning and loan commitment were aligned.

Under the previous system, a commitment risk resulted from the fact that the actual amount of annual releases of donor contributions, calculated in either SDRs or US dollars, could differ from the SDR equivalent of contributions pledged by donors in their national currencies—according to the various exchange rates set forth in the resolutions of the Board of Governors for ADF replenishments. Since the new currency scheme did not affect the manner in which donors make contribution commitments, it does not eliminate that risk. However, the new ADF currency scheme can mitigate to a certain extent the currency mismatch between ADF resources, ADF loan commitments, and the resulting disbursement risks applicable over long disbursement periods. The disbursement risk is an extension of the commitment risk. Previously, in view of the effects of exchange rate movements, there frequently was a substantial difference between the SDR amounts of loan disbursements already committed under a replenishment and the actual SDR value of ADF resources. The new currency scheme mitigates this disbursement risk by enabling ADB to streamline its currency practice regarding ADF loans with the full-fledged SDR system of IDA, which often lends to the same borrowers in Asia. Under the new system, ADF operational planning currency and loan commitment currency are aligned.

Financial Planning Framework

Following the establishment of the ADF and consistent with Article 10.3 of the Charter, any ADF income, together with accrued resources transferred from the MPSFs, was applied first to the discharge of administrative expenses incurred under special operations. The Board of Directors confirmed this approach in 1977, accepting management’s proposal that “at least until such time as the total amount of resources derived from repayments becomes significant, the use of these resources in the ADF, be governed by the same principles as apply to retained income.”\textsuperscript{576} In accordance with the policies approved by the Board of Directors in 1977, ADF loan disbursements were to be funded as far as practicable from drawdowns of ADF contributions. Set-aside resources, the accumulated surplus, and accumulated loan repayments, on


the other hand, were required to be retained primarily as a source of investment income for meeting the ADF’s share of administrative expenses and could be used for financing loan disbursements only to the extent that no contributed resources were available for that purpose.

When the Board of Directors reviewed this policy again in 1990, the situation had changed substantially because an increasing number of ADF loans had completed their 10-year grace period. As a result, ADF loan repayments were expected to rise significantly, and there was a clear risk that the continuation of the current policy would create excessive liquidity. Given the considerable needs of ADF borrowers for concessional funds, and because ADF expected with reasonable certainty a large volume of reflows during the ADF VI period, it was proposed that advance commitment authority (ACA) be made available to ADB at the beginning of 1991. However, this authority was limited to 85% of projected reflows expected from ADF VI.

The ACA program was innovative because it allowed ADB to commit loans before receiving reflows. However, the ACA was a stated amount (i.e., $615 million, representing 85% of projected 1991–1995 reflows). Therefore, other ways for enhancing ACA were discussed in 1997. To substantially increase the level of commitment authority from reflows, ADB Management proposed to introduce an expanded advance commitment authority (EACA). After undergoing fine-tuning during subsequent replenishment, EACA basically involved matching future reflows and disbursements rather than the ACA practice of matching reflows and new commitments. It enabled ADB to reduce the volatility of ADF commitment authority, and to improve the predictability of note encashment. The EACA scheme was a major departure from the existing framework, as donor and existing resources were no longer pooled together, but were managed separately in three pools: (i) the current replenishment pool, (ii) the post-replenishment pool, and (iii) the reflows-based resource pool or EACA pool.

The current replenishment pool—previously called the donor resource pool—consisted of donor contributions to the current replenishment, as well as the carryover of donor contributions from previous replenishments cleared during the period. Commitment authority was made available from these resources when installment payments were made, and after setting aside a 6.5% provision against disbursement risk due to adverse exchange rate fluctuations.

The post-replenishment pool, on the other hand, included resources used to finance commitments made under previous replenishments that had already been committed. Under ADF IX, this pool consisted of three subpools:

(i) the pre-ADF VII pool (ADF I–ADF VI),
(ii) the ADF VII pool, and
(iii) the ADF VIII pool.

Finally, the EACA pool consisted mainly of reflows from all loan repayments, service charges net of administrative expenses, investment income, and resources set aside from ADB’s paid-in capital and transferred to ADF as OCR net income or surplus.

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579 The terminology used here follows that in ADB. 2003. Treatment of Loan Savings and Cancellations to Increase ADF VIII Commitment Authority. Manila (R173–03, 15 September).
580 Previously, any additional resources other than donor contributions were also included in this pool. Two main sources were (i) OCR net income transfers and (ii) surpluses from the post-replenishment pool ADB. Treatment of Loan Savings and Cancellations to Increase ADF VIII Commitment Authority. Manila, p. 2. These resources in terms of cash inflows are matched against cash outflows—primarily loan disbursements and administrative expenses. Because loans are disbursed over several years and therefore do not have to be fully funded at the time of commitment, the use of these reflows could be maximized by making advance commitment or EACA against this pool’s projected net cash flows. The future level of liquidity of the reflow-based resource pool, however, limits the level of EACA. Under the present policy, this liquidity may never, at any given year of the projection, be lower than a minimum of 20% of the next year’s disbursement.
Financial management of the post-replenishment and the reflows-based resource pools focused on disbursement capacity, while the current replenishment pool focused on commitment capacity. The rationale for separating the resource pool supporting EACA from the donor resource pools was to enable ADB to closely monitor and manage the risks associated with the EACA framework. However, while the segregation of pools worked well for the commitment authority, the system lacked transparency and did "not promote the use of resources in their totality when determining the optimal financial capacity of the ADF."581 Liquidity increased markedly, from $0.46 billion at the end of 1996 to $6.40 billion at the end of 2006. The nominal growth rate in liquidity (more than 30% per year) occurred because disbursements were slower than resource inflows, because of the encashment in advance of disbursement needs under the accelerated note encashment program, and because of exchange rate movements. Together these factors led to a substantially higher investment income.582 Due to rapidly accumulating liquidity, ADB Management proposed "a holistic risk management approach [by using] the total liquidity for integrated risk mitigation"583 while maintaining a prudential minimal liquidity initially set at 100% of the next year's projected cash outflows. Thus, the ADB Board of Directors decided in 2007 to use total ADF liquidity (rather than liquidity from the EACA pool) to optimize the reflow-based commitment authority and to reduce in this context a safety cushion for comprehensive risk coverage. The various resource pools of the EACA financial framework were consolidated584 for that purpose.

Moreover, while aggregating ADF liquidity in a single resource pool for integrated liquidity management, ADB adopted a tranching approach broadly in line with IDA's practices for enhancing liquidity management and investment returns. For tranche 1, ADB adopted an "immunization strategy to hedge the interest rate risk…by matching the size and duration of tranche 1 to the present value and duration of contractual net cash flows."585 Tranche 2 (the return maximization portfolio) comprises prudential minimum liquidity to meet unexpected demands and usable liquidity for future commitments and can be viewed "as a conduit for risk management (through the mechanism of the [prudential minimum liquidity] PML) with the residual liquid assets being identified as useable liquidity that is available for future commitments."586 Consistent with liquidity tranching, ADB is currently formulating investment guidelines "to correspond to the nature of the cash flow profile of each tranche."587

Special Institutional Arrangements

An important test for any resource mobilization framework is the manner in which it can deal with crisis situations and exceptional circumstances. In the context of providing concessional financing, ability relates to situations where a lack of resources results, or threatens to result, in an interruption of concessional financing activities.

In view of the combined effects of qualified and delayed contribution commitments and payment arrears on the one hand, and the various trigger mechanisms restricting operational commitment of contributions of members on the other, constraints in the provision of concessional financing have been the rule rather than the exception in the history of ADB’s special funds. Just prior to the establishment

582 Ibid., pp. 15–16.
583 Ibid., p. 17.
584 Ibid., p. 9.
585 Ibid., p. 24. As provided herein, “Contractual cash flows relate to the current (ADF IX) and all prior replenishments, while projected cash flows relate to future replenishments of ADF.” Ibid., p. 22.
586 Ibid., p. 25.
587 Ibid.
of the ADF, ADB had to resort to a blending of special funds loans with OCR due to a lack of resources. Subsequently, there were many situations where ADB had to reduce its lending program or resort to conditional loan approval to cope with funding constraints.

The authorizing resolutions of the Board of Governors regarding the initial resource mobilization for the ADF and replenishments set out the terms and conditions attached to contributions to the ADF. Because contributions are mobilized multilaterally, donors cannot unilaterally reduce pledges incorporated in a resolution of the Board of Governors. Thus, the acceptance of any contribution less than the amount pledged in the resolution requires approval by the Board. In fact, Resolution No. 68 was amended more than once in order to establish the ADF and to allow the US to make an ADF contribution less than that originally pledged. An amendment was also necessary for the second phase of the initial resource mobilization covered by Resolution No. 67 and in the context of the first replenishment of the ADF. In addition, the trigger figures for operational commitment of contributions, which set forth various resolutions of the Board of Governors regarding ADF replenishments, also required modification. In the case of ADF III, however, the authorization to make appropriate modifications regarding the operational commitment of tranches of donors’ contributions was delegated to the Board of Directors.

Against the background of a large donor choosing not to participate in a regular IDA11 replenishment and the establishment of an IDA emergency fund, ADB found itself close to a situation where bridging arrangements—or other exceptional measures to ensure continuation of ADB’s concessional financing operations—might become necessary during ADF VII negotiations. ADB responded with a variety of measures aimed at enhancing commitment authority from internal resources. Moreover, a two-tier mechanism, which previously was a regular feature of ADF replenishments.

Since donor payments of ADF V arrears, loan cancellations, loan repayments, and net income and exchange rate fluctuations provided the ADF with resources that offset almost $1.0 billion in ADF VI donor contributions not yet released for operational commitment at the end of 1995, it was not necessary to pursue that option. This enabled ADB to extend the ADF V period by one year (to the end of 1996) without requiring additional contributions from ADF donors.

Future Perspectives

Several questions arise regarding the future funding structures, legal and institutional frameworks, and governance structures of ADB’s concessional windows.

ADB’s main concessional window—the ADF—has been structured as a revolving fund, predominantly funded by contributions from ADB’s member countries. When the ADF was established, development assistance was funded almost exclusively by the member countries of the Organisation for Economic Co-operation and Development (OECD), organized into the Development Assistance Committee. Since then, however, realities have changed. While official development assistance remains the main source of funding for multilateral concessional financing, there have been several new and emerging non-Development Assistance Committee donors. The private sector and philanthropy have become major providers of development assistance. Moreover, an abundance of new ideas and proposals for innovative financing mechanisms to reduce poverty reduction have emerged since 2000.589

588 See Chapter 3 (G. Droese, Modalities of Concessional Financing).
Thus far ADB has neither obtained nor actively sought to mobilize ADF contributions from other sources (e.g., nonmember countries, foundations, or private sector institutions), even though the ADB Board of Directors is authorized to accept such contributions by a special resolution adopted with qualified majority. Moreover, ADB’s other special funds and trust funds continue to be funded nearly exclusively by ADB members. ADB will need to weigh the benefits of accepting additional donor contributions from the private sector to the ADF and other special funds against the risks resulting from unsolicited contributions of unwarranted donors (e.g., gambling operators and arms dealers) and possible conflict-of-interest situations. To establish consistent criteria for accepting contributions from the private sector, it would be advisable for ADB to adopt a strategic framework for engaging the private sector. The recent global financial crisis makes it difficult in the short term to mobilize additional resources for ADB’s concessional financing operations from nonstate donors; from a medium- to long-term perspective, however, attempts should be made to secure funding from foundations and the private sector, in general, for ADB’s concessional operations. Moreover, while many of the proposed innovative financing mechanisms may be unsuitable for implementation in ADB, the potential of such mechanisms should be further explored, as they may substantially increase ADB’s assistance to the poorest countries in Asia and the Pacific.\footnote{See Chapter 3 (G. Droesse, Modalities of Concessional Financing).}

Recent ADF replenishments have closely aligned the PBA of ADF resources with the principles applicable to IDA. However, the appropriateness of applying the same or very similar criteria for performance-based resource allocation to countries in Asia and Africa in spite of their dramatically different circumstances has undergone increased scrutiny and questioning. In some cases the current system resulted in lower resource allocations to the poorest ADB member countries and increased resource allocation to larger countries, highlighting the inherent tension between addressing the needs of the weakest countries while simultaneously upholding the principle of rewarding performance.

Aligning ADB’s classification system with that of the World Bank reduced the number of “blend countries” that can borrow from ADB’s OCR and the ADF. Excepting blend countries that are eligible to borrow from both windows, the current system is predicated on the separation of concessional and nonconcessional resources. This separation leaves a large middle ground that requires further exploration and constrains ADB’s ability to find tailored solutions for its member countries and for specific sectors in such countries. In this context, increased use of blending arrangements should be considered.

The ADF was structured as a multipurpose concessional window to provide funding to all countries with access to ADF resources and all sectors. A concessional window of that kind will remain both necessary and relevant. In recent years, however, verticalization or earmarking of official development assistance has become very important, as shown by the explosive growth in resource allocations to thematic funds such as the Global Fund to Fight Aids, Tuberculosis and Malaria (Global Fund), and other funds in the health and environment sectors. Thus, consideration might be given to whether the current ADF could be supplemented by ADF funds for special purposes. This might give ADB the opportunity to mobilize additional resources.

In the history of the ADF, there have been several cases where the full potential of ADF replenishments was not exhausted as donors limited their contributions due to burden-sharing considerations to the lowest common denominator. Offering donors a series of thematic ADF windows to supplement a multipurpose ADF fund replenished on a burden-shared basis might offer an incentive to contribute to ADB’s concessional resources to their full potential. The same effect could be achieved by closely coordinating the ADF with other special funds and/or trust funds under umbrella operational arrangements comprising the administration of different types of resources on unified terms. It would be important to ensure the additionality of voluntary contributions to such special funds, trust funds or to thematic ADF windows to ensure that such contributions are without prejudice to the burden-shared replenishment of the core ADF fund. Thus, discussions on voluntary contributions to such windows should commence only after agreement on the burden-shared replenishment to the multipurpose ADF fund has been reached.
Replenishment negotiations might be extended by one day to allow donors after the end of the burden-shared ADF replenishment to make pledges.

Adjustments to current replenishment processes might also be considered to enhance cooperation with the private sector and coordination between ADB's Special Funds resources and trust fund resources. As has been shown, replenishment processes have evolved substantially in terms of institutional dynamics. They are now conducted in a participatory manner with representatives of borrowing countries. Thus far, however, private sector representatives have not been involved to any extent, and such a link to the private sector is missing. Consideration might be given to holding during replenishment negotiations a special meeting with private sector representatives to hear their perspectives, mobilize additional resources and involve the private sector in implementation of ADF-funded projects. Alternatively, foundations or other private sector entities might be invited to attend such a meeting as observers or, if they are prepared to make a substantial contribution to the ADF as participants in the replenishment negotiations.

As shown here, the ADF and its predecessor, the MPSF, are the only special funds established expressly for the purpose of providing concessional loans. The other special funds provide financing only in the form of grants, mostly for technical assistance. Furthermore, ADB's trust funds are generally used only for that purpose. However, ADB can establish trust funds for any of its statutory purposes. Thus, ADB could expand the modalities of its concessional financing substantially by offering through trust funds or other cofinancing arrangements additional concessional products to its poorest member countries, e.g., for managing risks, financing equity investments or trade on concessional terms, or providing debt relief. ADB might mobilize resources from its members, foundations, and private sector entities for such trust funds established by a decision of the ADB Board of Directors. Consideration should also be given to create an interest subsidy scheme to subsidize the rates of OCR loans. Such a scheme could be funded by ADF resources or other special funds or by trust funds. Also consideration might be given to offering ADF borrowers additional loan products, e.g., at their option ADF loans denominated in US$ or in local currency, instead in SDR, or ADF loans with a floating rate.

Trust funds increasingly have joined the mainstream of concessional financing. To enable ADB to offer consistent concessional products to its members, the administrative terms and conditions of ADB's trust funds and other cofinancing arrangements should be aligned as much as possible with those that apply to ADB's Special Funds resources. Both types of financing might be integrated in a multidonor platform that may comprise

(i) OCR resources;
(ii) a multipurpose ADF fund, replenished on a burden-shared basis;
(iii) supplementary thematic ADF funds (for ADB's core operational areas) and/or other special funds; as well as
(iv) multi- and single-donor trust funds and other cofinancing arrangements.

This would imply increased use of blending arrangements of OCR and concessional resources to produce tailored solutions and concessional rates for ADB members and/or sectors and certain changes to current approval procedures. When seeking Board approval for specific projects or programs, the project/program proposal should identify which of the above funding sources are to be used to implement the project or program. This would imply adopting a holistic approach by translating the programmatic decisions made in ADB’s country partnership strategy to specific umbrella financing arrangements for countries or sectors.

In this context, ADB should consider streamlining the approval processes for various types of concessional and nonconcessional financing from its own resources (including special funds) and trust funds. Under the MFF, the ADB Board of Directors performs a strategic role by approving a maximum amount for each MFF under specific terms and conditions, rather than specific loans, guarantees, or credit

lines. Similar procedures could be applied more generally by using them for umbrella financing arrangements for certain countries and/or sectors that might comprise concessional and nonconcessional resources as well as trust funds and other cofinancing arrangements. Under its overall authority to approve such facilities, the Board could create supplementary governance structures and implementation arrangements (e.g., committees, unified reporting templates, donor meetings) applicable to all the resources mentioned above, which would be administered on the same or very similar terms and conditions. Aligning the terms and conditions of trust funds and other cofinancing arrangements might also comprise procurement arrangements. In this context, current unduly restrictive procurement arrangements should be reviewed.

A system like that mentioned above would have advantages at several levels. It would substantially reduce transaction costs and administrative expenses, while enabling ADB to expand the modalities of its concessional financing by offering a consistent financing arrangement to its borrowers and maximizing synergies between different types of financing.
Appendix 1

Water Financing Partnership Facility: Concept Overview

<table>
<thead>
<tr>
<th>ADB’s Existing Resources</th>
<th>Additional Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ADF</td>
<td>• Project Loans/Grants/Guarantees (through standardized Framework Agreements)</td>
</tr>
<tr>
<td>• OCR</td>
<td>• Pooled Grants (through the Trust Fund Component)</td>
</tr>
<tr>
<td>• Special Funds (e.g., TASF/JSF)</td>
<td>• Other Donor Funds (through bilateral agreements)</td>
</tr>
</tbody>
</table>

Facility Manager

Project Support
Loans and TA in the DMCs for investment, reforms, and capacity development to support rural, urban, and basin water demonstration projects

Program Quality Support
TA and pilot demonstration activities to support the Water Financing Program with knowledge, capacity, and innovation services; engaging civil society; and regional cooperation

ADB = Asian Development Bank, ADF = Asian Development Fund, DMC = developing member country, JSF = Japan Special Fund, OCR = ordinary capital resources, TA = technical assistance, TASF = Technical Assistance Special Fund.

Appendix 2

Clean Energy Financing Partnership Facility: Concept Overview

<table>
<thead>
<tr>
<th>Resources (Supply)</th>
<th>Additional Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB’s Existing Resources</td>
<td>Clean Energy Fund (Multi-Donor Trust Fund)</td>
</tr>
<tr>
<td>• ADF</td>
<td>Clean Energy Trust Fund (Bilateral Donors)</td>
</tr>
<tr>
<td>• OCR</td>
<td>Joint or Parallel Financing Framework Agreement</td>
</tr>
<tr>
<td>• Core TA Funds (e.g., TASF/JSF)</td>
<td>Knowledge Sharing Framework Agreement (e.g., secondments, etc.)</td>
</tr>
<tr>
<td>Facility Manager with support from management unit</td>
<td>Risk-Sharing Framework Agreement (e.g., credit guarantees with first loss coverage, etc.)</td>
</tr>
</tbody>
</table>

Implementation (Demand)

- Grant Components of Investments
  e.g., to facilitate the deployment of new, more efficient and less polluting technologies such as clean coal, renewables, etc.

- Technical Assistance
  e.g., economic and sector research, project preparation, capacity building, transfer of technology, experience and practices, develop standards and codes, etc.

ADB = Asian Development Bank, ADF = Asian Development Fund, DMC = developing member country, JSF = Japan Special Fund, OCR = ordinary capital resources, TA = technical assistance, TASF = Technical Assistance Special Fund.

Regional Cooperation and Integration Financing Partnership Facility: Concept Overview

RCI Financing Partnership Facility
(Providing additional resources for RCI activities)

ADB’s Existing Resources
- Core TA Funds
- ADF
- OCR
- Existing Trust Funds with RCI as an Eligible Activity

Additional Resources
- Pooled Grants for TA (through the RCIF)
- Trust Funds (through bilateral agreements)
- Project-Specific Grants/Loans/Guarantees (through standardized Framework Agreements)
- Knowledge Provision and Exchange (secondments, etc.)

Activities (Demand)
Assistance to DMCs for RCI activities, including (i) cross-border physical infrastructure; (ii) feasibility studies for cross-border infrastructure projects; (iii) creation, exchange, and dissemination of knowledge products; (iv) policy dialogue; (v) capacity and institutional development; (vi) harmonization of cross-border regulations, standards, and procedures; and (vii) development of partnerships with other institutions engaged in RCI.


ADB = Asian Development Bank, DMC = developing member country, RCI = regional cooperation and integration, TA = technical assistance.
Appendix 4

ADF I to ADF X Replenishments

ADF = Asian Development Fund.
Source: ADB Strategic Planning Department.

Appendix 5

ADF Loan and Grant Approvals by Sector

ADF = Asian Development Fund, Ave = average, ICT = information and communication technology.
## Appendix 6

### Classification of Developing Member Countries

<table>
<thead>
<tr>
<th>Group A DMCs (ADF-only):</th>
<th>Afghanistan, Bhutan, Cambodia, Kiribati, Kyrgyz Republic, Lao People’s Democratic Republic, Maldives, Mongolia, Myanmar*, Nauru, Nepal, Samoa, Solomon Islands, Tajikistan, Timor-Leste, Tonga, Tuvalu, Vanuatu</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group B DMCs (Blend):</td>
<td>Armenia, Azerbaijan, Bangladesh, Georgia, India*, Marshall Islands, Federated States of Micronesia, Pakistan, Palau, Papua New Guinea, Sri Lanka, Uzbekistan, Viet Nam</td>
</tr>
<tr>
<td>Group C DMCs (OCR-only):</td>
<td>People’s Republic of China, Cook Islands, Fiji, Indonesia, Kazakhstan, Malaysia, Philippines, Thailand, Turkmenistan</td>
</tr>
</tbody>
</table>

* Currently with no access to ADF.

ADF = Asian Development Fund, DMC = developing member country, OCR = ordinary capital resources.

The Revised Performance-Based Allocation Framework

Revised country performance assessment criteria ratings (Table 10)

Policy/Institutional rating
Governance rating
Portfolio rating

Indicative volume allocations

Step 1

Criteria for Extra-Formula Allocations
- Disasters, Emergency Assistance Policy
- Absorptive capacity/weak performance
- Subregional eligibility criteria
- Caps on countries on graduation watchlist

Step 2

Annual Report on Country Performance Assessment for Public Disclosure

Country allocations

Allocation formula (Box 6) = Allocation shares × Expected commitment authority

Needs, equated with per capita income and population

Chapter 5


Adesegun Akin-Olugbade and Augustin Flory*

Abstract

Poverty reduction and sustainable economic growth are the core mandates of the African Development Bank Group, which consists of the African Development Bank (AfDB), the African Development Fund (AfDF), and the Nigeria Trust Fund (NTF). The African Development Bank Group provides concessional financing to its regional member countries through the AfDF and the NTF. Thirty-eight of the bank group’s regional member countries receive financing exclusively through the concessional windows.

The resources of the AfDF are designed to accelerate broad-based, equitable, and sustainable economic growth and also promote social development, with a special focus on poverty reduction. The AfDF window provides funding through long-term, interest-free loans and grants to low-income regional member countries for basic economic and human development projects.

The Federal Republic of Nigeria created the NTF to assist the development efforts of low-income regional member countries whose economic and social conditions and prospects require concessional financing. NTF resources are devoted primarily to financing long-term projects in agriculture (including livestock), fisheries and forestry, health, transport, and water supply.

The African Development Bank Group is the key player in promoting economic and social development in African states. The concessional financing provided by the bank group is a critical component of its efforts to reduce poverty and promote social development.

Introduction

The African Development Bank Group consists of the African Development Bank (AfDB), the African Development Fund (AfDF), and the Nigeria Trust Fund (NTF). The AfDB is a regional, multilateral development finance institution with 53 regional member countries in Africa and 25 nonregional member countries in North and South America, the Middle East, Asia, and Europe (Appendix 1). The AfDB window provides market-based lending to its most creditworthy regional member countries and to blend countries.1 The AfDF window is the bank group’s concessional lending arm to regional member

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1 Blend countries are eligible for resources from both AfDB and AfDF because they are creditworthy and meet the per capita income criteria for AfDF eligibility.
countries (and also to two blend countries) classified as low-income countries on the basis of their per capita income. The NTF, a special fund of the AfDB, was created by an agreement between the AfDB and the Government of the Federal Republic of Nigeria to aid development efforts of low-income regional member countries whose economic and social conditions and prospects require concessional financing. The NTF was a way for the bank’s largest shareholder to demonstrate its support for the institution.

The bank group channels its support to the operational priority areas identified in its 1999 vision statement and its 2002 strategic plan, including agriculture and rural development, health, education, transportation, rural water supply and sanitation, private sector development, good governance, regional economic cooperation and integration, environment and sustainable development, and capacity building in regional member countries. The bank group seeks to promote gender equity, good governance, and environmental sustainability in all of its operations.

Loans and grants by the bank group are traditionally denominated in units of account (UA), defined as equivalent to the special drawing rights (SDRs) of the International Monetary Fund (IMF) and disbursed as US dollars, euros, yen, or pounds sterling at the option of the borrower.

Cumulatively, the bank group committed a total of UA41.58 billion during 1967–2006 for 3,174 loans and grants to its borrowing regional member countries and various multinational institutions. AfDB resources accounted for 57.2% of the operations; the concessional AfDF window accounted for 42.1% and NTF resources accounted for 0.7%. For 2007, board approval of loans, grants, and debt relief reached UA3.10 billion; of this amount, UA1.67 billion came from the AfDB and UA1.38 billion from the AfDF.

### History of the Bank Group’s Concessional Financing Windows

#### African Development Fund

The agreement establishing the AfDF (the AfDF Agreement) was signed by the AfDB and 15 states on 29 November 1972 in Abidjan, Côte d’Ivoire, and was amended on 4 July 2003. While initially established as an international institution to assist the AfDB in contributing to the economic and social development of its members, promote cooperation, increase international trade (particularly among its members), and provide concessional financing for such purposes, the idea of establishing a concessional window at the AfDB was conceived six years earlier at the second annual meeting of the AfDB board of governors (April 1966).

In November 1966, the AfDB management sent certain nonregional countries an aide-mémoire summarizing a proposal to establish a multilateral fund as a special fund under Article 8 of the AfDB Agreement. The nonregional countries did not respond favorably, and AfDB established the AfDF as a special fund using its own resources.

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2 The operational cutoff for AfDF eligibility follows the International Development Agency (IDA) operational cutoff. In 2008, it was a 2007 gross national income per capita of $1,095, using Atlas methodology.


6 AfDF Agreement, Article 2.


8 Ibid.
The AfDB also entered into discussions with potential donors. After several years of negotiations, the AfDB and the donors agreed upon the principles that would govern the AfDF, most importantly that the AfDF would be a separate institution with its own board of governors and board of directors.

The AfDF Agreement (Article 2) defines the purpose of the AfDF as follows:

The purpose of the Fund shall be to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank's members and to the promotion of co-operation (including regional and subregional co-operation) and increased international trade, particularly among such members. It shall provide finance on concessional terms for purposes which are of primary importance for and serve such development.

Fund participants include the AfDB and those states (whether regional or not) that become parties to the AfDF Agreement (the state participants; Appendix 2). Participation in the fund does not require membership in the AfDB.

From 1974 to 2008, the AfDF approved a cumulative total of 1,407 loans and 768 grants amounting in aggregate to UA19.14 billion. Some 23.3% of these resources were allocated to agriculture and rural development, and 18.5% went to the social sectors. Transportation represented 19.5% and multisector operations 19% of the total cumulative AfDF approvals during the period, followed by water supply and sanitation (9.3%), power (6.37%), finance (1.8%), industry (1%), and communication (0.6%). The regional distribution of the AfDF’s cumulative approvals was as follows: West Africa (30.4%), East Africa (31.6%), Southern Africa (17.1%), Central Africa (9.0%), and North Africa (2.8%). Multiregional projects and programs accounted for the remaining 9.1%.

In 2008, AfDF approvals amounted to UA1.65 billion for 49 operations in 24 countries, compared with UA1.10 billion for 49 operations in 24 countries in 2007. In addition to loans and grants, the fund also approved UA0.018 billion in heavily indebted poor country (HIPC) debt relief for one country and UA0.036 billion in additional support for three countries under the Fragile States Facility. Overall, approvals under the AfDF window in 2008, including debt relief, totaled UA1.67 billion, a 21% increase from the fund’s commitments (UA1.54 billion) in 2006.

With respect to AfDF resources, project loans (UA0.681 billion for 22 operations) represented the main lending instrument during 2008, followed by project grants (UA0.424 billion for 14 operations). The AfDF also approved nine policy-based lending operations totaling UA0.413 billion and four policy-based grants totaling UA0.048 billion. The remaining resources (UA0.044 billion) were committed as grants for financing six technical assistance operations.

Nigeria Trust Fund

After the AfDB board of governors approved an agreement between the Federal Republic of Nigeria and the AfDB to establish the NTF (the NTF Agreement), the NTF commenced operations on 25 April 1976. The NTF was created to assist the development efforts of low-income regional member countries whose economic and social conditions and prospects require concessional financing. The resources of the NTF

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9 AfDF Agreement, Article 3.1. “State participants are fund participants other than the AfDB and originally were limited to the AfDB’s nonregional members; however, pursuant to Resolutions F/BG/98/04 and F/BG/2002/04 of the board of governors, regional members are now eligible to become state participants. In 1998, South Africa became the first regional member country to become a state participant in the AfDF.”

10 Multisector comprises public sector management, private sector development, industrial imports, export promotion, and institutional support. It includes all budget support operations included in the bank classification system.


13 NTF Agreement, Article 1.2.
are primarily devoted to long-term projects in agriculture (including livestock), fisheries and forestry, health, transport, and water supply.\textsuperscript{14} Its initial capital of $80 million was replenished in 1981 with $71 million. On 31 December 2006, total NTF assets amounted to $269 million.

On 22 September 2003, the AfDB and the Government of the Federal Republic of Nigeria entered into a protocol agreement to vary and amend the terms of the NTF Agreement in order to enhance the operational effectiveness of the NTF, allowing more flexibility in the fixed interest rate applicable to NTF loans and permitting the allocation of 10% of the annual net income of the NTF as a contribution to the HIPC Trust Fund.\textsuperscript{15}

During 1976–2007, the NTF approved UA304.6 million for 71 projects in 30 regional member countries. Of this amount, multinational projects received UA14.1 million. The sector distribution of the cumulative NTF loan approvals indicates that transportation accounted for 32.5% of approvals, followed by agriculture and rural development (18.8%); the social sector (18.2%); communications (9.2%); finance (5.8%); water supply and sanitation (5.7%); industry, mining, and quarries (5.4%); and power supply (4.5%). The regional distribution shows that West Africa received 39.2% of NTF cumulative loan approvals, followed by East Africa (24.5%), Southern Africa (17.5%), Central Africa (10.8%), North Africa (3.4%), and multiregional distribution (4.6%).

Approved amounts under the NTF technical cooperation agreement were devoted exclusively to funding technical assistance activities in agriculture and rural development in Gambia and Mauritania (UA4.3 million).

**Organizational (Governance) Structures of the Bank Group’s Concessional Financing Windows**

**African Development Fund**

The AfDF has a board of governors, a board of directors, and a president.

**Board of Governors**

The board of governors is the highest policy-making organ of the AfDF and consists of representatives of the state participants and the AfDB.\textsuperscript{16} Each state participant is represented by one governor. Governors and alternate governors of the AfDB are ex officio governors and alternate governors of the AfDF.\textsuperscript{17}

The AfDF Agreement defines the powers of the board of governors:

**Article 23**

**Board of Governors: Powers**

1. All the powers of the Fund shall be vested in the (AfDF) Board of Governors.
2. The Board of Governors may delegate to the Board of Directors all its powers, except the power to:
   (i) admit new participants and determine the terms of their admission;
   (ii) authorize increases in subscription under Article 7 and determine the terms and conditions relating thereto;

\textsuperscript{14} Ibid., Article 1.3.
\textsuperscript{15} For more information about the HIPC Initiative: IMF. www.imf.org/external/np/exr/facts/hipc.htm
\textsuperscript{16} AfDF Agreement, Articles 27(1), (2), and (3).
\textsuperscript{17} AfDF Agreement, Articles 24(1) and (2).
(iii) suspend a participant;
(iv) decide appeals from decisions made by the Board of Directors concerning the interpretation or application of this Agreement;
(v) authorize the conclusion of general arrangements for co-operation with other international organizations, other than arrangements of a temporary or administrative character;
(vi) select external auditors to audit the accounts of the Fund and certify the balance sheet and statement of the income and expenditures of the Fund;
(vii) approve, after reviewing the report of the auditors, the balance sheet and the statement of the income and expenditures of the Fund;
(viii) amend this Agreement;
(ix) decide to terminate the operations of the Fund and distribute its assets; and
(x) exercise such other powers as are expressly assigned to the Board of Governors in the Agreement.

3. The Board of Governors may at any time revoke the delegation of any matter to the Board of Directors.18

The AfDF board of governors usually votes in joint sessions with the AfDB’s board of governors on joint documents.

**Board of Directors**

The board of directors is composed of 12 members, 6 designated by the bank and 6 selected by state participants. Regional members of the AfDB who are not state participants have no direct representation or voting rights at the AfDF. The board of directors reports to the board of governors.

Article 26 of the AfDF Agreement defines the functions of the board of directors:

**Article 26**

**Board of Directors: Functions**

Without prejudice to the powers of the Board of Governors provided for in Article 23, the Board of Directors shall be responsible for the direction of the general operations of the Fund and for this purpose shall exercise any functions expressly given to it in this Agreement or delegated to it by the Board of Governors and, in particular, shall:

(i) prepare the work of the Board of Governors;
(ii) in conformity with the general directives of the Board of Governors, take decisions regarding individual loans and other forms of financing to be provided by the Fund under this Agreement;
(iii) adopt such rules, regulations or other measures as may be required to ensure that proper and adequate audited accounts and records are kept in relation to the operations of the Fund;
(iv) ensure that the Fund is served in the most efficient and economical manner;
(v) submit to the Board of Governors, for approval at each annual meeting, the accounts for each financial year in a form which distinguishes, to the extent necessary, between the accounts of the general operations of the Fund and of such operations as are financed from contributions made available to the Fund under Article 8;19

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18 AfDF Agreement, Articles 23(1), (2), and (3).
19 Article 8 of the AfDF Agreement provides that “the Fund may enter into arrangements to receive other resources, including grants and loans, from members, participants, States which are not participants and from any public or private entity or entities [on such] terms and conditions which are consistent with the Fund’s purposes, operations and policies and which will not
(vi) submit to the Board of Governors for approval at each annual meeting an annual report; and

(vii) approve the budget and general lending program and policies of the Fund, in accordance with the resources respectively available for these purposes.20

The AfDB exercises 50% of the voting powers in the AfDF. The AfDB and the state participants as a group each have 1,000 votes.21 Each state participant has a proportionate share of the aggregate vote of the state participants, based on the original subscriptions of the state participants and on certain agreed additional subscriptions.22

As a general rule, a three-fourths majority of the total voting power23 of the participants (i.e., collectively, the AfDB and the state participants) decides all matters before the board of governors or the board of directors.24 The directors representing state participants can separately cast the votes of the countries they represent, but they cannot split the vote of an individual country.25 No participant is liable, by reason of its participation in the AfDF, for the acts or obligations of the fund.

The delineation of powers and responsibilities between the board of governors and board of directors is clear and has not raised many issues. In some cases—e.g., the design and approval of the financial compensation scheme of the Multilateral Debt Relief Initiative (MDRI), further described below—both organs have been involved at different levels, with the board of governors approving the principles and setting guidelines and the board of directors designing and approving implementing mechanisms.

President of the Fund

The president of the AfDB also serves as the ex officio president and legal representative of the AfDF.26 In conducting ordinary business, the president draws on the officers, staff, organization, services, and facilities of the AfDB.27

impose an undue administrative or financial burden on the Fund or the Bank.” Article 8(5) provides that “[t]he Fund shall not accept any loan (except temporary accommodations required for its operations) which is not on concessional terms . . . .”

20 AfDF Agreement, Article 26.
21 AfDF Agreement, Article 29(1).
22 AfDF Agreement, Article 29(3). The boards of directors thoroughly discussed possible reforms of the AfDF governance structure in 2000 in the context of South Africa’s completion of the formalities to become the first regional state participant of the AfDF. Lacking a consensus on a permanent solution, the board of governors approved an interim governance arrangement in 2002 that allowed representation and voting rights for regional state participants. Resolution F/BG/2002/04 approved this interim arrangement, which provides that voting rights for regional state participants are included in the block of voting rights allocated to state participants (subject to a cap of 1%).
23 AfDF Agreement, Article 29(7). However, certain issues (e.g., the approval of a general or individual increase in the subscriptions of the AfDF state participants) require 85% approval by the governors (Article 7[4]), while any amendment of the AfDF Agreement requires either 85% approval by the governors or a unanimous vote in some cases (Article 51). Other issues (e.g., resource mobilization arrangements with states or agencies from nonparticipating states) shall be approved by the board of directors with an 85% majority of the total voting power of participants (Article 8[4]). According to the voting rule described above, abstentions do not count toward the required threshold. At meetings, the chairman of the board of directors generally ascertains the sense of the meeting in lieu of a formal vote. However, the chairman shall require a formal vote at the request of any director (Rule 9 of the board’s rules of procedure). The chairman of the board of directors customarily withdraws or defers adoption of a resolution if a sufficient majority does not support the relevant decision. Executive directors can enter provisional reservations to the adoption of a resolution, in which case, if a formal vote has been requested, the adoption of the resolution is deferred until the number of reservations sufficient to attain the applicable voting threshold has been lifted.
24 AfDF Agreement, Article 10. By contrast, voting at the board of directors of the AfDB is decided by a 66.66% majority of the voting power represented at the meeting, except that in respect of an issue declared by a member as being of great importance, touching upon a substantial interest of that member, said important issue is decided, at the request of the director concerned, by a majority of 70% of the total voting power. Each director is entitled to cast the number of votes that counted toward the election of said director, which votes shall be cast as a unit (AfDB Agreement, Article 35,3).
25 AfDF Agreement, Article 29(5).
26 AfDF Agreement, Articles 30(1) and (2).
27 AfDF Agreement, Article 30(4)(iv).
The function and powers of the president are provided in Article 30 of the AfDF Agreement:

**Article 30**

**The President**

1. The President of the Bank shall be ex officio President of the Fund. He shall be Chairman of the Board of Directors but shall have no vote. He may participate in meetings of the Board of Governors but shall not vote.
2. The President shall be the legal representative of the Fund.
3. In the event that the President of the Bank is absent or his office should become vacant, the person for the time being designated to perform the duties of President of the Bank shall act as President of the Fund.
4. Subject to Article 26, the President shall conduct the ordinary business of the Fund and, in particular, shall:
   (i) propose the operating and administrative budgets;
   (ii) propose the overall financing program;
   (iii) arrange for the study and appraisal of projects and program for financing by the Fund in accordance with Article 15(3);
   (iv) draw, as needed, on the officers, staff, organization, services and facilities of the Bank to carry out the business of the Fund and shall be responsible to the board of directors for ensuring and controlling the proper organization, staffing and services provided under Article 22; and
   (v) engage the services of such personnel, including consultants and experts, as may be needed by the Fund, and may terminate such services.\(^{28}\)

Similar to other multilateral development banks (MDBs) with comparable statutory provisions, issues have arisen occasionally about the governance regime of the AfDF and the delineation of decision-making functions and responsibilities between the board of directors and the president.

One such area has been the possibility for the board of directors to delegate to management approval authority for operations. Article 15(3) of the AfDF Agreement provides that the board of directors shall review each operation on the basis of the president’s recommendation (there is no such requirement in the AfDB Agreement).\(^{29}\) Therefore, the board of directors may not delegate its power to approve specific operations to management without being in breach of the requirements of Article 15(3).

Another area where clarification or interpretation has been sought involves the power of the board of directors to intervene in the preparation of AfDF policies. Although the AfDF Agreement provides that approval of the general lending program and policies of the fund is within the competence of the board of directors, it is a well-established practice of the fund and other MDBs that management is responsible for developing recommendations in all matters of policy requiring decision by executive directors.

**Nigeria Trust Fund**

The AfDB manages the NTF through its own organization, services, facilities, officers, staff, and other necessary experts.\(^{30}\) Therefore, the NTF does not have a separate governance structure. In the management of the NTF and in accordance with the provisions of the NTF Agreement, the AfDB must consult regularly

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28 AfDF Agreement, Articles 30(1), (2), (3), and (4).
29 “Before financing is provided, the applicant shall have presented an adequate proposal through the President of the Bank and the President shall have presented to the Board of Directors of the Fund a written report recommending such financing, on the basis of a staff study of its merits.” (AfDF Agreement, Article 15(3)).
30 NTF Agreement, Article 3.1.
with the governor for the Federal Republic of Nigeria to obtain agreement on the pipeline of projects.\footnote{Ibid.} Such consultation is conducted between operations complexes and the ministry of finance. High-level consultation takes place at the bank group’s annual meetings.

### Legal Framework

#### African Development Fund

The legal framework of the AfDF is composed primarily of the AfDF Agreement, the bylaws, and other instruments of the AfDF; the resolutions of the board of governors (including, in particular, the resolution approving the deputies’ report for each AfDF replenishment); and the various strategies, policies, guidelines, directives, and instructions approved by the AfDF board of directors and AfDB management for the purpose of carrying out the AfDF activities.

#### Agreement

The AfDF Agreement is the overarching legal framework of the AfDF. It defines the purpose, functions, and conditions of operation and administration of the AfDF.

The AfDF Agreement is an international treaty that may be amended only with the approval of three-fourths of the participants that have 85% of the voting powers. Action to modify the limitation of liability, the provisions relating to the subscription of additional funds, the right to withdraw from the AfDF, and the voting majority requirement requires unanimous approval of the board of governors.\footnote{AfDF Agreement, Article 51.}

#### By-Laws and Other Instruments

This category of documents comprises (i) the general regulations of the fund and the rules of procedure of the board of governors of the fund, both adopted by the board at its inaugural meeting (3 July 1973); (ii) the rules of procedure of the board of directors of the fund adopted by the board at its inaugural meeting (18 September 1973); and (iii) the rules of procedure governing the designation and election of the members of the board of directors of the fund (Schedule B of the AfDF Agreement).\footnote{AfDB. 2004. The Compendium of the By-laws and Other Instruments of the African Development Fund. 10 December. www.google.com/url?sa=t&source=web&ct=res&cd=1&ved=0CBYQFjAA&url=http%3A%2F%2Fwww.afdb.org%2Ffileadmin%2Fuploads%2Fafdb%2FDocuments%2FLegal-Documents%2F30723217-EN-COMPENDIUM-OF-THE-BY-LAWS-AND-OTHER-INSTRUMENTS-OF-THE-ADB-2008.PDF&ei=4uvsS4-6lcGTkAWJpcnWBg&usg=AFQjCNFKf5tmMztr4KoMYqo_rGljsOz7_b9&sig2=8-MvLmsrR9phvOEZNdzYqg}

#### Board Resolutions

The resolutions of the board of governors, adopted either during meetings of the board of governors or by postal ballot, constitute an essential part of the legal framework of the AfDF.

Since all the powers of the AfDF are vested in the board of governors, its resolutions may relate to any aspect of AfDF activities. Notable among such resolutions are those approving (i) the deputies’ reports for each AfDF replenishment, which contain the policy guidelines that apply to all AfDF operations during the replenishment cycle, including terms of financing and the resource allocation methodology for AfDF funds; and (ii) AfDF’s participation in the MDRI, particularly the compensatory financing scheme to reimburse the fund for debt cancellation.

\footnote{31 Ibid.}
**Strategies, Policies, Guidelines, Directives, and Instructions**

In accord with the powers granted to them by the AfDF Agreement or delegated to them by the competent authority, the board of directors and AfDB management adopt occasional strategies, policies, guidelines, directives, and instructions applicable to AfDF operations. Noteworthy among those are the financing policy for each AfDF replenishment cycle, the general conditions applicable to loan and guarantee agreements, the general conditions applicable to agreement protocols, the procurement rules, the environmental and social safeguard policies, and various sectorwide policies, as well as administrative policies.

**Nigeria Trust Fund**

The legal framework of the NTF consists primarily of the NTF Agreement, the technical cooperation agreement between the Government of the Federal Republic of Nigeria, the AfDB, and the AfDF, as well as the various strategies, policies, guidelines, directives, and instructions approved by the AfDB board of directors and AfDB management, to the extent that they apply to NTF activities.

**Agreement**

The NTF Agreement governs all aspects related to the establishment, purpose, resource utilization, administration, and operation of the NTF. The NTF Agreement stipulates that the NTF shall be in effect for a period of 30 years from the date of the agreement and that NTF resources shall be transferred to the Federal Republic of Nigeria upon termination of the fund.34 However, a mutual agreement between the bank and the Government of the Federal Republic of Nigeria can extend the 30-year sunset period. In 2008, the parties signed an agreement to extend the term of the NTF for 10 years.

**Technical Cooperation Agreement**

As part of the 2003 agreement between the Government of the Federal Republic of Nigeria and the bank, the government authorized the board of directors to appropriate the sum of $25 million from the corpus of the NTF to finance activities under the technical cooperation agreement.35

The technical cooperation agreement was entered into on 5 April 2004, for a term of 10 years, unless earlier terminated by either party by giving not less than 6 months notice.36

The purpose of the technical cooperation agreement is to assist in the preparation and implementation of development projects.

**Strategies, Policies, Guidelines, Directives, and Instructions**

The NTF Agreement provides that, in administering the NTF, the AfDB shall apply the same principles and criteria that apply to loans and investments made from its own ordinary resources.37

Accordingly, AfDB strategies, policies, guidelines, directives, and instructions will apply to the NTF to the extent relevant. Noteworthy among those are the financing policy for each AfDF replenishment cycle, the general conditions applicable to loan and guarantee agreements of the fund, the general conditions applicable to protocols of agreement of the fund, the procurement rules, environmental and social safeguard policies, and various sectorwide policies as well as policies of an administrative nature.

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35 Technical cooperation agreement, Article I(1).
36 Ibid., Article IX. The technical cooperation agreement is distinct from the NTF Agreement and therefore would not be affected by the termination of the NTF, should the NTF term not be extended.
37 NTF Agreement, Article 4.1.
Resource Mobilization and Replenishment Process

Resource Mobilization for the African Development Fund

The resources of the AfDF consist of subscriptions by the AfDB, subscriptions by state participants, other resources received by the AfDF, and funds derived from operations or otherwise accruing to the AfDF.\(^{38}\)

The initial resources of the AfDF consisted of subscriptions by the AfDB and the original state participants party to the AfDF Agreement. Thereafter, resources have been replenished through general or special replenishments. The general replenishments come from periodic replenishments by participants, usually on a 3-year basis.

In addition to general or special replenishments, resources have been increased by the contributions of new state participants\(^{39}\) and also by arrangements to receive other resources from members, participants, or any other state or entity, provided that “such arrangements are on terms and conditions consistent with the Fund’s purpose, operations and policies.”\(^{40}\) However, the AfDF is prohibited from accepting any nonconcessional loan, borrowing or participating in the issuance of securities in any market, or issuing negotiable or transferable obligations.\(^{41}\)

Replenishment Approval Process

Resolution of the Board of Governors

A replenishment cycle begins when the board of governors adopts a resolution instructing AfDB management, in consultation with the AfDF board of directors, to mobilize the resources required to extend operations of the AfDF into the next replenishment.

Deputies Meeting and Report

Replenishment levels are then negotiated between AfDB’s management and representatives of the AfDF state participants (the AfDF deputies).\(^{42}\) At the completion of negotiations, the AfDF deputies make pledges based on the agreed replenishment level and burden shares, and adopt a deputies’ report on their consultations that contains the overall strategic orientation, policy objectives, country eligibility, resource allocation system (including the respective percentages of loans and grants), and financing terms of AfDF operations applicable during the relevant replenishment cycle.\(^{43}\)

Board of Directors Report

The deputies submit their report for approval by the AfDF board of directors prior to its submission to the AfDF board of governors.

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\(^{38}\) AfDF Agreement, Article 4.

\(^{39}\) The contributions of new state participants are determined using the IMF quota of the new state participant relative to the IMF quotas of the nonregional state participants and the net development resources of the AfDF set as of 31 December of the previous year. The net development resources of the AfDF are available from the bank group’s annual report, available at www.afdb.org. They are the special-purpose financial statements of the fund. The applicable formula is as follows: contribution new participant = NDR*(IMF quota new participant)/(aggregate IMF quota nonregional participants).

\(^{40}\) AfDF Agreement, Articles 8.1 and 8.2.

\(^{41}\) AfDF Agreement, Article 8(5). However, pursuant to Article 7(1) of the financial regulations of the AfDF, the AfDF may borrow on nonconcessional terms for less than three months, subject to an aggregate cap of UA3 million.

\(^{42}\) By contrast, AfDB capital increases are negotiated at the AfDB board of directors.

\(^{43}\) Since the Eighth AfDF Replenishment (1999), the deputies have invited representatives of four AfDF-only countries to attend consultative meetings. This representation of AfDF beneficiaries in consultative meetings provides some voice to AfDF beneficiaries in the replenishment process, which has been considered a real improvement by state participants and management alike. However, some constituencies consider the level of representation insufficient and have called for a deeper reform of the AfDF governance structure (see Section XI below).
Board of Governors Resolution

The AfDF board of governors formally endorses and accepts the deputies’ report and adopts its main conclusions and recommendations by resolution of an 85% majority of the total voting powers of the participants to the AfDF (the replenishment resolution).44

Financing Policy

The instructions contained in the deputies’ report are then elaborated in the lending policy or financing policy guidelines for the relevant cycle. These guidelines, which are approved by the AfDF board of directors, are designed to implement and supplement the general operational guidelines set forth in Articles 14, 15, 16, 18, and 19 of the AfDF Agreement. They reflect the decisions reached during the consultations, as contained in the deputies’ report, and generally set out the details of country eligibility; priority sectors; the allocation of resources among countries, sectors, and instruments; the terms of financing; and the minimum level of contributions from borrowers and recipients. Appendix 3 compares the main terms of the lending policies of AfDF III–AfDF X.

Subscription, Installment Payment, and Burden Sharing

Instruments of Subscriptions

Upon submission of the participant’s instrument of subscription (IOS), subscriptions committed by each state participant for each general replenishment are recorded in full as subscriptions receivable from said participant.

Effectiveness and Trigger Mechanisms

A replenishment becomes effective when the AfDF receives IOSs from participants for a portion of the intended replenishment level as specified in the related replenishment resolution (e.g., the effectiveness trigger was set at 30% of the intended pledges for the AfDF VIII, IX, and X replenishments). Payment of the first installment of the subscription usually relates to the effective date (i.e., payments are due on a specific date or 30 days after the effective date, whichever comes earlier). The portion of subscribed amounts for payments not yet due from state participants, including qualified subscriptions, are recorded as installments on subscriptions not yet payable, and are not included in the net development resources of the AfDF.

Burden Sharing

The contributions of AfDF state participants have not been determined consistently according to burden shares under a particular replenishment. Hence, the burden sharing for a specific replenishment derives from the subscriptions of various donors for that replenishment resource level. Burden sharing for participants has varied over the successive replenishments. Traditionally, donor subscriptions to the AfDF and other multilateral funds have been influenced by burden shares in previous replenishments, relative economic capacity to contribute to a replenishment, aid volume relative to gross national product (GNP), and their vested interest in the region.

A structural gap has existed between the replenishment level and donor contributions since AfDF VI. A special allocation partially filled the 3.9% gap for AfDF VI, and a special subscription filled the 20.54% gap for AfDF VII. However, the gap for AfDF VIII was 20.22%, compared to 6.94% for the twelfth replenishment of the International Development Association (IDA12) and 4.31% for the seventh replenishment of the Asian Development Fund (AsDF VIII), and was not filled. For both AfDF IX (19.3% gap) and AfDF X (27.92% initial gap), some state participants have made additional contributions to fill the gap, either through a direct contribution or through supplemental contributions derived from accelerated encashment of their contributions. These additional contributions are usually not included in the computation of the state participants’ burden shares and do not carry voting rights.

44 AfDF Agreement, Article 7.4.
While state participants are not obliged to participate in any replenishment, each participant is given the opportunity to subscribe an amount that will enable it to maintain its relative voting power among state participants.45

In practice, state participants decide on their relative shares in a replenishment cycle on the basis of various factors that differ among states. However, since the AfDF requires a consensus among all participants on the acceptability of the final package and also because there are limits upon what each donor authority can accept for itself, it is very difficult to separate decisions on the total replenishment volume from decisions on relative shares. Conversely, problems can arise when a donor cannot contribute what others consider a fair share to a replenishment target that is generally agreed to be desirable.

**Payment Terms**

Subscription payments are usually made in three equal annual installments during the replenishment period. Participants can make payments either in cash or by depositing a nonnegotiable, non-interest-bearing promissory note, encashable on demand according to an encashment schedule agreed to at the time of the replenishment. Due to their legislative procedures, some state participants cannot make their subscription replenishment payments by the determined date. Thus, in effect, the actual payment of subscriptions from certain state participants depends upon their respective budget appropriation processes.

**Replenishment Process for the Nigeria Trust Fund**

At the request of AfDB management, the initial capital of the NTF ($80 million) was replenished in 1981 with $71 million and paid in three installments: $52.29 million on 7 October 1981, $10.87 million on 4 May 1984, and $7.38 million on 13 September 1985.

**Separation of Resources**

In accordance with the provisions of their respective agreements, the resources of the AfDB, the AfDF, and the NTF are kept strictly separate.

Article 11 of the AfDB Agreement provides that the ordinary capital resources of the AfDB shall at all times and in all respects be held, used, committed, invested, or otherwise disposed of entirely separate from its special resources.

Article 31(2) of the AfDF Agreement provides that the NTF shall be juridically separate and distinct from the AfDB, and assets of the NTF shall be kept separate and apart as well.

The NTF Agreement also provides that the resources of the NTF shall be held, utilized, committed, or otherwise disposed of completely independently of the resources of the AfDB, or of any other resources entrusted to the AfDB for administration.46

**Modalities of Concessional Financing**

**African Development Fund**

The resources of the AfDF are designed to accelerate broad-based, equitable, and sustainable economic growth and also to promote social development, with a special focus on poverty reduction. The AfDF

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45 AfDF Agreement, Article 7.2.
46 NTF Agreement, Article VII.
window provides funding in the form of long-term interest-free loans and grants to low-income regional member countries for investment in basic economic and human development projects.\textsuperscript{47}

Articles 14–21 of the AfDF Agreement provide the framework for fund operations. Within this framework, the AfDF board of governors and board of directors establish rules governing the allocation of resources for planned operations in AfDF borrowing countries, according to each country’s policy and institutional performance and also according to its record in terms of project implementation.\textsuperscript{48}

The AfDF may provide financing to

(i) any member or any geographical or administrative subdivision or agency thereof;

(ii) any institution or undertaking in the territory of any member; and

(iii) any regional or subregional agency or institution concerned with development in members’ territories.\textsuperscript{49}

The terms and conditions applicable to each loan or grant are governed by the relevant financing agreement and also by the general conditions applicable to the relevant instrument.

**Country Classification, Eligibility, and Access to Financing**

Allocation of the bank group’s resources is based fundamentally on several criteria, including country creditworthiness, per capita GNP, and country performance. Until such time as the AfDF’s own analyses are sufficiently developed, the assessment of creditworthiness is based on the criteria and operations of the World Bank.

For the AfDF X replenishment period (2005–2007), the AfDF made resources available to the 38 countries in Category A (i.e., countries deemed not creditworthy enough for nonconcessional borrowings and corresponding to IDA-only countries) and 2 countries in Category B (i.e., countries eligible for blend financing). Appendix 3 shows the evolution of the numbers and threshold of eligible countries.

**Performance-Based Allocation and Debt Sustainability Analysis**

The criteria for AfDF resource allocation have evolved over time. From 1972 to 1976, allocation of AfDF financing was not based on strict criteria; consequently, relatively rich countries received concessional resources from the AfDF, while much poorer countries did not. The lending policy adopted in 1976 introduced strict criteria, including

(i) degree of poverty,

(ii) balance of payment position,

(iii) public finance position and debt structure,

(iv) difficult geographical characteristics, and

(v) special economic and political circumstances.

GNP per capita was adopted to classify the countries into categories that determined their eligibility, and the above criteria were used to determine allocation within each category. These criteria have varied

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\textsuperscript{47} Article 16(1) of the AfDF Agreement stipulates that “[f]inancing by the Fund from resources provided under Articles 5, 6, and 7, and from repayments of, and income arising from, such financing, shall take the form of loans. The Fund may provide other financing, including grants, out of resources received pursuant to arrangements under Article 8 expressly authorizing such financing.” AfDF grants have been provided from AfDF general replenishment resources (as opposed to special arrangements under Article 8) on the basis of the provisions of Articles 19 and 20 of the AfDF Agreement and of the relevant enabling replenishment resolutions of the board of governors.

\textsuperscript{48} Most recently: enhanced performance-based allocation (PBA) framework for AfDF X (revised), July 2006.

\textsuperscript{49} AfDF Agreement, Article 16(3).
from one replenishment to another (Appendix 3). Performance-based allocation (PBA) was introduced for the first time during the AfDF VI replenishment (1991–1993), and it was given increasing weight thereafter.

**Performance-Based Allocation**

Since 1999, the allocation of resources to AfDF countries has been based on performance, while the nature of resources provided in the form of loans or grants has been determined by the debt sustainability analysis of the country.\(^{50}\)

The PBA system determines the total amount of resources allocated to each country for the whole replenishment cycle, on the basis of the country’s GNP per capita, the quality of its governance, its policy and institutional assessment, and its portfolio performance rating.

Since the AfDF deputies first required its use in 1999, the PBA system has evolved with a view toward better capturing the situation in individual countries, avoiding double counting, and harmonizing the approach as much as possible with that of other multilateral development banks (MDBs). Additional features allow increased per capita allocations for small countries (see below) and refinements in assessing performance in post-conflict countries (PCCs).\(^{51}\)

For the second half of the AfDF X cycle (2005–2007), the AfDF used the following revised PBA system:\(^{52}\)

\[
Ai = (\frac{GNI}{P})i - \lambda \times (CPA^*)i \times \theta (P)i
\]

where: 
\[
(CPA^*) = (CPA) \times (GF) \times (PCEF);
\]

\[
(CPA) = \alpha CPIAi + \beta CPPRi; \quad (\alpha + \beta) = 1.0
\]

where:

- \(Ai\) is the allocation share for country \(i\);
- \(GNI/P\) is gross national income per capita, a proxy for poverty level;
- \(P\) is the level of the population;
- \(\lambda\) is a fixed exponential assigned to the poverty variable \((\lambda = 0.125)\);
- \(\theta\) is the performance exponential, now fixed at \(\theta = 2\);
- \(GF\) is the governance factor;
- \(PCEF\) is the post-conflict enhancement factor;
- \(CPIA\) represents Country Policy and Institutional Assessments;
- \(CPPR\) denotes the Country Portfolio Performance Rating;
- \(\alpha = 70\%\); and
- \(\beta = 30\%\).

In addition to the above formula, the AfDF allocates a minimum UA5 million to each country, regardless of size, to help smaller countries.

**Debt Sustainability Analysis**

Under replenishment cycles until AfDF IX (2002–2004), grant eligibility was linked to expenditures to address specific operational priorities. Under AfDF X, however, the AfDF deputies agreed that eligibility...
for grants would be determined only by a country’s risk of debt distress under the new International Monetary Fund (IMF)–World Bank Debt Sustainability Framework (DSF).

Essentially, after the AfDF country allocation of resources has been determined by the PBA system, the actual loan/grant financing terms will be determined by the degree of debt distress associated with each AfDF-eligible country.

A country would be expected to face a high degree of debt distress by contracting additional concessional loans if its debt burden indicator exceeds the relevant threshold by more than a certain percentage. In such a case, the decision rule is to provide the country’s allocation in the form of grants. On the other hand, a country is assessed to have a low risk of debt distress by contracting an additional loan if its debt burden indicator falls below the relevant threshold by a certain percentage. In such a case, the country would qualify for 100% loans only. In the same vein, a country is assessed to have a moderate risk of debt distress if its debt burden indicator is smaller or greater than the relevant threshold by a certain percentage. In this case, the allocation is split and provided in a 50/50 or other loan/grant proportions.

**Terms of Loans**

The term of AfDF loans is 50 years, with a 10-year grace period. The loan principal is repaid at a rate of 1% per annum during years 11–20, and thereafter at a rate of 3% per annum. A service charge (0.75% per annum) on the principal amount disbursed and outstanding is payable semiannually. Loans approved after June 1996 carry a 0.5% per annum commitment charge on the undisbursed portion. Such commitment charge commences to accrue 120 days after the date of signature of the loan agreement.

Lines of credit to national development banks and similar national finance institutions are generally granted for a maximum of 20 years, including a 5-year grace period. The service charge rate on utilized lines of credit is the same as for other loans.

**Technical Assistance and Grants**

Prior to AfDF III (1982–1984), the AfDB and the fund provided technical assistance financing through loans, which were very limited because member countries preferred to use special grant funds and other technical assistance arrangements.

Thus, the AfDF’s second replenishment (1979–1981) set aside 2.5% of its resources for project-preparatory technical assistance loans, preferably to member countries in Category A.

**Technical Assistance Account and Technical Assistance Fund**

During the negotiations for the AfDF’s third general replenishment (1982–1984), the deputies agreed to expand the provision of technical assistance in order to address the difficulties that many borrowing member countries faced in project and program identification, preparation, and implementation. In May 1982, the board of directors adopted the AfDF III lending policy, which approved a special account, known as the technical assistance account (TAA), and earmarked 5% of AfDF resources for the TAA. The AfDF board of directors approved the guidelines and procedures for utilizing the TAA on 20 October 1983.

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54 For credits granted until AfDF V (inclusive), the grace period was extended to 45 years for credits granted for (i) pre-investment studies for which the results were negative as to the possibility of a feasible project or program, or (ii) strengthening the borrower’s project generation and implementation capacity without being related to a specific project or program.

55 Article 19 of the AfDF Agreement provides that, in furtherance of its purposes, the fund may provide technical assistance.
Category A and B member countries can access TAA resources to finance activities including

(i) preparation of sector studies;
(ii) strengthening the planning of functional institutions, especially through training, for the purpose of project or program generation and implementation;
(iii) prefeasibility studies for Category A countries only;
(iv) feasibility studies; and
(v) detailed engineering and design studies, including the preparation of tender documents.\(^{56}\)

The financing of these activities was meant to be normally undertaken as separate lending activities, rather than covering the technical assistance components of project or program loans. Borrowers were required to contribute not less than 5% of the cost of the activity being financed.

The TAA was confirmed under AfDF IV (1985–1987). However, during the AfDF V negotiations (1988–1990), the deputies agreed that the terms and conditions of the TAA did not go far enough toward addressing these difficulties. Therefore, the board of directors decided to provide technical assistance on a grant basis to countries in categories A and B and to increase the earmarked amount to 10% of the fund’s replenishment.

As a result of this transformed character of the AfDF’s technical assistance resources, the TAA was renamed the technical assistance fund (TAF) in 1988 and new guidelines for its operations were approved. The TAF provided resources primarily for planning (formulation of development strategies and carrying out sector studies), project cycle-related activities (identification, preparation, implementation), and capacity-building and research activities.\(^{57}\)

The TAF ceased as a distinct funding mechanism in 1999, during the AfDF IX replenishment, when grants became a regular instrument of AfDF funding.

However, when AfDF X adopted the DSF, AfDF loan-only countries automatically became ineligible for technical assistance grants because those grants were not provided as part of the general AfDF resources and were subject to the rules of the DSF. On 16 October 2006, the AfDF’s board of governors approved a resolution creating a technical assistance grant facility for AfDF loan-only countries, under the DSF (see above), for financing preinvestment studies and essential institutional support. A sum of UA80 million, representing about 5.2% of the loan allocation of eligible countries, has been allocated to this facility.\(^{58}\)

**Grant Financing**

As indicated above, grant financing was originally provided for planning, project cycle-related, capacity-building, and research activities. The AfDF IX lending policy extended the areas eligible for grant financing to support activities in priority areas such as HIV/AIDS interventions; post-conflict reconstruction; investments in education, health, and water supply and sanitation; and natural disaster reconstruction. Under the AfDF X financing guidelines, all activities eligible for AfDF financing can be financed through grants.

**Project Preparation Facility**

The board of directors established the project preparation facility (PPF) in 2000 as a complementary facility within the TAF to finance project-preparatory activities with a very high probability of generating projects. Fifteen percent of TAF resources were allocated to the PPF.

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\(^{58}\) Following approval by the AfDF board of governors, this facility became retroactively effective to 1 January 2006.
PPF resources only target preparatory activities of limited scope that are required for data validation and document revision before project appraisal and execution. These activities include feasibility studies and detailed design, environmental impact assessments, gender studies and other studies on crosscutting issues, and precontract services, including revision of tender documents.

The PPF is restricted to regional member countries in categories A and B. PPF advances range from UA20,000 to UA500,000 and can be used to finance both foreign and local cost elements of the project, subject to the requirement that the borrower should provide at least 5% of the local cost component.

PPF funds are advances and are treated as receivables in the books of the fund until the advances are reimbursed. While PPF advances do not attract any interest charges, there is a service charge of 0.75% per annum, which is not due until the advances are refinanced or reimbursed.

In situations where the preparatory efforts result in a project financed by the fund, the advance is refinanced in an amount equal to the principal plus service charges in a separate disbursement category provided in the fund loan or grant for the project.

When the preparation efforts do not result in a project loan or grant, the government reimburses the advance, preferably through savings from other AfDF loans or grants made to the country. In exceptional situations where there are no such savings, the government is required to settle the advance with its own resources, in three installments within one calendar year.59 Reimbursement of advances shall be made in the currencies disbursed by the fund.

The PPF continues to exist as part of regular fund financing after the extinction of the TAF. It is preserved by the enabling replenishment resolutions adopted by the board of governors.

**Currency Aspects**

The fund unit of account (FUA) was originally based on its relationship to the special drawing rights (SDRs) in place when the AfDF was established (i.e., FUA1.00 equal to SDR0.921052).

On 16 November 1992, the board of governors decided by Resolution F/BG/92/10 to define the AfDF’s unit of account (UA) as equivalent to the UA of the AfDB, which at that time was equivalent to the SDR of the IMF. In compliance with this resolution, the board of directors adopted 1 January 1993 as the effective date of the resolution. Since then, the AfDF’s UA has been defined as equal to the AfDB’s UA.

All AfDF loans and grants were traditionally denominated in UA and disbursed in the currency available at the time of disbursement.

AfDF loans have been denominated in UA since 2005. However, the borrower can select a disbursement currency among US dollars, euros, yen, or pounds sterling when negotiating the loan. The liability currency for such loans is the currency disbursed.

If a borrower or grant recipient requests disbursement in a currency or currencies other than the disbursement currency for paying expenditures incurred in such other currency, the AfDF can exchange such currency or currencies in the manner it deems appropriate, provided such expenditures are in readily available currency or currencies.

**Procurement**

In all cases where the proceeds of AfDF financing are used to finance the supply of goods, the provision of services, or the use of consultants, the necessary procurement activities must be conducted in accordance with rules governing the procurement of goods and works and the use of consultants (collectively, the “procurement rules”) as approved by the AfDF board of directors.

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59 In the case of advances of UA20,000 or less, payment should be made in one installment on the date determined by the AfDF, which shall in no event be less than 60 days following the notice by the AfDF to the borrower that the date agreed upon for this purpose by the borrower and the bank in the letter of agreement for the facility has been reached.
The AfDF does not require that the proceeds of its financing be spent in the territories of any particular state participant or member, but it is a statutory requirement that such proceeds be used only for procurement, in the territories of state participants or members, of goods produced in and services supplied from such territories. The board of directors may not waive this requirement. However, in the case of funds received from a state that is not a participant or member, the territories of that state shall also be eligible sources of procurement from such funds, and may be eligible sources of procurement from such other funds received, as the board of directors shall determine.

At its Annual Meetings in May 2008, the board of governors of the AfDF approved a proposal to delete Article 15(4) of the AfDF Agreement, thus eliminating the statutory requirement that proceeds be used only for procurement, in the territories of state participants or members, of goods produced in and services supplied from such territories. It is expected that this very important amendment of the AfDF Agreement, when ratified by the relevant authorities, will greatly increase the competitiveness and development effectiveness of the AfDF.

The bank group never participates directly in procurement activities by borrowers or grant beneficiaries. Rather, the borrower or beneficiary conducts procurement with the relevant contractors. However, the procurement rules stipulate that AfDB must closely monitor each step of the procurement process and cannot object if the procurement has been conducted in accordance with the procurement rules.

The AfDF may extend foreign exchange to meet local expenditures on a project when and to the extent that, in the opinion of the AfDF, this is necessary or appropriate for the purposes of the loan regarding the economic position and prospects of the member for whose benefit the financing is provided, and the nature and requirements of the project.

**Nigeria Trust Fund Loans**

Loans originated before 22 September 2003 carry an interest rate of 4% on the outstanding balance. Effective 22 September 2003, and pursuant to the board of governors’ Resolution B/BG/2003/11 of 3 June 2003 and the protocol agreement between the Government of the Federal Republic of Nigeria and AfDB (22 September 2003), the interest rate on loans changed from a flat 4% per annum to a range of 2%–4% (inclusive) per annum on the outstanding balance. Further, a 0.75% commission is payable on undisbursed balances commencing 120 days after the effective date of the loan. Loans are granted for a maximum period of 25 years and include grace periods of up to 5 years.

The NTF Agreement provides that loans shall be denominated in convertible currencies. Interest and other charges shall be paid in the currency disbursed or any other convertible currency acceptable to the AfDB.

Since 31 December 2004, all NTF loans have been disbursed and repayable in US dollars.

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60 AfDF Agreement, Article 15(4). It should be noted that this requirement, which is also generally referred to as the “rule of origin,” does not to apply to the expenditure of proceeds under budget support operations. Indeed, these expenditures are considered outside the ambit of the prescriptions specified in Article 15(4)(a), because budget support operations, by their nature, are participations by the AfDF in financing the budget of an eligible regional member country. Such financing does not raise issues of direct procurement, as the resources are not expected to be used to procure goods and services.

61 Nonparticipation in a given replenishment does not suspend the right of the said participant to participate in procurement activities under Article 15(4) of the AfDF Agreement.


63 AfDF Agreement, Article 16(4). Until AfDF VI (inclusive), the proceeds of AfDF financing used for financing local costs could not exceed 50% of the total project or program costs.

64 NTF Agreement, Article 6(1).

65 Ibid.

66 NTF Agreement, Article 4(5).
Financial Management

Resources of the African Development Fund

Investments
AfDF cash and liquid investments amounted to UA3.39 billion on 31 December 2007, compared to UA2.94 billion in 2006. Investment income for the year amounted to UA147.25 million, a return of 4.55%, on an average liquidity level of UA3.24 billion.

The AfDF classifies its investment securities based on management's intention on the date of purchase. Securities that management intends to and can hold until maturity are classified as held-to-maturity and reported at amortized cost. All other investment securities are carried at market value. The AfDF may invest in government and agency obligations (including marketable bonds or notes and other government obligations) issued or unconditionally guaranteed by governments of member countries or other official entities with a minimum credit rating of AA–. For asset-backed securities, the AfDF may only invest in securities with an AAA credit rating. The AfDF’s investments also include money market instruments (e.g., time deposits, certificates of deposit, and other obligations with a maturity period of less than a year) issued or unconditionally guaranteed by banks and other financial institutions with a minimum rating of A.

Loan Portfolio
As of 31 December 2008, the total of all active AfDF loans and grants amounted to UA16.76 billion, compared with UA15.47 billion at the end of 2007. At the end of 2008, there were 1,615 active signed loans and grants amounting to UA4.87 billion, UA706.96 million higher than at the end of 2007. This increase occurred despite debt cancellation under the Multilateral Debt Relief Initiative (MDRI) for two completion-point countries during the year, amounting to UA102.12 million. As of 31 December 2008, a total of 538 loans amounting to UA4.54 billion have been fully repaid.

The AfDF places all loans to a borrower country on nonaccrual status when principal installments or service charges are overdue by 6 months or more, unless AfDF’s management determines that the fund will collect the overdue amount in the immediate future. Further, management may place a loan on nonaccrual status, even if it is not yet overdue by 6 months, if the specific facts and circumstances warrant such action. On the date a borrower's loans are placed on nonaccrual status, unpaid charges that had accrued on loans to the borrower are deducted from the income from loans of the current period. Charges on loans on nonaccrual status are included in income only to the extent that payment has been received by the fund.

In the context of the general policy framework for the operations of the bank group's three lending windows, the boards of directors adopted a sanctions policy in May 1997 to recover loan arrearages. This policy defines the rules and sanctions applicable to borrowers and guarantors who fail to pay the principal and capital costs on loans borrowed from any of the group's lending windows, including the fund. The sanctions apply equally to borrowers and guarantors, and include the suspension of any new loans or grants, disbursement of any loan or grant, and identification and appraisal missions, as well as the prohibition to sign new loan, grant or guarantee agreements with borrowers or guarantors in arrears.67 The sanctions policy provides certain exemptions from the above-mentioned prohibitions and

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67 At the time the sanctions policy was adopted, AfDF financing was exclusively in the form of loans, except for technical activities. Therefore, the sanctions policy did not envisage the approval of new grant operations or the suspension of grant disbursements for projects other than technical assistance services. Since the adoption of the DSF under AfDF X, the AfDF has provided project financing to certain countries in the form of grants. The sanctions policy has been interpreted as applying to such grant financing. The sanctions exemption for technical assistance services remains in force.
suspensions for technical assistance services financed from the fund’s resources, such as preinvestment
studies, and institutional strengthening that are financed in the form of grants.

Disbursements
Disbursements of loans and grants in 2008 amounted to UA1.12 billion; as of 31 December 2008,
cumulative disbursements on loans and grants amounted to UA11.88 billion. A total of 1,504 loans
and grants were fully disbursed for an amount of UA9.54 billion, representing 80.3% of cumulative
disbursements.

Administrative Expenses
Pursuant to Article 31 of the AfDF Agreement, the AfDF reimburses the AfDB for the fair value of its use
of the latter’s offices, staff, organization, services, and facilities. The amount reimbursed for administrative
expenses is based on a predetermined cost-sharing formula, which is driven in large part by the AfDF’s
relative share of the number of programs and projects executed during the period by the bank group.

Resources of the Nigeria Trust Fund
Investments
Although NTF cash and investments are denominated in US dollars, the accounts of the NTF are kept
in UA.68 NTF cash and liquid investments amounted to UA196.68 million as of 31 December 2007.
Investment income for 2007 amounted to UA10.34 million, representing a return of 5.36%, on an
average liquidity level of UA207.37 million.

The 2003 amendment of the NTF Agreement removed the limitation on investments of uncommitted
NTF resources to short-term securities.69 This action enabled the adoption of a dual portfolio management
approach for NTF resources, whereby 25% of the liquidity is managed against a rolling average of the
three-month London InterBank Offered Rates in US dollars, while the remaining 75% is invested as a
held-to-maturity portfolio maturing on the statutory sunset date.

The NTF’s trading investments are primarily in government and other obligations and are carried at
market value. Government and other obligations include marketable bonds, notes, and other obligations.
For government and agency obligations, the NTF may invest only in obligations with a minimum credit
rating of AA—issued or unconditionally guaranteed by governments of AfDB member countries or other
official entities. For asset-backed securities, the NTF may only invest in securities with AAA credit rating.

Loan Portfolio
As of 31 December 2008, loans signed, net of cancellations, amounted to UA240.88 million. There
were 34 active signed loans amounting to UA54.79 million and 35 fully repaid loans amounting to
UA94.82 million.

The NTF places loans in nonaccrual status if the principal installments, interest, or other charges
related to such loans are overdue by six months or more, unless the NTF’s management determines that
the overdue amount will be collected in the immediate future. Interest and other charges on loans in
nonaccrual status are included in income only to the extent that payment has been received by the NTF.
When a loan is placed in nonaccrual status, all related unpaid interests and related charges are reversed
against current income. In general, loans are returned to accrual status immediately after the related
arrears have been cleared. However, certain loans that have become current may continue in nonaccrual
status until after a period of satisfactory performance.

68 NTF Agreement, Article 7.3.
69 NTF Agreement, Article 2(3).
Administrative Expenses

The NTF uses the offices, staff, organization, services, and facilities of the AfDB and reimburses the AfDB for its share of the costs of such facilities, based on an agreed-upon cost-sharing formula. NTF administrative expenses comprise, primarily, such reimbursements made to the AfDB during the year. The annual payment for the administrative expenses of the AfDB cannot exceed the total of 20% of the gross income of the NTF during the course of each year.

Special Arrangements

Heavily Indebted Poor Countries Initiative

To ensure that unsustainable external debt burdens do not compromise reform efforts, the AfDF participates in a multilateral initiative to address the debt problems of heavily indebted poor countries (HIPCs). The HIPC Initiative aims to reduce the indebtedness of poor regional member countries to sustainable levels, and to direct debt service savings toward poverty reduction activities.

Resources made available under the HIPC Initiative are devoted to finance key pro-poor growth programs that are listed in the recipient countries’ poverty reduction strategy papers. Under the HIPC Initiative, creditors provide debt relief for those countries that demonstrate good policy performance over an extended period to bring their debt burdens to sustainable levels.

As a part of this process, the HIPC (Debt Initiative) Trust Fund, which comprises funds from donors including the bank group, was established to help beneficiaries reduce their overall debt, including debts owed to the AfDF. Under the original framework of the initiative, after signing an HIPC debt relief agreement between the AfDF, the beneficiary country, and the HIPC trust fund, loans or repayment installments identified for sale to the HIPC trust fund are recorded at their estimated net present value. On the settlement date, the estimated amount was adjusted to reflect the actual difference between the cash received and the carrying value of the loans sold.

In 1999, enhancements to the HIPC Initiative provided greater, faster, and more poverty-focused debt relief. The enhancements reduced the eligibility criteria for qualification under the HIPC Initiative and connected debt relief much earlier than the original framework. The enhanced framework delivers debt relief through annual debt service reductions that allow the release of up to 80% of annual debt service obligations as they come due until the total net present value of debt relief, as determined by the debt sustainability analysis, is provided. Interim financing of up to 40% of total debt relief is granted between the decision and completion points.

In 2006, three operations amounting to UA155.28 million were approved within this framework.

Post-Conflict Countries Arrears Clearance Facility

In 2004, the AfDB established a framework to assist post-conflict countries (PCCs) in clearing their loan arrears to the bank group. The framework entails setting aside a pool of resources with contributions from the AfDB net income allocations and the AfDF. Contributions can also be accepted from third parties.

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70 NTF Agreement, Article 3.1.
71 NTF Agreement, Article 9.2.
72 The board of directors created the PCCF in 2004 to assist PCCs in clearing their bank group arrears. The boards of directors of the bank and the fund adopted guidelines for the bank group’s assistance to PCCs on 12 April 2004, and the board of governors approved the allocation of UA100 million to the PCCF at the 2004 annual meetings. The board of directors approved the Bank Group Post-Conflict Assistance Policy Guidelines–Arrears Clearance Framework on 19 July 2004.
that are interested in facilitating the process of reengaging the PCCs in the development process and assisting them to reach the decision point under the HIPC Initiative.

The PCC arrears clearance framework was created to help PCCs reengage with international finance institutions and the donor community generally, and to access debt relief under the enhanced HIPC Initiative.

Upon agreement of an arrears clearance program, the AfDF provides grant financing for special technical assistance, and the bank group endorses further steps in the reengagement program. PCCs regain access to the full resources of the AfDF when they complete the arrears clearance program. PCC arrears clearance programs mobilize resources equally (one-third each) from three sources: the beneficiary country, donors, and the bank group.

The bank group’s assistance is channeled through a legally autonomous Post-Conflict Countries Facility (PCCF) under the auspices of the AfDF. The PCCF aims to provide financial assistance to PCCs to clear their bank group arrears and to service new maturities until the countries qualify for debt relief under the HIPC Initiative. The PCCF is a limited-life facility that will terminate when (i) its resources are exhausted, (ii) all HIPC-eligible PCCs have reached a decision point within the HIPC debt relief initiative, or (iii) an HIPC sunset clause is invoked. Upon termination, any residual resources in the PCCF will go to the AfDF general pool. The PCCF is financed by contributions from the three institutions within the bank group.

Eligibility for an arrears clearance program under the framework requires

(i) that the regional member country has been designated by the bank group as “post-conflict”;
(ii) that the PCC is in a context of coordinated reengagement programs with the IMF, the International Bank for Reconstruction and Development, and the international community;
(iii) that the PCC enforce the bank group preferred creditor status with regard to its loans;
(iv) a financially sustainable plan for the recipient PCC to qualify for HIPC debt relief;
(v) demonstrated need; and
(vi) maximum reasonable effort by the PCCs to mobilize donor resources to help pay bank group arrears.

The PCCF provides financial assistance to PCCs in the form of grants on a case-by-case basis. Resources so provided to PCCs will count as contributions to the HIPC Initiative. The use of PCCF resources as part of an arrears clearance program for a PCC requires the approval of the boards of directors of the bank group.

AfDF X approved an initial tranche of UA100 million for the PCCF. If necessary, the AfDF will provide the facility with an additional UA150 million to finance the clearing of arrears of PCCs.

The resources of the PCCF are separate and distinct from those of the AfDB.

**Multilateral Debt Relief Initiative**

Aiming to provide 100% debt relief by international finance institutions to eligible post-completion point HIPCs, the G8 countries launched the MDRI at the Gleneagles summit in July 2005.

The main objective of the MDRI involves completing the process of debt relief for HIPCs by providing additional resources to help 42 countries worldwide (33 in Africa) make progress towards achieving the Millennium Development Goals, and simultaneously safeguarding the long-term financing capacity of the AfDF and the International Development Agency (IDA).

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73 The AfDF board of directors approved the PCCF on 19 July 2004.
74 Part of the contribution reimbursed the sum of UA55 million that had been advanced from the resources of AfDF IX.
On 31 March 2006, the AfDF deputies issued a report entitled “Additions to AfDF Resources: Financing the Multilateral Debt Relief Initiative,” which endorsed the MDRI and provided details of the donor compensatory financing arrangements, with financing commitments to cover the AfDF costs of the MDRI over its 50-year life-span. Debt cancellation will be implemented by relieving repayment obligations of post-completion point HIPCs and adjusting their gross assistance flows downward by the same amount. Donors would make additional contributions to the AfDF and the IDA to match “dollar-for-dollar” foregone principal and service charge payments based on an agreed burden sharing.

Donors will provide additional resources for financing the costs of the initiative through one or more instruments of commitment (IOCs). However, given the long-term nature of the financing commitments required, the IOCs will be amended over time to reflect updated cost estimates as well as additional donor commitments. Donor financing will be provided over three periods of compensation: (i) the remaining AfDF X period (CY06–07), (ii) the remainder of the first decade (CY08–15), and (iii) the subsequent 4 decades (CY16–54).

On 18 May 2006, the AfDF board of governors approved a resolution by postal ballot that approved the conclusions and recommendations of the final report of the AfDF deputies on the MDRI and authorized:

(i) the AfDF board of directors to approve the debt cancellation;
(ii) the AfDF to proceed with a general increase in the subscriptions of state participants; and
(iii) the AfDF to enter into arrangements to receive additional resources from countries that are not state participants, with the approval of the board of directors.

Under the scheme, state participants receive voting rights for their contributions to the general increase of the AfDF resources. However, the contributions of state participants to the general increase of the AfDF resources for the MDRI will not be counted as part of the burden share for the replenishment period in which the contributions are made.

The effectiveness of the scheme was subject to certain thresholds, specifically, the deposit with the AfDF of IOCs representing an aggregate amount equivalent to at least 70% of the total cost of debt relief for the 14 HIPCs currently at the post-completion point, of which not less than an amount equivalent to at least 90% of the cost of debt relief incurred during the AfDF X period shall be unqualified commitments for payments due in 2007.

As of 31 December 2007, the AfDF received from donors aggregate commitments in excess of UA4.40 billion. These commitments represent 79% of the indicative cost of debt relief for 33 eligible countries (UA5.57 billion). The total cost of the MDRI for 2007 was UA36.60 million.

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75 The AfDF Agreement does not explicitly provide for, or prohibit, debt cancellation or forgiveness. Statutory authority for the debt cancellation can be found in Article 20 of the AfDF Agreement in conjunction with Articles 2 and 52. Article 20 provides authority for the AfDF to engage in activities that were not expressly mentioned in the AfDF Agreement, so long as such activities are incidental to its operations and serve to advance the economic and social development of the AfDB’s members.

76 There was broad consensus among deputies to use the AfDF X normalized burden-sharing framework as a basis for the increase in resources for the initiative, except two donors which preferred applying their current burden shares, resulting in a structural gap of 1.25%.

77 Resolution F/BG/2006/12.

78 The second threshold of 90% was lowered to 75% by a board of governors’ resolution adopted on a lapse of time or nonobjection basis on 31 August 2006. The compensatory financing scheme under the MDRI became effective on 1 September 2006 (Resolution F/BG/2006/13).

79 The “qualified” commitment corresponds to a commitment subject to the adoption of the necessary parliamentary or legislative approvals for the full amount of the subscription and contribution.
Special Arrears Clearance Mechanism

In connection with an internationally coordinated effort between the African Development Bank Group, the IMF, the World Bank, and other bilateral and multilateral donors to assist the Democratic Republic of Congo (DRC) in its reconstruction efforts, the board of directors approved an arrears clearance mechanism for the DRC on 26 June 2002. Under that mechanism, representatives of the AfDF state participants (the AfDF deputies) authorized an allocation of approximately UA36.50 million of grant resources from AfDF IX to clear the entire stock of the DRC’s arrears to the AfDF.

Trust Funds

In accordance with the AfDF Agreement, the AfDF has available resources derived from contributions entrusted to it under Article 8 of the agreement, which empowers the AfDF to receive other resources, including grants from state participants, nonparticipating countries, and from any public or private body or bodies. Resources of the trust funds are kept separate from those of the AfDF.

Overview of Replenishments of the African Development Fund

Fifth Replenishment

The Consultations for the Fifth Replenishment of the Resources of the African Development Fund (AfDF V) were conducted from March 1987 to November 1987. The deputies held five consultative meetings, following the directives by the board of governors authorizing commencement of the consultations. The AfDF deputies initially pledged commitments of FUA2.25 billion for AfDF V, which covered the period 1988–1990.

AfDF V came into effect in November 1988, when state participants deposited instruments of subscription (IOSs) for the minimum level required (an aggregate amount of 45% of the total intended subscription) under the AfDF V replenishment resolution.

The AfDF V replenishment increased the percentage of funds set aside for technical assistance activities from 5% to 10%, and made funds available on a grant basis.

Sixth Replenishment

The Consultations for the Sixth Replenishment of the Resources of the African Development Fund (AfDF VI) were conducted from June 1990 to February 1991. The deputies held five consultative meetings, following the directives by the board of governors authorizing commencement of AfDF VI consultations. The AfDF deputies initially pledged commitments of FUA2.59 billion for AfDF VI, which covered the period 1991–1993. In addition, funds totaling FUA0.06 billion were pledged by Italy, the Netherlands, and Norway as additional resources not carrying voting rights to be allocated for social programs in the most vulnerable of the African countries.

AfDF VI came into effect in 1992, when state participants deposited IOSs for the minimum level required (an aggregate amount of 40% of the total intended subscription) under the AfDF VI replenishment resolution.

Seventh Replenishment

The Consultations for the Seventh Replenishment of the Resources of the African Development Fund (AfDF VII) were conducted from May 1993 to December 1995. Nine consultative meetings were
held, following the directives by the board of governors authorizing commencement of the AfDF VII consultations. The AfDF deputies initially pledged commitments of UA1.30 billion for AfDF VII, which covered the period 1996–1998. In addition, some participants made a special contribution of UA500,000.

The Seventh Replenishment came into effect in December 1996, when state participants deposited IOSs for the minimum level required (an aggregate amount of 40% of the total intended subscription) under the AfDF VII replenishment resolution.

**Eighth Replenishment**

The Consultations for the Eighth Replenishment of the Resources of the African Development Fund (AfDF VIII) were conducted from May 1998 to January 1999. Five consultative meetings were held with the AfDF deputies, following the directives by the board of governors authorizing commencement of the AfDF VIII consultations. The AfDF deputies initially pledged commitments of UA2.20 billion for AfDF VIII, which covered the period 1999–2001.

The Eighth Replenishment came into effect in 1999, when state participants deposited IOSs for the minimum level required (an aggregate amount of 40% of the total intended subscription) under the AfDF VIII replenishment resolution.

**Ninth Replenishment**

The Consultations for the Ninth Replenishment of the Resources of the African Development Fund (AfDF IX) were conducted from May 2001 to September 2002. Six consultative meetings were held with the AfDF deputies, following the directives by the board of governors authorizing commencement of the AfDF IX consultations. The AfDF deputies initially pledged commitments of UA2.37 billion for AfDF IX, which covered the period 2002–2004.

AfDF IX came into effect on 30 January 2003, when state participants deposited IOSs for the minimum level required (an aggregate amount of 30% of the total intended subscription) under the AfDF IX replenishment resolution.

**Interim Financing Arrangement**

There was a delay in concluding the consultations on AfDF IX. At the conclusion of the deputies’ deliberations during the fifth consultative meeting on AfDF IX, the deputies agreed in principle to contribute to an interim financing arrangement to be established by the AfDF that would facilitate its continued operations, pending the conclusion of the consultations on AfDF IX. The interim financing arrangement consisted of additional individual voluntary subscriptions by state participants to the resources of the AfDF, pursuant to Article 7 of the AfDF Agreement. The additional individual subscriptions were considered advance payments by contributing state participants toward their eventual subscriptions under AfDF IX. The resources that accrued to the AfDF from the additional individual subscriptions were utilized on the basis of the lending policy that was approved for the AfDF VIII. After reaching final agreement on AfDF IX, the interim financing arrangement was terminated and the policies and procedures adopted for AfDF IX were applied to uncommitted resources from the additional individual subscriptions.

Approval by the board of governors of the interim financing arrangement required a majority vote of 85% of the total voting power of all participants. Contributing state participants participated in the interim financing arrangement by submitting IOSs in the agreed amounts. State participants received

80 Resolution F/BG/2002/03 adopted by the board of governors on 28 May 2002 approving the recommendations of the board of directors contained in Document AfDF/BG/IF/2002/05, on the interim financing arrangement pending the conclusion of the ninth replenishment.
no additional voting rights for making contributions to the interim financing arrangement until the AfDF IX became effective, at which point contributing state participants were allocated additional voting rights on account of their additional individual subscriptions.81

Tenth Replenishment

The Consultations for the Tenth Replenishment of the Resources of the African Development Fund (AfDF X) occurred during 2004. Four consultative meetings were held with the AfDF deputies in 2004, following the December 2003 directives by the board of governors authorizing commencement of the AfDF X consultations. The AfDF deputies agreed on a replenishment level of UA3.40 billion for AfDF X, which would cover the period 2005–2007.

AfDF X came into effect on 6 September 2005, when state participants deposited IOSs for the minimum level required under the AfDF X replenishment resolution (an aggregate amount of 30% of the total intended subscription). As of 31 December 2005, state participants had subscribed to UA2.02 billion, representing 59% of the AfDF X target replenishment level.

The AfDF X replenishment includes important new features. The estimated share of grant resources increased significantly, from 18%–21% under AfDF IX to 34.29% under AfDF X.82 Additionally, the resources for multinational programs and projects increased from 10% of resources under AfDF IX to 15% under AfDF X. The terms of AfDF financing for individual countries will now be based on the new IMF–World Bank Debt Sustainability Framework (DSF), with some two-thirds of eligible countries expected to receive their AfDF allocations in the form of grants only. During the AfDF X replenishment consultations, the AfDF deputies recommended the adoption of an advance commitment authority scheme similar to the IDA and the Asian Development Fund. The scheme allows the AfDF to make loans and grants on the basis of an advanced commitment capacity that reflects not only internally generated resources that are actually available, but also anticipated reflows (such as loan repayments, net income, and loan cancellations) to be generated in the future. The boards of directors approved the scheme in April 2005. Prior to the approval of the advance commitment authority scheme and its implementation during the AfDF X replenishment period, the AfDF board of directors had approved loans and grants only when such commitments were fully covered by mobilized AfDF resources.

Proposed Reforms

Some fund participants have called for a revision of the AfDF governance structures to address several issues and concerns relating to representation, voice, and voting rights for regional member countries in the AfDF governing bodies and replenishment process, while ensuring a growing resource base for AfDF beneficiaries.

The boards of directors discussed possible reforms of the AfDF governance structure extensively in 2000 in the context of South Africa’s completion of the formalities to become the first regional state participant of the AfDF. Since no consensus on a permanent solution was reached, the AfDF board of governors approved an interim governance arrangement in 2002 that allowed representation and voting rights for regional state participants in the AfDF.

In 2002 the board of governors also directed the fund to commission an independent study on the governance structure of the AfDF to review detailed options to address more permanently representation,

81 Ibid.
82 These figures are estimates only, because countries’ eligibility for loans and/or grants is reviewed each year under the DSF.
voting rights, and institutional issues. The recommendations of the independent study, which contained proposals to (i) increase the voting rights of regional member countries who are participating in the fund, (ii) increase representation of regional member countries on the board of directors and in AfDF replenishment consultations, and (iii) open membership in the AfDF to all regional member countries, whether they are donors or not, were considered in 2002 and in the context of the AfDF X replenishment in 2003 and 2004, but no consensus could be reached on any of the proposals.

The AfDF governance structure was discussed again briefly during the AfDF XI replenishment, but no agreement has been reached on a proposed option as of the date of completion of this paper.83

Conclusion

Concessional financing is a very important aspect of the African Development Bank Group’s operations, which emphasize the twin objectives of poverty reduction and sustainable economic growth in its regional member countries. Thirty-eight of the AfDB’s regional member countries receive financing exclusively through the concessional windows. The provision of development finance on concessional terms is critical if these less-endowed regional member countries are to raise living standards and reduce poverty. The bank group is the key player in promoting economic and social development in African states. The concessional financing provided by the bank group are critical components of its efforts to reduce poverty and promote social development in its low-income regional member countries by accelerating broad-based equitable and sustainable economic growth.

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Appendix 1  Regional and Nonregional Member Countries of the African Development Bank

<table>
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<th>Regional Member Countries</th>
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### Appendix 1 continued

#### Nonregional Member Countries

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<thead>
<tr>
<th>Argentina</th>
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<td>Denmark</td>
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<td>India</td>
<td>Turkey (as of May 2008)</td>
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<td>United States</td>
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### Appendix 2 State Participants of the African Development Fund

#### Regional Member Countries

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<tr>
<th>Argentina</th>
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<td>China, People's Republic of</td>
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<td>India</td>
<td>United Arab Emirates</td>
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<td>Italy</td>
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<td>Japan</td>
<td>United States</td>
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### Appendix 3  Main Terms and Conditions of the Replenishment Cycles of the African Development Fund

|--------------------------|------------------------|-----------------------|------------------------|-------------------------|--------------------------|--------------------------|--------------------------|
| **Country eligibility thresholds categories ($ GNP per capita)** | A: X<400
B: 401<X<780
C: 781<X  | A: X<510
A1: X<350
A2: 350<X<510
B: 511<X<990
C: 990<X | A: X<510
A1: X<350
A2: 350<X<510
B: 511<X<990
C: 990<X | A: X<510
B: 511<X<990
C: 990<X | A: B, C; according to WB assessment | A: B, C; according to WB assessment | A: B, C; according to WB assessment |
| **Number of countries per category** | A: 29
B: 13
C: 8 | A: 33
B: 9
C: 8 | A: 34
B: 9
C: 7 | A: 33
B: 10
C: 8 | A: 39
B: 3
C: 11 | A: 39
B: 2
C: 12 | A: 38
B: 2
C: 13 |
| **Allocation of resources among instruments, sectors, and country category** | 5% TAA
85% A
15% B
0% C | 5% TAA
5% emergencies Balance: Project loans (90% A; 10% B) | 10% TAA (85% A; 12% B; 3% C)
PBO: 20% Balance: Project loans (90% A; 10% B) (Objective 10% for MNO) | 10% TAA (85% A; 12% B; 3% C)
22.5% PBO Balance: Project loans (90% A, 10% B) | 7.5% TAF (90%–95% A, 5%–10% B)
22.5% PBO
70% project loans (95% A, 5% B) | 10% MNO
SMF
HIPC
6% for exchange contingencies Balance:
7.5% TAF
22.5% PBO
70%: investment loans (95% A, 5% B) | UA36.5 M clearance arrears to the Democratic Republic of Congo (DRC)
UA22.5 M HIPCUA15M grants to research and capacity-building institutions
UA0.5 M independent evaluation AfDF
10% RCI
2% for exchange contingencies
Balance:
22.5% PBO
77.5% investment projects (95% A, 5% B) (18%–21% grants) | UA100 M PCCF
1% for exchange contingencies
Balance:
(34.29% of balance as grants)
85%: project investment and TA
(95% A, 5% B)
(25% PBO)
15% MNO |

---

This information has been drawn from the individual lending policy of the African Development Bank for each replenishment.
| Special country treatments | — | — | Seychelles | Federal Republic of Nigeria Namibia | — | — | — | — |
| — | — | — | — | — | — | — | — | — |
| Criteria for allocation among countries within a category | — | — | — | — | — | — | — | — |
| — | — | — | — | — | — | — | — | — |
| Performance-based | — | — | — |—— | — | — | — | — |
| — | — | — | — | — | — | — | — | — |
| Eligible sectors | Agriculture Health Education Roads and telecommunications Public utilities Energy | Agriculture Health Education Transport and telecommunications Public utilities Energy SMEs | Agriculture Social (education and health) Transport and telecommunications Public utilities Energy | Agriculture Social (education and health) Transport and telecommunications Public utilities Energy | Environment SMEs Women in development Agriculture and food production Social sectors (education health and population) PBO RCI | Agriculture and rural development Human capital Private sector Good governance Gender Environment RCI Post-conflict RCI Gender Environment | Agriculture and rural development Human capital Private sector Good governance Gender Environment RCI Post-conflict RCI Gender Environment | Agriculture and rural development Human capital Private sector Good governance Gender Environment RCI Post-conflict RCI Gender Environment |
| — | — | — | — | — | — | — | — | — |
| Terms of financing | 50-year term 10-year grace period service charge 0.75% If credit for preinvestment study and no project: 45-year grace period | 50-year term 10-year grace period service charge 0.75% If credit for preinvestment study and no project: 45-year grace period | 50-year term 10-year grace period service charge 0.75% If credit for preinvestment study and no project: 45-year grace period | 50-year term 10-year grace period service charge 0.75% If credit for preinvestment study and no project: 45-year grace period | 50-year term 10-year grace period service charge 0.75% Commitment fee: 0.5% | 50-year term 10-year grace period service charge 0.75% Commitment charge: 0.5% | 50-year term 10-year grace period service charge 0.75% Commitment charge: 0.5% | 50-year term 10-year grace period service charge 0.75% Commitment charge: 0.5% |

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### Grants

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<td>—</td>
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<td>All TAF financing except for cat C countries Minimum contribution per recipient: 5%</td>
<td>All TAF financing except for cat C countries (only 50% TA under grant) Minimum contribution per recipient: 5%</td>
<td>All TAF financing 95% cat A 5% cat B (90% project cycle activities; 10% institution building) Minimum contribution per recipient: 5%</td>
<td>All TAF financing 95% cat A 5% cat B (90% project cycle activities; 10% institution building) Minimum contribution per recipient: 5%</td>
<td>Allocation according to GNP; Available for project cycle activities, institution building + HIV/AIDS, post-conflict, natural disaster, and investments in education, health, and water and sanitation Minimum contribution per recipient: 5%</td>
<td>Allocation according to DSF; Available for all AfDF-eligible sectors and projects Minimum contribution per recipient: 5% (project preparation studies) 10% all other cases</td>
</tr>
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### Technical assistance

<table>
<thead>
<tr>
<th>TAA Loans under AfDF terms</th>
<th>TAA Loans under AfDF terms</th>
<th>Adoption of new TAF guidelines Grants</th>
<th>As grants, under TAF</th>
<th>As grants, under TAF</th>
<th>As grants, under TAF + creation of PPF under TAF (reimbursable advances for PPF)</th>
<th>Extinction of TAF funds. TA provided as regular grants under AfDF</th>
<th>TA provided as regular grants under AfDF or as advances under PPF</th>
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### Financing of local costs

<table>
<thead>
<tr>
<th>No more than 50% of total costs</th>
<th>No more than 50% of total costs</th>
<th>No more than 50% of total costs</th>
<th>No more than 50% of total costs</th>
<th>No limit</th>
<th>No limit</th>
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### Contribution by recipient country

| 10% | 10% | 10% | 10% | 10% | 10% (possibility waiver) | 10% (possibility waiver) | 10% investment 5% project preparation (possibility waiver) |

( ) = sub-allocations within the relevant allocation; I, II, III = country categories; A, B, C = country categories; AfDF = African Development Fund; Balance = balance of funds available following deduction of allocations; cat = category; CPA = country performance assessment; CPIA = country policy and institutional assessment; CPR = country portfolio rating; DRC = Democratic Republic of Congo; DSF = debt sustainability framework; Environment = environmental management; forex = foreign exchange market; Gender = gender mainstreaming; GNP = gross national product; HIPC = heavily indebted poor country; LP = lending policy; M = million; MNO = multinational operations; MVA = modified volume approach; PBA = performance-based allocation; PBO = policy-based operation; PPF = project preparation facility; RCI = regional cooperation and integration; SMEs = small and medium-sized enterprises; TA = technical assistance; TAA = technical assistance account; TAF = technical assistance fund; UA = unit of account; WB = World Bank.)
Chapter 6

The Unified Special Development Fund of the Caribbean Development Bank

Yvette Lemonias Seale, William Warren Smith, and Adrian Debique*

Introduction

The Unified Special Development Fund (SDF[U]) of the Caribbean Development Bank (CDB) is one of two components of CDB’s Special Development Fund (SDF). The SDF is itself one of several funds known as CDB’s Special Funds resources, which constitute the concessional resources of CDB.

The SDF is a partnership between countries in the Caribbean, both borrowing and nonborrowing, and countries from outside the Caribbean. It aims to reduce poverty, generate broad-based sustainable growth, and achieve the Millennium Development Goals (MDGs). SDF resources are an essential complement to CDB’s ordinary capital operations, and make it possible for CDB to address the problems of poor communities, including acute vulnerability to natural disasters and economic shocks. SDF resources also help CDB to strengthen institutional capacities for enabling and monitoring progress towards the MDGs; to provide financing to its borrowing member countries (BMCs), particularly poorer and more heavily indebted BMCs, beyond what they can afford to borrow on conventional terms; and to support regional adjustment and transition through regionally integrated programs of regional integration. Appendix 1 lists the BMCs.

Historical Background

In March 1966, the tripartite economic survey of the Windward and Leeward Islands in the Caribbean, jointly sponsored by Canada, the United Kingdom (UK), and the United States (US), recommended the establishment of a regional development institution in the Caribbean.1 This concept was discussed at the July 1966 Commonwealth Caribbean-Canada conference in Ottawa, Canada, and the final communiqué called for a study of the possibility of establishing a separate financial institution for regional development in the Commonwealth Caribbean to finance projects of particular interest to the smaller areas as well as projects that would benefit the Caribbean region as a whole.2

With the support of Canada, the UK, and the US, the governments of the Caribbean decided to request the United Nations Development Programme (UNDP) to undertake a detailed examination of the feasibility and desirability of establishing such an institution for the Caribbean. The UNDP report that emerged recommended, among other things, the creation of a financial institution similar to the

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* Yvette Lemonias Seale is the general counsel of the Caribbean Development Bank (CDB). William Warren Smith is the director of finance and corporate planning of the CDB. Adrian Debique is the deputy director of corporate planning of the CDB.

1 Unpublished confidential paper held by the Caribbean Development Bank (CDB) dated 16 September 1968 from the Secretary of State for External Affairs of Canada to the Commonwealth Finance Ministers meeting in London on 25–26 September 1968.

2 Ibid.
Asian Development Bank (ADB), with equity capital plus a concessional special fund of sufficient size to begin to meet, from the outset, the priority needs for soft financing, especially in the smaller territories.

In the autumn of 1967, discussions to consider the establishment of a bank along these lines were held in Barbados by the Commonwealth Caribbean nations, and the idea was endorsed in general terms. Subsequent meetings with regional and nonregional participants laid the groundwork for the CDB’s Articles of Agreement.

**Organizational Structure**

**Status**

CDB is a multilateral financial institution dedicated to developing the economies of its Caribbean member countries through long-term project loans, grants, and other forms of assistance. CDB was established on 26 January 1970 pursuant to the Agreement Establishing the Caribbean Development Bank (the CDB Agreement),3 an international treaty that has been deposited, together with the instruments of ratification and accession by member countries, with the United Nations Secretary-General. CDB commenced operations on 31 January 1970. Its headquarters is in Wildey, Saint Michael, Barbados.


There are 21 regional countries and five nonregional countries.

Under Article 6, para. 2 of the CDB Agreement, the authorized capital stock of CDB must at all times be held or be available for subscription as follows: not less than 60% by regional members and not more than 40% by other members.

**Purpose**

CDB was established for the purpose of contributing “to the harmonious economic growth and development of the member countries in the Caribbean (hereinafter called the “region”) and to promote economic co-operation and integration among them having special and urgent regard to the needs of the less developed countries of the region.”4

**Functions**

CDB’s functions include

(a) assisting its regional members in coordinating their development programs, with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their international trade, particularly intraregional trade;

(b) mobilizing, within and outside the region, additional financial resources for the region’s development;

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3 A copy of the CDB Agreement as amended is available: www.caribank.org/titanweb/cdb/webcms.nsf/AllDoc/2D364FC01E65 6AA204257399006DE28C/$File/agreement.pdf?OpenElement

4 CDB Agreement, Article 1.
(c) financing projects and programs contributing to the development of the region or any of its regional members;
(d) providing appropriate technical assistance to its regional members, particularly by undertaking or commissioning preinvestment surveys and assisting in the identification and preparation of project proposals;
(e) promoting public and private investment in development projects by, among other means, aiding financial institutions in the region and supporting the establishment of consortia;
(f) cooperating and assisting in other regional efforts designed to promote regional and locally controlled financial institutions and a regional market for credit and savings;
(g) stimulating and encouraging the development of capital markets within the region; and
(h) undertaking or promoting such other activities as may advance its purpose.5

Concessional Financing Windows

CDB resources are separated into ordinary capital resources (OCR) and Special Funds resources,6 and their resources and investments remain separate.7 The ordinary operations of CDB are financed from its OCR, which include the subscribed capital stock of CDB, plus funds derived from borrowings, funds derived from ordinary operations, and other funds or income received by CDB that do not form part of any of its Special Funds resources. Under its charter, CDB is required to have special and urgent regard to the needs of the less developed members of the region.8 Accordingly, while CDB’s OCR embrace all of its BMCs, the major part of its Special Funds resources is used for less developed member countries.

The Special Funds resources comprise the SDF and other special funds established and administered by CDB, including technical assistance and other grant resources contributed on a nonreimbursable basis.9 The CDB Agreement established the SDF10 to receive contributions or loans that may be used to make or guarantee high-priority developmental loans with longer maturities, longer deferred commencement of repayment, and lower interest rates than those determined by CDB for its ordinary operations. The other special funds are established in accordance with an agreement between CDB and the respective contributors.11 The terms and conditions are agreed upon on a case-by-case basis with the approval of CDB’s board of directors. In general, these special funds are used for specific types of projects as agreed upon by CDB and the contributors. The resources and accounts of each special fund are kept entirely separate from other special funds and their resources and accounts.12

The terms and conditions upon which CDB may receive contributions or loans for special funds, including the SDF, are agreed upon by CDB and the contributor or lender.13 Special funds may be used in any manner and on any terms and conditions consistent with the purpose and functions of CDB or with any agreement relating to such funds.14

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5 CDB Agreement, Article 2(1).
6 CDB Agreement, Article 9.
7 CDB Agreement, Article 12.
8 CDB Agreement, Article 1.
9 CDB Agreement, Article 8.
10 CDB Agreement, Article 8(1). The establishment of the SDF by the CDB Charter was an attempt to meet the desire of regional members for early action on these resources. This was in contrast, for example, to the ADB Agreement, which merely provided for the possibility of the establishing of special funds.
11 CDB Agreement, Article 8(2).
12 CDB Agreement, Article 12(1).
13 CDB Agreement, Article 8(3).
14 CDB Agreement, Article 8(3).
No allocations may be made to the SDF or to any other special funds from the paid-up capital or reserves of CDB or from funds borrowed by CDB for inclusion in its OCR. However, allocations may be made to any special fund from the net income arising from CDB’s ordinary operations.

Although no allocations have been made to the SDF and other special funds from the net income arising from CDB’s ordinary operations, allocations have been made to surplus, which was used in part to establish two other special funds and to add resources to one of them.

Institutional Arrangements and Decision-Making Procedures

General Institutional Arrangements

The CDB Charter sets forth the purpose, functions, capital structure, and organization of CDB. It outlines the operations in which CDB may engage and prescribes limitations on those operations. It also establishes the legal status, immunities, and privileges of CDB and provides for the disposition of the currencies available to CDB, the withdrawal and suspension of members, and the suspension and termination of CDB’s operations.

The CDB Agreement provides for its amendment only by a decision of the board of governors by a vote of not less than two-thirds of the total number of governors, representing not less than three-fourths of the total voting power of the members of CDB. The unanimous agreement of the board of governors is required for the approval of any amendment modifying the right to withdraw from CDB, the right to purchase capital stock of CDB, and the limitations on liability.

The CDB Agreement also provides that any question of interpretation or application of its provisions not otherwise expressly provided for shall be submitted to the board of directors for decision. The decision may then be submitted to the board of governors, whose decision shall be final. Although any member may withdraw from CDB by delivering a written notice, any such member remains liable for all direct and contingent obligations to CDB to which it was subject at the date of delivery of the notice.

CDB possesses juridical personality and has full capacity to contract, acquire, and dispose of immovable and movable property and also to institute legal proceedings. Although the CDB Agreement specifies that CDB shall enjoy immunity from every form of legal process, a specific exception is made for cases arising out of, or in connection with, the exercise of its powers to borrow money; guarantee obligations; or buy, sell, or underwrite the sale of securities. In such cases, legal action may be brought against CDB in a court of competent jurisdiction in the territory of any member in which CDB has its principal or a branch office, in the territory of a member or nonmember state where CDB has appointed an agent for the purpose of accepting service or notice of process, or in a jurisdiction in which CDB has issued or guaranteed securities. No action shall be brought against CDB by members or persons acting for or deriving claims from members.

The property and assets of CDB are immune from all forms of seizure, attachment or execution before the delivery of final judgment against CDB. Said property and assets are also immune from search,
requisition, confiscation, expropriation, or any form of taking or foreclosure by executive or legislative action. The archives of CDB are inviolable. The governors, directors, their alternates, officers, and employees of CDB are immune from legal process with respect to acts they performed in their official capacities.

CDB, its property, other assets, income, and its operations and transactions are exempt from all direct taxation and from all customs duties on goods imported for its official use.

The affairs of CDB are conducted by the board of governors, the board of directors, the president, the vice-presidents, other officers, and staff. CDB’s highest policy-making body is its board of governors, on which each member country is represented. The board of governors meets annually, when CDB’s operations are reviewed and major policy decisions taken. Special meetings are held as necessary.

The board of governors consists of one governor appointed by each member (each member also appoints an alternate governor), except that, for the purposes of appointment of a governor and voting, the five territories of Anguilla, British Virgin Islands, Cayman Islands, Montserrat, and Turks and Caicos Islands are considered a single member of CDB. The governor (or alternate governor in the absence of the governor) for each member country or constituency of member countries (the five above-mentioned territories being considered for this purpose as a single member) is entitled to cast 150 votes plus one vote for each share of capital stock of CDB held by said member country or constituency. Appendix 3 summarizes member country subscriptions as of 31 December 2006.

The powers of the board of governors, except those specially reserved to it under the CDB Agreement, have been delegated to the board of directors, which approves loans, investments in equity, borrowings, technical assistance, and administrative budgets, and submits accounts pertaining to each financial year to the board of governors.

The board of directors currently consists of 17 directors: one each appointed by the governor for each nonregional member, each non-Commonwealth Caribbean member, and each of the Commonwealth of the Bahamas, Barbados, the Co-operative Republic of Guyana, Jamaica, and the Republic of Trinidad and Tobago (representing Haiti as well). The remaining four directors are appointed by the governors of the other 12 member countries. Directors are appointed for two-year terms of office and are eligible for reappointment. Each director is entitled to cast the number of votes of the member or constituency of members, as the case may be, whose votes counted toward his or her selection.

All matters before the board of governors or the board of directors are decided by a majority of the total voting power of the members represented at a properly constituted meeting, except in certain cases provided in the CDB Agreement in which a higher percentage is required. In practice, decisions are usually taken on the basis of consensus.

The president of CDB, who is elected by the board of governors for a term not exceeding five years and may be reelected, is the chairman of the board of directors.

Under the direction of the board of directors, the president conducts the business of CDB and is its chief executive officer. The two vice-presidents are appointed by the board of directors on the recommendation of the president. The ranking vice-president exercises the authority and performs the functions of the president in the absence or incapacity of the president or while that office is vacant.

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22 CDB Agreement, Article 50.
23 CDB Agreement, Article 51.
24 CDB Agreement, Article 54.
25 CDB Agreement, Article 55.
26 CDB Agreement, Article 30.
Lending Operations

CDB provides loan financing to the governments of its BMCs, and to public and private sector entities in those countries. It also lends to private sector entities without government guarantee, and invests in equity in those enterprises. As part of its loan financing, CDB includes technical assistance to public sector enterprises in its BMCs.

Since the adoption of its Strategic Plan 2000–2004, CDB has focused on poverty reduction. CDB’s Strategic Plan 2005–2009 continues to focus on assisting its BMCs to reduce poverty; its strategic agenda for doing so focuses on promoting broad-based economic growth, fostering inclusive social development, promoting good governance, and fostering regional cooperation and integration. CDB’s priorities in carrying out its strategic agenda include:

(a) strengthening and modernizing public utilities and infrastructure, improving competitiveness, and supporting agriculture and rural development;

(b) improving quality and access to education, promoting gender mainstreaming and gender management systems, and promoting social protection measures;

(c) supporting a modern public sector, strengthening the capacity of BMCs to develop sound macroeconomic policies, and promoting social partnerships and wider participation in national decision making; and

(d) strengthening the capacities of regional institutions and supporting the provision of regional public goods, with environmental sustainability and disaster risk management as crosscutting themes.

CDB’s lending operations are subject to the following operating principles set forth in Article 15 of its Charter:

(a) CDB’s operations shall provide principally for the financing of specific projects, including those forming part of a national, sub-regional or regional development program. They may, however, include loans to, or guarantees of loans made to, national development banks or other suitable financial institutions in order that the latter may finance development projects on terms approved by CDB where individual financing requirements of such projects are not, in the opinion of CDB, large enough to warrant direct supervision of CDB.

(b) CDB shall not finance any undertaking in the territory of a member if that member objects to such financing.

(c) Before a loan or guarantee is granted, the applicant shall have submitted an adequate loan or guarantee proposal and the president of CDB shall have presented to the board of directors a written report regarding the proposal together with his recommendations on the basis of a staff study.

(d) In considering an application for a loan or a guarantee, CDB shall pay due regard to the ability of the borrower to obtain financing elsewhere on terms and conditions that CDB considers reasonable for the recipient.

(e) In making or guaranteeing a loan, CDB shall pay due regard to prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract.

(f) In making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of CDB, appropriate for the loan concerned.

As required by CDB’s operating principles as set forth above and reinforced by a 1970 resolution of the board of directors, the board of directors considers loans only on the basis of written reports prepared by the staff. These reports set forth in detail information regarding the technical feasibility of the project and relevant financial and legal matters, as well as the economic situation of the country of the borrower.

In the case of loans to borrowers other than governments, CDB policy requires the borrower to provide adequate security. Typically, such loans are secured by a first mortgage on land and buildings including the project site, but other forms of security without prior claim may be accepted in appropriate cases. CDB’s loans cover only a portion of the total cost of a project, with the remainder being provided by the sponsor.

The Special Funds resources comprise the SDF and other special funds established or administered by CDB, including technical assistance and other grant resources contributed on a nonreimbursable basis. The SDF was established to receive contributions or loans that may be used to make or guarantee loans of high developmental priority, with longer maturities, longer deferred commencement of repayment, and lower interest rates than those determined by CDB for its ordinary operations. As a result of rules adopted by CDB for the SDF in May 1983, contributions to the SDF currently comprise funds made available to CDB subject to the former rules and funds made available to CDB subject to the new rules. Funds made available to CDB under the former rules would continue to be governed by such rules except where contributors opt to transfer funds under the new rules.

For the purposes of its lending operations, CDB groups its BMCs according to (i) financing from the SDF(U) and (ii) other available interest-free contributions to its Special Funds resources. For the last replenishment, SDF(U)6 (see below for a discussion of the replenishment cycles), the grouping of its BMCs is as follows:

1. Group 1. The Commonwealth of the Bahamas, British Virgin Islands, Cayman Islands;
2. Group 2. Anguilla, Antigua and Barbuda, Barbados, the Republic of Trinidad and Tobago, Turks and Caicos Islands;
3. Group 3. Belize, the Commonwealth of Dominica, Grenada, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines; and

CDB can provide financing to meet either external or local expenditures for a project being assisted. However, CDB’s ability to finance local expenditures from the Special Funds resources is determined in each case by the agreement under which the funds are made available to CDB.

In CDB’s special operations, the proceeds of loans from the SDF(U) may be spent on goods and services having their source and origin in and procured from member countries and those other countries that have contributed substantially to the SDF(U) (substantial contributors) and, in the case of loans from

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28 CDB Agreement, Article 8.
30 Although Antigua and Barbuda and Barbados are classified as Group 2 countries, the lending terms for Group 1 countries apply.
31 Although Barbados and Trinidad and Tobago are classified as Group 2 countries, the same terms for as for Group 1 will continue to apply, as in the past. CDB. 2008. CDB Special Development Fund Annual Report 2007 and Financial Projections 2008 to 2010. www.caribank.org/titanweb/cdb/webcms.nsf/AllDoc/94918C78AC34A4D30425746700639DA3/$File/SDFAnnualReport07.pdf
32 Although Grenada is classified as a Group 3 country, the same lending terms as for Group 4 countries will apply for SDF(U)6 because of the devastation it suffered from Hurricane Ivan. Ibid.
33 Montserrat and St. Kitts and Nevis were retained as Group 3 countries in recognition of the impact of natural disasters on them. Ibid.
34 CDB Agreement, Article 15(n).
other special funds, from those countries specified as eligible countries in the agreement under which the funds are made available to CDB.

In making a loan, CDB will specify in what currencies it must be repaid. These will normally be the currencies that it makes available to the borrower. However, where the resources of the SDF(U) are used, the currency of repayment is US dollars.

To the extent that special funds are made available to CDB for investment in equity, CDB will, in its special operations, take equity positions in large national and regional projects in its BMCs, letting local development finance institutions participate in projects eligible for loans from national development banks or other suitable financial institutions in Groups 3 and 4 countries. In deciding on priorities for equity investment in Groups 1 and 2 countries, attention will be paid to the economic and financial situation of the country and the availability locally of other sources of funds for providing equity.

In its special operations, where permissible, CDB will lend

(i) up to 80% of the cost of the project to Groups 1 and 2 countries; and

(ii) up to 90% of the cost of the project to Groups 3 and 4 countries.

In projects blending OCR and Special Funds resources, the proportion of such resources shall be determined on the basis of their weighted proportion and the maximum proportion of financing applicable to each.

Table 1 summarizes the rate of interest and other terms of loans financed from the SDF(U) and other available interest-free contributions to the Special Funds resources.

Governments or governmental agencies of the BMCs are required to contribute to each project such amounts in excess of the loans as are required for the punctual and effective implementation of the project. In cases where governments or governmental agencies in Groups 3 and 4 countries are unable to make such contributions from their own resources and to the extent that special funds are made available to CDB for this specific purpose, CDB may, in its special operations, make loans to assist with the provision of such counterpart contributions.

In its special operations, CDB normally does not lend directly to private sector borrowers. However, loans are made by CDB from its Special Funds resources to national development banks or other suitable financial institutions for the purpose of enabling them to make subloans to private sector borrowers.

### Table 1 Terms of SDF(U)6 Loans and Interest-Free Contributions to the Special Funds Resources

<table>
<thead>
<tr>
<th>Group</th>
<th>Maximum Maturity, Including Grace Period (Years)</th>
<th>Maximum Grace Period (Years)</th>
<th>Interest Rate Per Annum (%)</th>
<th>Upper Lending Limit (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>80</td>
</tr>
<tr>
<td>2</td>
<td>25</td>
<td>5</td>
<td>4</td>
<td>80</td>
</tr>
<tr>
<td>3</td>
<td>30</td>
<td>10</td>
<td>2.5</td>
<td>90</td>
</tr>
<tr>
<td>4</td>
<td>30</td>
<td>10</td>
<td>2</td>
<td>90</td>
</tr>
<tr>
<td>Regional</td>
<td>25</td>
<td>7</td>
<td>2.5</td>
<td>to be determined</td>
</tr>
</tbody>
</table>

Source: Report of the Contributors to SDF(U)6. The terms of these loans were agreed by the Contributors and approved by CDB’s Board of Directors as required by the SDF(U) Rules.

Note: Figures are determined by CDB’s board of directors in accordance with CDB’s SDF(U) rules.
In addition, where a government is privatizing an operation and at the time of divestment, an existing CDB loan or loans to the government or government-owned entity comprises or includes Special Funds resources, either of the following will apply:

(a) The government or the government-owned enterprise will be required to repay the Special Funds resources loan or portion prior to divestment.

(b) The Special Funds resources loan or portion will be replaced by a new loan which will attract the current OCR lending rate.35

**Specific Institutional Arrangements Regarding Replenishments**

Replenishments commence when CDB’s board of directors consider the status of the SDF(U) operations before the close of the SDF(U) cycle, decide to seek a replenishment of funds for the next SDF(U) cycle, and agree upon the program for the next SDF(U) cycle.

CDB invites its member countries and potential contributors to a meeting at which CDB staff make presentations regarding the program contemplated for the next SDF(U) cycle and the funds needed to finance that program. Negotiations continue until there is consensus on the program and the financial plan and pledges are made by participants to contribute to the next SDF(U) cycle.

After each negotiation meeting, a report is made to CDB’s board of directors and the board’s comments are obtained and used as guidelines for the next negotiation meeting and the final negotiation meeting.

At the final negotiation meeting, a report is agreed upon by CDB’s management on the one side and member countries and potential contributors on the other.

On or before the final negotiation meeting, potential contributors indicate their intentions to make contributions to the SDF(U) in specific amounts. At the final negotiation meeting, a resolution is passed by the potential contributors to the SDF(U), formalizing both their intention to make these contributions and the arrangements that will govern the use of such contributions. The resolution, including the decisions contained in the attached report (which forms part of the resolution),36 constitutes an agreement between CDB and the prospective contributors.

The use of the contributions is detailed in the report on the negotiations and adopted by the resolution of the contributors.

CDB’s board of directors then formally

(a) notes the resolution of the contributors to the particular cycle of SDF(U); and

(b) approves the decisions set out in the report on the negotiations, required by CDB’s board of directors under CDB’s Lending Policies and the SDF(U) Rules (e.g., country grouping, interest rates, grace periods, and maturities for loans).37

This brings the formalities to an end. The board of governors does not participate in this exercise.

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At this time, CDB’s board of directors will agree to apply any change in country groups and lending terms for the particular cycle of the SDF(U) to loans approved from the available, interest-free Special Funds resources then subject to the grouping and lending terms for the previous SDF(U) cycle.

Contributions may be accepted from any CDB member country, any country eligible for membership in CDB, any agency of any such member country or other eligible country, any entity or enterprise in the public or private sector operating in any such country, or any international or regional agency or other entity concerned with the economic development of the eligible member countries.

Contribution cycles are approximately 4 years each or such other period as CDB in consultation with the contributors may determine from time to time and shall be the period during which projects and programs to be financed by CDB from contributions pledged for a contribution cycle are expected to be approved by CDB.

Contributions are made in accordance with decisions taken during the negotiation period for the contribution cycle for which such contributions are to be made. A contribution may be pledged at any time consistent with such decisions and ratification of any such pledge must be concluded within 6 months therefrom by a contribution agreement.

The terms on which a contribution is made shall be set forth in a contribution agreement, which shall be subject to the SDF(U) rules and to decisions taken during the relevant negotiation period, and shall specify the amount of the contribution and the form and terms on which the contribution is to be made.

Each contribution shall be denominated and paid in US dollars; in the currency of the contributor, provided such currency is freely and fully convertible into US dollars; or in both US dollars and such convertible currency. No maintenance of value provisions shall apply to the SDF(U).

Under Rule 3.7.1 of the SDF(U) rules, CDB is required to submit annually to each contributor

(a) requests for drawdowns from the contributor,
(b) the amounts drawn down by CDB from each contributor as of the end of the immediately preceding year,
(c) a statement of disbursements by CDB from the resources during the immediately preceding year,
(d) projected estimates of disbursements by CDB for the current and immediately succeeding years and the pro rata projected drawdown by CDB from each contributor to meet such disbursement, and
(e) details of the absolute and relative updated contribution of each contributor for the given contribution cycle.

**Modalities of Concessional Financing**

CDB may provide financing (including loans but excluding equity) or other assistance (including guarantees, grants, and technical assistance) from the SDF(U) to the eligible member countries or to any political subdivision or any agency thereof, or any entity or enterprise in the public sector operating in the eligible member countries, and also to international, Caribbean, or regional agencies or other entities concerned with the economic development of the eligible member countries.

Contributors established the following four broad themes using the resources of the sixth cycle of the SDF(U), which started on 1 January 2005:

(a) poverty reduction and broad-based economic growth as an overarching goal, with a further strengthening of implementation of policy directions that contributors had already set (including further operationalization of the poverty reduction strategy) and maintaining a high priority for programs directly targeted at the poor;
(b) addressing the MDGs, with further development of the MDGs as a framework for SDF programming, monitoring, and preparation of appropriate targets and indicators for SDF operational programs;

(c) strengthening development effectiveness and results-based management together with other elements of the post-Monterrey agenda,\(^{38}\) including an emphasis on sound policies and good governance, assisting BMCs to take advantage of economic opportunities such as those presented by the regional integration process, and enhancing collaboration, harmonization, and partnership based on the Rome Declaration on Harmonization; and

(d) planning and implementing the expansion of BMC membership, in particular Haiti.\(^{39}\)

Except where the authority to do so is delegated to the president of CDB, the approval of CDB’s board of directors is required for the provision of all loans, grants and other assistance to be financed from the OCR and Special Funds resources. Under Rule 2.1.4 of the SDF(U) rules, except as otherwise provided in those rules, any decision, determination, agreement, or other exercise of the powers of CDB with reference to the SDF must involve the same exercise of responsibility by CDB’s board of governors, board of directors, and the president and staff as would apply in comparable circumstances to the OCR. In addition, under Rule 2.1.5, the procedures adopted for the exercise of those powers must, where appropriate, be the same as those which apply to the OCR and must also include arrangements for consultation with contributors or such other arrangements as may be adopted from time to time.

The same voting rights apply to OCR, SDF and other special funds, but contributors to the SDF(U) that are not members of CDB are invited to be present with the right to speak at meetings of CDB’s board of directors when projects, policies, and other matters related to the SDF(U) are being considered.

Loans are denominated in US dollars and each loan agreement provides that all payments to CDB of interest and other charges and the repayment to CDB of principal under the loan agreement shall be made in US dollars.

Where the recipient of a loan or a guarantor of a loan is not itself an eligible member country, CDB may, when it deems advisable, require in the loan agreement that the eligible member country in whose territory the project or program concerned is to be carried out, or a public agency of that country acceptable to CDB, or more than one eligible member country acceptable to CDB, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with its terms.

Where the recipient of a loan or a guarantor of a loan is an eligible member country, its central bank or other public agency of that country, acceptable to CDB, the loan agreement, or guarantee agreement, as the case may be, shall provide that,

(a) subject to Article 42 of the CDB Agreement, if the country concerned ceases to be a member of CDB, any amount due it for shares repurchased by CDB shall be withheld so long as that country, its central bank, or other public agency remains liable, as recipient or guarantor of a loan made under these rules or a loan made in the other special funds operations or in the ordinary operations of CDB, and such amount may, at the option of CDB, be applied to any such liability as it matures; and

(b) subject to Article 46 of the CDB Agreement, in the event of a distribution of the assets of CDB, that country shall not be entitled to receive its shares in such distribution until it has settled all its obligations with CDB.

\(^{38}\) The post-Monterrey agenda emphasizes sound policies and good governance in CDB’s BMCs and promotes collaboration, harmonization, and partnership among aid donors. For more information, please refer to the International Conference on Financing for Development website: www.un.org/esa/ffd/ffdconf/

\(^{39}\) CDB, Replenishment of the Resources of the Special Development Fund (SDF 6). www.caribank.org/titanweb/cdb/webcms.nsf/AllDocSearch?SearchView&Query=Replenishment%20of%20resources&Count=50&Start=1
Financial Management

The SDF(U) is financed by periodic injections of grant resources from contributors, reflows from outstanding loans (interest and amortization payments), and income earned from the investment of available balances of cash belonging to the SDF(U). All of the above combine to determine the committable resources of the SDF(U). New contributions generally represent the largest component of the financing for each cycle (x% of the program in SDF(U)6). Because of the very long-term nature of SDF(U) loans and the concessionary interest rates charged on the majority of the loan portfolio, reflows are relatively modest compared to the size of the portfolio, and investment income is also modest due to the very conservative investment guidelines that are applied to the management of surplus cash of the SDF(U).

On the completion of negotiations for each SDF(U) cycle, each contributor is required to deposit with the CDB an instrument of contribution specifying the amount of the contribution and providing for the mode of payment. Payment may be made in cash or by deposit of nonnegotiable, non-interest bearing promissory notes. The majority of contributors employ the latter approach for meeting their obligations to the SDF(U). This means that, prior to SDF(U)6, there was a significant buildup of uncashed notes due to the then encashment policy of the SDF(U).

Up to SDF(U)5, the system for encashment of promissory notes was determined each semester by reference to the projected cash requirements for the upcoming 6-month period. In determining the system for encashment of promissory notes, projected disbursements were compared with the current liquidity position of the SDF(U), adjusted by payments in advance from contributors, projected repayments on loans, and the projected net income flows. The resulting shortfall in liquidity was then shared among the contributors on the basis of their outstanding balances to the SDF(U). The rate of encashment of promissory notes was therefore influenced principally by the rate of disbursement of SDF(U) loans and grants. The majority of approved SDF(U) loans relate to social sector projects, which have a relatively slow rate of disbursement spanning 7 to 8 years, resulting in a significant lag between the commitment of resources and the need for actual cash to procure the related goods and services.

The encashment policy that prevailed up until the end of SDF(U)5 was somewhat unique to CDB and had the effect of depriving the SDF(U) of investment income (reducing, in turn, the potential size of the committable resources for the cycle). The build-up of uncashed notes over extended periods also presented accounting difficulties for those contributors who had transitioned from cash to accrual account systems.

It has been the practice of other multilateral development banks that promissory notes are encashed in accordance with the historical disbursement profile of their concessional funds. This provides contributors with a predefined payment schedule for which budgetary allocations can be made, and also enhances the liquidity and investment income of the SDF(U). In order to boost the commitment authority of SDF(U)6 and in order to bring CDB practice more in line with that of the other multilaterals, contributors agreed to adopt a predefined schedule for the encashment of promissory notes so that SDF(U)6 promissory notes would be encashed by the end of the SDF(6) cycle in equal quarterly installments from 2006 to 2009. Because CDB’s SDF(U) is unique in incorporating beneficiaries as contributors, this new encashment policy had to be applied with some degree of flexibility; several of these countries are currently experiencing severe fiscal challenges and high levels of indebtedness, and would therefore find it burdensome to shift toward a more onerous system of note encashment. In these instances, CDB was authorized to negotiate more liberal encashment terms on a bilateral basis.

In relation to the encashment of outstanding notes, SDF(U)6 contributors also agreed conditionally to measures that should eliminate, or at least diminish, the reservoir of old notes dating back to previous cycles. They have also been provided with a predetermined schedule for the phased encashment of all old notes, with the target of eliminating all old notes by the end of SDF(U)6. As a result, CDB has achieved a great degree of compliance and seen a significant increase in the liquidity of the SDF(U). Fortuitously, the accumulation of liquidity due to the early encashment approach for SDF(U)6 notes and the enhanced encashment of old notes has coincided with a period of relatively high interest rates in the international markets where these surplus funds are invested. This combination of higher than
normal liquidity and better investment returns has had a salutary effect on the overall financial position of the SDF(U) and should have the effect, other things being equal, of generating higher than projected commitment authority for SDF(U)6.

**Special Issues**

In general, procurement of goods and services for projects financed from the SDF(U) is open to member countries and substantial contributors. In special cases, however, CDB’s board of directors may permit procurement from other sources.

The resources are available without restriction to finance transportation and insurance costs associated with the procurement of goods and services.

CDB has provided assistance from the SDF(U) to the Co-operative Republic of Guyana, at that time the sole Group 4 country, under the Heavily Indebted Poor Countries (HIPC) Initiative as well as the enhanced HIPC Initiative. 40

Substantial contributors are those contributors to the SDF(U) whose contributions are accepted as substantial at the relevant negotiation meeting and at the annual meeting of contributors.

In 2001, contributors agreed that the principle of advance commitment authority for expected reflows, which has proven useful in the case of the International Development Association and the ADB, could be used in a modest way for the fifth cycle of SDF(U) by permitting commitments in the first two years of the replenishment based on 80% of the expected reflows in the replenishment's third and fourth years.

Prior to SDF(U)6, contributors to the SDF(U) met their commitments over the 4-year cycle by paying 25% of the pledged amount each year, either in cash or by a promissory note. With respect to the cash needs of the SDF(U), CDB requested encashment from its contributors based on a formula that assessed the cash available for the relevant cycle of SDF(U) against the potential cash needs in the upcoming 6-month period. The cash difference was allocated to each contributor based on an allocation formula. Consequently, there was a build-up of uncashed notes over several cycles, due to the slow disbursing nature of the social projects funded by SDF(U). This build-up of uncashed notes caught the attention of the Accountants General in several capitals and CDB was informed that unless the matter of the build-up of the uncashed notes was addressed, the notes would be cancelled. As a consequence, it was agreed at the negotiations for SDF(U)6 that an effort would be made to encash the outstanding notes. It was also decided that a similar effort would be made to complete the encashment of any notes issued within the SDF(U)6 cycle by the end of that cycle.

**Overview of Various Replenishments**

**Introduction**

Every four years, contributors to the SDF(U) enter into negotiations with CDB with the objective of agreeing on the priority areas that should be addressed by CDB over the next SDF(U) cycle. 41 These negotiation meetings are opened to representatives of all CDB member countries as well as other countries or multilateral institutions that may wish to contribute to the SDF(U). The negotiations take into account

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40 Funding was not sufficient for debt relief under the HIPC Initiative and a second initiative financed by CDB through SDF(U) and other aid donors was established and referred to as the enhanced HIPC Initiative.

41 The SDF(U) cycles are numbered consecutively.
the economic and social situation in CDB’s BMCs, the international and regional environment, and CDB’s own capabilities and comparative advantages.

Negotiations for the replenishment of SDF(U) usually commence with a consideration of the mid-term review report on the operations of the ongoing cycle. At this meeting, contributors may make suggestions on the themes and priorities that would be considered for support during the new cycle. CDB prepares a paper on the themes, issues, and timelines arising from these deliberations to guide the SDF(U) negotiation process for the contributor's consideration and approval.

The negotiations are conducted over a period of approximately 12 months and include approximately four formal meetings, usually chaired by the CDB president. On the basis of these discussions, contributors agree on the objectives to be pursued during the next SDF(U) cycle and the amount of resources that will be necessary to realize those objectives.

In the closing stages of the negotiations, participants pledge specific amounts as funding assistance for an agreed program for the next SDF(U) cycle. All members (borrowers and nonborrowers) of CDB usually contribute to the funding of SDF(U). At the final negotiation meeting, potential contributors approve a report on the negotiations together with a resolution, thus formalizing both their intention to make the pledged contributions and the arrangements that will govern the use of such contributions. The resolution, including the decisions contained in the report that is attached to and forms part of the resolution, constitutes an agreement between CDB and the prospective contributors.

CDB’s board of directors notes the resolution of contributors to the particular cycle of SDF(U), and is required to approve those decisions that require CDB’s approval under the SDF(U) rules. The document describes the outcomes of the negotiations for the replenishment of each cycle of SDF(U), including the size of the agreed financial assistance program, the level of new contribution to each cycle, the themes, the sectors that were targeted for assistance, and other principal conditions that would guide the use of the SDF(U).

**Unified Special Development Fund 1**

In 1983, contributors agreed on the level of resources to be made available for the first cycle of SDF(U). The approved resources included $60.0 million in contributions from Canada and the UK to the existing pool of funds in SDF (the old SDF) transferred to SDF(U), which, together with contributions from other member countries, totaled $171.0 million from 1984 to 1987. The contributors did not stipulate any specific areas of focus for the use of these resources.

**Unified Special Development Fund 2**

The SDF(U)2 negotiations commenced on 12 May 1987, and an agreement was concluded in September 1987 after four negotiation meetings. The new pledges amounted to $98.0 million to support a financial assistance program of $136.7 million from 1988 to 1991. The program consisted of loans of $116.7 million, allocation for technical assistance grants of $12 million, and basic human needs grants of $8 million.42

Contributors agreed that the burden should be shared on a fair and equitable basis considering the relative economic situation of contributors, the level of shareholding, and other relevant matters. The funding for the SDF(U)2 financial assistance operations came from the following sources:

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The Unified Special Development Fund of the Caribbean Development Bank

Regional borrowing members $ 10.4
Regional nonborrowing members 10.0
Nonregional members 97.0
Nonmembers 5.0
Internally generated funds and reflows 14.3
Total $136.7

Note: All figures in $ million.
Source: Resolution of Contributors to SDF 2 with Report of Meetings of Contributors on 18 March, 2 May, and 21 and 22 September 1987, as Schedule 3.

Under SDF(U)2, contributors agreed that priority use of SDF(U)2 resources should be given to employment-intensive projects benefiting the poorest groups in the poorest BMCs. To support this thrust, CDB provided for an appropriation of up to $8.0 million for basic human needs grants. CDB also recognized the need to increase technical assistance grants to support the organization’s loan operations and to provide economic policy advice. Accordingly, it provided for an appropriation of up to $10.0 million from SDF(U)2 resources for grant financing of technical assistance, in addition to $2.0 million to be set aside from SDF(U) net income.

Contributors agreed that 15% of SDF(U)2 resources, normally on a cofinancing basis with the World Bank and/or the International Monetary Fund, could be used for structural adjustment programs and, in addition, CDB would continue to make sector loans in consultation with the World Bank. Furthermore, in preparation for projects to be financed by SDF(U), an environmental impact analysis should be undertaken wherever necessary and included in the appraisal report on the project.

The contributors also provided indicative allocations for four separate groupings of BMCs, with suggested funding levels in each case for certain categories of assistance and with varying financial terms to be applied to SDF(U)2 loans for countries in the different groups.

Contributors agreed that the duration of procurement eligibility for contributions made in any contribution cycle would be linked to the original flow of contributions but not to reflows.

Unified Special Development Fund 3

The SDF(U)3 negotiations commenced on 24 October 1989 and were concluded in May 1991 after four negotiation meetings and consideration of three supporting staff papers. The meetings resulted in pledges totaling $123.4 million to assist in supporting an overall financial assistance program of $167.0 million from 1992 to 1995. The financial assistance program comprised $129.0 million for lending for capital projects, $18.0 million for technical assistance grants, $15 million for Basic Needs Trust Fund (BNTF) grants and $5 million for a small-scale development program. The funding for the SDF(U)3 financial assistance operations came from the following sources:

Regional borrowing members $ 19.4
Regional nonborrowing members 15.0
Nonregional members 82.0
Nonmembers 7.0
Reflows and balance b/f43 43.6
Total $167.0

Note: All figures in $ million.

43 “b/f” means “brought forward” and refers to the carrying forward of unused resources from a previous cycle to the current cycle.
Contributors required that resources provided would be channeled to high-priority development activities mainly in the poorer countries, and that 25% of the resources were to be used to finance projects that would benefit the poor directly. The resources were to be channeled into projects that, among other things, alleviated poverty; improved the earning capacity of women and the unemployed; enhanced rural development; provided critical basic needs; and encouraged increased competitiveness, enterprise development and industrialization. The indicative allocations were provided for essential economic infrastructure, social infrastructure, lines of credit, and technical assistance, and also for a disaster rehabilitation programme.

A Small-Scale Enterprise Development Programme was established with an amount of $5 million to promote small-scale productive enterprises and to benefit women, unemployed craftsmen, low-income producers, and entrepreneurs with limited access to credit. It was also agreed that SDF(U)3 would now take on principal responsibility for BNTF, which supported community-based social development projects and community participation in development. An amount of $15 million was set aside for use as grant funding for the BNTF projects.

**Unified Special Development Fund 4**

The SDF(U)4 negotiations commenced on 10 May 1994, and an agreement was concluded on 20 October 1995 after five negotiation meetings.

The People's Republic of China joined CDB in 1998 and contributed $24 million to SDF(U)4, allowing an expanded SDF(U)4 financial assistance program and its extension for an additional year, to 2000. The new pledges amounted to $124.7 million to support a financial assistance program of $160.0 million from 1995 to 2000. The program consisted of loans of $130 million, technical assistance grants of $12 million, and BNTF grants of $18 million. Contributors agreed that burden sharing should be on a fair and equitable basis considering the relative economic situation of contributors, level of shareholding, and other relevant matters. The funding for the SDF(U)4 financial assistance operations came from the following sources:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional borrowing members</td>
<td>$19.6</td>
</tr>
<tr>
<td>Regional nonborrowing members (including Mexico and Venezuela)</td>
<td>9.0</td>
</tr>
<tr>
<td>Nonregional members (including the People’s Republic of China)</td>
<td>89.8</td>
</tr>
<tr>
<td>Nonmembers</td>
<td>6.3</td>
</tr>
<tr>
<td>Reflows and balance b/f</td>
<td>49.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$174.6</strong></td>
</tr>
</tbody>
</table>

Note: All figures in $ million.


Contributors agreed on the importance of continuing SDF(U)4 in order to give eligible BMCs the necessary breathing space that would allow them to cushion the effects of and/or create an internal capacity to address, on a sustained basis, many of the structural and contemporary problems besetting them at the time. The major structural and contemporary problems were:

- very high per capita costs of providing administrative services and basic social and economic infrastructure as a result of the relatively small population sizes in these countries;

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44 The $124.7 million includes pledges from Mexico and Venezuela, amounting to $4 million, and the contribution from the People's Republic of China, amounting to $24 million, which were made after the passing of the resolution of the contributors.
low domestic savings level and weak current external accounts;
• extreme vulnerability of whole economies to natural and man-made disasters;
• extreme openness of these economies and their consequential heavy dependence on external sources of goods, services, capital and skills;
• erosion, and threat of virtual elimination, of significant trade preferences for major commodities which dominate employment opportunities;
• strangling external and domestic debt burden and servicing levels for some of the larger BMCs;
• considerable reduction in aid flows to the Caribbean region; and
• failure of the Caribbean region to attract enough private investment as a result of increasing global competition for such investment.

The policy direction for SDF(U)4 required that resources be used to advance the same objectives as SDF(U)3 and be channeled to high-priority development activities with high socioeconomic returns, and to the poorer countries. More specifically, financing was concentrated on programs and projects under the following themes:

• poverty reduction;
• human resource development;
• environmental mitigation and natural resource management activities aimed at supporting the sustainable use of the natural environment (e.g., sewerage and waste management systems, protection of the natural resources and landscape, and natural and man-made disaster mitigation and management);
• institutional strengthening, particularly in the public sector but also including support for enhancement of productive capacity; and
• essential socioeconomic nonfinancially self-liquidating physical infrastructure.

Contributors agreed that at least 40% of the resources available for the SDF(U)4 cycle should be focused on activities that were directed toward poverty reduction and that SDF(U)4 resources could not be used to make structural or sector adjustment loans. In addition, it was mandated that adequate attention be given to gender issues in SDF(U)4 project design and implementation.

Contributors further agreed that nonmember contributors whose contributions were accepted as substantial would be eligible for procurement in respect of projects approved during the SDF(U)4 cycle, including those financed from the SDF(U)3 cycle, in which such contributions were made.

A major review of the country classification was undertaken in 1991 in the context of the SDF(U)3 replenishment using both quantitative and qualitative criteria. No further adjustments were made for SDF(U)4. As with previous replenishments, the country classification determined the level of funding to which the country (as part of the country group) has access, the blend of SDF(U) and OCR funds considered broadly appropriate, the maximum share of a project’s costs that can be financed from SDF(U), and the terms on which SDF(U) lending can be made available.

**Unified Special Development Fund 5**

The SDF(U)5 negotiations began on 7 March 2001 and were concluded on 13 December 2001 after three negotiation meetings. The new pledges amounted to $125.0 million to support a financial assistance program of $185.5 million from 2001 to 2005. Considerable attention was given during the SDF(U)5 replenishment negotiations to a strategy for allocating the limited concessionary resources that were made available. Contributors drew on the experience of other multilateral development banks and approved a new system to replace the old method of allocating resources by country groups.
The new resource allocation formula had two components: a needs component and a country performance, or effectiveness, component. The performance component recognized that countries that have policy and institutional frameworks are more likely to make better use of concessory resources, especially with respect to poverty reduction and broad-based sustainable growth, and to provide an incentive for good policy and institutional performance. The needs component was based on population and per capita GDP, with a pro-poor and pro-small country emphasis, adjusted for vulnerability.

Contributors agreed that, while the largest part of SDF(U)5 should be allocated according to the resource allocation formula, there was also a need for fixed allocations to provide for

(i) support for regional technical assistance projects;
(ii) an initial budget for the commencement of operations in new members, for which data required by the formula was not yet available and where SDF(U)5 programming would only begin during the course of the SDF(U)5 cycle; and
(iii) an emergency reserve, available in response to natural disasters, major transitions in economic structure and/or other emergencies such as HIV/AIDS.

Contributors retained the use of country groups to set the terms and conditions for SDF(U)5 lending and provide a basis for the blending of SDF(U) and OCR funding at the country level. However, individual country allocations would be determined for Group 2, 3, and 4 countries other than for new members, for which a direct allocation would be provided.

Under SDF(U)5, contributors and CDB agreed that the SDF partnership should continue its focus on poverty reduction in BMCs. They also agreed that “capability enhancement, reduction of vulnerability and good governance, together with broad-based sustainable growth,” were critical priorities for SDF(U)5 resources.

They endorsed the MDGs, particularly the goal of halving world poverty by 2015, as providing the context for SDF(U) operations and achievements. They proposed that the MDGs—together with Caribbean-specific goals that might be developed with CDB assistance—should provide strategic benchmarks against which SDF(U) operations could be planned and performance in BMCs assessed.

The SDF(U)5 financial assistance program consisted of loans of $145 million to be allocated on the basis of the new resource allocation formula; $10 million for initiating operations in new BMCs (targeting Haiti and Suriname); $5 million for regional projects; and $25 million for disaster response, major transitions in economic structures, and HIV/AIDS. Funding for the SDF(U)5 financial assistance operations came from the following sources:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional borrowing members</td>
<td>$26.0</td>
</tr>
<tr>
<td>Regional nonborrowing members</td>
<td>9.6</td>
</tr>
<tr>
<td>Nonregional members</td>
<td>57.5</td>
</tr>
<tr>
<td>Reflows and balance b/f</td>
<td>60.5</td>
</tr>
<tr>
<td>Funding gap</td>
<td>29.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$185.5</strong></td>
</tr>
</tbody>
</table>

Note: All figures in $ million.

Source: Resolution of Contributors to SDF V with Report of Meetings of Contributors on 7 and 8 March, 22 May, 13 July, and 13 December 2001 as Schedule 3.

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46 Under SDF(U)5 provision was made for initiating operations in Suriname on the assumption that Suriname would have completed its membership formalities within the SDF(U)5 period. This did not occur and the amount was subsequently reallocated. Email from CDB to author dated 9 July 2010.
Three principal factors were highlighted as the justification for continuing SDF(U)5 operations:

(i) Unacceptably large percentages of the population of the region remain in deep poverty, accentuated by the extreme vulnerability of many BMCs to natural disasters and economic change.

(ii) CDB was about to expand its membership and take on major new development responsibilities. The admission of Haiti alone would double the population base of CDB’s BMCs and quadruple the number of persons in extreme poverty within the BMCs, and CDB must now be equipped to deal with its new responsibilities.

(iii) All BMCs were facing major economic changes and difficult transitions, with changing trade and economic patterns, and, in several cases, a serious loss of preferential access to major export markets. Some BMCs were in an economic crisis, with serious structural problems to be addressed and the risk of a widening of poverty unless effective action was taken quickly.

Contributors recognized that OCR could not address these challenges alone and that, without additional concessory resources, CDB would be unable to operate in some of its BMCs, or to help others address the serious problem of poverty and achieve broad-based growth and economic transition. Contributors noted that the SDF(U) remains critical to the development work of CDB and its ability to undertake its core mission of poverty reduction.

**Unified Special Development Fund 6**

Contributors held four meetings to consider the replenishment of the resources of the SDF(U) for a sixth cycle, starting 22 November 2004 and reaching agreement on 13 October 2005. On completion of these negotiations, contributors agreed to a financial assistance program of $257.5 million for 2005–2008. They also agreed that the program would be funded by basic contributions of $158.1 million and internally generated resources, including net income and loan repayments of $73.5 million, and that the structural financing gap of $25.9 million would be met by additional contributions during the cycle, income from accelerated payments, and accelerated encashment of existing demand notes.

Contributors agreed that the objectives and operational framework for SDF(U)6 should build on the directions set for SDF(U)5 and reflect the international development agenda as applied to the Caribbean. The four broad themes established for the replenishment were (i) poverty reduction and broad-based economic growth, (ii) addressing the MDGs, (iii) strengthening development effectiveness and results-based management, and (iv) planning and implementing the expansion of BMC membership.

Contributors agreed that the financial assistance program for SDF(U)6 should consist of the following specific allocations:

(i) $91 million in grant funding, with
   (a) $32 million for BNTF in support of poor communities in the currently eligible countries;
   (b) $18 million for technical assistance programs, including capacity building in BMCs, project cycle training, and Caribbean Technological Consultancy Services (CTCS) network;
   (c) $4 million for special support for monitoring progress toward MDGs;
   (d) $10 million in support of regional integration and facilitating the provision of regional public goods;
   (e) $8 million as a provision for disaster response; and
   (f) $19 million for Haiti, including a provision of $15 million for BNTF-type programming and $4 million for administrative expenses.
(ii) $45 million as a provision for loan funding for natural disaster mitigation and rehabilitation and countries in fiscal distress; and

(iii) $121.5 million for normal lending operations, including a provision of $6 million for small and micro enterprises lending for Haiti, with the balance for the current BMCs to be allocated according to the SDF(U) resource allocation strategy approved by contributors during SDF(U)5 negotiations.

In programming terms, the increased amount of the replenishment for SDF(U)6 compared with SDF(U)5 allowed jumpstarting a BNTF-type program in Haiti; restarting a new and improved project implementation and management training program for senior officials in CDB’s BMCs; extending the reach of CTCS training packages for micro, small- and medium-sized enterprises; promoting regional integration and cooperation, including regional public goods; building BMCs’ capacity to monitor and manage progress toward the attainment of the MDGs; improving CDB’s capacity to meaningfully mitigate and respond to natural disasters; and rendering a more comprehensive package of assistance to BMCs in fiscal distress. Increased financing for loans allocated on the basis of the resource allocation formula will also contribute to the future financial sustainability of SDF(U).

Contributors required a midterm review of SDF(U)6 operations, including a review of the specific allocations, in order to ensure that any funds not required as originally planned can be reallocated to where they can be used most effectively within the SDF(U)6 cycle. However, SDF(U)6 would not reduce allocations for BNTF and technical assistance. Decisions on the use of the funds provided for Haiti would be made by CDB’s board of directors on the basis of a detailed submission by CDB on program options in respect of Haiti.

Contributors also mandated that environmental sustainability should receive a significantly increased priority in SDF(U)6 to stem the deterioration of environmental and natural resource capital; relieve the blight of large sections of urban areas becoming home to a poor and increasingly disaffected populace; and address more comprehensively the relationship between poverty reduction and environmental degradation. They supported the use of a part of SDF(U) grant funding for environmental sustainability projects as an innovative addition to the program instruments available under SDF(U)6.

The contributors emphasized the need for greater recognition of the gender dimensions of poverty, the different vulnerabilities and coping strategies of poor women and men, and the inequities that impede them from participation as equal and full partners in the development of their societies. They encouraged CDB to strengthen key social, economic, and community institutions within the context of poverty reduction to address these inequities through increased sensitivity to gender issues, and to promote attention to gender issues in policy dialogue. In order to strengthen gender analysis in project operations, it was agreed to undertake a comprehensive gender analysis of 10 BMCs and integrate gender into CDB’s social and operational guidelines.

The terms for SDF(U)6 lending would continue to vary by country group, as in the past, and these would be the same as used for SDF(U)5.

Contributors reviewed the issue of grant financing, including the extent to which grants reduce SDF(U) income and future reflows. They noted that SDF(U) had traditionally included grants as particularly appropriate for certain types of activity, and they concluded that grants continued to be important for such purposes. They underscored, however, the need for an appropriate balance, and agreed that the share of grant funding in SDF(U)6 should be no higher than 35%, inclusive of grant funding for new members.
Conclusion

The SDF has played a very important role in CDB’s efforts to pursue its mission of reducing poverty in its BMCs. While the SDF’s role is similar to that of similar funds in the other multilateral development banks (MDBs), the SDF has evolved in a number of unique ways in order to dovetail with the special requirements of CDB’s clients.

Like other MDBs, CDB has utilized the mechanism of multiple funds to pursue its objectives in its BMCs. CDB’s SDF(U) is the largest of the group of “soft” resources available to CDB for meeting the needs of a diversified group of BMCs, characterized by a range of different problems and positioned at different stages on the development scale. By classifying BMCs into different groups based on varied “needs-related” criteria, CDB has been able to price the access of these countries to the SDF(U) in a discriminatory manner, based on their overall socioeconomic position.

In more recent cycles, eligibility for a specific share of SDF(U) resources has been determined on the basis of what is referred to as a “resource allocation” formula, which, in CDB’s case, factors in “need” (measured by per capita income), “vulnerability” (through an index that measures exposure to natural disasters and economic shocks), the quality of governance, and the quality of the country’s portfolio of CDB-funded projects. The introduction of this allocation tool has enabled CDB not only to allocate resources in response to the demonstrated needs of the BMC, but also to recognize that resources are best utilized in an environment of good governance and to reward the country accordingly with a greater share of the resources.

As a small institution operating in a small, concentrated risk environment, CDB raises funds on the international capital markets at rates higher than their larger counterparts. The small size of its balance sheet also places limits on the amount of exposure that CDB can prudentially tolerate to individual BMCs from its OCR. The existence of the SDF has enabled CDB to increase the amount allocated to an individual project and to reduce the average funding cost to the project by blending OCR and SDF resources. The blending technique has been used extensively by CDB throughout the life of the SDF.

Because of the peculiarities of the situation in the Caribbean, the SDF was the only one of the MDB “soft” funds where beneficiaries also contributed a substantial portion of the fund’s resources. While this approach engendered a considerable amount of ownership and support for the SDF by beneficiaries, it also meant that CDB employed a drawdown mechanism less onerous that that used in other MDBs, largely due to the beneficiaries’ relative financial weakness. While this approach minimized the cash impact on BMCs, it also resulted in large amounts of uncashed promissory notes and deprived the SDF of much needed investment income.

Finally, grant resources to BMCs have featured prominently in the SDF (representing 35% to 50% of the total replenishment), much more so than in the other MDB funds. The upside of this has been that CDB has been able to design very effective poverty-focused programs such as the BNTF, which provides grant financing for small-scale community development projects in very poor communities. The downside is that the absence of reflows associated with grant financing undermines the longevity of the SDF and, perhaps, necessitates higher replenishment levels than would otherwise have been the case with a lower percentage of grant financing.
## Appendix 1

### Borrowing Member Countries of the Caribbean Development Bank

<table>
<thead>
<tr>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anguilla</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
</tr>
<tr>
<td>Bahamas, Commonwealth of the Barbados</td>
</tr>
<tr>
<td>Belize</td>
</tr>
<tr>
<td>British Virgin Islands</td>
</tr>
<tr>
<td>Cayman Islands</td>
</tr>
<tr>
<td>Dominica, Commonwealth of Grenada</td>
</tr>
<tr>
<td>Guyana, Co-operative Republic of Haiti</td>
</tr>
<tr>
<td>Jamaica</td>
</tr>
<tr>
<td>Montserrat</td>
</tr>
<tr>
<td>Saint Kitts and Nevis</td>
</tr>
<tr>
<td>Saint Lucia</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
</tr>
<tr>
<td>Trinidad and Tobago, Republic of</td>
</tr>
<tr>
<td>Turks and Caicos Islands</td>
</tr>
</tbody>
</table>

## Appendix 2

### Members of the Caribbean Development Bank

**Regional Members**

<table>
<thead>
<tr>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anguilla</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
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<td>Bahamas, Commonwealth of the Barbados</td>
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<tr>
<td>Belize</td>
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<tr>
<td>British Virgin Islands</td>
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<tr>
<td>Cayman Islands</td>
</tr>
<tr>
<td>Colombia</td>
</tr>
<tr>
<td>Dominica, Commonwealth of Grenada</td>
</tr>
<tr>
<td>Guyana, Co-operative Republic of Haiti</td>
</tr>
<tr>
<td>Jamaica</td>
</tr>
<tr>
<td>Mexico</td>
</tr>
<tr>
<td>Montserrat</td>
</tr>
<tr>
<td>Saint Kitts and Nevis</td>
</tr>
<tr>
<td>Saint Lucia</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
</tr>
<tr>
<td>Trinidad and Tobago, Republic of</td>
</tr>
<tr>
<td>Turks and Caicos Islands</td>
</tr>
<tr>
<td>Venezuela</td>
</tr>
</tbody>
</table>

**Nonregional Members**

<table>
<thead>
<tr>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
</tr>
<tr>
<td>China, People’s Republic of</td>
</tr>
<tr>
<td>Germany</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>United Kingdom</td>
</tr>
</tbody>
</table>
### Appendix 3

#### Summary of Subscriptions as of 31 December 2006 ($ ’000)

<table>
<thead>
<tr>
<th>Subscriptions</th>
<th>Subscribed Capital</th>
<th>Callable Capital</th>
<th>Paid-up Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional countries</td>
<td>412,944</td>
<td>322,518</td>
<td>90,426</td>
</tr>
<tr>
<td>Non-regional countries</td>
<td>238,308</td>
<td>186,126</td>
<td>52,182</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>651,252</strong></td>
<td><strong>508,644</strong></td>
<td><strong>142,608</strong></td>
</tr>
<tr>
<td>Additional Subscriptions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional countries</td>
<td>9,893</td>
<td>6,651</td>
<td>3,242</td>
</tr>
<tr>
<td>Non-regional countries</td>
<td>43,896</td>
<td>34,050</td>
<td>9,846</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>53,789</strong></td>
<td><strong>40,701</strong></td>
<td><strong>13,088</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>705,041</strong></td>
<td><strong>549,345</strong></td>
<td><strong>155,696</strong></td>
</tr>
</tbody>
</table>

Source: CDB by email to author dated 9 July 2010.
Chapter 7

Multilateral Concessional Financing of the International Fund for Agricultural Development

Vera P. Weill-Hallé, Cynthia Licul, and Itziar García Villanueva*

Introduction

The International Fund for Agricultural Development (IFAD) was established as a result of the 1974 World Food Conference organized by the international community in response to the persistence of widespread hunger and malnutrition in the world. The conference recognized that hunger and food insecurity should not be associated solely with shortfalls in food production and supply at national or international levels. Rather, they should be understood as products of deep-seated structural problems associated with underdevelopment and poverty, especially as these affect rural poor people.1

The Agreement Establishing the International Fund for Agricultural Development2 (AEI) was opened for signature on 20 December 1976 and entered into force on 30 November 1977. In 1978, IFAD became a specialized agency of the United Nations (UN),3 with headquarters in Rome, Italy.

IFAD membership to is open to any state member of the UN and its specialized agencies, or state members of the International Atomic Energy Agency.4 IFAD classifies its 165 member states5 into three categories:

- List A6, which primarily includes members of the Organisation for Economic Co-operation and Development (OECD);
- List B7, which primarily includes members of the Organization of the Petroleum Exporting Countries (OPEC); and
- List C8 (developing countries).

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3 www.ifad.org/governance/elifad/anniversary/milestones.htm

4 IFAD. 1976. AEI, Article 3, section 1(a). Section 1(b) thereof also provides that membership is open to any grouping of states whose members have delegated to it powers in fields falling within the competence of the Fund and which is able to fulfil all the obligations of a member of the Fund. Currently, IFAD has no member falling within the category described in Section 1(b).

5 www.ifad.org/governance/elifad/ms.htm

6 List A member states are available at www.ifad.org/governance/elifad/lista.htm

7 List B member states are available at www.ifad.org/governance/elifad/listb.htm

8 List C member states are available at www.ifad.org/governance/elifad/listc.htm
List C is further divided into

- Sub-list C1\(^9\) (countries in Africa),
- Sub-list C2\(^10\) (countries in Europe, Asia, and the Pacific), and
- Sub-list C3\(^11\) (countries in Latin America and the Caribbean).

**Objectives and Functions**

IFAD seeks to “mobilize additional resources to be made available on concessional terms for agricultural development in developing Member States.”\(^12\) To fulfill this objective, IFAD provide[s] financing primarily for projects and programmes specifically designed to introduce, expand or improve food production systems and to strengthen related policies and institutions within the framework of national priorities and strategies, taking into consideration the need to increase food production in the poorest food deficit countries; the potential for increasing food production in other developing countries; and the importance of improving the nutritional level of the poorest populations in developing countries and the conditions of their lives.\(^13\)

IFAD finances loans and grants for its developing member countries in accordance with the terms and conditions of the fund’s lending policies and criteria.\(^14\) IFAD entered into its first loan commitments in 1978. Similarly, grant financing is governed by the IFAD Policy for Grant Financing,\(^15\) which was approved by the executive board in December 2003 and updated in September 2009.

**Organizational Structure**

IFAD is composed of a governing council and an executive board, and supported by a secretariat. The president of the secretariat is elected and appointed by the governing council, and may appoint a vice-president to perform duties assigned by the president.\(^16\)

**Governing Council**

The governing council\(^17\) is IFAD’s supreme body. Consisting of all member states, the council meets annually within the first quarter of any given year.\(^18\) Two thirds of the total votes of all members of the council constitute a quorum.\(^19\)

\(^9\) Sub-List C1 member states are available at www.ifad.org/governance/ifad/listc1.htm
\(^10\) Sub-List C2 member states are available at www.ifad.org/governance/ifad/listc2.htm
\(^11\) Sub-List C3 member states are available at www.ifad.org/governance/ifad/listc3.htm
\(^12\) IFAD. 1976. AEI, Article 2.
\(^13\) Ibid.
\(^14\) Available at www.ifad.org/pub/basic/lending/e/02polcri.pdf
\(^16\) IFAD. 1976. AEI, Article 6, section 8(c).
\(^17\) IFAD. 1976. AEI, Article 6, section 2.
\(^18\) The sessions of the governing council are held at the seat of the Fund; however, the governing council may decide to hold a session elsewhere, provided that this does not involve additional costs to the Fund. IFAD. 1977. Rules of Procedure of the Governing Council, Rule 4. www.ifad.org/pub/basic/gc/e/05govco.pdf
\(^19\) IFAD. 1976. AEI, Article 6, section 2(g).
Each member state appoints its own governor to the council, along with an alternate, who votes only in the absence of the governor.\(^{20}\) Invited observers may attend council sessions.\(^{21}\)

Presiding over the council is a bureau consisting of a chairperson and two vice-chairs, all elected by the governors from among themselves. These officers serve for two years and remain in office until their successors are elected.\(^{22}\) Each list (A, B, and C) of member countries is represented on the bureau.

IFAD vests all its powers in the council, which is authorized to review the adequacy of the resources available to the organization,\(^ {23}\) authorize any member to increase the amount of any of its contributions,\(^ {24}\) and adopt broad policies, criteria, and regulations.\(^ {25}\) The council elects and appoints the IFAD president\(^ {26}\) and approves the administrative budget.\(^ {27}\)

The council may delegate any of its powers to the executive board, excepting the power to

- adopt amendments to [the AEI],
- approve membership,
- suspend a member,
- terminate the operations of the organization and distribute its assets,
- decide appeals regarding decisions made by the executive board concerning the interpretation or application of [the AEI]; and
- determine the remuneration of the president.\(^ {28}\)

### Executive Board

The executive board\(^ {29}\) is IFAD’s second-tier governing body. Chaired by the IFAD president, it consists of 18 members and 18 alternate members elected from the member states at the annual session of the governing council. Executive board members and their alternates are elected and appointed in accordance with the procedures set forth in Schedule II of the AEI.\(^ {30}\)

Schedule II provides that seats on the executive board shall be distributed by the governing council as follows:

- eight members and up to eight alternate members elected or appointed from List A;
- four members and four alternate members from List B; and
- six members and six alternate members from List C, including two members from each of the three regional subdivisions of List C member countries.

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\(^{20}\) IFAD. 1976. AEI, Article 6, section 2(a).

\(^{21}\) These observers may be representatives from non-member states that have applied for fund membership; the Holy See; the Sovereign Order of Malta; and those specialized agencies of the UN, intergovernmental organizations, and nongovernment organizations (NGOs) whose observer status has been approved by the fund’s executive board. Rules of Procedure of the Governing Council, section XIII. Available at www.ifad.org/pub/basic/gc/e/05govco.pdf


\(^{23}\) IFAD. 1976. AEI, Article 4, section 3.

\(^{24}\) IFAD. 1976. AEI, Article 4, section 4.

\(^{25}\) IFAD. 1976. AEI, Article 7, section 2(d).

\(^{26}\) IFAD. 1976. AEI, Article 6, section 8.

\(^{27}\) IFAD. 1976. AEI, Article 7, section 2.

\(^{28}\) IFAD. 1976. AEI, Article 6, section 2(c).

\(^{29}\) IFAD. 1976. AEI, Article 6, section 5.

\(^{30}\) IFAD. 1976. AEI, Article 6, section 5(a) and Schedule II of the AEI.
Members and alternate members are elected to a three-year term of office. The executive board meets three times each year, generally in the months of April, September, and December. The quorum for any meeting of the executive board requires two thirds of the total votes of all board members.31

The executive board has full authority to determine the work program, and also approves projects and programs, including specific grants.32 Pending final approval by the council, the board may also adopt and recommend action on matters related to policy, the annual administrative budget, and applications for membership and staffing within IFAD.33 It refers any applications for nonoriginal membership to the council.

The executive board can obtain a vote of the council on a specific question without calling a session of the council, unless the question refers to

- invitations to members to make additional contributions to the resources of IFAD (i.e., replenishment);
- adoption of regulations and bylaws to conduct the business of the organization;
- appointment or termination of the appointment of the president;
- determination of the permanent seat of the organization;
- approval of the administrative budget;
- adoption of broad policies, criteria, and regulations governing financing by IFAD;
- approval of agreements to be concluded with the UN in accordance with Article 63 of the UN Charter and of any amendments thereto;
- suspension of a member or restoration of a suspended member to good standing; and
- termination of IFAD operations and distribution of its assets.34

The executive board may establish committees and other subsidiary bodies from among its members and refer any question to them for study and report.35 In addition, the board has two standing subcommittees: (i) the Audit Committee and (ii) the Evaluation Committee.

**Audit Committee**

At its 15th session (April 1982), the executive board established the Audit Committee to deal with audit-related matters on an ad hoc basis.36

In concurrence with the new membership distribution of the executive board that emerged from Resolution 86/XVIII of the governing council, the executive board revised the membership distribution of the Audit Committee during its 61st session (September 1997). The Audit Committee currently consists of nine members elected to a three-year term of office by the executive board from its own members: four from List A, two from List B, and three from List C.37 Chairmanship of the Audit Committee rests permanently with List A.

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31 IFAD. 1976. AEI, Article 4, section 5(f).
32 www.ifad.org/governance/ifad/eb.htm
33 IFAD. 1976. AEI, Article 6, section 10.
36 www.ifad.org/governance/ifad/audit.htm
37 www.ifad.org/governance/ifad/audit.htm
The Audit Committee meets regularly, four times each year. Its first meeting each year, held in early March, is a review of the audited financial statements. Subsequent meetings occur just prior the April, September, and December sessions of the executive board. The committee's first meeting each year, held in early March, is a review of the audited financial statements. Subsequent meetings occur just prior the April, September, and December sessions of the executive board. Five members constitute a quorum.

The Audit Committee assists the executive board in exercising control over the financial administration of the organization. To this end, the committee makes recommendations to the executive board regarding the selection, appointment, and remuneration of the external auditor; reviews the draft annual financial statements, and also reviews the detailed scope, design, and results of audits by the external auditor; satisfies itself that the internal audit system is effective and efficient; conducts triennial reviews of IFAD's risks and risk management procedures to determine that the internal control and risk management systems established in the areas of investments and procurement effectively safeguard the assets of the organization; reports to the executive board on any matters arising from the above terms of reference and submits such conclusions and recommendations that the committee deems appropriate; and reviews the annual budget prior to submission to the executive board.

During the course of the annual audit of IFAD accounts, the external auditor submits recommendations on internal control and accounting procedures to the Audit Committee. In 2006, the executive board approved a policy on mandatory rotation and length of service of the external auditor. This policy imposes a maximum of two five-year terms for the external auditor and mandatory rotation of the engagement partner, and also bars the external auditor from providing other services during the engagement.

Evaluation Committee

During its 31st session (September 1987), the executive board established an Evaluation Committee “to assist the Executive Board by undertaking in-depth reviews of a selected number of evaluations and studies, relieving the Board of these duties.” The committee studies and reports on the IFAD’s evaluation activities, seeking to draw lessons from completed projects that may help improve the design, implementation, or evaluation of future projects.

Until 1999, the work of the Evaluation Committee was governed by organizational principles adopted during its 1st session in 1988; however, the terms of reference were not elaborated during that session. It was only at its 68th session (December 1999) that the executive board approved terms of reference and rules of procedure for the Evaluation Committee.

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38 www.ifad.org/governance/ifad/audit.htm
The executive board also revised the membership distribution of the Evaluation Committee, in concurrence with the revised membership of the executive board. Similar to the Audit Committee, the Evaluation Committee currently consists of nine members drawn from the executive board: four from List A, two from List B, and three from List C. Chairmanship of the Evaluation Committee rests permanently between Lists B and C. The executive board elects Evaluation Committee members to a three-year term of office. The committee meets formally four times each year, during the April, September, and December board sessions and also in October. If necessary, the committee also meets informally.44

In April 2003, the executive board approved the IFAD Evaluation Policy,45 which was prepared in response to a decision of an independent Office of Evaluation that reports directly to the executive board.46 The adoption and implementation of the Evaluation Policy created the need to review the role and function of the Evaluation Committee, including its interaction with the executive board and Office of Evaluation.47 As a result, in 2004 the executive board approved new terms of reference and rules of procedure for the Evaluation Committee. The new terms of reference of the Evaluation Committee are:

(i) to enhance the ability of the Executive Board to assess the overall quality and impact of IFAD programmes and projects through a discussion of selected evaluations and reviews conducted by the Office of Evaluation and Studies, as well as to fortify the Board’s knowledge of lessons learned in IFAD’s programmes and projects and to enable Member States to better assess the Fund’s role in the pursuit of a global development strategy;

(ii) to discuss with the Office of Evaluation and Studies the scope and contents of its annual work programme and strategic directions;

(iii) to satisfy itself that the Fund has an effective and efficient evaluation function;

(iv) to report to the Executive Board on the Committee’s work and, as appropriate, make recommendations and seek guidance on evaluation issues of policy and strategic importance; and

(v) to undertake field visits, as and when required, and participate in evaluation missions, workshops, round-table meetings and related activities in order to assist the Evaluation Committee in conducting its duties.48

Office of the President

The governing council elects and appoints the IFAD president49 to a four-year term, with the possibility of reappointment for only one additional term. Appointment and termination of the president requires a two-thirds majority of all members of the governing council.

The president heads the staff and, under the control and direction of the governing council and the executive board, is responsible for conducting IFAD business. Generally responsible for financial

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44 www.ifad.org/governance/ifad/ec.htm
49 IFAD. 1976. AEI, Article 6, section 8(a). A vote of two-thirds majority of the total number of votes is necessary to appoint the President.
management and policy, the president is the legal representative of the fund and also serves as chairperson of the executive board. The president may participate in all meetings of the general council and the executive board, but lacks the right to vote.

Independent Office of Evaluation

IFAD established an evaluation function shortly after it began operations in 1978. At that time, however, evaluation was combined with monitoring as part of the Monitoring and Evaluation Division, which reported to the assistant president of the Economic Policy Department. Following recommendations by the rapid external assessment of IFAD during the negotiation of the Fourth Replenishment of IFAD’s Resources (1994), IFAD separated the evaluation function from monitoring and established the Office of Evaluation and Studies, a unit that is independent of operations. The director of the Office of Evaluation initially reported directly to the president until the office was incorporated into the Office of the President.

The 2003 Report of the Consultation on the Sixth Replenishment of IFAD’s Resources agreed on a new, independent role for the Office Evaluation and Studies, and the executive board renamed it the Office of Evaluation at its 78th session (April 2003), resolving that it should conduct both independent evaluations (to promote accountability) and learning (to improve the performance of the IFAD operations and policies).

Every year, the Office of Evaluation assesses a sample of completed IFAD projects, cooperation strategies in countries with large IFAD portfolios, and IFAD policies, strategies, programs and processes. IFAD management ensures that its officials and assisted projects promptly provide all documents and other information required by the Office of Evaluation and otherwise participates and cooperates actively in the evaluation process.

The director of the Office of Evaluation reports directly to the executive board, which oversees its work. The director devises strategy; formulates the annual budget for the work program; directly and simultaneously issues final evaluation reports to the executive board, the president, and other stakeholders; and discloses such reports to the general public without prior clearance from anyone outside the Office of Evaluation. The president has authorized the director to make all personnel and operations decisions concerning the staff and consultants of the Office of Evaluation, in accordance with IFAD rules and procedures. The executive board’s Evaluation Committee assists in considering evaluation issues.

The director of the Office of Evaluation is appointed through a process involving executive board endorsement. Specifically, although the recruitment process is largely similar to that for all other staff, the appointments and promotions board decides the nomination of the director, which is then submitted by the president for endorsement by the executive board. After the endorsement is properly recorded in the board minutes, the president appoints the director to a fixed term. Similarly, the president can remove the director only upon the endorsement of the board, as recorded in the executive board minutes.

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51 IFAD. 1976. AEI, Article 6, section 8(h).
52 IFAD. 1976. AEI, Article 6, section 7.
53 IFAD. 1976. AEI, Article 6, section 7.
54 www.ifad.org/evaluation/policy/policy1.htm#top
**Vote Allocation System**

As discussed above, member states are categorized into Lists A, B, and C. Upon joining the fund, and after consultation with the members of a list, a new member gives the president written notification of its list of choice.

IFAD was founded in 1977 on three pillars of membership, as represented by its categories:

- Category I/List A (state members of the Organisation for Economic Co-operation and Development),
- Category II/List B (state members of the Organization of the Petroleum Exporting Countries), and
- Category III/List C (other developing countries).

Each category held one third of the total votes (i.e., 600 votes apiece from a total of 1,800 votes). The combination of contributing countries (Categories I and II/Lists A and B) held two thirds of the voting power and an equal proportion of representation within the executive board. Conversely, the combination of the developing countries (Categories II and III/Lists B and C) held two thirds of the voting power and board representation. This balance allowed equal representation for the interests of contributing countries and developing countries, creating a unique partnership. Although this arrangement was amended during negotiations for the Fourth Replenishment, in essence it still prevails. The balance of votes still requires all lists to work together to approve important policies, and no list or lists can make unilateral decisions. Over the past 28 years, this arrangement has resulted in consensus votes in all executive board decisions and all but one or two decisions by the governing council.58

**Vote Allocation Prior to the Fourth Replenishment**

Prior to the 1997 amendment of the AEI, the total number of votes in the governing council was 1,800, distributed equally among Categories I, II, and III. The 600 votes allocated to each category were divided among individual members and in accordance with the following formula:

- Category I (now List A) distributed 105 “fixed votes” (17.5%) equally among its members and distributed the remaining 495 votes proportionate to the member’s respective share of total Category I contributions to IFAD’s initial resources and the First, Second, and Third Replenishments together.
- Category II (now List B) distributed 150 “fixed votes” (25%) equally among its members and distributed the remaining 450 votes according to contributions (see above).
- Category III (now List C) distributed 600 votes equally among its members.59

For the purpose of distributing votes on the basis of member contributions as a percentage of the total category contributions, contributions were defined as payments in cash or in promissory notes. Pledges and instruments of contribution were not used for these calculations except to the extent actual payment had been made. However, some members made payments in promissory notes but had not been able to encash part or all of their promissory notes when a drawdown had been called. IFAD financial statements included an accounting provision against that amount for any member in arrears on encashing promissory notes for 24 months or longer. Such an accounting provision reduced the member’s proportionate to the unpaid balance of its promissory note to the total category contribution. Votes thus

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reduced from a particular member were distributed among all other members of the same category in proportion to their valid cash and promissory note contributions.60

Therefore, until 19 February 1997, the voting shares of the categories calculated without regard to contributions were:

- Category I: 33.3% (600 votes)
- Category II: 33.3% (600 votes)
- Category III: 33.3% (600 votes)61

Changes Introduced by the Fourth Replenishment62

The governing council’s adoption of Resolution 86/XVIII63 regarding the Fourth Replenishment of IFAD’s Resources resulted in the introduction in 1995 of a new vote allocation system that established a link between contributions and voting rights. In particular, amendments to Article 6, section 3, and Schedule II of the AEI fully reflected the new voting system. The amendments entered into force and effect on 20 February 1997 following fulfilment of the pending conditions (“completion”) of the resolution.64

Governing Council

The new structure divides the total numbers of votes in the governing council into original votes and replenishment votes and further divides both groups into membership votes and contribution votes. Each replenishment creates new votes and divides them between membership and contribution votes. Any change in membership creates a redistribution of membership votes, and contribution votes are allocated and continuously redistributed among member states on the basis of paid-in contributions.

Original Votes

Original votes consist of a total of 1,800 votes made up of membership votes and contribution votes. Of these, 790 votes are allocated as membership votes and distributed equally among all IFAD members. The 790 membership votes are redistributed each time a new member joins IFAD.

After subtracting membership votes from the original 1,800 votes, the remaining 1,010 contribution votes are distributed among all members in proportion to their cumulative paid contributions to IFAD resources (i.e., initial resources through the Third Replenishment) authorized by the governing council prior to 26 January 1995 and made by members in accordance with the AEI, bear to the aggregate of the total of the said contributions paid by all members.

Replenishment Votes

Commencing with the Fourth Replenishment, votes include membership and contribution votes totaling a level that the governing council determines prior to each replenishment. Except as decided by a two-thirds vote of the governing council, the votes for each replenishment represent a ratio of 100 votes to
the equivalent of each $158 million contributed to the total amount of that replenishment, or a fraction thereof.

Membership votes are distributed equally among all members. Contribution votes are distributed among all members in the proportion that each member’s paid contribution to the resources contributed to IFAD by members for each replenishment bears to the aggregate of the total contributions paid by all members to the said replenishment.65

Any change in the number of members and paid-in contributions requires a redistribution of membership votes and contribution votes in accordance with the principles and formula described above. The governing council ensures that members who belonged to Category III before 1995 will receive one third of the total votes as membership votes.66

Executive Board
The current composition of the executive board also results from decisions made during negotiations and consultations for the Fourth Replenishment, which revised the vote allocation system. Similar to the governing council, distribution of the total number of votes in the executive board is calculated on the basis of original and replenishment votes.67

Resolution 86/XVIII also amended the procedures for electing members of each list to the executive board. The amended Schedule II (AEI) provided that the member state within each list making the highest substantial contribution to IFAD among the member states of that list should be elected to the executive board.68 Rule 40.1 of the Rules of Procedure of the Governing Council was also amended to provide that any member state in arrears of its contribution payment and against which an accounting provision exists at the time of elections is ineligible for election or appointment to the executive board.

Decision-Making Process
The chairperson at any meeting of the governing council, or the president at any meeting of the executive board, must attempt to secure a consensus on a proposal before taking a vote thereon; however, the council or board, as the case may be, will take decisions by vote at the request of any governor or member, respectively.69

Except as otherwise specified, decisions of the governing council carry by a simple majority of the total number of votes.70

With respect to voting in the executive board, the governing council may occasionally decide the distribution of votes among the members of the executive board in accordance with the principles described above.71 Unless otherwise specified in the AEI, decisions of the executive board are taken by a majority of 3/5 of the votes cast, provided that such majority is more than one-half of the total number of votes of all members of the executive board.72

65 IFAD. 1976. AEI, Article 6, section 3.
66 Ibid.
67 To date, all decisions of the Executive Board have been arrived at without resorting to a formal vote.
70 IFAD. 1976. AEI, Article 6, section 3(b) in re: Article 6, section 3(a); see also IFAD. 1977. Rules of Procedure of the Governing Council, Rule 34. www.ifad.org/pub/basic/gc/e/05govco.pdf
71 IFAD. 1976. AEI, Article. 6, sections 5(a) and 6(a).
72 IFAD. 1976. AEI, Article. 6, section 6(b).
Legal Framework of IFAD Resources

The IFAD Fund consists of regular, or core, resources and nonregular resources.

Regular or Core Resources

IFAD resources include (i) initial contributions, (ii) additional contributions, (iii) special contributions from nonmember states and other sources, and (iv) funds derived or to be derived from operations or otherwise accruing to the fund.\(^{73}\)

Initial Contributions

The amount of an initial contribution by original and nonoriginal members must be the amount and in the currency specified by the member in the instrument of ratification, acceptance, approval, or accession deposited by that member.\(^{74}\) The initial contribution of each member is due and payable either in single sum or, at the option of the member, in three equal annual instalments.\(^{75}\)

Additional Contributions

Additional contributions\(^{76}\) include resources contributed to the fund by its member states through the periodic replenishments. In order to assure the continuity of IFAD operations, the governing council periodically reviews the adequacy of its available resources and may, as a result of such review, invite members to make additional contributions.

Special Contributions

Fund resources may be increased by special contributions from nonmember states or other sources on terms and conditions approved by the governing council on the recommendation of the executive board.\(^{77}\) The executive board must present the terms and conditions applicable to such contributions for approval by the governing council and ensure that they are in accordance with Article 4, section 5 (AEI), which provides in part that contributions should be made without restriction regarding use and made in freely convertible currencies.

Other Income

This category includes reflows from loan payments and investments or other interest-derived income. This entails the receipt of resources obtained from loan repayments made by the member states (i.e., reflows) as well as additional funds obtained from investments and other interest-derived income.

Nonregular Resources

Nonregular IFAD resources include supplementary funds and complementary contributions.

Supplementary Funds

Supplementary funds are resources received from one or more donors for a purpose specified in an agreement between IFAD and the donor(s). Such resources are neither received under nor considered as

\(^{73}\) IFAD. 1976. AEI, Article 4, section 1.

\(^{74}\) IFAD. 1976. AEI, Article 4, section 2(a).

\(^{75}\) IFAD. 1976. AEI, Article 4, section 2(b).

\(^{76}\) IFAD. 1976. AEI, Article 4, section 3.

\(^{77}\) IFAD. 1976. AEI, Article 4, section 6.
Article 4, Section 1 of the AEI, which defines the resources of the fund. Supplementary funds are kept distinct from all other funds held by IFAD.

The executive board delegated authority to the president of IFAD to receive supplementary funds from member states.\(^78\) IFAD’s standard legal instrument for receiving supplementary funds is generally the partnership agreement and its associated administration agreement.

Each supplementary fund agreement sets forth conditions for the use of the proceeds (i.e., the activities for which the funds may be used) and may specify reporting requirements. Indeed, supplementary funds are restricted and must meet certain criteria for mobilization and use. In particular, these funds “are accepted for activities consistent with the objectives, policies, aims and activities of IFAD and, to the extent possible, are mobilized”\(^79\) to support IFAD’s strategic framework. In addition, IFAD charges a management fee to cover the cost of these resources.

For operational purposes, IFAD supplementary funds may be categorized broadly by purpose, as follows:

- **IFAD-administered grant cofinancing**: resources received and administered by IFAD on behalf of donors to co-finance projects and programs financed by IFAD loans or grants;
- **Sectoral/thematic studies**: resources received by IFAD to finance a range of thematic programs and short-term technical assistance activities, and also to cover project and program development, implementation and evaluation expenditures as defined by partnership and administrative agreements;
- **Consultant supplementary funds**: resources received by IFAD to finance consultants for the purposes outlined in the partnership and administrative agreements; and
- **Other activities**: resources received by IFAD to finance non-program-related activities such as international workshops or regional conferences.

As stated above, IFAD charges its administrative expenses for supplementary funds to the respective donors through a management fee detailed in the respective agreement. Depending on the size of the agreement this may comprise (i) interest retention for contribution up to $100,000; (ii) 5% upfront percentage of the total contribution up to a maximum of $300,000 plus interest retention; or (iii) a higher upfront percentage with no interest retention.

IFAD reports separately to its donors on the use of supplementary funds, in accordance with the partnership and administrative agreements. Although IFAD does not keep supplementary funds in a separate bank account, they are maintained separately in its bookkeeping accounts. Supplementary funds are also reflected in IFAD’s consolidated financial statements, including both the total contribution received and the balance unspent by the donor.

**Complementary Contributions**

Complementary contributions are voluntary payments made by member states during replenishment periods. Such payments are part of IFAD’s core resources. The relevant replenishment resolutions anticipate and provide for complementary contributions and also define the character and methodology for receiving them. In contrast to regular replenishment contributions, member states do not receive

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\(^78\) IFAD 1986. In Document EB 86/28/R.47, the executive board authorized the president “to negotiate and conclude a participation agreement with the Government of the Kingdom of the Netherlands for financing selected on-going IFAD projects” and “to conclude similar participation arrangements in the future.” IFAD. 1987. Document EB 87/30/R.28 (EB 87/30/R.28), in which the executive board authorized the president “to negotiate and conclude an arrangement with the Government of the Kingdom of the Netherlands for the financing by the Netherlands of various studies and short-term technical assistance activities related to IFAD’s operations” and “to conclude similar arrangements in the future with the Government of the Netherlands or any other Member State who may wish to provide such a facility to IFAD.”

Multilateral Concessional Financing of the International Fund for Agricultural Development 469

Complementary contributions are made without restrictions as to use. Thus, while a member state may specify the desired use of such funds, the governing body formally determines and approves how the funds may be utilized through a resolution for the replenishment in question, which is approved by the governing council when it adopts the replenishment resolution.

The executive board approves the use of complementary contributions received after adoption of the replenishment resolution. If the complementary contribution is designated for an established instrument, program framework, or trust fund, the procedures for obtaining and using funds under that instrument, program framework, or trust fund will apply. Other uses of complementary contributions may be decided in the context of IFAD’s annual work program and budget or by decision of the executive board.

Modalities of Financing Activities

Forms and Terms of Financing

AEI Article 7 defines the eligibility, general terms, and considerations of IFAD’s financing operations. The AEI also stipulates that IFAD shall provide financing on terms it deems appropriate to the economic situation and prospects of the member and to the nature and requirements of the activity concerned. Lending terms and conditions, including considerations for the degree of concessionality to be granted to an eligible borrower, are defined in the lending policies and criteria of IFAD.

The executive board determines what proportion of the Fund’s resources will be committed to loans or grants in any financial year, taking into account the long-term viability of IFAD and the need for continuity of operations. The proportion of grants normally does not exceed 1/8 of the total resources committed during any financial year. A large proportion of IFAD loans are granted on highly concessional terms. In 2007, 10% of the work program was apportioned to grants.

The executive board also selects and approves all projects and programs financed by IFAD.

General Eligibility Criteria for Financing

IFAD provides restricts its loans and grants to developing states that are members of the organization or to intergovernmental organizations in which such members participate. In the case of loans to intergovernmental organizations, IFAD may require suitable governmental or other guarantees. Loan proceeds can be used only for the purposes for which the financing was provided, with due regard to economy, efficiency, and social equity.

81 IFAD. 1976. AEI, Article 4, section 5(a).
84 See IFAD. 1976. AEI, Article 7, section 2(a).
86 IFAD. 1976. AEI, Article 7, section 2(b).
87 IFAD. 1976. AEI, Article 7, section 1(b).
88 IFAD. 1976. AEI, Article 7, section 1(c).
Allocation of IFAD resources is guided by the objectives and functions set forth in the AEI (i.e., increasing food production and improving nutrition for the poorest populations in the poorest food-deficit countries, and potentially increasing food production in other developing countries). Emphasis is placed on improving the nutritional level of the poorest populations in these countries and the conditions of their lives.\(^9^9\)

Eligibility for assistance is set forth in IFAD’s lending policies and criteria and is based on objective economic and social criteria, with special emphasis on the needs of the low income countries and their potential for increasing food production, as well as due regard to a fair geographic distribution in the use of such resources. The lending terms are currently undergoing review and will be considered by the executive board during its September 2010 session.

**Country Eligibility Criteria**\(^9^0\)

Although all developing member states are eligible for financing,\(^9^1\) IFAD prioritizes the needs of the poorest countries. The Consultation on the Sixth Replenishment of IFAD’s Resources also reaffirmed the decision of the fifth replenishment to allocate at least 67% of IFAD’s loan resources to countries that borrow on highly concessional terms and conditions.\(^9^2\) In accordance with the AEI, IFAD also focuses on other developing countries with a potential for food production, emphasizing projects designed to benefit the poorest segments of their populations.\(^9^3\)

The executive board periodically reviews its operations with due regard to fair geographic distribution of the fund’s total resources within the general framework the its lending policies and criteria.\(^9^4\) The allocation to any single recipient country cannot exceed 10% of IFAD’s total annual lending or such other percent determined by the executive board, to be applied flexibly depending on resource availability.\(^9^5\)

Among the countries considered eligible for financing, the fund focuses on the general economy and agricultural and administrative policies and practices. The lending operations of IFAD can be successful only if the recipient country has a strong commitment to a development strategy which is directed towards the rural poor. This commitment should be reflected in appropriate price and fiscal policies, land reforms, credit policies and budgetary allocations to agriculture and rural development. Of equal importance are actions in the institutional area which enable the government to reach the rural poor effectively through coordinated action of its own agencies. Performance criteria also entails an assessment of the efficiency of utilizing past and present resource flows to agriculture, to identify serious constraints to agricultural progress.\(^9^6\)

In addition to the broad policies established by the lending policies and criteria, allocation of financing operations is driven by IFAD’s performance-based allocation system (PBAS).\(^9^7\) IFAD applies the PBAS to all lending and country grants to highly concessional and non-highly concessional borrowers. The country lending/grant allocations are developed within the framework of the distribution between

\(^ {9^9} \) IFAD. 1976. AEI, Article 2.

\(^ {9^0} \) IFAD. 1978. Lending Policies and Criteria. www.ifad.org/pub/basic/lending/e/02polcri.pdf

\(^ {9^1} \) IFAD. 1976. AEI, Article 7, section 1(b).


\(^ {9^3} \) IFAD. 1976. AEI, Article 7, section 1(d).


highly concessional and non-highly concessional lending as established in the LPC. The executive board developed the design and implementation details of the PBAS, and then approved its structure and operation at its 79th session (September 2003). At its 87th session (April 2006), the executive board agreed that IFAD would continue to use its resources with “due regard to a fair geographic distribution.” Moreover, application of the uniform allocation system from 2007 meant that in accord with the decisions reached during the Seventh Replenishment, IFAD would “continue to direct at least the current percentage share of resources to sub-Saharan Africa, provided that the performance of individual countries warrants it.”

In concurrence with other international financial institutions and to reflect IFAD’s membership and resource structure, the operation of the PBAS is subject to ongoing review and improvement.

Project Eligibility Criteria

The lending policies and criteria of IFAD provide broad principles for project criteria, recognizing that the impact of IFAD’s activities upon rural poverty depends not only on those activities themselves, but also on the economy and social structures. It is, therefore, necessary to understand the dynamics of each society, so that each project or programme can be viewed in a broader perspective, with attention to its negative or positive inter-actions with other parts of the system. IFAD therefore pays particular attention to the dissemination of improved and appropriate technologies to small farmers, capital investment programmes that increase output, especially of low-cost calories, per unit of land and labour, and the promotion of labour-intensive rural activities that improve the quality or efficiency of the inputs into the production, storage or processing of farm outputs.

When selecting projects in food exporting developing countries or those with a potential for food exports, IFAD takes into account the capacity and the comparative advantage of the country to produce food. Preference is given to projects enabling such countries to offer increased supplies of food for food-deficit developing countries. In this context, it actively encourages cooperation between potentially food-surplus developing countries and food-deficit developing countries with results in making food available on reasonable terms to the population of the latter.

IFAD accords high priority to activities that strengthen the technical and institutional capacity essential to agricultural and rural development.

Lending Terms and Conditions

IFAD provides loans to its developing member countries on highly concessional, intermediate, and ordinary terms for approved projects and programs. The criteria for determining the specific terms of loans include:

Highly Concessional Terms

Only developing member countries with a gross national product (GNP) per capita of $805 or less in 1992 prices or classified as International Development Association-only countries are normally eligible for highly concessional loans.
**Intermediate Terms**

Developing member countries with GNP per capita between $806 and $1,305 in 1992 prices are normally eligible for loans on intermediate terms.\(^{106}\)

**Ordinary Terms**

Developing member countries with GNP per capita of $1,306 or above in 1992 prices are normally eligible for loans on ordinary terms.\(^ {107}\)

For developing member countries with a significant difference between GNP per capita and gross domestic product per capita, IFAD uses the latter as the criterion for determining applicable lending terms within the same monetary limits.\(^ {108}\)

Among countries eligible for loans on the same terms, IFAD prioritizes those countries characterized by low food security and severe rural poverty.\(^ {109}\)

In determining lending terms, the executive board also considers the IFAD president's assessment of a country's debt sustainability and debt-servicing capacity.\(^ {110}\)

The conditions for highly concessional, intermediate, and ordinary lending terms include

- special loans on highly concessional terms that are free of interest but bear a service charge of 0.75% per annum and have a maturity period of 40 years, including a grace period of 10 years;
- loans on intermediate terms whose annual interest rate equals 50% of the variable reference interest rate, as determined annually by the executive board, and with a maturity period of 20 years, including a grace period of 5 years;
- loans on ordinary terms carry an annual interest rate equivalent to 100% of the variable reference interest rate, as determined annually by the executive board, and a maturity period of 15 to 18 years, including a grace period of 3 years; and
- no commitment charge is levied on any loan.\(^ {111}\)

The composition of IFAD's lending operations on various terms of concessionality relate directly to the economic and financial capacity of the countries eligible for loans. The financial position of the poorest countries makes it imperative that IFAD grant the largest portion its resources on highly concessional terms, concentrated on the poorest food-deficit countries.\(^ {112}\)

Loans to countries that are not eligible for highly concessional loan terms are given on intermediate or ordinary terms. Every project submitted to the executive board must justify the degree of concessionality proposed. The dominating criterion is the country's economic and financial situation. However, in determining the degree of concessionality for appropriate cases, the board might consider the nature of the project to be financed.\(^ {113}\)

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Loan terms and conditions, including project description, implementation arrangements, and procurement are detailed in a loan agreement between IFAD and the borrower, including IFAD’s general conditions, which form an integral part of the loan agreement.114

**Specific Grant Criteria**

Since 1978, IFAD has committed approximately $700 million in grants to support research-for-development and capacity-building programs, which have allowed IFAD to (i) test and disseminate new pro-poor agricultural technologies; (ii) develop new organizational approaches at the community level and beyond, and (iii) influence policies.

In December 2003, IFAD’s executive board approved a Policy on Grant Financing,115 which was updated in September 2005. In December 2009, IFAD Executive Board approved the Revised IFAD Policy for Grant Financing.116 The revised grant policy aims mainly to promote successful and/or innovative approaches and technologies, together with enabling policies and institutions that will support agricultural and rural development, thereby contributing to the achievement of IFAD’s overarching goal of empowering poor rural women and men in developing countries, and specifically to

- promote innovative activities and develop innovative technologies and approaches to support IFAD’s target group;
- increase awareness, advocacy, and policy dialogue on the issues important to poor rural people promoted by this target group;
- strengthen the capacity of partner institutions to deliver a range of services that support poor rural people; and
- increase lesson-learning, knowledge management, and dissemination of information on issues related to rural poverty reduction among stakeholders within and across regions.
- Similar to the previous policy, eligible partners in implementing grant-financed activities include developing member states;
- intergovernmental organizations in which such member states participate;
- civil society organizations, including NGOs; and
- IFAD-hosted initiatives.

Additionally, for-profit, private-sector entities are now also eligible to receive grant financing for specific and agreed-upon grant-financed activities aimed at enabling poor rural women and men to achieve higher incomes and improved food security. All grant proposals must have an IFAD staff member as focal point/champion to sponsor the grant and whose responsibilities include facilitating the grant processing to approval and providing implementation support/supervision as required.

IFAD grant proposals are country-specific, regional or international, depending on the nature of the potential innovation and impact. IFAD has also joined the larger international aid effort by adopting the Debt Sustainability Framework117 to address many countries’ debt problems by providing assistance on grant terms rather than through loans.

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114 Currently, General Conditions for Agricultural Development Financing dated 2 December 1998, adopted by the executive board at its 66th session. Previously, what applied were the General Conditions Applicable to Loan and Guarantee Agreements dated 19 September 1986, adopted by the executive board at its 28th session; General Conditions Applicable to Loan and Guarantee Agreements dated 11 December 1978, approved by the executive board at its 4th session; and General Conditions Applicable to Loan and Guarantee Agreements dated 13 April 1978, approved by the executive board at its 2nd session.


117 IFAD. Rethinking Debt. www.ifad.org/operations/grants/dsf.htm
Financial Management of IFAD Resources

Since 1995 (with entry in force on 20 February 1997), all contributions must be tendered in freely convertible currencies. Members may not maintain or impose any restriction on how the fund holds or uses freely convertible currencies.

IFAD uses the special drawing right (SDR) of the International Monetary Fund (IMF) as its unit of account. For the purposes of the AEI, IFAD calculates the value of a currency in terms of SDR, in accordance with the valuation method applied by the IMF. However, if the value of the currency of an IMF member is not currently available, IFAD calculates the value after consulting with the IMF. For the currency of a non-IMF member, IFAD calculates the value in terms of SDR on the basis of an appropriate exchange rate relationship between that currency and the currency of an IMF for which a value is calculated as specified above.

IFAD denominates its loans in SDR and disburses loan proceeds in the currency requested by the borrower. It bases the amount charged to loan account on the basis of IMF exchange rate for the SDR in effect on the value date of withdrawal.

From time to time, the borrower pays any interest or service charges on the principal amount of the loan outstanding at the rate specified in the loan agreement. Such interest or service charges accrue from the respective value dates on which the amounts are deemed withdrawn from the loan account until the respective value dates on which IFAD deems such amounts repaid, prepaid, or refunded.

Interest or service charges are computed on the basis of a 360-day year of twelve 30-day months.

If the loan agreement specifies a variable interest rate (i.e., on intermediate and ordinary terms, where the rate is linked to the annually adjusted reference interest rate), IFAD must notify the borrower, as soon as practicable, of the interest rate charged on the loan in each interest period.

At the end of the grace period specified in the loan agreement, the borrower must initiate repayment of the aggregate principal amount of the loan outstanding (i.e., the amount withdrawn), in accordance with the amortizations schedule specified in the loan agreement.

Core Principles of Financial Management

The general financial administration of IFAD is governed by its financial regulations, in conjunction with the AEI.

The executive board conducts the general operations of the IFAD, but delegates certain review and oversight functions regarding financial matters to the Audit Committee.

IFAD prepares annual financial statements in accordance with International Financial Reporting Standards. In accordance with its financial regulations, a qualified and independent external auditor examines these accounts at least once a year. To date, IFAD has always received a clean audit opinion.

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118 IFAD. 1976. AEI, Article 4, section 5.
119 IFAD. 1976. AEI, Article 5, section 1(a).
120 IFAD. 1976. AEI, Article 5, section 2(a).
121 IFAD. 1976. AEI, Article 5, section 2(b).
More specific details regarding the financial planning framework, currency management, investment and liquidity policy and the ACA are detailed below.

Financial Planning Framework

The Strategic Planning and Budget Division was formed within IFAD’s Finance and Administration Department in January 2004 under the assistant president of finance and administration. It supports and monitors the alignment of the IFAD work program and budget in accordance with the objectives stated in the Strategic Framework for IFAD (2002–2005); it also maintains the platform for proactive performance management throughout the organization. Within the financial parameters of the Asset and Liability Management Framework and resources available for commitment, present the Strategic Planning Division implements a budget process that is resource-efficient and driven by corporate strategic priorities and cost-effectiveness.

Currency Management

The majority of IFAD’s commitments are expressed in special drawing rights. Consequently, IFAD maintains its overall assets to ensure that commitments for undisbursed loans and grants denominated in SDRs are matched, to the extent possible, by assets denominated in the currencies and ratios of the SDR valuation basket. Similarly, the general reserve and grant commitments denominated in US dollars are matched by assets denominated in that currency.

The overall assets of IFAD subject to SDR alignment include the investment portfolio, promissory notes, and members’ contribution receivables. IFAD’s methodology is to align overall assets against the currency composition of the SDR, rather than align only that part of total assets against which commitments have been made, or that are matched against the general reserves.

Investment Policy and Liquidity Management

The president may select to place or invest cash funds not needed immediately for operations or administrative expenditures.

When investing resources, the president is guided by the paramount considerations of security and liquidity. Within these constraints, the president seeks the highest possible return from nonspeculative investments.

Income earned from investments may be used inter alia to meet administrative and other expenditures in accordance with the approved budget.

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125 Currently the US dollar, EU euro, Japanese yen, and UK pound sterling.
126 The General Reserve was established by the governing council at its 4th session to provide cover for the Fund against the following risks:
1. potential overcommitment of the Fund as a result of a diminution in the value of assets caused by exchange rate fluctuations;
2. possible delinquencies in receipt by the Fund of loan service payments;
3. possible delinquencies in the recovery of amounts due to the Fund from the investment of its liquid assets; and
4. potential over commitment as a result of a diminution in the value of assets caused by fluctuations in the market value of investments.
Since 1994, external investment professionals have managed the major part of the IFAD investment portfolio, following investment guidelines provided by the organization.

During the first quarter of 2005, IFAD liquidated the remaining equities portion of its investment portfolio\(^{130}\) and funded a held-to-maturity portfolio invested in high-quality bond instruments. The policy allocation was subsequently redistributed proportionally across asset classes (i.e., 5.5% in cash, 49% in government bonds, 25.5% in diversified fixed-interest instruments, and 20% in inflation-indexed bonds.

At its 80th session (December 2003), the executive board officially endorsed the framework for asset and liability management (ALM), defined as the appropriate “means to effectively manage exposure to financial risks.” Against the background of the asset and liability management framework, the board focused on management of IFAD’s assets, liabilities and their related risk. Further, the board approved a liquidity policy\(^{131}\) for the organization during its 89th session (December 2006).

**Advance Commitment Authority**

In February 1997, the governing council authorized the use of advance commitment authority (ACA). The main purpose of ACA is to fill shortfalls in the amount of committable resources available for loans and grants that may arise in a particular year by allowing approval of loan and grant commitments on the basis of projected reflows during a period specified in the respective replenishment period. ACA may only be used if the resources available for commitment (i.e., net additional resources received or accrued during the previous year, in addition to unused resources brought forward) are insufficient to complete the approved lending program in any given year.

During the Sixth Replenishment (2004–2006), the maximum amount of commitments through ACA could not exceed three years of future reflows.\(^{132}\) The Seventh Replenishment (2007–2009) increased this ceiling to five years of future reflows,\(^{133}\) and the Eighth Replenishment (2010–2012) increased it again to a maximum of seven years of future reflows.\(^{134}\)

The ACA was used for the first time in 2001, and 2004 is the only year that had an overall cover of ACA rather than net use, as there was no need to request ACA due to unusually large contributions by member states and loan repayments (reflows).

Along with the status of resources available for commitment, the management of the ACA is reported to the executive board on a regular basis. The use of ACA is also reviewed by the external auditor as part of the audit of IFAD’s Financial Statements.

**Replenishment of Resources**

IFAD resources derive from a combination of sources: member states’ contributions through a replenishment process, loan reflows, and funds derived or to be derived from operations or otherwise accruing to the organization (e.g., investment income).

\(^{130}\) IFAD was invested in equities from 1997 through the first quarter of 2005, when all equity investments were liquidated.


\(^{133}\) Document GC 29/L4 and GC Resolution 141/XXIX (Annex 1, Attachment B).

To assure continuity in the fund’s operations, Article 4(3) of the AEI provides that the governing council, when deemed necessary by a two-thirds majority of the total number of votes (generally, every three years) reviews the adequacy of the resources available to the organization and, if necessary, invites member states to make additional contributions to IFAD’s resources.

In 1977, initial contributions to IFAD’s operations totalled $1 billion in pledges for the period 1978–1980. Contributions were made mainly by Lists A and B member states. However, as of the Third Replenishment, contributions from List C member states figured far more predominantly than the smaller voluntary amounts previously made by members from this list.

Further to the process outlined in Article 4.3 of the AEI, the governing council normally establishes a consultation two years before the conclusion of the current replenishment period. The resolution establishing the consultation specifies the composition of its members (usually senior representatives), and member state governments designate their respective representatives. Historically, the IFAD president has chaired consultation sessions, as set forth in the respective resolution establishing the consultation.

Consultation members agree on a schedule of meetings and on the range of issues to be discussed. A replenishment consultation exercise is ideally completed by the next session of the governing council.

The consultation submits a report containing policy guidance and including a draft resolution to the governing council. Among other things, the draft resolution establishes the target level of the replenishment as well as its terms and conditions. The adopted replenishment resolution also specifies the pledges received by member states as of that date.

First Replenishment

The First Replenishment of IFAD Resources was for an amount similar to its initial resources. Although originally intended to cover the period 1981–1983, due to protracted negotiations for the Second Replenishment the period was extended to cover resource requirements for 1984.

Second Replenishment

The Second Replenishment, negotiations for which lasted more than two and one-half years, resulted in pledges totalling approximately $489 million for the period 1985–1987. Protracted negotiations, mainly around burden-sharing issues, coincided with declining oil prices that affected the economic situation of List B countries and reduced the overall level negotiated for the Second Replenishment.

Third Replenishment

The Consultation on the Third Replenishment of IFAD’s Resources was established at the 11th session of the governing council (January 1988) and concluded its deliberations the following year. Pledges ultimately totalled approximately $570 million for the period 1989–1991.

The Replenishment Resolutions for the First and Second Replenishments provided a desirable burden share ratio of 60:40 between Lists A and B. In reality, the effective burden share during the First Replenishment was 59:41 and 60:40 during the Second Replenishment. Negotiations for the Third Replenishment agreed on a one-time basis that List A countries would match separately the convertible currency contributions of List C members on a 3:1 basis. This agreement established a new pattern of involvement in IFAD’s replenishment process for List C countries.

Fourth Replenishment

Negotiations for the Fourth Replenishment were completed in November 1996. The level of pledged contributions totalled $420 million and complementary contributions totalled $40 million. Governance
and voting rights issues figured prominently in the negotiations, and a special committee was established to review resource requirements and governance-related issues. Subsequent to these discussions, IFAD eliminated its formal category structure, although the membership would continue to work through lists. To strengthen the link between institutional representation and paid contributions (weighted voting), IFAD also revised its methodology for calculating members’ voting rights.

**Fifth Replenishment**

Negotiations for the Fifth Replenishment were completed in July 2000, and Resolution 119/XXIV was adopted on 31 July 2000 through a vote by correspondence. After receiving pledges equalling or exceeding 80% of the respective targets for the member lists ($360 million for List A, and $100 million for Lists B and C, collectively), the president completed Resolution 119/XXIV on 20 February 2001, in accordance with paragraph V.21 of the resolution and the powers delegated to him by the executive board. The period of the Fifth Replenishment was set at 20 February 2001 to 19 February 2004, with a target level of $569 million. The replenishment became effective on 7 September 2001.

**Sixth Replenishment**

The 25th anniversary session of the governing council (February 2003) adopted the Sixth Replenishment Resolution with a target of $560 million for the period 1 January 2004–31 December 2006. The replenishment subsequently became effective on 17 December 2003. As of September 2006, total pledges to the Sixth Replenishment, including complementary contributions, totalled $509.1 million.

**Seventh Replenishment**

The governing council established the Consultation on the Seventh Replenishment at its 28th session (February 2005). The resolution establishing the consultation increased the number of List C countries represented in the consultation from 12 to 15, and also included six observers. Negotiations were completed in December 2005, with a preliminary target of $800 million for the period 2007–2009. The governing council agreed that the structural gap would not exceed 15% of the target level. The council authorized the president to adjust the target level at the end of the six-month period for the creation of new votes, so that the total amount of pledges received by that date represented 85% of the adjusted target. If such an adjustment were necessary, the president would communicate the new target level to the governors, who would amend the replenishment resolution accordingly. After receiving pledges totalling $612.5 million from member states, the president communicated the new target of $720 million on 16 August 2006, and the governors revised the resolution. The replenishment took effect on 22 December 2006 (i.e., the date upon which the instruments of contributions relating to contributions from all members were deposited with the organization in an aggregate total equivalent to at least 50% of the $612.5 million in pledges to the replenishment received as of 16 August 2006).

The Consultation on the Seventh Replenishment recommended establishing an ad hoc committee of the executive board to review the voting rights of member states as well as the role, effectiveness, and

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138 See Document GC 28/Res.137/XXVIII.
139 See Document GC 28/L.5; Document GC/28 Resolutions, Resolution 137/XXVIII.
membership of the executive board. The consultation further recommended that the ad hoc committee have the same list composition as other executive board committees (i.e., four members from List A, two members from List B, and three members from List C) and that the committee meet with the objective of concluding its discussions and recommendations by the end of 2006. At its 87th session (April 2006), the executive board approved a recommendation to establish the committee, which commenced its work in July 2006.

Eighth Replenishment

The governing council established the Consultation on the Eighth Replenishment at its 31st session (February 2008). As with the previous negotiation, the consultation consisted of all members of Lists A and B, 15 member representatives from List C, and 6 observers. After five sessions, negotiations were completed in December 2008, and the governing council approved the consultation report in February 2009. The consultation agreed to a work program target of $3 billion for 2010–2012, and also set a $1.2 billion target for member contributions, representing a 67% increase over the last replenishment, the largest in the organization's history.

Procurement

IFAD defines eligibility for supplying project-related procurement in its procurement guidelines, which apply to all contracts for goods, works, and consulting services financed in whole or in part by IFAD financial assistance (loans and grants). Financing is disbursed exclusively for expenditures for goods, works, and consulting services provided by nationals of, and produced in or supplied by, IFAD member countries. Unless exempted by the president, the source of procurement is limited to firms, contractors, and consultants from member states; such exemptions are granted on a case-by-case basis. While the guidelines apply to all projects financed exclusively by IFAD, co-financed projects may be governed by the procurement guidelines of the cooperating institution, as set forth in the respective loan agreements.

The following considerations generally guide IFAD’s procurement requirements:

- the need for economy and efficiency in project implementation, including the procurement of the goods and works involved and the recruitment of consultants;

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145 “IFAD loan proceeds are disbursed exclusively for expenditures for goods, works and consulting services provided by nationals of and produced in or supplied from IFAD member countries. Under this policy, nationals of other countries or bidders offering goods, works and consulting services from other countries will be disqualified from bidding under contracts financed in whole or in part from an IFAD loan [n.b. also applies to grants in accordance with footnote 2 of the Procurement Guidelines], unless an exemption has been made by the President of IFAD on a case by case basis.” IFAD. 2004. Procurement Guidelines (PG). Part A, para. 7. www.ifad.org/pub/basic/procure/e/proceng.pdf
146 See AEI, Article 7, Section 2(g). Until February 2006, all IFAD loans were administered and project implementation supervised by “competent international institutions” (with the exception of those projects under a pilot programme approved by the Governing Council in 1997). In February 2006, the Governing Council adopted an amendment to the AEI and the LPC which would allow for regional, national or other entities to take on these tasks, or for IFAD to do its own loan administration and/or project supervision.
• IFAD's interest in giving all eligible bidders from developed and developing countries the opportunity to compete in providing goods, works, and consulting services financed by IFAD;
• IFAD's interest, as a development financing institution, in encouraging the development of domestic capacity to provide goods, works, and consulting services, and giving appropriate preference to experts, technicians, and supplies from developing countries;
• the importance of fairness, integrity, transparency, and good governance in the procurement process; and
• recognition that competition is the basis for efficient public procurement.  

Responsibility for project implementation and the award and administration of contracts rests with the borrower. Selection of the most appropriate procurement method is critical for meeting the particular needs of a project as well as satisfying the general and specific procurement considerations of both IFAD and the borrower. The procurement method adopted during project implementation is project-specific, and procurement is guided by the principle of international competitive bidding. The loan agreement specifies the methods of procurement for various items or services, as well as thresholds or set levels.

Special Programs

Strictly speaking, IFAD does not have any special funds—all of its “core resources” and additional funds (e.g., complementary contributions) are used under the same mandate and for the same operations. On the other hand, IFAD may, from time to time, administer special programs for specific purposes.

Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification

In Resolution 38/IX (dated 23 January 1986), the governing council authorized the establishment of the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification (SPA). Contributions to SPA were made by member states outside of Article 4 of the AEI, and these contributions were reported separately under separate financial statements. Therefore, such contributions were not considered regular or core resources.

At the same session, Resolution 39/IX established the Basic Framework on Special Resources for Sub-Saharan Africa (SRS). The council also established a special facility to receive and disburse funds for the SRS in accordance with the facility's constituent document. Membership and contributions to the facility are open to all IFAD member states on a voluntary basis, and contributions were parallel to the regular, or core, resources that finance IFAD’s regular work program. The SRS could be considered a trust fund to which more than one member state contributed.

Eligibility as source of procurement for projects and programs financed through SPA was more restricted, because it was limited to members who contributed to the SRS and to developing member states.

IFAD used the funds mobilized under SPA to assist rehabilitation and reactivation of the economies of the affected countries. The funds so mobilized were used by IFAD for operations under the SPA, and

150 IFAD. The Special Programme for sub-Saharan Africa. www.ifad.org/special/spa/index.htm
were additional to operations undertaken by IFAD under its regular program utilizing the resources defined in Article 4 of the AEI.\textsuperscript{151}

Loans and grants were made under the SPA and SRS from 1986 through the end of 1995. With the then-upcoming effectiveness of the Fourth Replenishment of IFAD’s Resources, the executive board, at its 55th Session and under authority granted by the governing council, approved the termination of SPA on 31 December 1995 and the integration of SRS funds into IFAD’s regular (Article 4) resources on 1 January 1996.

**Belgian Fund for Food Security**

In 1983, the Government of Belgium created the Belgian Survival Fund (BSF) in response to drought and famine in sub-Saharan Africa. In January 2010 the BSF was renamed the Belgian Fund for Food Security (BFFS)\textsuperscript{152} to better reflect its food security agenda.

Since 1984, IFAD and the Belgian Fund for Food Security Joint Programme have worked together to pursue a common goal: helping poor people in rural areas overcome poverty. In 1984, the Programme Support Unit was established within IFAD, and BFFS has partnered with IFAD to pioneer and refine its intersector development strategy for poverty reduction. This joint approach addresses a wide range of needs by supporting the socioeconomic sectors, including health, education, water and sanitation, and capacity-building. BFFS provides grants for rural development projects that focus on food security and nutrition in the poorest countries in Africa, targeting the most vulnerable households. BFFS grants are linked with IFAD loans to such countries.

IFAD and BFFS each offer unique expertise. BFFS increases the value of IFAD investments by focusing on water and sanitation, capacity building at all levels (local authorities, farmers groups, etc), micro-credit, and land issues (land-ownership and environmental protection, etc). Because BFFS grants include activities such as bringing clean drinking water to a village, thus improving the health of the population, they offer an entry point for projects funded by IFAD co-financing through its own resources. IFAD financing (loans or country grants) and BFFS grants (which emphasize social issues) are complementary because they tackle the broad range of problems faced by rural poor people.

Eligibility for financing by the BFFS Joint Programme is limited to those projects and countries approved at the annual meeting of the BFFS Steering Committee. Governance of funding from BFFS, including approval of programs and projects, remains with the donor. The Government of Belgium formalizes the approval of each BFFS funding proposal with a ministerial decree issued by the minister of development cooperation, specifying the project/program to be financed and the amount and purpose of its contribution.

BFFS funds are received as part of the IFAD replenishment process. While BFFS Funds are included within the consolidated financial statements of IFAD, the separate BFFS financial statements are subject to a separate independent audit opinion.

**Financing Facility for Remittances**\textsuperscript{153}

In 2006, IFAD established a multi-donor Financing Facility for Remittances (FFR) to promote innovative partnerships between rural financial institutions and remittance operators. Such partnerships can generate significant benefits by easing competition and reducing costs, thereby offering more resources to poor households and increasing their options to use capital profitably.

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\textsuperscript{151} Introduction of the Basic Framework on Special Resources for Sub-Saharan Africa.

\textsuperscript{152} For more information, please visit the BFFS.JP website: www.ifad.org/bffs

\textsuperscript{153} For more information on the Financing Facility for Remittances, see www.ifad.org/remittances
FFR increases economic opportunities for poor rural people by supporting and developing international and domestic remittance services that are innovative, cost-effective, and easily accessible. To achieve these goals, FFR launches competitive annual calls for proposals, selecting and financing only the most innovative and promising projects. FFR awards eligible institutions with grant financing up to $250,000 per project, to be implemented within a two-year period.

To date, FFR has selected 25 grant recipients, who draw funding from IFAD in partnership with the European Commission, the Consultative Group to Assist the Poor, the UN Capital Development Fund, the Governments of the Grand Duchy of Luxembourg and Kingdom of Spain, and the Inter-American Development Bank. The selected projects focus on three major activities in rural areas:

- improving remittance transmission and access to remittance services;
- linking remittances to financial services and products in rural areas; and,
- developing innovative and productive rural investment channels and opportunities for migrants and community-based organizations.

**Indigenous Peoples Assistance Facility**

At its 88th Session, the IFAD executive board approved the transfer of the World Bank’s Grant Facility for Indigenous People to IFAD for the purpose of making small grants to indigenous peoples organizations for development projects. IFAD established the facility and renamed it the Indigenous Peoples Assistance Facility. Projects financed under the facility are consistent with the strategic framework of IFAD, which singles out indigenous peoples as an important target group because they face economic, social, political, and cultural marginalization within their own societies, resulting in extreme poverty and vulnerability for a disproportionate number of people. IFAD administers funds it receives for the facility as supplementary funds.

Indigenous peoples community organizations, not-for-profit organizations, and nongovernment organizations (NGOs) legally registered in the country of grant implementation are eligible to apply for grants financed under the facility. These organizations must be fully functioning, and applications for financing must contain, at a minimum, the bylaws, certificate of registration, and evidence of legal capacity of the organization to receive donor funds under applicable law.

The facility is managed members of its own board, which is separate and composed of a majority of indigenous peoples leaders. In addition to its fiduciary responsibilities, IFAD has certain operational responsibilities. Through its participation in the facility’s board, IFAD participates in the proposal review process and has veto power over any proposal that could pose any risk for IFAD. In addition, IFAD and its consultants directly monitor and supervises situations where IFAD has its own financed operations are under implementation.

**Hosted Entities**

**The Global Mechanism of the United Nations Convention to Combat Desertification**

The Global Mechanism was established by Article 21 of the United Nations Convention to Combat Desertification (UNCCD), and began operations in October 1998. As a subsidiary body of the UNCCD, its mandate is to “increase the effectiveness and efficiency of existing financial mechanisms...[and]...to promote actions leading to the mobilization and channelling of substantial financial resources to affected developing-country Parties.”

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154 For more information on the Indigenous Peoples Assistance Facility, see www.ifad.org/english/indigenous/grants/index.htm
156 Visit the GM’s website for more information: www.global-mechanism.org/
Considering its role as a global agency positioned at the forefront of tackling land degradation and reducing rural poverty through agricultural development, IFAD was selected to host the Global Mechanism in 1997.

**The Role of the Global Mechanism**

The Global Mechanism specializes in providing advisory services on finance to developing country parties to the convention, helping them upscale public finance and private sector investments in sustainable land management (SLM) and rural development activities. Since the launch of the Paris Declaration on Aid Effectiveness and the changing financial architecture in Overseas Development Assistance, the Global Mechanism has focused on national-level coordination of line ministries with the ministries of finance and the international community, thus positioning SLM on the development agenda, where it can and to positively influence the allocation of financial resource. This in-country work is complemented information and access to funds and other sources of finance by making available at the international level.

The Global Mechanism’s primary instrument for supporting country parties in this regard is the Integrated Financing Strategy (IFS). As required by the UNCCD Ten-Year Strategy, the IFS guides the process toward establishing an Integrated Investment Framework containing a package of bankable SLM projects and programs. Used repetitively during each domestic budget process, this strategy aims to mobilize resources from a variety of sources, the domestic budget, and at the international level as well as innovative sources linked closely with land (e.g., financial mechanisms for food security, climate change adaptation/mitigation, trade and market access, and water and forests. Cooperation with the Global Environment Facility (GEF) and its implementing agencies plays an important role in mobilizing cofinance for GEF projects to achieve programmatic approaches at country level.

To maximize the effectiveness of its support to countries, the Global Mechanism works closely with a dynamic network of partners who are committed to focusing their energy, resources, and knowledge to deliver against the objective of increased finance for sustainable land management, as a cross-cutting development objective. The Global Mechanism has forged partnerships with governments, bilateral and multilateral development cooperation agencies, the private sector, civil society, and academia. This dynamic network is continuously evolving, with an increasing number of innovative financing mechanisms emerging at all levels.

**The Global Mechanism and IFAD**

The Global Mechanism’s approach and instruments, such as its country engagement modalities and IFSs are complementary to IFAD’s Country Strategic Opportunities Programmes (COSOPs) and country-level projects and programme design processes. Given that the Global Mechanism is mandated to support countries in scaling up finance for SLM, IFAD is the most natural partner of the Global Mechanism.

In addition, the Global Mechanism collaborates closely with IFAD’s Global Environment and Climate Change Unit to attract and mobilize cofinancing GEF programs executed by IFAD and
other agencies (e.g., the World Bank, United Nations Development Programme, United Nations Environment Programme, and the regional development banks). The Global Mechanism continues to support interventions by IFAD’s Global Environment and Climate Change Unit that assist countries in adopting an enhanced multi-sectoral and integrated programmatic approach.

**International Land Coalition**

The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, and capacity building. ILC was established in 1995 as an outcome of the Conference on Hunger and Poverty, which recognized the urgent need to empower the rural poor by increasing their access to land, water, and common property. Composed of 83 members from more than 40 countries, including farmers’ associations, NGOs, research institutions, and UN agencies, ILC is funded through voluntary contributions from multi- and bilateral donors. IFAD is a founding member of the ILC and is a co-chair of the Coalition Council, a governing body of ILC along with its Assembly of Members. IFAD has hosted the ILC Secretariat since 1998, and IFAD’s regional divisions collaborate with ILC members in Africa, Asia, and Latin America. IFAD’s Finance Division produces and clears ILC’s annual financial statements, which are subject to an independent external audit.

Working through regional platforms, ILC aims to enhance the capacities of its members and partners at all levels and promote the resource rights of poor women and men in developing countries. ILC places a strategic focus on working for landless people and those who are most vulnerable to land tenure insecurity, including: small and marginalized farmers, especially women; people reliant on common property resources (including water, forests, pastures, rangelands, and indigenous territories); people negatively affected by extractive industries, conservation, and tourism; and people affected by land-related conflicts.

The ILC Secretariat acts as a network facilitator to implement ILC activities and initiatives, including the Commercial Pressure on Land initiative, which focuses on the impact of recent global trends that are prompting a massive increase in global commercial interest in land and natural resources; the Land Alliance for National Development to strengthen national level collaboration between state, civil society, bilateral, and international stakeholders; the Land Reporting Initiative to promote evidence-based advocacy at the national level; Women’s Access to Land, a crosscutting area of work with targeted initiatives; and the Community Empowerment Facility, which supports the capacity building and institutional strengthening of civil society organizations at the local, national, and regional levels.

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163 For more on ILC, visit [www.landcoalition.org](http://www.landcoalition.org)
Chapter 8

The Global Environment Facility: Institutional and Operational Aspects

Maurizio Ragazzi*

Introduction

The Establishment of the Global Environment Facility

After calls at the 1989 annual meetings of the Bretton Woods institutions for the creation of a voluntary fund for the global environment, the Global Environment Facility (GEF) was established in 1991 by Resolution 91-5 of the Executive Directors of the International Bank for Reconstruction and Development (IBRD, or the World Bank),1 accompanied by interagency procedural arrangements with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP).2 When it was established in 1991, the GEF was a pilot program with the enduring aim of providing financial resources to implement projects, programs, and activities protecting the global environment.

In 1992, the GEF participants agreed to modify its structure and modalities on the basis of eight principles whereby the GEF would

(i) provide additional grant and concessional financing of the agreed incremental costs to achieve agreed global environment benefits,

(ii) finance activities benefiting the global environment in selected focal areas,

(iii) function as the funding mechanism for global environmental conventions if so requested,

(iv) ensure the cost-effectiveness of its activities,

(v) fund country-driven projects and programs,

(vi) build on proven institutional structures,

(vii) be transparent and accountable to donors and beneficiaries, and

(viii) be flexible as a need for modifications arises.3

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1 In World Bank usage, the expression “World Bank” ordinarily identifies jointly IBRD and the International Development Association (IDA), while the term “Bank” is ordinarily used just for the former. On the other hand, the expression “World Bank Group” refers to all five affiliates: IBRD, IDA, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes. However, under the GEF Instrument (and in this writing), the expression “World Bank” identifies only IBRD. It is, therefore, IBRD (and not any other World Bank Group affiliate) that acts as implementing agency, trustee, and provider of administrative services for the GEF.

2 Resolution 91-5 was adopted on 14 March 1991. Its text and annexes are reproduced in International Legal Materials 30 (1991), pp. 1758–1772. The Procedural Arrangements among the World Bank, UNEP, and UNDP, for operational cooperation under the GEF, are in Annex C.

At the same time, the action plan (Agenda 21) adopted by the 1992 United Nations (UN) Conference on Environment and Development called for GEF restructuring to encourage universal participation, flexibility, transparency and democratic governance, predictability in the flow of funds, and new forms of conditionality. The same call for GEF restructuring was embodied in Article 21(3) of the UN Framework Convention on Climate Change (Climate Change Convention) and in Article 39 of the Convention on Biological Diversity (Biodiversity Convention) as a prerequisite for designating the GEF as the financial mechanism of these conventions.

As a result of these developments, seven rounds of restructuring negotiations with an increasing number of participants began in December 1992. The representatives of 73 participating states accepted the Instrument for the Establishment of the Restructured Global Environment Facility (the GEF Instrument) in March 1994, transforming the GEF from an experiment into a permanent program. After formal adoption by the World Bank, UNEP, and UNDP, the GEF Instrument became effective on 7 July 1994. Since its initial phase in 1991, GEF membership has increased to 182 participants. The GEF has provided financing for over $8 billion (almost all grants) and generated nearly $33 billion in cofinancing to support about 2,200 projects and activities in more than 160 developing countries and countries with economies in transition.

The World Bank, UNEP, and UNDP are the three implementing agencies of the GEF. The World Bank plays two additional roles: (i) it is the sole trustee of the GEF Trust Fund, and (ii) it provides administrative support to the GEF Secretariat. Annex B of the GEF Instrument details the role and fiduciary responsibilities of the World Bank as trustee. They include resource mobilization, financial management, reporting and monitoring, and entering into arrangements with various entities. The trustee is the “legal owner” and holds in trust the funds, assets, and receipts that constitute the GEF Trust Fund. Regarding the performance of its fiduciary responsibilities, the trustee is accountable to the GEF Council, which is the executive board of the GEF.


As a result of their restructuring negotiations, the GEF participants decided not to provide the GEF with legal personality, as their intention was not to create a new institution. But what exactly is the GEF? In a Memorandum to the Executive Secretary, Intergovernmental Committee for the Convention on Biological Diversity, the UN Office of Legal Affairs expressed the view that “the restructured GEF constitutes a joint subsidiary body, in the form of a financial mechanism created by the World Bank and UNDP and UNEP, acting on behalf of the United Nations.” The World Bank’s legal department has questioned

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this view. However, both legal offices agree on the lack of legal personality in the GEF, which may be described as a unique finance mechanism, representing a “unique blend of United Nations and Bretton Woods practices.”

The GEF Instrument is also unique, because it is not an international treaty (i.e., an international agreement governed by international law and concluded between states or international organizations). Naturally, the fact that the GEF Instrument is not a treaty does not exclude the possibility that customary rules on the law of treaties may provide a helpful starting point, by analogy, when analyzing the provisions of the GEF Instrument, as has indeed been the case.

Over time, the GEF Instrument has been amended twice, and two other amendments are currently pending. In 2002, the second GEF Assembly (in Beijing, People’s Republic of China) approved the GEF Council’s proposal to add land degradation and persistent organic pollutants to the GEF’s four original focal areas—biological diversity, climate change, international waters, and ozone layer depletion. In 2006, the third GEF Assembly (in Cape Town, South Africa) approved the GEF Council’s proposal that, if the council so decides, council meetings may take place outside of the secretariat’s seat in Washington, DC.

At its November 2006 meeting, the GEF Council agreed to recommend to the fourth GEF Assembly (to be held in Punta del Este, Uruguay, in 2010) an amendment to para. 6 of the GEF Instrument whereby the GEF would operate as a finance mechanism of the United Nations Convention to Combat Desertification (UNCCD). Finally, at its June 2009 meeting, the GEF Council agreed to recommend to the fourth GEF Assembly an amendment to para. 21 whereby the council would appoint the GEF chief executive officer (CEO) (with no joint recommendation by the implementing agencies, as is currently the case) for a one-time renewable term of 4 years (rather than 3, as is currently the case).

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14 Para. 7 of the legal memorandum attached to GEF/C.22/Inf.15/Rev.1 (14 November 2003). www.thegef.org/Documents/Counci_Documents/GEF_C22/GEF_c22.html#Information

15 For the text of the Beijing Declaration of the second GEF Assembly, with an introductory note by the author of this contribution, see Beijing Declaration of the Second GEF Assembly (2005), pp. 1002–1007.


18 See documents of the third GEF Assembly, along with those of the first and second Assemblies: www.thegef.org/interior_right .asp?id=52&menu_id=114


The amendment procedure is set forth in para. 34 of the GEF Instrument. An amendment recommended by the GEF Council requires consensus approval by the GEF Assembly, and becomes effective only after it has been adopted by the three implementing agencies and the trustee in accordance with their respective rules and procedural requirements. The same procedure applies to a proposal to terminate the GEF Instrument.\textsuperscript{22}

**Institutional Aspects**

The GEF has three organs—the Assembly, the Council, and the Secretariat—and an advisory body—the Scientific and Technical Advisory Panel (STAP).\textsuperscript{23}

**The Global Environment Facility Assembly**

The Assembly consists of the representatives of all GEF participants (or members); each participant appoints one representative and one alternate. As the governing body of the GEF, the Assembly is responsible for reviewing the GEF’s general policies and membership, evaluating GEF operations, and approving amendments to the GEF Instrument on the Council’s recommendation.

The understanding among the participants in the negotiations that led to the adoption of the GEF Instrument was that the GEF Trust Fund would be replenished every 3 years, but there is no requirement to that effect in the GEF Instrument. Under the first replenishment, the GEF Trustee was authorized to accept contributions to the GEF Trust Fund from 1 July 1994 to 30 June 1997. Instead, the second and subsequent GEF replenishments have provided for additional resources to be made available to the GEF Trust Fund over the following 4-year periods: 1998–2002, 2002–2006, and 2006–2010. As a result, and contrary to what may be inferred from para. 13 of the GEF Instrument (whereby the Assembly should meet once every 3 years), GEF Assemblies have taken place every 4 years: Delhi (1998), Beijing (2002), and Cape Town (2006).\textsuperscript{24} Acknowledging that the Assembly may take full account of the policy recommendations emerging from the conclusion of the replenishment negotiations, the GEF Council agreed in May 2000 that

the Assembly should be linked with the completion of replenishment discussions and that it would therefore be important for the forthcoming GEF Assembly to be held after the completion of negotiations for the third replenishment of the GEF Trust Fund.\textsuperscript{25}

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\textsuperscript{22} Termination of the GEF Instrument should not be confused with termination of the role of trustee or implementing agency, regarding which the relevant provisions in the GEF Instrument are para. 35 and Annex B (para. 14).

\textsuperscript{23} In accordance with the Scientific and Technical Advisory Panel (STAP) terms of reference adopted by the GEF Council in June 2007: http://stapgef.unep.org/docs/folder.2005-12-08.7258554031/folder.2005-12-06.1499852866/STAP%20ToR%20-%20%20June%202007.pdf, and the UNEP executive director's proposal on the reconstitution of the STAP approved by the GEF Council in April 2008 (GEF/C.31/Rev.1 (25 March 2008): www.thegef.org/uploadedFiles/Documents/Council_Documents_%20(PDF_DOC)/GEF_31/GEF%2031/GEF%2031%20C.31.Rev.1%20Proposal%20of%20the%20composition%20of%20STAP.pdf). The STAP is composed of six experts whose biographies are in the Annex of the latter document. The members on the STAP are appointed for a renewable term of 2 years by the UNEP executive director, in consultation with the GEF implementing and executing agencies, the GEF Secretariat, and upon approval by the GEF Council. The STAP and its ad hoc working groups are supported by a Secretariat provided by UNEP. See the STAP Rules of Procedure, prepared by UNEP and submitted to the GEF Council for information (GEF/C.33/Inf.11, dated 16 April 2004): http://stapgef.unep.org/about/docs/folder.2005-12-08.7258554031/folder.2005-12-06.1499852866/Rules%20of%20Procedure%20of%20STAP.pdf. The STAP meets twice a year, usually 6 weeks before the GEF Council. See the documentation regarding STAP meetings: http://stapgef.unep.org/activities/stapmeetings/index_new.html

\textsuperscript{24} See the documentation regarding the three Assemblies: www.thegef.org/interior_right.aspx?id52&menu_id=114

\textsuperscript{25} See para. 68 of the Joint Summary of the Chairs of the May 2000 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_May_2000_English.pdf. On that occasion, the GEF Council also concluded that it would be useful for the forthcoming Beijing Assembly to be held after the convening of the Rio+10 conference so that the Assembly “may take into account the results and new directions agreed to by the conference.”
However, in 2006, the third GEF Assembly rejected an amendment to the GEF Instrument to the effect that it would expressly provide that the Assembly be convened after the conclusion of replenishment negotiations, or as otherwise decided by the Council.26

Under its Rules of Procedure, the Assembly is open to accredited representatives and alternates of all the GEF participants (with a maximum of two advisors for each representative in the meeting room).27 The Assembly is also open to the participation of the representatives of various entities, including the GEF implementing agencies, the trustee, STAP, regional development banks, the environmental conventions, funding organizations, and accredited major groups. In addition to any privileges and immunities they may have by virtue of their office, irrespective of the GEF, all those participating in the Assembly in an official capacity enjoy the privileges and immunities ensured by a memorandum of understanding (MoU) that is signed before each Assembly by and among the government of the host country, the Secretariat, and the World Bank as trustee. The MoU also spells out the rights and obligations regarding meeting services and facilities.

The provisional agenda for each Assembly meeting is prepared by the GEF CEO and approved by the Council. The meeting elects a chair without the right to vote, while the CEO serves as an ex officio member of the bureau of the meeting. As expressly required in para. 25(b) of the GEF Instrument, Assembly decisions are taken by consensus. Although various authors and texts provide different definitions, consensus is essentially a procedure for adopting a decision when no participant in the decision-making process opposes the contents of the decision strongly enough to insist on a formal vote.28 Hence, consensus does not necessarily imply unanimity. In fact, there may well be situations in which the dissenting decision makers, while not agreeing on a decision reached by consensus, do not request a formal vote and are content with attaching statements to the decision reached by consensus to the effect that they would not have supported the decision had a vote been taken.29

The Global Environment Facility Council

The Council is the executive body of the GEF tasked with developing, adopting, and evaluating GEF policies and programs. Its functions are listed in para. 20 of the GEF Instrument and include the exercise of “such other operational functions as may be appropriate to fulfill the purposes of the Facility.”30 The Council consists of 32 members (and an equal number of alternates) representing constituency groupings that reflect a need for the “balanced and equitable representation of all participants and giving due weight to the funding efforts of all donors.”31 The division is as follows: 16 members are from developing countries, 14 are from developed countries, and 2 are from economies in transition.

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26 The text and background of the proposed amendment are in paras. 3 to 7 of GEF/A.3/5 (14 June 2006): www.thegef.org/uploadedFiles/GEF.A.3.5%20Proposed%20Amendments%20to%20the%20Instrument.pdf. The rejection of the proposed amendment is noted in para. 9 of the Chair’s Summary of the Third GEF Assembly: www.thegef.org/uploadedFiles/Chair%20Summary.pdf


28 As a means to adopt a decision or resolution, consensus developed out of an emergency situation in the 1960s, when the UN General Assembly was faced with a situation in which several members were in substantial arrears with their contributions and were deprived of their voting rights. As a solution, the General Assembly decided to operate under a procedure whereby decisions would be taken without a vote. Since then, this procedure has become a familiar feature at the UN and at other international organizations.

29 Despite contrary views expressed in the international legal literature, such statements expressing reservations to decisions reached by consensus do happen in practice. Hence, a state not entirely satisfied with a decision reached by consensus may still decide not to impede such a consensus, thus remaining silent or registering its dissatisfaction without requesting a formal vote.

30 This language is quite broad. Does it include the power to decide on issues of interpretation of the GEF Instrument? No provision similar to Article IX (“Interpretation”) of the World Bank’s Articles of Agreement has found its way into the GEF Instrument. In practice, issues of interpretation have been tackled pragmatically, and amendments have been the last resort when a solution could not be achieved by means of reasonable interpretation that would respect the letter and intent of the GEF Instrument.

Some constituencies (Canada, the People’s Republic of China, France, Germany, Iran, Italy, Japan, the Netherlands, the United Kingdom, the United States) are formed by only one country, while the others are multicity constituency. In another distinction, 14 constituencies represented by members and alternates from developed countries are composed principally (but not exclusively) of nonrecipient countries and, therefore, are identified in Annex E of the GEF Instrument as nonrecipient constituencies. The 18 other constituencies, known as recipient constituencies, include 6 for Africa, 6 for Asia and the Pacific, 4 for Latin America and the Caribbean, and 2 for Central-Eastern Europe and the former Soviet Union. The joining of a constituency by any new GEF participant is the result of a consultation process that considers several criteria, including those listed in para. 3 of Annex E of the GEF Instrument:

(i) equitable and balanced representation,
(ii) common environmental concerns,
(iii) policies and efforts toward sustainable development,
(iv) natural resources endowment and environmental vulnerability,
(v) contributions to the GEF (the prevailing factor in the formation of nonrecipient constituencies), and
(vi) other relevant factors.

The Secretariat provides assistance to facilitate these consultations, and a country’s participation in a constituency is subject to confirmation by the Council. GEF financial assistance is available for constituency meetings and to facilitate communication between Council members and their constituencies.

Each member and alternate of the Council is appointed by the participants in any given constituency for a renewable 3-year term (or until a new member is appointed, whichever comes first), unless the constituency decides otherwise. Members and alternates serve without compensation in their representative (not personal) capacity. As Council members and alternates are neither GEF staff members nor, as a rule, do they hold appointments to the World Bank, the privileges and immunities of the World Bank do not apply to them. As stated in a legal memorandum, although some Council members and alternates may have privileges and immunities by virtue of their office, no privileges and immunities derive from either the GEF Instrument or the privileges and immunities of the implementing agencies and the trustee.

Pursuant to para. 17 of the GEF Instrument, the Council meets semi-annually “or as frequently as necessary to enable it to discharge its responsibilities.” Unless otherwise decided by the Council, meetings take place in Washington, DC, except that Council meetings take place at the same location as Assembly meetings when they occur. The costs of Council meetings are disbursed from the administrative budget of the Secretariat and may include the travel and subsistence expenses of Council members, notably those from the least developed countries.

32 For example, the constituency represented by Switzerland includes Azerbaijan and five Central Asian countries.
33 For example, when Cambodia became a GEF participant and requested to join a certain constituency, its minister of the environment stressed that “all current GEF projects underway in Cambodia have some transboundary and regional components and the inclusion of Cambodia in this constituency will enable Cambodia to better coordinate GEF activities between the constituency members on these issues.” (GEF/C.19/4 (8 May 2002), para. 2: www.thegef.org/Documents/Council_Documents/GEF_C19/gef_c19.html)
34 A summary of the procedure for joining a constituency: www.gefweb.org/interior.aspx?id=212. The constituencies of Israel, Libya, and Malta have yet to be determined.
35 A tool kit for requesting and using such financial assistance: www.thegef.org/gefevaluation.aspx?id=17054&terms=toolkit
36 See the legal memorandum attached to GEF/C.22/Inf.15/Rev.1 (14 November 2003), which has already been cited: www.thegef.org/Documents/Council_Documents/GEF_C22/gef_c22.html#Information
The conduct of Council meetings is governed by the rules of procedure of the GEF Council, adopted in 1994 and subsequently amended in 1999 and 2000. The rules of procedure have also been adapted to meetings where the GEF Council acts as the Council for two other funds (i.e., the Least Developed Countries Fund for Climate Change and the Special Climate Change Fund), with minor modifications.

Council meetings are open to members, alternates, the CEO, and two advisors accompanying each member. Invitees to Council meetings include representatives of each GEF participant and representatives of the three implementing agencies, the trustee, STAP, the environmental conventions and, upon the CEO's decision after consulting the Council, the representatives of other organizations and entities. The agenda for each meeting is prepared by the CEO and adopted by the Council at the beginning of each such meeting. At least 4 weeks before the beginning of a regular meeting, and as soon as possible before a special meeting, the CEO transmits documentation regarding the items on the provisional agenda to all meeting invitees. At each meeting, the Council elects a chairperson. Para. 18 of the GEF Instrument requires that this position alternate between recipient and nonrecipient Council members from one meeting to the next. The chairperson, who has no right to vote, conducts the Council's deliberations on such issues as monitoring and evaluation, oversight of the Secretariat's work, and other issues mentioned in para. 18. On the other hand, the CEO conducts deliberations on issues such as the review and approval of the work program and GEF's operational modalities. The elected chairperson and the CEO jointly conduct deliberations reviewing the purposes, scope, and objectives of GEF operations.

As is the case for Assembly decisions, Council decisions are adopted by consensus. Para. 2(o) of the 1994 draft rules defined consensus as “the prevailing sense of the meeting such that the Chair ascertains that if a vote were to be taken on a decision under consideration the decision would be adopted.” However, several members expressed concern with this definition or with any need for a definition at all. Therefore, the Council finally agreed to drop the definition of consensus from the rules it adopted.

If the Council and its chairperson have made all practicable efforts to reach consensus without success, any Council member, pursuant to para. 25(b) of the GEF Instrument, may require a formal vote. When this is the case, the decision is taken by a double-weighted majority (i.e., an affirmative vote representing 60% of both the total number of GEF participants and total contributions). For the purposes of voting power, the total contributions are the actual cumulative contributions made to the GEF Trust Fund. The Council members (who each represent one or several GEF participants) cast their votes. A Council member representing a plurality of GEF participants may cast the votes of each participant separately.

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37 The Rules were attached to the decision on agenda item 5 in the Joint Summary of the Chairs of the November 1994 Council Meeting: www.thegef.org/Documents/Council_Documents/GEF_C2/GEF.C.2__Joint_Summaray_of_the_Chairs.pdf
40 See Council documents of these two funds: www.thegef.org/interior.aspx?id=18072. At its April 2008 meeting, the GEF Council accepted an invitation by the COP serving as the Meeting of the Parties to the Kyoto Protocol to provide Secretariat services on an interim basis to a third fund, i.e., the Adaptation Fund (see para. 7 of the Joint Summary of the Chairs of the April 2008 Council Meeting: www.thegef.org/uploadedFiles/Documents/Council_Documents__PDF_DOC)/GEF_33/Joint%20Summary%20of%20the%20Chairs(1).pdf). However, examining any of the documents regarding these three funds exceeds the scope of the present analysis.
When a decision requires a formal vote, the written text of the motion is distributed to all Council members. A formal vote is then taken at the subsequent Council meeting. If a member proposes an amendment, voting is taken first on the amendment and then on the proposal to which it refers. Voting is conducted by alphabetical roll call. Whenever a decision cannot be postponed, the rules allow a vote without a meeting. In such circumstances, the CEO transmits a proposed decision to each member, with an invitation to approve it on a no-objection basis. The approval of a decision with financial implications requires responses from at least two-thirds of the Council members. If a member objects to any proposed decision, the CEO places the proposed decision on the agenda of the subsequent Council meeting.

The Global Environment Facility Secretariat

Pursuant to para. 21 of the GEF Instrument, the Secretariat services and reports to the Assembly and the Council. Also listed in para. 21, the Secretariat's functions include implementing Assembly and Council decisions, overseeing program activities, preparing common guidelines on the GEF project cycle, chairing interagency group meetings, coordinating activities with other secretariats, providing information to the trustee, and performing other functions entrusted to it by the Council.

Although functionally independent, the Secretariat is supported administratively by the World Bank. The Secretariat has a separate budget, provided by the Trust Fund, to reimburse the Secretariat for administrative expenses incurred in the performance of its corporate management activities. The Council reviews and approves the yearly corporate budget for the GEF, including the Secretariat's budget. With these funds, the Secretariat then reimburses the World Bank for the budget monitoring system, treasury services, legal advice, training support, office technology support, and other ancillary services performed by the World Bank on behalf and for the benefit of the Secretariat. Since 2003, the corporate budget of the GEF Evaluation Office (an independent evaluation entity within the GEF that reports directly to the Council on monitoring and evaluation) has been reported separately from the Secretariat's corporate budget.

The Secretariat is headed by a CEO (identified in the Instrument as the "CEO/Chairperson") who presently (i.e., pending the approval of the recommended amendment mentioned above) is appointed (and may be reappointed) for 3 years by the Council on the joint recommendation of the three GEF implementing agencies. The Council may remove the CEO for cause. Secretariat staff members are

45 See GEF/C.54 (20 June 1995) for commentary on the Secretariat’s functions and the staffing plans at an early stage of the GEF existence: www.thegef.org/Documents/Council_Documents/GEF_C5/GEF_C5.4_GEF_Secretariat_Staffing_Plan_for_FY96.pdf
48 The first GEF CEO was Mohamed T. El-Ashry (Egypt), who had been the Chairman of the GEF pilot phase and was appointed as CEO at the first Council meeting in 1994. (See para. 4 of the Joint Summary of the Chairs of the July 1994 Council Meeting: www.thegef.org/Documents/Council_Documents/GEF_C1/Joint_Summary_of_the_Chairs.pdf) He was reappointed in 1997 and 2000. (See para. 4 of the Joint Summary of the Chairs of the April/May 1997 Council Meeting: www.gefweb.org/COUNCIL/council9/sumc9.htm; and para. 4 of the Joint Summary of the Chairs of the May 2000 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_of_the_Chairs-May_2000.pdf) El-Ashry was succeeded by Leonard Good (Canada), who was appointed CEO in 2003. (See para. 7 of the Joint Summary of the Chairs of the May 2003 Council Meeting: www.thegef.org/Summary_of_the_Chairs.pdf) Good was succeeded by Monique Barbut (France), who was appointed CEO in 2006 (see para. 52 of the Joint Summary of the Chairs of the June 2006 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_SummaryoftheChairs_C.28_001.pdf), and reappointed in 2008 (see para. 30 of the Joint Summary of the Chairs of the November 2008 Council Meeting: www.thegef.org/uploadedFiles/Documents/Council_Documents_pdf/GEF_C34/Joint%20Summary%20of%20the%20Chairs_C.34.pdf). (In para. 31 of the same document, the Council requested from the Secretariat a paper “exploring the option of making the CEO term and the replenishment cycle coterminous.”)
professionals seconded from the GEF implementing agencies or hired competitively by one of the GEF implementing agencies, which in practice is the World Bank on account of its administrative support to the GEF. The CEO is responsible for the appointment and dismissal of Secretariat staff members. The CEO and Secretariat staff members serve in their personal capacity and enjoy the privileges and immunities given to World Bank officials and employees.50

Relationship with the Conventions

In accordance with para. 6 of the GEF Instrument, the GEF serves as the financial mechanism of three environmental conventions: the UN Framework Convention on Climate Change, the Convention on Biological Diversity, and the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention).51 In this role, the GEF functions “under the guidance of, and is accountable to”52 the Conferences of the Parties (COPs), the supreme organs of these conventions.53 Pursuant to paras. 15,54 20(h),55 and 2656 of the GEF Instrument, such guidance and accountability imply the obligation of the Council, when operating as the financial mechanism of the environmental conventions, to act in conformity with “the policies, program priorities and eligibility criteria decided by the [COP]” for the purposes of each convention.57

The relationship between the GEF Council and the COPs is specified in “cooperative arrangements or agreements” (para. 27 of the GEF Instrument) which, in practice, have taken the form of MoUs approved in parallel by the COPs and the Council (the Council having given its approval only after the COPs adopted the MoU, except in the case of the MoU for the Climate Change Convention, for which the reverse order of approval was followed). The MoUs regarding all three conventions mentioned in para. 6 of the GEF Instrument have been approved: (i) the MoU between the Council and the COP to the Climate Change Convention,58 (ii) the MoU between the Council and the COP to the Biodiversity Convention,59 (iii) the MoU between the Council and the COP to the Biodiversity Convention.
A fourth MoU differs from the other three because it is an MoU for enhanced collaboration between the GEF and UNCCD.

The MoUs have broadly similar structures: after a preamble and the definitions, they contain paragraphs discussing the purpose of the MoU; guidance to the GEF by the COP; reporting, monitoring, and evaluation; inter-Secretariat cooperation; and reciprocal representation, followed by closing paragraphs discussing amendments, interpretation, entry into effect, and termination.

However, there are differences. For example, pursuant to para. 4 of the MoU with the COP to the Climate Change Convention, the Council ensures "the effective operation of the GEF as a source of funding activities for the purposes of the Convention in conformity with the guidance of the COP." To this end, the GEF Council “reports regularly” to the COP on its convention-related activities and on their conformity with the guidance provided by the COP. In para. 5, it is further specified that, regarding funding decisions for specific projects, the COP may ask the Council for "further clarification on the specific project decision and in due time may ask for a reconsideration of that decision" should it consider that the decision in question does not comply with the established policies, program priorities, and eligibility criteria. The MoU with the COP to the Biodiversity Convention also requires the Council in para. 3.1 to report regularly to the COP, and allows in para. 4.2 for a request for “further clarification,” similar to that found in para. 5 of the MoU for the Climate Change Convention. However, the difference is that the MoU for the Biodiversity Convention contains no parallel request for the “reconsideration” of

its May 1995 meeting (see para. 16 of the Appendix to the Joint Summary of the Chairs of the May 1995 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_May_1995_English.PDF) and its July 1995 meeting (see paras. 16–19 of the Appendix to the Joint Summary of the Chairs of the July 1995 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_July_1995_English.PDF), approved the MoU at its subsequent meeting (see para. 24(b) of the Appendix to the Joint Summary of the Chairs of the April 1996 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_April_1996_English.pdf). In reality, the April 1996 decision properly relates to the approval of an amendment to the annex to the MoU on determining funding; the annex was approved by the Council at its April/May 1997 meeting. (See para. 7 of the Appendix to the Joint Summary of the Chairs of the April/May 1997 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_April–May_1997_English.pdf.) However, it is also true that the approval of an amendment to an annex would not have made much sense unless the MoU (to which the annex in question relates) had been approved as well. In fact, in the preamble of a decision of the fourth meeting of the Subsidiary Body for Implementation of the Climate Change Convention (Decision 1/SBI 4, Annex I, in FCCC/SBI/1996/14: http://unfccc.int/resource/docs/1996/sbi/14.pdf), it is stated that the MoU was approved by the Council “at its April 1996 session”, thus correcting the mistaken reference to “July 1995” in para. 2 of the Note by the Secretariat in FCCG/CP/1996/9 (http://unfccc.int/resource/docs/cop2/09.pdf). The COP adopted the MoU on 19 July 1996 (see the citation at the beginning of this footnote).

59 CBD/COP/3/Decision III/8: www.cbd.int/decisions/cop-03.shtml?m=COP-03&cid=7104&lg=0. The Council, which had been unable to discuss the MoU at its October 1996 meeting (see para. 17 of the Joint Summary of the Chairs of the October 1996 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_October_1996_English.pdf, approved the MoU at its subsequent meeting (see para. 7 of the Appendix to the Joint Summary of the Chairs of the April/May 1997 Council Meeting: www.thegef.org/Documents/Council_Documents/Joint_Summary_-_April–May_1997_English.pdf), after the COP had itself adopted the MoU at its third meeting in November 1996 (see the citation at the beginning of this footnote).

60 Annex to Decision SC-1/11, in UNEP/POPS/COP/1/31: www.pops.int/documents/meetings/cop_1/meetingdocs/en/cop1 _31/COP1REPORT.pdf. The Council approved the MoU at its November 2005 meeting (see para. 11 of the Joint Summary of the Chairs of the November 2005 COP Council Meeting: www.thegef.org/Documents/Council_Documents/documents/Joint_SummaryofChairs-RevisedNovember30_000.pdf) after the COP had itself adopted the MoU at its first meeting in May 2005 (see the citation at the beginning of this footnote). See also the Note by the Secretariat on the 2003 draft, in UNEP/POPS/ INC.7/16: www.pops.int/documents/meetings/inc7/en/7_inf_16.pdf


of a funding decision for a specific project by the Council. The case of the MoU for the Stockholm Convention presents yet a different solution to the problem. Under para. 6, if the COP concludes that a specific project decision does not comply with the policy, strategy, program priorities, or eligibility criteria, the COP may request the GEF “to propose and implement a course of action to address the concern regarding the project in question.”

Despite these and other differences, the MoUs have an important element in common in that they reflect, on the one hand, the autonomy of the GEF as an external finance mechanism to the conventions (with the consequence that the COP can do no more than request clarification and/or reconsideration of a Council’s project funding decision or the proposal and implementation of a remedial course of action). On the other hand, there is a need for close cooperation between the Council and the COPs by means of the Council acting in conformity with the policies, program priorities, and eligibility criteria established by the COPs. In any event, there is nothing in either the GEF Instrument or the MoUs that requires the Council to do anything more than clarify and/or reconsider a decision or propose and implement a remedial course of action. The only practical sanction remains the liberty of the COP to reconsider the position of the GEF as the finance mechanism for the implementation of its convention.

**Operational Aspects**

**Participants, Eligible Countries, and Recipient Countries**

Under para. 7 of the GEF Instrument, participation in the GEF is open to any member state “of the United Nations or of any of its specialized agencies.” This formulation is justified by the fact that being a member of the UN is not necessarily a prerequisite to becoming a member of one of the UN “specialized agencies” (a term that identifies international organizations, established by treaty, that have entered into a relationship agreement with the UN). For instance, membership in the UN is not a prerequisite for membership in the World Bank, which has been a UN specialized agency since 1947. Switzerland, for example, joined the UN in 2002, 10 years after becoming a member of the World Bank and more than 8 years after becoming a GEF participant.

To become a GEF participant, a state must provide the Secretariat with an instrument of participation, substantially in the form set out in Annex A of the GEF Instrument. For a state contributing to the GEF Trust Fund, an instrument of commitment (in the form of Attachment 2 in Annex C of the GEF Instrument) serves as its instrument of participation. In practice, after receiving an instrument of participation or commitment, the GEF Secretariat verifies that the country in question is a member of the UN or a specialized agency. Generally, no legal opinion confirms that the instrument was signed by a duly authorized representative. Instead, the GEF Secretariat relies on the implicit representation that the signatory of the instrument (usually the minister for the environment) has the required authority to represent the country in question. Participation takes effect on the date the notification is deposited with the GEF CEO. Participants may withdraw from the GEF by submitting an instrument of termination, which is a modified version of the instrument of participation in Annex A. No state has ever withdrawn from the GEF.

Not all participants are eligible to receive GEF funding. Pursuant to para. 9 of the GEF Instrument:

(i) grants made available within the framework of the finance mechanisms of the environmental conventions are subject to the eligibility criteria decided by the COP of each convention,
(ii) all other grants are available to countries eligible to borrow from the World Bank and/or the International Development Association (IDA) (the soft lending affiliate of the World Bank Group),65 and to countries eligible for UNDP technical assistance (while grants for activities within a focal area addressed by a convention but made available outside the framework of the finance mechanisms of the conventions can only be made to eligible recipient countries that are parties to the convention concerned),66 and

(iii) concessional financing in a form other than a grant is subject to the eligibility criteria of the COP concerned, if made available within the framework of a financial mechanism, or is subject to the terms determined by the Council, if made available outside the framework of a financial mechanism.

At a special meeting in August–September 2005, the Council approved the resource allocation framework, a system for allocating resources to eligible recipient countries.67 The implementation of this new system started in July 2006 in the focal areas of biodiversity and climate change. In essence, resources are allocated on the basis of each recipient country’s potential to generate global environmental benefits and capacity to implement GEF projects successfully. Each country’s initial indicative allocation is disclosed at the beginning of a replenishment period. This initial allocation is then adjusted every 2 years to reflect the country’s potential and capacity. As in other institutions that have adopted a similar system, such as IDA and the International Fund for Agricultural Development (IFAD), the aims are to increase the impact of the allocated resources and strengthen each country’s potential and capacity. According to the terms of reference that the Council reviewed and approved with modifications at its November 2007 meeting, the GEF Evaluation Office undertook an independent midterm review of the resource allocation framework, which the Council reviewed at its November 2008 meeting.68

Implementing Agencies, Executing Agencies, and Recipients

Under para. 22 of the GEF Instrument, the three implementing agencies (World Bank, UNEP, and UNDP) are accountable to the Council for their GEF-financed activities and the implementation of GEF operational policies, strategies, and decisions “within their respective areas of competence and in accordance with an interagency agreement to be concluded on the basis of the principles of cooperation” set forth

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66 While para. 9(b) of the GEF Instrument refers to a UNDP country Indicative Planning Figure, in reality, UNDP uses a scheme called “Target for Resource Assignments from the Core (TRAC),” which is summarily described at www.undp.org/cpr/disred/english/wedo/wedo.html


in Annex D of the same GEF Instrument.69 Annex D, para. 11 describes the areas of particular emphasis for each implementing agency. UNDP is charged with “ensuring the development and management of capacity building programs and technical assistance projects,” UNEP is responsible for “catalyzing the development of scientific and technical analysis and... advancing environmental management in GEF-financed activities,” and the World Bank is tasked with “ensuring the development and management of investment projects.” To facilitate cooperation among the three implementing agencies (each having its own arrangement with the trustee), an interagency committee operates at the institutional level by means of periodic meetings among the heads of the three agencies (with the participation of the GEF CEO), and at the operational level through cooperation between the staff members of the three agencies and the GEF Secretariat in the preparation of a joint work program.70 Pursuant to para. 28 of the GEF Instrument, the Secretariat and implementing agencies are required to cooperate under the Council’s guidance with other international organizations to promote the achievement of GEF purposes. Among these international organizations, the four regional development banks—the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank—had been engaged in discussions with the World Bank to formalize their GEF collaboration since the GEF pilot phase.71 In May 1999, the Council initiated a policy of expanded opportunities for the four regional development banks as a way to advance GEF’s operational objectives.72 With the passage of time, other organizations have been added to the program73 and granted direct access to GEF funding (i.e., without the funds being channelled to them through the implementing agencies). Today, seven such organizations have direct access to GEF funding: the four regional development banks and three UN specialized agencies—the Food and Agriculture Organization (FAO), IFAD, and the United Nations Industrial Development Organization (UNIDO). Their access to GEF funds correlates to their “comparative advantages,” which lie in investment projects at the country and multicountry level in the case of the regional development banks and in focal areas in the case of FAO, IFAD, and UNIDO.74 When acting in some GEF-related capacity, the seven organizations mentioned above are “executing agencies.” However, the use of this expression is not restricted to these seven organizations, except for its use within the context of the expanded opportunities program. The implementing agencies may make arrangements for GEF project preparation and execution with such varied entities as “multilateral development banks, specialized agencies and programs of the United Nations, other international organizations, bilateral development agencies, national institutions, non-governmental organizations, private sector entities and academic institutions.”75 Indeed, a significant number of such entities have acted as executing agencies outside the expanded opportunities program, channelling funds from the implementing agencies to fund recipients. In practice, the operational difference between the seven organizations under the expanded opportunities program and all other executing agencies is, in addition to direct access to GEF funding, the fact that the seven organizations may apply their own policies and

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69 Procedural arrangements for operational cooperation under the GEF among the three implementing agencies had already been signed in the pilot phase of the GEF.
70 See para. 23 of the GEF Instrument and para. 14 of Annex D.
75 Para. 28 of the GEF Instrument.
Funds for Development: Multilateral Channels of Concessional Financing

procedures (including procurement and consultants’ guidelines) as opposed to those of the implementing agencies.76 The recipients of GEF funds have included diverse entities that are not necessarily countries, but can be and have been, for example, nongovernment organizations, national institutions, academic institutions, and others. In these instances, project endorsement is provided by the operational focal point designated by the GEF participant in question.77

These multiple levels of partnership within the GEF led to the preparation of a matrix that attempts to clarify the roles and responsibilities of the various GEF entities regarding general activities, relations with the conventions, country coordination and programming, policy and program development, programmatic approaches, and monitoring and evaluation.78

Grants, Concessional Financing, and Nongrant Instruments

GEF funding is available for a wide variety of project types, including

(i) small grants to provide support for community-level initiatives,
(ii) enabling activities to finance the preparation of programs linked to environmental conventions,
(iii) medium-sized projects limited to a maximum of $1 million, and
(iv) full-sized projects for amounts greater than $1 million.

In addition, project preparation grants can be used to deflate, at least in part, project preparation expenses.79 In the case of the World Bank, these grants are extended by means of legally binding agreements with the recipients, according to contractual model forms substantially similar to those used for grants out of other trust funds administered by the World Bank. Unless the agreement in question is between the World Bank (as a GEF implementing agency) and one of the seven GEF executing agencies under the expanded opportunities program, World Bank policies apply, and the World Bank’s procurement and consultant guidelines are incorporated by reference in the agreement.

Most GEF resources have been provided as grants, usually complementary to credits, loans, and guarantees. At the same time, however, nongrant instruments have already been used in several projects in the form of

(i) nontraditional grants, with a repayment obligation if certain criteria have been met;
(ii) concessional or contingent loans;
(iii) risk or credit guarantees; and
(iv) equity participation in companies.

76 In fact, it is only for executing agencies’ activities under the expanded opportunities program that the accountability of the implementing agencies to the Council is limited “to conducting the due diligence review to ensure compliance of the [executing agencies] with the policies and procedures of the GEF.” (Hence, there is no reference to the implementing agencies’ policies and procedures. para. 11 of GEF/C.22/12 (24 October 2003). www.thegef.org/interior.aspx?id=16752)

77 Each GEF member country designates governmental officials responsible for GEF activities. A “political focal point” is an official (designated by each GEF member country) responsible for GEF governance issues and policies; an “operational focal point” is an official (designated by a GEF member country that is eligible to receive GEF funds) responsible for in-country program coordination and other operational activities. A list of focal points and other documentation: www.thegef.org/interior.aspx?id=212


79 Greater detail on these various funding options available at www.thegef.org/interior.aspx?id=90
Moreover, at its April 2008 meeting, the GEF Council reviewed and endorsed certain operational policies and guidance for using nongrant instruments in GEF-financed projects. Indicatively, the following tools were proposed:

(i) performance grants,
(ii) contingent grants or loans to private entities,
(iii) guarantee mechanisms for performance and credit risks,
(iv) minority equity participations (with less than 35% of capital and no participation in management),
(v) short-term small-scale loans, and
(vi) grants to multilateral development banks.

While the primary focus would remain climate change (already the case for nongrant instruments), other focal areas are also encouraged to develop projects using nongrant instruments. As such instruments are usually linked to investment projects, the primary executing agencies involved in the use of nongrant instruments will likely be multilateral development banks and IFAD. In principle, all countries eligible for GEF funding would also be eligible to benefit from nongrant projects. The only limitation is that highly indebted countries ineligible for IDA credits according to the World Bank-International Monetary Fund Debt Sustainability Framework would be ineligible for projects involving reimbursements to the GEF.

Project Cycle

The Council approved an interim project cycle at its second meeting in November 1994. Since then, the Council has strived to streamline this cycle and make it efficient and cost-effective. In 2006, the GEF Evaluation Office concluded that the project cycle was neither efficient nor cost-effective, and that GEF modalities had not made full use of new forms of collaboration aimed at promoting flexibility, efficiency, and results. On this basis, the Council requested the Secretariat to prepare options for a new project cycle. The Council approved (with revisions) the new project cycle proposed by the Secretariat at its June 2007 meeting.

The new project cycle is based on four principles:

(i) consistency with the GEF Instrument,
(ii) the CEO’s exercise of executive authority,
(iii) the Secretariat’s review of project concepts at an early stage, and
(iv) the Council’s strategic oversight of portfolio development.

The first step in the project cycle is the CEO’s review of the project concept (documented in a project identification form), followed by the GEF CEO’s consideration whether to include the project identification form in the work program. Next, the work program is approved by the Council, which reviews four work programs per year (one at each Council meeting, and two intersessionally on a no-objection basis). The third step is the CEO’s endorsement of the projects before they are approved by the GEF agencies.

The final step involves implementation, supervision, monitoring, and final evaluation. The project cycle aims to process a proposal spanning identification and the beginning of implementation in less than 22 months, ensuring project quality and financial accountability.

In connection with the new project cycle, the Council also approved programmatic approaches aimed at more effectively supporting the development agenda, together with the program processing and approval procedures.\(^87\)

### Conclusion

The absence of international legal personality has not hindered the GEF’s ability to establish itself as the main finance mechanism for the environment. The central role of the World Bank and two UN programs (UNEP and UNDP) in the GEF has led to the comingling of UN features with Bretton Woods features. This is particularly evident, for example, in the allocation of responsibility for the conduct of the Council’s deliberations between an elected chairperson (the UN model) and the CEO (the Bretton Woods model). This comingling is also evident in the GEF voting system, which balances the “one-country-one-vote” system (the UN model) and the “contribution-weighted” system (the Bretton Woods model). Naturally, the successful comingling of these features has not impeded the ongoing consideration of how institutional and governance reforms may strengthen the existing system.\(^88\) Likewise, at the operational level, the search for modalities to improve efficiency and cost-effectiveness is not a point of arrival, but rather an ongoing process.

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88 See, for example, the paper GEF/R.5/15 (1 June 2009) submitted by the GEF Secretariat to the Second Meeting for the Fifth Replenishment of the GEF Trust Fund, with a joint (GEF Secretariat/World Bank Legal Vice-Presidency) legal note as Appendix I to this paper: [www.thegef.org/uploadedfiles/GEF.R.5.15.pdf](http://www.thegef.org/uploadedfiles/GEF.R.5.15.pdf)
Chapter 9

A Practical Guide to Creating a Collective Financing Effort to Save the World: The Global Environment Facility Experience*

Sophie Smyth†

Introduction

An increasingly globalized world and the emergence of global crises such as climate change, HIV/AIDS, financial systems collapse, and, most recently, swine flu, present increased demands for international cooperation. In particular, international collective financing efforts are needed to make funds available to developing countries to help them survive.¹ Developing countries depend heavily on financial assistance from the developed world to fight these crises. Their need for assistance in turn gives rise to a need for collective action on the funding front; no donor country can finance these efforts alone. Global crises call for collective financing efforts in which multiple donors agree on a program of assistance and a course of action informed by the latest expertise and information on cause, containment, and cure. Creating such a collective funding effort requires careful consideration of the choices donors must make and the challenges that will have to be overcome for the effort to succeed.

At first blush, it seems counter-intuitive to suggest that new global issues call for new collective financing efforts. After all, international collective financing is not a new phenomenon. In the aftermath of World War II, the world’s strongest economies created the World Bank and the United Nations specifically to advance international development and cooperation.² But the credibility of these institutions has dwindled since their creation,³ and over the last twenty years, donor countries have pursued alternative

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* This article was first published in the Georgetown International Environmental Law Review (GIELR) (Fall 2009), Vol. 22, No. 1, pp. 29–97.

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¹ See, for example, the suggestion made by Robert Zoellick, President of the World Bank, in a recent article in the New York Times, that the developed country members of the Group of 20 (G-20) set up a new “vulnerability fund” to assist developing countries that cannot afford bailouts and deficits. See Robert B. Zoellick, Op-Ed, A Stimulus Package for the World, NY Times, 23 January 2009, at A27. The “Group of 20” refers to the group of twenty countries’ finance ministers and central bank governors that was established in 1999 “to bring together systematically important industrialized and developing economies to discuss key issues in the global economy. . . . [It] is an informal forum that promotes open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability.” G20, What Is the G-20, www.g20.org/about_what_is_g20.aspx (last visited, 13 September 2009).


forms of collective financing efforts directed at developing countries. Specifically, instead of increasing the budgets of the United Nations, its agencies, or the World Bank to give them extra resources to address global issues as new crises arise, donor countries have opted to set up large international funds dedicated exclusively to providing developing countries with resources to address the particular problem.\(^4\)

Although these funds are usually administered by the World Bank or the United Nations, they have their own governance structures, which give donor countries an active ongoing role in allocating the funds’ resources.\(^5\) They are maintained separately from the resources of the institutions that administer them, and the financial assistance they provide to developing countries is separate and distinct from assistance provided by the United Nations or the World Bank.\(^6\)

The Global Environment Facility (GEF) pioneered this new kind of collective financing phenomenon,\(^7\) the popularity of which has increased exponentially since the GEF was created.\(^8\) Created in 1994 to serve as the financing mechanism for the United Nations Framework Convention on Climate Change\(^9\) (Climate Change Convention) and the United Nations Framework Convention on Biodiversity\(^10\) (Biodiversity Convention), the GEF introduced many innovations. Prior to its creation, the standard international collective financing effort, aside from infusing the established institutions such as the United Nations or the World Bank with additional resources, consisted of creating relatively small funds. Referred to as “trust funds”, these small funds were usually administered by one of those institutions as “Trustee”, within their broad discretion, and they financed projects exclusively identified, supervised, and monitored by the Trustee Institution.

The GEF introduced an entirely new concept for such trust funds.\(^11\) Its innovations included a trust fund, the Global Environment Facility Trust Fund, with a governance structure which: (i) did not give the Trustee (the World Bank) discretion over the allocation of the fund’s resources but, instead, reserved the right to allocate the fund’s resources to the participants acting as a collective body; and (ii) drew a clear distinction between the financial management of the fund (a role it assigned to the World Bank as Trustee) and the task of identifying, appraising, monitoring, and supervising projects to be financed by the trust fund (a role which it initially assigned to three intermediaries, called “Implementing Agencies,” one of which was the World Bank).

In addition, consistent with the active role the participants retained in the allocation of the GEF Trust Fund’s resources, the GEF’s structure included a functionally independent secretariat, which was headed by a Chief Executive Officer appointed by the participants and entrusted with coordinating the participants’ role and managing the GEF’s day-to-day operations. In previous World Bank trusts, without active contributors to coordinate, the role of Trustee included responsibility for the kind of day-to-day management assigned to the Secretariat of the GEF. The GEF also developed a set of policies and procedures for replenishing a long-term collective financing effort. In later years, it also showed how the governance structure of a large fund can be used as an umbrella structure for smaller funds, as its

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\(^5\) Id. at 2.

\(^6\) Id. at 1.


\(^11\) See Silard, supra note 8, at 624–25.
governance structure became an umbrella structure for two smaller funds: a Least Developed Countries Fund and a Special Climate Change Fund.

This article shows the challenges involved in creating and managing the kind of international collective financing effort the GEF pioneered through the prism of the four replenishments of the Global (GEF) Trust Fund. The existing legal scholarship on the GEF focuses on the GEF’s achievements in international environmental law and global governance. In this article, I make a different contribution. My interest in the GEF is its pathbreaking role as an international collective financing effort. I analyze it from the perspective of what it teaches us about the financial issues involved in following through on a collective commitment made by a group of sovereign donors to provide financial assistance to developing countries to address an identified problem. I examine the choices that have to be made and the processes that have to be built to translate hortatory language into a solid funding machine.

As this article shows, we can draw several lessons about international collective financing efforts from the GEF experience. First, the GEF shows that addressing a global problem requires a long-term solution and, therefore, a long-term funding process. It illustrates, vividly, the delicate process of sharing that long-term funding burden and the constant risk that the cooperative framework will unravel when voluntary contributors fail to make good on their express or implied promises. Second, the GEF shows that creating and maintaining an international collective financing effort is a complex banking task. The role demands an affinity with the idiosyncratic, at times arcane, appropriations processes of national governments and with the authorizing mandates of international and regional development institutions likely to be involved in implementing a fund’s objectives on the ground. These complexities augur in favor of having an international financial institution fulfill the role of fund administrator, despite the risk of limiting the financing effort’s independence if the administering institution has a conflicting agenda.

Third, the GEF shows that sharing control over the resources of a collective financing effort between the contributors to the effort and the financial institution charged with managing the effort as Trustee redefines the role of Trustee. The contributors to the GEF retained for themselves the right to allocate the GEF trust fund resources, relegating the role of the World Bank as Trustee to that of a financial functionary. In the case of the GEF, the World Bank’s reduction in its powers as Trustee was offset by the fact that the participants gave it a major role in GEF projects, as a designated Implementing Agency of the GEF. An open question remains as to the palatability to an institution such as the World Bank or a similar institution settling for a much reduced Trustee role in the absence of the opportunity to serve as an implementing agency. The wisdom of the World Bank or a similar institution settling for a much reduced Trustee role is also open to doubt given the significant liability and reputational risks that could be involved.

A fourth lesson from the GEF can be drawn from the tensions encountered between the Secretariat and the World Bank as a result of the GEF not having the capacity to enter into legally binding agreements. The experience of the GEF shows that the goals and ambitions of a secretariat grow commensurately with the growth in size and stature of a financing effort. When, however, the financing effort does not have legal capacity, the Secretariat cannot enter into binding legal agreements concerning the use of the effort’s financial resources, as that capacity vests exclusively in the Trustee as legal owner of those resources. If the expanding agenda and ambitions of the Secretariat begin to compete and appear to usurp the agenda of the Trustee Institution, which also serves as an implementing agency for the effort, as happened in the GEF, this situation is primed for conflict.

That conflict also plays out in the employment status of the secretariat staff, especially in the case of the CEO. For example, because the GEF lacks legal capacity, the CEO and staff of the GEF Secretariat serve on contracts of employment with the World Bank and are governed by the same employment

principles and policies as World Bank staff. When, and if, the agendas of the GEF and the World Bank conflict, the CEO and other GEF staff, are faced with an untenable conflict of interest. Initially, the World Bank and the Secretariat dealt with these conflicts through administrative arrangements and delegations of authority. Continued and increasing tensions emerging from the Secretariat’s agenda for the fifth replenishment, however, suggest that such solutions may not be viable indefinitely. The GEF experience on this issue may lead the creators of future collective financing efforts to rethink how they balance between giving the effort legal capacity and having the benefit of the fiduciary and other controls when that capacity vests in the Trustee.13 More broadly, the GEF experience may prompt consideration of the need for an institution, whose sole purpose is to serve as Trustee of such efforts, and which has no other competing agenda.

Fifth, the experience of the GEF shows that there are advantages to having a distinct replenishment regime that is separate from the regular process of allocating a collective funding mechanism’s resources and setting overall policy. Since its second replenishment, the GEF replenishment regime has consisted of a series of replenishment meetings held separately from the biannual meetings of the GEF Council (the body charged with deciding on the allocation of the GEF’s resources and any amendments to the GEF’s policies).

The advantage of having a separate replenishment regime is that it sets the task of replenishment firmly in motion. A time frame is set for replenishment discussions and closure, and early on in the process, a target replenishment figure is agreed upon. Setting that time frame and figure puts pressure on contributors to prepare their legislatures for action. The ideal, from a financial stability standpoint, is to confine the agenda of replenishment meetings to a dollar-and-cents calculation of a fund’s financing needs for future survival. The experience of the GEF shows that this is a difficult, perhaps impossible, ideal to achieve. Inevitably, contributors will use the leverage they have at replenishment time to push their own individual agendas for the effort, even at the cost of undoing previously negotiated priorities. The discipline of a distinct replenishment regime, however, helps to limit the extent to which contributors can usurp agenda by preserving the focus on financial matters, such as cost sharing, currency exchange rates, and payment mechanisms. Sticking to this agenda implicitly creates the assumption that the effort will be replenished. Thus, although matters of policy will creep into, and frequently dominate, replenishment discussions, having a replenishment regime maintains the momentum for ongoing funding.

The GEF also shows that having a distinct replenishment regime can present risks to other aspects of a fund, if not carefully managed. Specifically, one much-praised aspect of the GEF is the degree to which it is a participatory mechanism. The GEF Council, the body that allocates the GEF Trust Fund’s resources and that sets GEF policy, is composed of both contributing and non-contributing participants. Only contributing countries, however, participate in replenishment meetings. For this reason, having policy issues pre-cooked in replenishment meetings threatens to undercut the participatory process of a collective effort like the GEF.

Lastly, the GEF shows that a collective financing mechanism aimed at addressing a global need can ultimately become too big to survive as a single fund. As the funding agenda expands, fissures arise over how to set priorities. As happened with the GEF, these fissures ultimately tend to overwhelm the priority of a having a single, unified pool of funds.

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13 Sometimes, a new financing mechanism will rely on an existing international organization’s administrative services as an interim step towards full independence. When the Global Fund for HIV/AIDS, Tuberculosis and Malaria was created in 2002, for example, it entered into an Administrative Services Agreement with the World Health Organization which provided a range of administrative services to it. This enabled the fund to start operations quickly but was intended as a temporary arrangement. On 19 December 2008, the Global Fund announced that it would terminate this arrangement and become an administratively autonomous institution with effect from 1 January 2009. In doing so, it sought to achieve greater flexibility as an institution. See Press Release, The Global Fund, The Global Fund Becomes an Administratively Autonomous Institution as of 2009 (19 December 2008), available at www.theglobalfund.org/en/pressreleases/?pr=pr_081219
I illustrate the lessons of the GEF experience by tracing the evolution of the GEF in chronological order, beginning with its creation as a pilot program in 1991 and moving through its four replenishments. Part II briefly describes the origins of the concept of the GEF as a global fund. Part III details its metamorphosis from an account held at the World Bank—over which the World Bank, as Trustee, had broad control—to a multilayered financing mechanism with quasi-entity status, co-governed by its participants. It shows how this change necessitated devising a governance structure to allow for shared control and a long-term funding process. Part IV shows how firm norms for the GEF’s four yearly replenishments became solidified in the course of this metamorphosis.

Parts V and VI progress from describing the construction of the GEF and its funding process to a review of the GEF’s fight for survival in the face of intra-participant and intra-institutional divisions. Part V shows how the third replenishment of the GEF presented challenges to its continued existence. Persistent arrears in some contributors’ payments, notably those of the United States, undermined the GEF’s collaborative spirit. In addition, the coexistence of the GEF alongside the World Bank became fraught with tension as the GEF grew in size and the CEO sought additional powers that conflicted with the Bank’s desire to preserve the status quo. Part VI shows how the contributors to the GEF ultimately abandoned the concept of “one global environment, one global environment fund” as the global environmental issues in need of attention multiplied and participants’ views on how and whether to address them diverged. This process suggests that such fragmentation may be inevitable for any collective financing effort with a global agenda. Part VI also shows how the GEF faces continuing pressure to evolve as the Secretariat pushes an ambitious program of institutional and governance reform in the fifth replenishment, which, if successful, will fundamentally alter the legal status of the GEF and its relationship to the World Bank.

In conclusion, the Global Environment Facility, both in its original form and as it evolves, represents a milestone in international development finance. Future international collective financing vehicles will do well to take its lessons of experience under advisement, and the resolution of ongoing suggestions to restructure the GEF will further enrich those lessons.


The GEF began as a pilot program, an approach now frequently followed by innovative collective financing efforts, which allows them to test the waters and readily make any changes that prove necessary in the way they are structured or plan to operate.

The Concept of a Global Environment Facility

The idea of a funding mechanism to support the costs of developing country activities aimed at addressing global environmental concerns first gained traction in 1989 at the World Bank/International Monetary Fund (IMF) Annual Meetings.14 The participants at that meeting asked the World Bank to assess the requirements for a global environmental mechanism and to consult with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) to develop a tripartite arrangement.15 France proposed an SDR 1 billion facility that would serve as a pool

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14 Streck, supra note 13, at 72.
of funds to be made available to developing countries to cover the incremental costs of projects that would produce global environmental benefits. The participants designated four areas for assistance: ozone depletion, international waters, biodiversity, and climate change. In due course, the GEF and the Global Environment Trust (GET) emerged.

The Pilot GEF and the GET

The Governance Structure of the GEF

A threshold question for any collective funding vehicle is what activities it will fund and how proposals for its funding will be generated. At its inception, the countries interested in contributing to a global environment facility conceived of it as a fund that would provide resources for the incremental costs of projects proposed and managed by the World Bank, UNDP, and UNEP. They also agreed that the facility’s governance structure should incorporate developing country representation. To achieve these goals, they agreed on a governance structure which included the World Bank, UNDP, and UNEP as Implementing Agencies; the Participants Committee comprising the heads of the Implementing Agencies; representatives from all contributing countries and from developing countries (the latter divided into constituency groupings); and the Scientific and Technical Advisory Panel (STAP) which would advise the Participants Committee on the latest developments in environmental science.

The Participants Committee was to meet every six months to review and approve the facility’s overall policy framework, the terms and conditions for use of the facility’s resources, the Implementing Agencies’ proposed work programs, and their progress in executing them. Despite these actions, the fact that the World Bank proposed the bulk of the projects, convened the Participants’ Committee meetings, and prepared the agenda for them meant that the World Bank essentially controlled the Fund.

The Management and Operation of the GET

The GEF’s resources were held in the GET, a trust fund administered by the World Bank as Trustee, which was a role set apart and distinct from the World Bank’s role as an Implementing Agency of the facility. The contributors agreed to fund the GET up to the SDR 1 billion target figure suggested by France on the basis of broad, multilateral participation.

All international collective financing efforts aim to strike a balance between facilitating broad-based participation while providing for financial soundness. To encourage participation, the contributors to the

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16 Incremental costs are defined as “the extra costs incurred in the process of redesigning an activity vis-a-vis a baseline plane, which is focused on achieving national benefits, in order to address global environmental concerns.” Streck, supra note 13, at 73.
17 Silard, supra note 8, at 617. The Special Drawing Right (SDR) is an “international monetary reserve asset valued by the [International Monetary Fund].” Id. at 617 n.31 (citing Int’l Monetary Fund, Annual Report of the Executive Board for the Financial Year Ended 30 April 1993 93 (1993)). See also Int’l Monetary Fund, Factsheet – Special Drawing Rights (SDRs), Oct. 31, 2009, available at www.imf.org/external/np/exr/facts/sdr.htm (discussing SDRs).
18 Freestone, supra note 13, at 1097.
20 See GEF Pilot Memorandum, supra note 16, para. 8.
21 Id. at para. 19.
22 Id.
23 Id. at para. 24.
24 Id. at para. 25.
25 Id. at para. 25.
GET agreed on a small–SDR 4 million threshold as the minimum contribution. Further, although contributions were payable over a three-year period, developing countries were allowed to contribute over an eight-year period. At the same time, contributors could only contribute in convertible currencies (valued at an exchange rate agreed upon in advance). Contributors could pay in cash or by demand notes. Payments in cash were rewarded by crediting the contributor with an amount equal to the investment income expected to be earned on its contribution prior to disbursement, thereby reducing the overall amount the contributor would have to pay. The World Bank as Trustee cashed contributors’ demand notes in fixed equal installments, so that contributors could count on a degree of predictability regarding when they would be expected to have such cash available.


Once the participants agree on the purpose of a collective funding effort and the activities it will fund, they must address two critical structuring choices: who will allocate the financing vehicle’s collective resources and what kind of arrangements they will make for the effort’s long term survival if they envisage funding beyond an immediate critical need (such as disaster relief). The pilot phase of the GEF and the GET catalyzed the idea of providing funding to the developing world as part of the bargain inherent in an equitable sharing of the obligation and burden of protecting the global environment. Within a year of its creation, however, contributors called for the facility to be restructured. They wanted greater control over the allocation of GET resources. They also wanted to establish a process that would allow for replenishment and longevity well beyond the three years of the pilot phase. Achieving these objectives meant changing the GEF’s governance structure and the roles and responsibilities of its component parts, including those of the Trustee. It also meant devising a financing framework. In restructuring the GEF, the participants built upon the component parts of the pilot facility but preserved the ground rules that the pilot facility had established for funding the facility.

A Revised Governance Structure: Contributor Control over Resource Allocation

The extensive power exercised by the World Bank over the pilot GEF reflected business as usual for the World Bank at that time. Typically, when the World Bank served as administrator of a trust fund, the contributors to the fund would agree to the World Bank’s administration in accordance with a broad set of objectives defined by the contributors at the time the trust fund was created. The World Bank would

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26 Id. at para. 34.
27 Id. at para. 37.
28 Id. at paras. 33–34.
29 Id. at para. 33.
30 Id. at para. 34.
31 Id. at para. 35.
32 See Streck, supra note 13, at 72.
33 Id. at 75; Freestone, supra note 13, at 1080.
34 See Freestone, supra note 13, at 1080; Silard, supra note 8, at 633.
35 See Silard, supra note 8, at 633; Freestone, supra note 13, at 1080.
then decide on the allocation of the trust fund resources and enter into grant agreements with trust fund recipients.\textsuperscript{37} It would provide the contributors with an annual financial statement on the use of the funds, as well as periodic progress reports on the nature and status of activities that had been funded.\textsuperscript{38} Apart from receiving such reports, the contributors would have no further involvement in the trust fund.

In setting up the GEF, however, the contributors envisaged a different role for themselves, one that accorded them ongoing collective control over the allocation of the resources they contributed.\textsuperscript{39} Accordingly, in restructuring the facility, they set out to wrest control from the World Bank in a number of ways. These changes included strengthening their own involvement by reconfiguring the Participants Committee into a GEF Council and creating an overseeing body, the GEF Assembly.\textsuperscript{40} They also interposed a secretariat between themselves and the World Bank as Implementing Agency\textsuperscript{41} and decided that the Secretariat would be governed by a Chief Executive Officer (CEO), directly appointed by and responsible to them.\textsuperscript{42} Further, they opened up the possibility that other entities, such as multilateral development banks and other UN agencies, in addition to the Implementing Agencies, might submit proposals for funding from the GEF Trust Fund.\textsuperscript{43}

As with the GET, the facility separately delineated the financial management role of the World Bank as Trustee from the other roles played by the World Bank.\textsuperscript{44} The contributors further agreed that the restructured GEF would operate subject to, and consistent with, the decisions of the Conferences of the Parties (COPs) regarding the policies, program priorities, and eligibility criteria for use of GEF Trust Fund monies to ensure these resources are used in a manner consistent with the Climate Change and Biodiversity Conventions.\textsuperscript{45} The quasi-entity that resulted was both novel and flawed. As its role evolved, its flaws gave rise to fissures. Nonetheless, it represented a significant departure from business as usual\textsuperscript{46} and ushered in a new era of contributor-controlled collective funding vehicles,\textsuperscript{47} which could learn from and avoid the same flaws.

The restructuring and replenishment negotiations began with an informal meeting in Rome in March, 1993.\textsuperscript{48} Participants agreed that revising the facility’s governance structure should proceed in tandem with replenishing the facility and that only those countries that had indicated an intention to contribute some minimum amount should participate in the negotiations.\textsuperscript{49} Other countries that had participated in the pilot phase were invited to attend as observers. On this basis, 25 countries participated as contributors in the restructuring and replenishment negotiations.\textsuperscript{50} The governance structure of the restructured GEF and the duties and responsibilities of its component parts are set out in the Instrument

\textsuperscript{37} See generally World Bank, Operational Manual, supra note 38, at OP 14.40
\textsuperscript{38} See generally id.
\textsuperscript{41} Id. at paras. 21–22.
\textsuperscript{42} Id.
\textsuperscript{43} Id. at paras. 9(b), 28.
\textsuperscript{44} Freestone, supra note 13, at 1079–82.
\textsuperscript{45} Instrument, supra note 41, at paras. 26–27.
\textsuperscript{46} See Silard, supra note 8, at 624.
\textsuperscript{47} See World Bank, Management Framework, supra note 9, para. 2.14, at 12.
\textsuperscript{49} Id.
\textsuperscript{50} Id. (The countries which participated in those negotiations as donors were, “Australia, Austria, Brazil, Canada, [People’s Republic of] China, Denmark, Egypt, Finland, France, Germany, India, Italy, Japan, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, [and the] United States.”)
for the Establishment of the Restructured Global Environment Facility (GEF Instrument), which 73 participating countries ultimately accepted at a meeting of their representatives held in Geneva from 14–16 March 1994.51

The Component Parts of the Restructured GEF

From the time of its creation, the restructured GEF reflected a delicate balance between many conflicting interests and demands. The interests of contributing participants differed from those of the non-contributing participants; the Implementing Agencies competed inter se and with other UN agencies and entities, such as the multilateral development banks that also had projects that would have benefited from GEF Trust Fund financing but did not make the Implementing Agency cut. The interests of the World Bank’s lending departments, accustomed to treating trust fund resources as supplemental to their lending agenda and allocating them accordingly, diverged from those of the contributors, who had decided that the allocation of the resources would be their responsibility. Moreover, the contributors’ interests conflicted with those of the World Bank’s trust fund management department, which was accustomed to managing and dispensing trust fund resources in a World Bank-dominated universe, rather than serving as a financial functionary for a donor-driven governing body. The formal duties and responsibilities assigned to the component parts of the restructured GEF by the GEF Instrument represent its founders’ attempts to achieve this balance. The details of how the component parts would navigate around different constituencies’ divergent interests were left to be worked out on a learning-by-doing basis.

The GEF Council and GEF Assembly

The GEF Council (Council)—the reconfigured Participants Committee—became the driving force of the GEF under the restructured facility, along with the CEO and the GEF Secretariat. The Council is made up of 32 members: 16 from developing countries, 14 from developed countries, and 2 from countries with economies in transition.52 Council decisions are made by consensus, although the GEF Instrument includes a mechanism for a formal vote if consensus is unattainable.53 The Council’s chief function is to review and approve allocations of GEF Trust Fund resources.54

The Council operates subject to the oversight and strategic guidance of the GEF Assembly, which meets every three years.55 The powers of the GEF Assembly include reviewing the general policies and operations of the facility and approving amendments to the facility recommended by the GEF Council.56

51 See Instrument, supra note 41, at paras. 11–24; World Bank, Global Environment Facility Trust Fund: Restructuring and Replenishment of the Global Environment Facility, Exec. Dir. Res. No. 94-2, para. A (24 May 1994), 33 I.L.M. 1273, 1281 (1994) (hereinafter World Bank Res. 94-2) (memorializing the World Bank’s adoption of the Instrument). Following the meeting, the boards of each of the three Implementing Agencies adopted the GEF Instrument. Freestone, supra note 13, at 1081–82 nn. 24–26. The World Bank agreed to serve as Implementing Agency under the restructured facility, to support the newly-established Secretariat administratively, and to serve as Trustee of the newly established GEF Trust Fund. World Bank Res. 94-2, supra, at paras. 1, 2. Further, the GET was terminated and its contributors agreed that all funds, receipts, assets and liabilities held by it would be transferred to the newly created GEF Trust Fund and managed and used in the manner provided for in the GEF Instrument. World Bank Res. 94-2, supra, at paras. E, 2.

52 Instrument, supra note 41, at para. 16. The major contributors to the facility—France, Germany, Japan, the UK and the US—hold individual chairs on the Council. Freestone, supra note 13, at 1090 & n.64. The other Council chairs represent constituencies of a number of members. See Instrument, supra note 41, at Annex E (articulating the process for formation of Council constituencies pursuant to iterated criteria).

53 Instrument, supra note 41, at para. 25(b).

54 Id. at para. 20(e). The Council’s functions also include monitoring the ongoing work program, reviewing the degree to which GEF activities conform to the priorities and policies of the relevant Conference of the Parties, overseeing the work of the Secretariat, reviewing and approving the Secretariat and Trustees’ annual budget, and evaluating GEF operational strategies, policies and programs. Freestone, supra note 13 at 1091. The Council allocates funds based on a work program, prepared and submitted to it by the CEO, following consultations with the Implementing Agencies and other entities involved in preparing or executing GEF projects. Instrument, supra note 41, at paras. 20(c), 28–29. The Council meets twice a year, with meetings co-chaired by the CEO and a chair elected from among its members for that purpose. Instrument, supra note 41, at para. 17.

55 Silard, supra note 8, at 638; Freestone, supra note 13, at 1092.

56 Instrument, supra note 41, at para. 14; Freestone, supra note 13, at 1092 & nn.77–78; Silard, supra note 8, at 638.
Every country in the GEF (currently 177 countries), whether it participates as a contributor, recipient, or both, appoints a representative to the GEF Assembly.57

The Secretariat and CEO

A body such as the Council, made up of government representatives from member countries, meeting periodically to make decisions and provide oversight, cannot function without a standing secretariat. During the pilot phase, the secretariat role was performed by the World Bank, undifferentiated from the functions the World Bank served as Trustee of the GET. Under the restructured facility, the GEF Secretariat (Secretariat) became a distinct component part of the facility, designed to operate in a “functionally independent” manner according to the GEF Instrument.58 It is headed by a CEO, who is appointed by the Council for a three-year term on the joint recommendations of the Implementing Agencies and is accountable to the Council for running the Secretariat.59

The Secretariat’s key function under the GEF Instrument is to coordinate between the Implementing Agencies and other entities in the development of the GEF work program and to oversee the implementation of the work program once the Council approves it.60 It services both the GEF Assembly and the GEF Council and reports to both.61 It is housed within the World Bank. Although selected by the CEO, the Secretariat’s staff serves on World Bank contracts and is governed by World Bank staff rules and policies.62

The Trustee

In stark contrast to the broad discretionary powers the World Bank usually exercised over the funds it administered as Trustee, the duties and responsibilities assigned to it as Trustee of the restructured facility are strictly limited to financial management.63 It is also charged with the responsibility of monitoring the application of budgetary and project funds so as to ensure that the GEF Trust Fund’s resources are used in accordance with the GEF Instrument and decisions made by the Council.64 Under the GEF Instrument, the Trustee is responsible to the Council for the discharge of its fiduciary duties.65 The World Bank’s significant role in GEF projects as the Implementing Agency likely made the reduction of its powers as Trustee more palatable to it than might otherwise have been the case.

57 Instrument, supra note 41, at para. 13.
58 Id. at para. 21. The intention of this provision is clear: the Secretariat and the CEO heading the facility were clearly intended by the GEF contributors and the Conferences of the Parties to the pertinent Conventions to be independent of the World Bank. It is questionable, however, whether such independence can be achieved when staff of a Secretariat serve two “masters”: World Bank management and the GEF Council. It is also questionable whether it is in the interests of an organization like the World Bank to acquiesce in the creation of a Secretariat, headed by a CEO, with a stated conflict of interest, or even permissible under the World Bank’s Articles of Agreement. Full discussion of this issue, however, is beyond the scope of this paper.
59 Id. at paras. 20(j), 21. Once a CEO is appointed, the Council has the exclusive right to re-appoint him or her. Id.
60 Id. at paras. 21(b)–(c). The Secretariat also prepares common guidelines on the implementation of GEF operational policies adopted by the Council. Id.
61 Id. at para. 21(g).
63 See Instrument, supra note 41, at Annex B. The GEF Instrument iterates the different tasks of the Trustee: (i) receive contributions from contributors, (ii) maintain records and accounts of funds received and invest them pending their disbursement, (iii) disburse GEF Trust Fund resources in accordance with the decisions of the GEF Council, and (iv) report regularly to the Council on the status of the GEF Trust Fund’s resources. Id. at Annex B, para. 4.
64 Id., at Annex B, para. 7. The precise scope of this duty is not clear, as the World Bank as Trustee is not equipped to monitor the use of GEF resources by the Implementing Agencies and others on a project by project basis. At the Trustee’s suggestion, however, the Council agreed that the Trustee’s role would be deemed discharged by the receipt of annual audited financial statements from the Implementing Agencies and others receiving GEF Fund resources direct from the Trustee. World Bank, Trustee Report, GEF/C.23/Inf.3 para. 13 (19 April 2004) (on file with author). See discussion infra pp. 35–43, Expanding the Intermediary Umbrella.
65 Instrument, supra note 41, at Annex B, para. 2.
A Revised Financing Structure: Provisions for Replenishment and Longevity

As part of their commitment to restructuring the GEF, the contributors to the pilot facility also agreed to develop a formal process for funding the new GEF Trust Fund on an ongoing basis. The process agreed upon draws extensively on the contributors’—and the World Bank’s—experience with the replenishment of the International Development Association (IDA). As in the case of the IDA and, indeed, as is necessary for any collective inter-governmental financing effort, the agreed-upon process treads a fine line between accommodating contributors’ legislative appropriations processes, affording the fund some degree of certainty as to the availability of liquid funds, and preventing a delayed payment from one or more contributors from prematurely causing the funding effort to unravel.

The Component Parts of a Funding Process

The IDA was established in 1960 as a distinct legal entity under international law to provide funds to the poorest countries of the world by means of interest-free loans.66 It is funded by contributions from the richer member countries to the World Bank and is replenished on a four-year cycle.67 By the time the restructured GEF was created, the IDA had undergone ten replenishments and developed a tried and true replenishment process.68 This process included assessment of individual contribution amounts according to principles of burden-sharing, a pledging process, a payment schedule, flexible payment modalities, flexible effectiveness provisions, and safeguards to encourage contributors to deliver on their promises to participate.69 The process on which the contributors agreed for funding the GEF Trust Fund incorporates these mechanisms and is set out in Annex C of the GEF Instrument.70

Burden Sharing

At the outset, the contributors agreed to advance from the simple financing arrangement used for the pilot phase, for which there was no formal burden sharing, to determining the amount of funds each would contribute to the GEF Trust Fund on the basis of burden-sharing principles.71 Burden sharing is commonly used for deciding contribution levels in international financial agreements between sovereigns. Under a burden-sharing approach, contributors agree on the target amount of funds to be raised and then assume responsibility for contributing their respective shares of that amount.72 Shares are determined according to a contributor’s capacity to pay as measured by its standing in the global economy.73

Contributors to the restructured GEF agreed to use the burden-sharing framework adopted for the tenth IDA replenishment as a starting point, but they adjusted it to meet the needs of the GEF Trust

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68 See World Bank, Report on Negotiations to Restructure and Replenish The Global Environment Facility, supra note 20, at paras. 40–42; Silard, supra note 8, at 641.
69 Silard, supra note 8, at 641–44.
70 Instrument, supra note 41, at Annex C; Silard, supra note 9, at 642–44.
71 Silard, supra note 8, at 641.
72 See id. at 640–43.
73 Id. at 641. Sometimes, contributors agree on a target amount but also agree to contribute slightly less than the target amount so as to leave what is termed a “financing gap” between the target amount and the amount actually contributed in the hope that the financing gap will create an incentive for new contributors to join in and fill it. The tenth replenishment of IDA left such a financing gap but the donors to the first replenishment of the GEF agreed to adjust their shares to avoid creating such a gap. Id. at 641–42.
Funds for Development: Multilateral Channels of Concessional Financing

Ultimately, 26 countries agreed to contribute a total of $2 billion to the GEF Trust Fund, with the United States making the largest pledge (amounting to 20.86% of the total pledged contributions), in accordance with burden-sharing principles. The US was followed by Japan (18.70%), Germany (11%), France (7.02%), the United Kingdom (6.15%), and Italy (5.30%).

Formalized Pledges

Contributors formalize their promises to contribute to the GEF Trust Fund by depositing a document, known as an “Instrument of Commitment,” with the Trustee. The Instrument of Commitment is a signed promise to pay the amount listed as the contributor’s share in Annex C of the GEF Instrument. To accommodate certain contributors’ parliamentary and budgetary processes, the GEF Instrument gives contributors the option of depositing a “Qualified Instrument of Commitment,” which provides that a certain amount of the contribution will be paid without qualification but that payment of the balance is contingent on the contributor’s legislature enacting the necessary appropriations legislation. Contributors depositing Qualified Instruments of Commitment undertake to make their best efforts to pass the legislation necessary to un-qualify their commitments within the time frame set in the Instrument of Commitment for payment of all contributions. This option meets the needs of countries like the United States and Canada that are prohibited by their national laws from depositing Instruments of Commitment for amounts of funds that have not yet been appropriated by their legislatures.

A Payment Schedule

The GEF Instrument provides that contributors will pay in four equal annual installments. Payments become due upon effectiveness of the GEF Trust Fund, which the GEF Instrument ties to contributors’ deposit of Instruments of Commitment (qualified or unqualified) with the Trustee. The GEF Instrument provides that the fund becomes effective, and contributions are thereby payable, when Instruments of Commitment representing a certain amount of all fund pledges have been deposited.

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74 Instrument, supra note 41, at Annex C, attachment 1. The IDA basic-share arrangements left a financing gap of slightly over 12% of the target figure set for the Tenth IDA Replenishment; the contributors to the GEF Trust Fund left a financing gap of only 5%. Id. See also World Bank, Report on Negotiations to Restructure and Replenish The Global Environment Facility, supra note 20, at paras. 41–42.

75 Instrument, supra note 41, at Annex C, attachment 1; World Bank, Report on Negotiations to Restructure and Replenish The Global Environment Facility, supra note 20. At the suggestion of the Trustee, contributors agreed to use the average exchange rates for the period 1 February 1993 through 31 October 1993 to establish the US dollar equivalent of respective local currency contributions. See id. at para. 42.

76 Instrument, supra note 41, at Annex C, attachment 1.

77 Id. at Annex C, para. 2(a).

78 Id. at Annex C, para. 2(b).

79 Id.

80 In the United States the Constitution grants Congress sole control over the allocation of Federal funds in that “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” US Const. art. I, § 9, cl. 7. Federal Agencies and the Executive Branch are limited by the amount granted by Congress and may not spend more than Congress has approved. The Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(A) (2006); see also US Gov’t Accountability Office, Office of Gen. Counsel, Principles of Federal Appropriations Law 2, 6-34 to 6-35 (3d ed. 2006). Furthermore, reallocation of funds to a purpose other than that originally established by Congress is prohibited, 31 U.S.C. § 1301(a) (2006); US Gov’t Accountability Office, Office of Gen. Counsel, Principles of Federal Appropriations Law 1, 4-6 (3d ed. 2004). “No officer, however high, not even the President, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. . . . The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well-known constitutional provision that no money can be taken or drawn from the Treasury except under an appropriation by Congress. . . .” Reeside v. Walker, 52 US 272, 291 (1850). Likewise in Canada, government expenditures are limited to those specified and approved by Parliament. Constitution Act, 1867, 30 & 31 Vict. Ch. 3, §§. 53–54 (UK), as reprinted in R.S.C., No. 5 (Appendix II 1985); see also Amelia A. Armit, An Overview of the Canadian Budget Process 7 (Parliamentary Centre 2005) (presentation to a roundtable on state financial control, hosted by the Russian Federation Council within the Framework of the IX St. Petersburg International Economic Forum).

81 Instrument, supra note 41, at Annex C, para. 3(c).

82 Id. at Annex C, para. 6(a). In the First Replenishment, effectiveness was tied to the deposit of Instruments of Commitment reflecting an aggregate value of SDR 980.53 million.
Advance Effectiveness

In order to avoid any interruption in the ability of the GEF to make financing commitments pending the effectiveness of the GEF Trust Fund, the contributors agreed to include an advance effectiveness mechanism in the GEF Instrument. Under this mechanism, once the Trustee has received Instruments of Commitment representing an agreed minimum amount of pledged contributions, the Trustee can, prior to the effective date of the GEF Trust Fund, treat a quarter of each contribution for which an Instrument of Commitment has been received as an “Advance Contribution.” Advance Contributions are payable to the Trustee on a schedule agreed upon between the Trustee and the contributor. Once received by the Trustee, they are immediately available for commitment and transfer.

The Pro Rata Right

As in the case of the IDA, contributors to the GEF Trust Fund wanted to address the risk that some contributors might renege on their promises to contribute after others had already committed funds in accordance with their pledges. In the case of the GEF, contributors were particularly concerned that the United States would delay on paying its share because it had a history of delaying on its IDA contribution. The United States was the only country whose promised contribution to the GEF represented more than 20% of the total amount of the resources to be contributed. It had indicated that it would deposit a Qualified Instrument of Commitment but gave no indication of when it would un-qualify its commitment. Accordingly, the other contributors wanted the GEF Instrument to include a mechanism, similar to the mechanism used in the IDA, which would allow them to withhold authorization from the Trustee to use the funds they had contributed unless, and until, the United States contributed in a timely manner. The mechanism used to meet these objectives, known in development financing as a pro rata right, is set out in Paragraph 8(b) and (c) of Annex C of the GEF Instrument.

Paragraph 8 governs the Trustee’s commitment or transfer authority of GEF Trust Fund resources. Generally, contributions become available for commitment, transfer, and disbursement upon receipt of payment by the Trustee. Under Paragraph 8(b), however, the Trustee is required to inform all contributors if a contributing country, having deposited a Qualified Instrument of Commitment, and whose contribution represents more than 20% of the total amount of resources to be contributed pursuant to the GEF Instrument (e.g., the United States), fails to unqualify its Instrument of Commitment within designated timeframes.

Upon receipt of such notice from the Trustee, contributors who have paid the amount of their contributions due under Annex C of the GEF Instrument may instruct the Trustee to defer commitment

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83 *Id.* at Annex C, para. 7(a).
84 The contributors agreed that advance effectiveness could be triggered once the Trustee had received Instruments of Commitment from Contributors whose aggregate contributions amounted to not less than $SDR 280.15 million. *Id.*
85 *Id.* All contributors have the option, however, of specifying in their respective Instruments of Commitment, that their Instrument of Commitment should not be treated as an Advance Contribution. *Id.*
86 *Id.* at Annex C, para. 8(a).
89 See e.g., Letter from H. Fukui, VP, Resource Mobilization and Cofinancing, World Bank to K. A. Kutch, Director, Development Banks Section, Australian Agency for International Development (18 December 1997) (on file with author). Indeed, the contributors’ concern proved well-founded. The US ultimately deposited a Qualified Instrument of Commitment in the amount of $430 million, of which it had only unqualified $190 million toward the close of the first replenishment period. *See id.*
90 *Instrument*, supra note 41, at Annex C, para. 8(a).
91 *Id.* at Annex C, para. 8(b). A Participant [must have] unqualified at least 50% of the total amount of its contribution by 30 November 1995, or 30 days after the effective date, whichever is later, and at least 75% of the total amount of its contribution by 30 November 1996, or 30 days after the effective date, whichever is later, and the total amount thereof by 30 November 1997, or 30 days after the effective date, whichever is later. *Id.*
of a portion of those contributions until the United States has unqualified its Qualified Instrument of Commitment. Contributors, however, may only defer commitment of a pro rata amount of their paid-in contributions equivalent to the percentage of the Qualified Instrument of Commitment that remains qualified. Contributors who defer commitment of their contributions in this way are said to be exercising their pro rata right. The Trustee cannot commit any of the resources to which the exercise of the pro rata right applies until the Qualified Instrument of Commitment that has prompted the exercise of the pro rata right has been unqualified. Once the contributors had agreed upon the pro rata right and the other payment procedures, the funding process of the GEF Trust Fund was in place.

These carefully designed components of the GEF funding process, borrowed and adapted from the IDA, provide a template for future collective intergovernmental financing efforts. The complexities and idiosyncrasies of this process are driven by the special needs created by sovereign contributors’ legislation, and the degree to which their overseas development aid funds are at the mercy of their political and appropriations cycles. Given these complexities, there are clear advantages to having an inter-governmental financial institution assume the role of Trustee of such an effort. An institution like the World Bank, for example, as distinct from a commercial bank, will be familiar with individual contributor government’s norms while also having the requisite degree of complex financial management expertise.

The Articulation of Process and Principles

The second replenishment of the GEF shows that the challenge of creating a collective financing effort pales in comparison to the challenge of making it operational. Achieving a consensus on the terms and conditions of the restructured GEF and the overlapping roles and responsibilities of its distinct components was a significant accomplishment. Implementing the understandings and vision enshrined in that consensus became the next step. The first priority for the World Bank as Trustee was the formulation of a replenishment process and its underlying core principles.

The Articulation of a Replenishment Process

If the contributors to a collective financing effort anticipate that the effort will exist for an indefinite period of time (which is likely if they aim to address a global problem, as distinct, for example, from meeting an immediate need, such as tsunami or earthquake relief), they must provide for the funding effort to be replenished. The contributors to the GEF Trust Fund neglected to provide expressly for the fund’s replenishment; the GEF Instrument provided for the fund to be established and for the World Bank to serve as Trustee from 1 July 1994 to 30 June 1997, but it was silent as to what should happen beyond that date. The World Bank as Trustee, however, working in collaboration with the Secretariat and with the blessing of the Council, honed a formalized replenishment regime, which has withstood the test of time and serves as a useful precedent for future funding efforts.

The GEF Instrument indicates that both the Council and the Trustee have a role in resource mobilization. Annex B of the GEF Instrument lists resource mobilization as one of the Trustee’s fiduciary responsibilities. Paragraph 10 of the GEF Instrument, however, indicates that the Trustee should only

92 Id. at Annex C, paras. 8(b)–(d).
93 Id.
94 Id.
95 Id. at Annex C, para. 1.
96 Id. at Annex B, para. 4(a).
initiate replenishment at the request of the Council, which is charged with responsibility for cooperating with the Trustee to mobilize resources. As the need for more resources became increasingly clear, the challenge for the Trustee, the Secretariat, and the Council was to translate these scattered provisions into a series of steps that would allow for replenishment. On 12 March 1997, the World Bank, acting as Trustee, convened an initial meeting of potential contributors to plan the second replenishment negotiations. It was comprised of all countries that had either pledged to the pilot facility, the restructured facility, or both. The participants at that meeting articulated a set of procedures to govern the second replenishment which subsequently became the standard for all replenishments of the GEF Trust Fund and which are sufficiently robust to serve as a template for the replenishment of any collective financing effort.

The procedures are based on the premise that replenishment negotiations should occur within a target timeframe, preferably one year, during which contributors will meet approximately four times to finalize the terms of the replenishment and the amount of their contributions. Significantly, the replenishment meetings are kept separate and distinct from the bi-annual meetings of the Council (although, for convenience, held close in time to the Council meetings when possible). From the beginning, the CEO and the Trustee adopted the practice of co-chairing all replenishment meetings.

As agreed at the time of the initial funding of the restructured GEF, representatives of countries contributing to the replenishment participate in the discussions and decisions of the replenishment meetings. Representatives of member countries of the GEF that are not contributing to the replenishment are informed of the meetings and allowed to attend as observers. The Council has an indirect voice in the replenishment meeting because the CEO conveys the results of each replenishment meeting to the Council.

The contributors to the GEF decided that the replenishment would be given formal effect by committing its terms and conditions and the amounts of the contributors’ pledges to a document modeled on Annex C of the GEF Instrument, termed a “Replenishment Resolution.” Once finalized and agreed to by all contributing participants, this document is submitted by the CEO to the Council for endorsement. Following endorsement, the Council asks the CEO to transmit the document to the World Bank Board of Executive Directors, which is invited to adopt it by resolution, thereby authorizing the World Bank, as Trustee, to manage the funds made available for the replenishment.

97 Id. at para. 10.
100 Summary of the Co-Chairs (Second Replenishment), supra note 99, at para. 2.
101 Id. at attachment 1 (providing for three additional meetings).
102 Id. at para. 2.
104 Id.
105 See Summary of the Co-Chairs (Second Replenishment), supra note 99, at para. 10.
107 See id. at Recommended Council Decision.
108 Id.
The Articulation of Replenishment Principles

The issues identified as the focus of the second replenishment meetings became the mold for all subsequent GEF replenishments. These issues include (i) the demand for GEF resources, (ii) burden-sharing, and (iii) an assessment of the GEF’s performance during the prior replenishment period.109 Like the agreed upon replenishment procedures, the identification of these issues should serve as a template for the replenishment of other financing efforts. The focus of the discussions during the second replenishment of the GEF Trust Fund certainly foreshadowed the issues that would dominate subsequent GEF replenishments.

The Demand for GEF Resources

At the outset of a replenishment, the case must be made that further funds are needed, that all contributors are still supportive, and that the financing vehicle is making good use of the money that has been contributed. Several factors contributed to a ready acknowledgment that the GEF Trust Fund needed to be replenished. The number of potential recipient countries acceding to the Climate Change and Biodiversity Conventions had almost tripled since the time of the first replenishment.110 Further, many potential recipient countries had undertaken preparation activities to avail themselves of GEF funding (“enabling activities”).111 Nonetheless, it fell to the World Bank as Trustee to respond to queries raised by some potential contributors as to the need for replenishment, given that the GEF Trust Fund had substantial assets on hand at the time replenishment discussions began.112

This disparity between the need for contributors to pledge new funds and the need for actual cash to disburse is common in large multi-donor trust funds. It arises because of the many steps it takes to transfer funds from a contributor, through a Trustee, to an intermediary, and on to the ultimate beneficiary. The sequential steps in this process are not always well understood by representatives of contributor countries who are concerned about being called upon by their legislators to account for the use of development aid resources.

In the case of the GEF Trust Fund, the allocation, commitment, transfer, and disbursement of funds takes place on several levels. Consistent with the authority accorded it under the GEF Instrument, the Council allocates the resources available on the date of the Council Meeting, as reported by the Trustee, on the basis of the work program, compiled by the Secretariat in consultation with the Implementing and Executing Agencies.113 The Council’s practice is to allocate only such resources as have been paid to the Trustee by contributors, although the Council is not prohibited from making allocations contingent on contributors’ payment of their pledges.114 The GEF Instrument imposes tighter constraints on the Trustee. The Trustee commits GEF Trust Fund resources to the Implementing and Executing Agencies on

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109 Id., at para. 2.
111 Id. at para. 3(c). Enabling activity occurs when financing is provided for either “a plan, strategy, or program to fulfill commitments under a global environmental convention” or “a national communication or report to a relevant convention.” GEF, Enabling Activities, www.thegef.org/Projects/projects-Projects/EnablingActivities.html (last visited 24 July 2008).
112 See Global Environment Facility, GEF Council, Planning Meeting for the Second GEF Replenishment, 12 March 1997, Background Note, GEF/R2/1 para. 8 (1997) (on file with author) (showing that the GEF would have a balance of $673 million in uncommitted funds at the end of the first replenishment period, 30 June 1998, if all contributors delivered on their pledges).
113 Instrument, supra note 41, at paras. 18, 20(e) (providing that the Council shall “direct the utilization of GEF funds”). The GEF Council has delegated authority to the CEO to allocate GEF resources for project preparation. See Global Environment Facility, Project Preparation Grants 3 (April 2008), available at http://gefweb.org/uploadedfiles/3Chapter%203%20Project%20Cycle%202012-1-08.doc
114 The usual practice is for the Trustee to report to the GEF Council on the amount of GEF resources available for commitment at a given Council meeting and for the Council to allocate within that reported amount. See, e.g., Global Environment Facility, GEF Council, Trustee Report on the Financial Status and Management of the GEF Trust Fund, GEF/C.21/Inf.3 paras. 2–7 (1 May 2003), available at www.thegef.org/Documents/C.21.Inf.3_Trustee_Report.pdf. The GEF Instrument simply states that the Council “shall direct the utilization of GEF funds” and “review the availability of resources from the GEF Trust Fund.” Instrument, supra note 41, at para. 20(e).
the basis of the allocations made by the Council. It can only commit funds, however, up to the amount of funds that it has actually received from contributors.\textsuperscript{115}

The Trustee’s commitment of trust fund resources to an agency does not mean that all of those resources are immediately transferred to the agency. On the contrary, the Trustee and the agency agree on a process whereby the Trustee makes periodic transfers of funds to the agency, the amounts of which are determined on the basis of a showing of need by the agency for liquid funds.\textsuperscript{116} In making that showing, the agency must indicate the amount of commitments it has made to GEF recipients, the amount of disbursements it has made, and any balance it holds as a result of cancelled or delayed GEF projects.\textsuperscript{117}

Agencies can, and usually will, commit GEF resources to recipients before actually receiving resources from the Trustee. The agencies make their commitments in the form of grant agreements and generally provide for the transfer of resources to the recipient in installments.\textsuperscript{118} Typically, the first installment will be payable upon effectiveness of the grant agreement, with subsequent installments payable subject to performance of a set of activities specified in the grant agreement.\textsuperscript{119}

Pending transfer, the Trustee invests GEF cash assets.\textsuperscript{120} The Implementing and Executing Agencies also invest GEF funds transferred to them, pending disbursement. They must account to the Trustee for investment income earned on GEF resources, which is credited toward amounts due to them by the Trustee.\textsuperscript{121} In light of the number of steps involved before funds actually pass into the hands of recipients, the Trustee can end up having a large cash balance in the GEF Trust Fund when, at the same time, the amount of uncommitted, available resources for the GEF Council to allocate may be minimal. Thus, the need for replenishment is triggered by the need to enable the Council to make allocations, not by an immediate need for liquid funds.\textsuperscript{122}

A Shared Commitment to Contribute

Burden sharing is always a game of cat and mouse, and the negotiation of the financial commitments of contributors to the second replenishment proved no exception. Participants readily agreed to use the same burden-sharing framework they had used in the first replenishment and to base it on a target figure of $2.75 billion.\textsuperscript{123} Unfortunately, their consensus on those aspects did not translate into an immediate outpouring of unconditional financial support. Fueling the difficulty was the fact that the United States had still not paid a substantial amount of its pledge of SDR 306.92 million to the first replenishment. As of 31 October 1997, for example, 41.09% of the US pledge remained qualified.\textsuperscript{124}

\textsuperscript{115} See Instrument, supra note 41, at Annex C, para. 8(a).


\textsuperscript{118} See World Bank, Operational Manual, supra note 37, at OP 12.00, para. 3.

\textsuperscript{119} Id. at OP 12.00, para. 4.

\textsuperscript{120} Instrument, supra note 41, at Annex B, para. 4(b).

\textsuperscript{121} GEF Agency Financial Procedures Agreements, supra note 117.

\textsuperscript{122} See, e.g., World Bank, Trustee Report, supra note 65, paras. 9–10 (under heading “Projected Available Resources of the GEF Trust Fund”).

\textsuperscript{123} See GEF Council Meeting, Report on the Second Replenishment, supra note 100, at para. 7.

\textsuperscript{124} See Global Environment Facility, Burden Sharing GEF-2 Replenishment, GEF/R2/INF. 9 (6 November 1997) (on file with author). There was also some dilatoriness on the part of some of the less significant contributors. Italy was behind on the payment of 66.67% of the amount of its pledge due to be paid at that time, Ireland and Egypt were behind by 30.89% and 50% respectively, and Brazil and Argentina had not yet even deposited their Instruments of Commitment. Id.
The dissatisfaction of the other major contributors at the sheer size of the amount the United States had failed to pay initially threatened to scuttle the replenishment negotiations. Ultimately, the same core group of countries that had contributed to the first replenishment agreed to contribute to the second, subject to all contributors agreeing to make their best efforts to contribute to a fully funded replenishment.\textsuperscript{125} In various ways, however, they communicated a message of dissatisfaction with the United States through their pledges. Germany and France, for example, made a portion of their contributions conditional on the other “major Participants” (the United States and Italy) making full payment of their GEF-1 pledges.\textsuperscript{126} The Netherlands pledged to make a supplementary contribution, above and beyond its basic contribution, on the same condition.\textsuperscript{127} Meanwhile, the United Kingdom agreed to increase its supplementary contribution further if the condition outlined by France, Germany, and the Netherlands was met.\textsuperscript{128} Eventually, at the final meeting on the replenishment, the United States reported that it expected to pay the remainder of its pledge to the first replenishment in 1999.\textsuperscript{129} Further, Italy announced that it expected the requisite legislation, authorizing payment of all the amounts it owed under the first replenishment, to be passed in a matter of weeks.\textsuperscript{130} A stalemate in the negotiation of the replenishment was averted, but it was clear that the swords were drawn.

**Assessment of the GEF’s Performance**

The time of replenishment is a point of reckoning for any fund. Contributors, understandably, want to be satisfied that their contributions have been put to good use before they commit additional resources. Contributors will also try to use the leverage they have at replenishment to move the fund closer to their individual agendas, at times in disregard of the shared agenda previously agreed to by all contributors. Both of these tendencies surfaced early on in the second replenishment of the GEF.

During 1997, the Council directed two independent studies of the GEF: a Study of the GEF’s Overall Performance, and a Study of GEF Project Lessons.\textsuperscript{131} Drawing upon those studies, the participants in the second replenishment negotiations drew up a set of policy recommendations for the Council along with the draft financial provisions for replenishment.\textsuperscript{132} Included were recommendations that the GEF strengthen its country-based activities, such as capacity building, training, and outreach, so that GEF activities could be increasingly country-driven.\textsuperscript{133} The participants also called upon the Implementing Agencies to incorporate global environmental objectives into their own policies and programs, and upon the Secretariat to develop a GEF resource allocation strategy and broad performance indicators.\textsuperscript{134}

\textsuperscript{125} See GEF Council Meeting, *Report on the Second Replenishment*, supra note 100, at Annex A. This meant that many of them pledged in greater amounts than under the first replenishment because all contributors agreed that they did not want to leave a financing gap. The financing gap left in the first replenishment for the purpose of giving the CEO an incentive to try to raise funds from other sources had not proved an effective motivator. No additional contributors were secured and so to continue to leave a gap would have been to blatantly ignore the GEF’s expanded mandate. See id.


\textsuperscript{127} Id. at Attachment 1, n.g.

\textsuperscript{128} Id. at Attachment 1, n.h.

\textsuperscript{129} Specifically, the US representative stated that the Administration had included payments to the GEF Trust Fund to cover all its obligations under the First Replenishment in its Fiscal Year 1999 submission to the US Congress. See GEF Council Meeting, *Report on the Second Replenishment*, supra note 100, at para. 5.

\textsuperscript{130} Id.

\textsuperscript{131} GEF Council Meeting, *Report on the Second Replenishment*, supra note 100, at Annex B.

\textsuperscript{132} Id.

\textsuperscript{133} Id. at Annex B, para. 1.

\textsuperscript{134} Id. at Annex B, para. 2.
they urged the Secretariat to explore ways of leveraging additional GEF resources from the private sector.\textsuperscript{135} In addition, they recommended the strengthening of a monitoring and evaluation function within the Secretariat and increased participation by the multilateral development banks in GEF activities.\textsuperscript{136}

These substantive policy recommendations, addressing issues squarely assigned to the purview of the Council under the GEF Instrument, added a new layer to the replenishment negotiations. As with the other issues raised in the second replenishment, the policy issues echoed themes that would loom large in future replenishments. Further, the trend towards preempting issues for the Council became a precedent. In subsequent replenishments, the policy recommendations would come to dominate the negotiations, with negative consequences. Inter-donor wrangling over policy issues would give rise to significant delays in agreeing on final financial provisions. Having such disputes play out in replenishment negotiations (from which non-contributing recipient countries are excluded) also undermines the donor country/recipient collaboration reflected in the composition of the Council, a much-touted hallmark of the GEF’s structure.

In sum, the distinct replenishment process and principles devised for the GEF during its second replenishment provide some clear guideposts for future collective financing vehicles. They also provide certain caveats with respect to the difficulty of balancing between the need for infusions of new funds and the tendency of contributors to condition their further financial commitments on the adoption of new conditions. In the case of the GEF Trust Fund, the task of corralling contributors’ demands fell to the CEO and the World Bank as Trustee, in their roles as joint chairs of the replenishment negotiations. The challenge of this task suggests that contributors to future collective funding vehicles should ensure that the entity they charge with responsibility for this resource mobilization task will have sufficient credibility with all contributors to undertake it.


The seventh year of the GEF, by which time it had become a relatively mature financing mechanism with defined norms, was a make-or-break year. The core innovations of the GEF that make it a pioneering financing mechanism—the use of several entities, in addition to the World Bank, to serve as financial intermediaries, and the co-existence of a functionally independent Secretariat alongside the World Bank—came under serious challenge. In addition, the shared cooperative framework the contributors had negotiated to fund the GEF almost became unglued in the face of significant delays in the United States’ payment of its contributions. A further challenge to the GEF Trust Fund’s long-term sustainability emerged when funds that would ordinarily have gone to the GEF Trust Fund were diverted to two newly established trust funds, the Special Climate Change Fund and the Least Developed Countries Fund, due to the United States’ opposition to the premises on which support for those funds was based. The emergence of these challenges and the manner in which they were addressed present useful, if sobering, lessons for collective financing efforts.

**Expanding the Intermediary Umbrella**

One pathbreaking aspect of the GEF’s structure was the distinction it drew between the task of managing the financial resources of the GEF Trust Fund (which the contributors entrusted to the World Bank as Trustee) and the task of assessing, proposing, monitoring, and supervising individual projects financed with GEF Trust Fund resources. Instead of having the GEF Trust Fund finance World Bank projects exclusively

\textsuperscript{135} Id. at Annex B, para. 3.  
\textsuperscript{136} Id. at Annex B, paras. 4–5.
(the pre-GEF norm for trust funds for which the World Bank served as Trustee), the contributors to the GEF decided that the GEF Trust Fund should fund World Bank, UNEP, and UNDP projects in addition to the projects of a range of other entities, including multilateral development banks, other specialized agencies and programs of the United Nations, other international organizations, bilateral development agencies, national institutions, non-governmental organizations, private sector entities, and academic institutions.137 These projects are subject to the Trustee and Secretariat working out appropriate arrangements with the entities.138 These other entities are referred to in the GEF Instrument as “Executing Agencies.”139

The World Bank, UNEP, and UNDP, in their capacity as Implementing Agencies, did not want the Secretariat to enter into funding arrangements with additional entities because they did not want to compete with multilateral banks and others for GEF Trust Fund resources. The CEO and the Secretariat, however, were keen to expand the universe of entities receiving GEF funding so as to build up a pipeline of good projects. These differing viewpoints came to a head over the course of the third replenishment process.

In the first few years of the restructured GEF’s existence, the Council allocated funds within a limited universe. Prior to Council meetings, the CEO would consult with the three Implementing Agencies to identify projects eligible for GEF funding.140 On the basis of those consultations, the CEO would submit a joint implementing agency work program to the Council for approval. Other entities had no voice. The three Implementing Agencies occasionally used the multilateral development banks and other UN agencies as intermediaries, whereby one of the Implementing Agencies might transfer GEF resources to such an entity, which would issue sub-grants to the ultimate recipients.141 But those entities could not themselves make proposals to the Secretariat for inclusion in the work program. Under the GEF Instrument, they were empowered only to make proposals to the Implementing Agencies in the hope that one of the Implementing Agencies would adopt the proposal and engage the proposing entity as an Executing Agency to execute it. This hope proved in vain. The Implementing Agencies had their own agendas and showed little interest in project proposals submitted by potential Executing Agencies.142

The Inclusion of Multilateral Development Banks, UN Agencies, and Other Entities

In time, the multilateral development banks complained to donor governments and the CEO that the Implementing Agencies routinely ignored them with the result that worthwhile project proposals for GEF funding could not get funded.143 These complaints fell on a sympathetic ear in the CEO, who was under pressure from the GEF donors to develop a robust pipeline of GEF-funded projects and who was concerned about the slow pace of the Implementing Agencies’ project development. He tabled the issue for the donors’ review as part of the second replenishment negotiations.144 At the conclusion of those negotiations the participants instructed the Secretariat to prepare options for the Council’s consideration on ways to promote greater Executing Agency participation in the GEF, with a particular focus on a greater role for the multilateral development banks.145

137 Instrument, supra note 41, at para. 28.
138 Id.
139 Id. at Annex B, para. 8.
140 Id. at para. 29.
143 See id. at paras. 5–7.
The Secretariat subsequently presented a modest proposal for an increased role for the multilateral development banks in the GEF to the Council for approval. The proposal suggested that the Council allow the multilateral development banks to implement GEF-funded projects jointly with the Implementing Agencies. Under the proposal, the CEO would include project suggestions for such jointly implemented projects to the Council as part of the GEF work program, and any such project approved by the Council would specifically delineate the respective responsibilities and costs of the Implementing Agency and the multilateral development bank. The Implementing Agency, however, would remain fully accountable to the Council for the entire project. A second part of the Secretariat’s proposal, however, went further in giving the multilateral development banks autonomy. Under this part, the Secretariat proposed that the multilateral development banks be allowed to apply directly to the CEO, independent of any Implementing Agency, for GEF project preparation grants. The Council approved the proposal.

Though modest, the Council’s approval of these expanded opportunities for the multilateral development banks marked the beginning of a major increase in the number of entities that would ultimately participate in GEF activities as Executing Agencies and a major expansion of the responsibilities they would assume. In 2000, the Council approved a request from the Secretariat to allow specialized UN agencies and programs that had worked previously with an Implementing Agency to jointly implement GEF projects and to submit applications for project preparation grants. On that basis, the Council ruled that the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Industrial Development Organization (UNIDO) should be included as Executing Agencies of the GEF.

A year later, in May, 2001, the Council approved a set of criteria proposed by the Secretariat for all future determinations by the Council of when an entity should be eligible to have access to GEF resources equivalent to that accorded to the multilateral development banks. The approved criteria included: (i) the extent to which the entity could fulfill one of the GEF’s strategic needs; (ii) the entity’s capacity in areas of relevance to the GEF; and (iii) the entity’s potential to build global environmental concerns into its regular work program and to leverage resources. The Council ruled that the Secretariat, in consultation with the Implementing Agencies, should conduct a due diligence review of an entity on the

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146 GEF Council Meeting, 5–7 May 1999, Expanded Opportunities, supra note 143.
147 See id. at para. 19.
148 Id. at para. 24.
149 Id. at para. 19.
150 Id. The Council has authorized expedited procedures for the approval of GEF grants of limited size. See Global Environment Facility, Projects, http://thegef.org/Operational_Policies/Eligibility_Criteria/Funding_Options/funding_options.html. (last visited 16 November 2009). These procedures apply to grants for Medium Sized Projects (defined as grants of up to $450,000 in the areas of biodiversity and climate change) and Project Preparation Grants (defined as grants for developing projects). See id. Project Preparation Grants are divided into three categories: PDF Block A (up to $25,000), PDF Block B (up to $350,000), and PDF Block C (up to $1 million). Id. Expedited procedures also apply for the approval of grants for Enabling Activities (defined as a plan, strategy, or program to fulfill commitments under a global environmental convention, or a national communication or report to a relevant convention). See GEF, Enabling Activities, supra note 112. The May 1999 Council ruling authorized the multilateral development banks to apply to the CEO for PDF-B grants. See GEF Council Meeting, 5–7 May 1999, Expanded Opportunities, supra note 143, at para. 22.
154 Id. at para. 4.
basis of these criteria, before recommending to the Council that the entity be given access to the GEF Trust Fund resources.155 Further to the recommendation of the Secretariat, it ruled that the International Fund for Agricultural Development (IFAD) met these criteria.156

Consistent with their respective responsibilities within the GEF structure, the Secretariat and the World Bank, as Trustee, concluded formal arrangements with the newly minted Executing Agencies to govern the processes of grant applications, approvals, and fund transfers. Each Executing Agency entered into a Memorandum of Understanding with the Secretariat, setting out the grant application and approval process that would apply.157 Reconciling the policies and procedures of the Executing Agencies with both the World Bank’s policies and procedures as Trustee and the Secretariat’s project proposal policies and procedures took a considerable amount of time.158 Ongoing deliberations over satisfactory fee-sharing arrangements with the Implementing Agencies compounded the difficulties encountered in reaching closure.159 Once those arrangements were in place, however, the way had been cleared for a broad range of entities to be involved in GEF activities.

As the Executing Agencies gained experience in jointly implementing GEF projects and developed sound proposals funded by project preparation grants, the case for giving them the same degree of access to GEF funds as the Implementing Agencies became insurmountable. Consequently, in October, 2002, at the urging of the participants in the third replenishment, the Council ruled that the Asian Development Bank (ADB) and the Inter-American Development Bank (IADB) be accorded direct access to full GEF project funding based on prior positive performance.160

When proposing that ADB and IADB be given full access to GEF Trust Fund resources, the participants in the third replenishment also recommended that the Council review annually the experience of other Executing Agencies.161 They wanted such review to consider whether additional entities should also be granted direct access to full GEF project funding, based on having satisfactorily demonstrated to the Council their capacity and comparative advantage in the management of GEF activities. Subsequently, the Council, at the Secretariat’s recommendation,162 decided that if an Executing Agency had access to GEF grants for preparation activities and for joint implementation with Implementing Agencies, and the Executing Agency was interested in having direct access to full GEF project funding, it should be accorded such access.163

155 Id. at para. 5.
156 Id. at paras. 10–14. The Council also ruled that UNIDO and FAO should be provided direct access to GEF Trust Fund resources for undertaking activities on persistent organic pollutants. See id. at para. 2.
157 World Bank, Trustee Report, supra note 65, para. 11. Concurrent with such Memoranda of Understanding, each Executing Agency entered into a Financial Procedures Agreement with the World Bank as Trustee setting out how grant funds allocated to the agency would be committed and transferred to it and the entity’s concomitant financial reporting obligations. Id.
158 See id.
163 See Global Environment Facility, GEF Council, Meeting, 19–21 November 2003, Joint Summary of the Chairs para. 24 (25 November 2003), http://gefweb.org/uploadedFiles/Documents/Council_Documents/GEF_C22/Joint%20Summary%20of%20the%20Chairs%20-%20November%202003.pdf (last visited 16 September 2009); World Bank, Trustee Report, supra note 65, para. 11. The International Finance Corporation, which serves as an Executing Agency for some World Bank GEF projects, has not opted to seek direct access to full GEF project funding.
continues. Most recently, in the second meeting of the fifth replenishment, the Secretariat has proposed that the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Food Programme (WFP) be included in the list of entities eligible to serve as Executing Agencies of the GEF. The Secretariat also indicated that it proposes to include additional, unspecified entities in the near future.164

The Implications of an Expanded Universe of Intermediaries on the Scope of the Trustee’s Fiduciary Duties

The expanded universe of Executing Agency entities eligible to receive GEF Trust Fund resources directly from the Trustee raised legitimate concerns for the World Bank with respect to the scope of its fiduciary duties as Trustee. The Bank had agreed to serve as Trustee when that meant transferring funds to only three entities—the World Bank itself (in its capacity as an Implementing Agency), UNEP, and UNDP (the other two Implementing Agencies). Now, it would be required to transfer GEF Trust Fund resources to a range of additional entities without any opportunity to verify either their financial management processes or their capacity to provide the Bank with the kind of financial reporting necessary to satisfy its fiduciary duty to report on the use of trust fund resources to contributors.

This concern prompted the World Bank as Trustee to seek a ruling from the Council clarifying the scope of the fiduciary duty it owed to the contributors to the GEF Trust Fund. Under the GEF Instrument, the Trustee is responsible for the “monitoring of the application of budgetary and project funds . . . so as to ensure that the resources of the [GEF Trust] Fund are being used in accordance with the Instrument and the decisions taken by the Council.”165 When the GEF first began operations, the World Bank, UNEP, and UNDP agreed inter se that it would suffice for the World Bank as Trustee to secure an annual, externally audited financial report from each Implementing Agency and periodic un-audited financial reports to satisfy this responsibility.166 They based this on the understanding that, under the GEF Instrument, the Implementing Agencies share responsibility with the Trustee for ensuring that GEF Trust Funds are used appropriately.167 The World Bank as Trustee sought and obtained a ruling from the Council that this practice was satisfactory and that, in the opinion of the Council (and by extension, the contributors to the GEF Trust Fund, as reflected in the views of the Council), the World Bank as Trustee could proceed on the same basis in monitoring GEF Trust Fund resources made available to the Executing Agencies.168

Given the importance of the agencies’ financial reports to the Trustee’s ability to discharge its fiduciary duty, however, the World Bank also sought a ruling from the Council authorizing it as Trustee to suspend commitment or transfer of funds allocated by the Council to an Executing Agency if that agency failed to meet its financial reporting obligations to the Trustee.169 The Council granted the ruling.170 The World Bank’s power as Trustee to suspend commitment or disbursement applies

165 Instrument, supra note 41, at Annex B, para. 4(d).
166 World Bank, Trustee Report, supra note 65, para. 13.
167 See Instrument, supra note 41, at para. 22.
169 World Bank, Trustee Report, supra note 65, para. 15.
170 GEF Council, Meeting, 19–21 May 2004, Joint Summary of the Chairs, supra note 169, para. 31. This was an important ruling for the Trustee. In prior years, the Trustee had difficulty securing satisfactory audited financial reports from UNEP and UNDP. Both agencies routinely submitted qualified audits (i.e., audits which indicated that the use of a certain amount of funds), those subject to the qualification could not be verified. See, e.g., Memorandum from Jing Chen, ACTTF, World Bank, to Sanjivi C. Rajasingham, FRM, World Bank 2 (12 March 1999) (on file with author) (reporting that 20% of UNDP’s 1996 GEF disbursements and 11% of UNEP’s 1996 GEF disbursements and 23% of UNDP’s 1997 GEF disbursements and 21% of UNEP’s 1997 GEF disbursements were not covered by the audits they provided to the Trustee); Global Environment Facility, GEF Council, Meeting, 22–24 May 2000, Joint Summary of the Chairs para. 14 (27 May 2004) (on file with author) (reporting that the audit of UNDP’s 1999 GEF disbursements was subject to a qualification).
Whenever an agency is out of compliance with its financial reporting obligations for 30 days or more after issuance of written notice by the Trustee. The suspension lasts until the compliance has been resolved to the satisfaction of the Trustee.

The debacle over expanding the intermediary umbrella for the GEF holds a message. While eventually resolved in favor of an expanded universe of entities eligible to apply for GEF funding, the differing views of the Secretariat, the World Bank, UNEP, and UNDP illustrate the inherent tension that exists when a functionally independent Secretariat, headed by a CEO answerable to the contributors, co-manages a fund alongside a Trustee and powerful Implementing Agencies. It also illustrated, however, the value to the contributors of having that independent voice, notwithstanding the tension it created. Absent that voice, the contributors’ desire to spread GEF financing broadly would have been subsumed by the World Bank’s, UNEP’s, and UNDP’s parochial desire for control.

As for the implications of an expanded group of intermediaries on the Trustee role, subsequent events suggest that the arrangement the World Bank as Trustee worked out with the contributors may not modify the contributors’ expectations of the Trustee as well as the World Bank would hope. The contributors, acting through the Council, appeared to understand and agree that the Trustee would serve a limited oversight role, which would be fulfilled by securing externally audited financial reports from the Implementing Agencies and Executing Agencies. Less than two years later, however, they would call upon the World Bank as Trustee to develop a set of policy proposals on strengthening the accountability of those agencies, a demand which, on its face, seems inconsistent with the Trustee playing a strictly limited oversight role.

A GEF Bid for Legal Independence

The GEF’s structure has given rise to significant conflict between the Secretariat and the World Bank as the GEF has grown in size and stature. The desire of the GEF Secretariat for more independence than allowed by the GEF’s structure (under which the GEF lacks independent legal personality or capacity, and the World Bank, as Trustee, is the only entity with legal capacity to act in respect of the GEF Trust Fund assets), surfaced as a key issue in the third replenishment. The issue was resolved at that time by a number of band-aid arrangements. Subsequent developments in the early stages of the fifth replenishment suggest that the shelf life of those band-aids has now expired. This ongoing tension suggests that combining multiple roles in one institution, as done in the GEF (where the World Bank serves as financial manager or Trustee, Implementing Agency, and host to an “independent” Secretariat) does not serve well the

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172 Id.
173 See infra pp. 75–77.
interests of the many stakeholders in a collective financing effort. Alternative approaches may ultimately warrant exploring the need for a founding framework for collective financing efforts that does not depend on common law trust principles. There may also be a need for an institutional framework that enables a new financing effort to be less heavily dependent for financial management and execution on institutions with competing agendas.

**The Background to the GEF’s Legal Status**

The creation of a functionally independent Secretariat headed by a CEO appointed by and answerable to the GEF Trust Fund contributors was a defining feature of the 1994 restructuring of the GEF. Having a Secretariat was a necessary step, given the creation of the Assembly and Council, which reflected a determination on the part of the contributors that, and not the World Bank, would control the allocation of GEF Trust Fund resources. Initially, the roles contemplated for the Secretariat and the CEO were limited, consisting of coordinating the work program between the Implementing Agencies, overseeing its implementation, and preparing GEF operational guidelines. No provision was made for the CEO and Secretariat to develop their own agenda independent of this general coordinating role. Further, the capacity to enter into arrangements implicating the use of GEF Trust Fund resources was placed squarely within the control of the World Bank as Trustee and, therefore, “legal owner” of the trust fund resources. As the GEF evolved, however, and the resources of the GEF Trust Fund grew, the ambitions of the CEO for his own role and the role of the Secretariat grew as well. These ambitions came to a head during the negotiations of the third replenishment when the CEO proposed that the GEF’s structure be changed, and the GEF Instrument amended, so as to accord the GEF full legal independence.

The CEO’s proposal for the GEF’s legal independence opened up an issue that was much debated and, it was thought, laid to rest at the time the GEF was restructured. The issue surfaced in early 1994, when the Conferences of the Parties (COPs) of the Biodiversity and Climate Change Conventions sought opinions from the United Nations Office of Legal Affairs (UNOLA) on the legal status of the GEF. They also asked for an opinion regarding the type of arrangements that the COPs and the GEF could enter into that would formalize the COPs and participants’ understanding that the GEF Trust Fund resources would be used in conformity with the policies, priorities, and eligibility criteria decided by the COPs.

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175 Instrument, supra note 41, at para. 21.
176 Id. at paras. 21–23.
177 Id. at Annex B, paras. 1, 7.
179 Memorandum from Ibrahim F. I. Shihata, Vice President and General Counsel, World Bank, to Files (23 August 1994) (on file with author) (hereinafter Shihata Memorandum); Memorandum from Hans Corell, Under-Secretary-General and Legal Counsel, UN Office of Legal Affairs, to Angela Cropper, Executive Secretary, Intergovernmental Committee for the Convention on Biological Diversity, Questions Concerning the Legal Status of the Global Environment Facility (31 May 1994) (on file with author) (hereinafter Corell Memorandum). The record indicates that Hans Corell, then-Under-Secretary General and Legal Counsel of the UN, issued two opinions in response. These included the 31 May 1994 memorandum to the Executive Secretary of the Intergovernmental Committee for the Convention on Biological Diversity and a 22 June memorandum to the Executive Secretary of the INC/FCC on the legal personality and legal capacity of the GEF. See Shihata Memorandum, supra, at p. 1. For ease of reference these two opinions are referred to herein as the UNOLA Memos.
180 The understanding that such arrangements would be entered into is expressly reflected in the Instrument. Instrument, supra note 41, at paras. 20(g), (h), 26, 27, 31. The UNOLA issued an opinion on this question, dated 23 August 1994 and titled Arrangements between the Conference of the Parties of the United Nations Framework Convention on Climate Change and the Global Environment Facility, which advised that a legally binding treaty instrument should be entered into between the COP of the Climate Change Convention and the GEF to formalize the working relationship between the constituent bodies of the GEF and the COP. See Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, Meeting, Geneva, 22 August–2 September 1994, Matters Relating to Arrangements for the Financial Mechanism and for Technical and Financial Support to Developing Country Parties, A/AC.237/74 Annex (23 August 1994), http://unfccc.int/resource/docs/a/74.pdf
Legal Personality and Capacity to Enter Binding Legal Agreements

The COPs’ query embodied two distinct parts: (i) whether the GEF was an independent legal entity, and (ii) whether the GEF had the capacity to enter into binding legal agreements. On both counts, the UNOLA answered no. With respect to the question of legal personality, the UNOLA based its opinion on the premise that an international entity has legal personality if, in accordance with its constituent instrument, it is established as an international organization subject to international law. The UNOLA concluded that the GEF Instrument did not make the GEF an international organization under international law for three reasons. First, the representatives of the states who accepted the text of the GEF Instrument did not become contracting parties to the GEF Instrument at the time (rather, the GEF Instrument provided for the subsequent deposit of Instruments of Participation or Commitment). Second, the GEF Instrument contains no provision to the effect that states should give their consent to be bound by the GEF Instrument. Lastly, the participants in the GEF lack the final authority under the GEF Instrument to amend or terminate the GEF Instrument (as the power to amend or terminate is also dependent on the agreement and action of the Implementing Agencies).

With respect to the GEF’s capacity to enter into binding legal agreements, the UNOLA memos also embraced the view that an entity’s constituent instrument is the source of the entity’s implied powers to carry out its purposes and duties. These powers, they opined, include, inter alia, the legal capacity to enter into treaties and contracts. The UNOLA memos based their conclusion that the GEF lacked such capacity on the wording of the GEF Instrument. It contains no express provision giving the GEF legal capacity to enter into legally binding agreements but does contain an express provision (Paragraph 7, Annex B) granting the Trustee authority to enter into arrangements and agreements, thereby negating any suggestion that the GEF possesses such implied powers. Following the issuance of the UNOLA memos, up until the time of the third replenishment, the legal status of the GEF, as characterized by the UNOLA opinion, remained unchallenged.

181 Corell Memorandum, supra note 180, at paras. 21–22.


183 In the course of concluding that the GEF did not have independent legal personality, H. Corell stated the view that the restructured GEF was a “joint subsidiary body, in the form of a financial mechanism, created by the World Bank and UNDP and UNEP, acting on behalf of the United Nations.” Corell Memorandum, supra note 180, at para. 17. This view was refuted by I. Shihata, then Vice President and General Counsel of the World Bank. Shihata Memorandum, supra note 180. Shihata expressed the view that the GEF, as envisaged by the Instrument, was “neither an international organization endowed with juridical personality nor an organ of either the UN, the Bank, or both.” Id. at p. 1. Rather, Shihata wrote, the GEF “is a sui generis international arrangement with special characteristics detailed in the Instrument.” Id. In a meeting held between H. Corell and I. Shihata following the issuance of the UNOLA Memos, Corell agreed to avoid the characterization of the GEF as a subsidiary organ in presenting documents concerning the GEF to the GEF General Assembly. Id. at p. 3.

184 Corell Memorandum, supra note 180, at para. 3. It is well accepted that inter-governmental organizations may have international legal personality. See Oppenheim’s International Law 18–19 (Robert Jennings & Arthur Watts, eds., 9th ed. 1996). However, the rights and obligations that stem from such personality depend upon what is provided in the constitution of the organization or on what legal capacities must be implied in order for the organization to perform the functions for which it was established. See id. at 19.

185 Corell Memorandum, supra note 180, at para. 3.

186 See id. at para. 7.
The CEO’s 2001 bid for GEF legal independence stemmed from a desire for greater autonomy in certain specific areas. First, he sought an increased role for the Secretariat in policy formulation. He maintained that for the GEF to be an effective mechanism, the Secretariat needed to be free to engage in its own GEF-focused country assistance strategy with each country eligible to receive GEF Trust Fund resources rather than the GEF being simply an afterthought in the ongoing dialogue between the Implementing Agencies and their client countries. Second, he sought the freedom, in formulating the GEF’s strategy, to develop allocation strategies based on global and regional approaches and, therefore, to depart from the country-based model followed by the World Bank. Third, the CEO sought the ability to enter into (and sign on behalf of the GEF) arrangements with external parties, notably Executing Agencies, country governments, and the Secretariats of the COPs to the various international environment treaties. Fourth, he sought the right to determine the terms and conditions of employment of Secretariat staff (all of whom served on World Bank contracts of employment) and to appoint, terminate, and promote Secretariat staff. At the third meeting of the participants to the third replenishment, the participants asked the CEO to refine his proposals for presentation to the December 2001 Council meeting.

The Secretariat/Implementing Agency Divide

Although the CEO presented his bid for GEF independence as a means of effecting the recommendations of the Study of the GEF’s Overall Performance, the Implementing Agencies saw his bid as a thinly-disguised power grab. Prior to the December 2001 Council meeting, they met with the CEO several times to explore the possibility of meeting his demands through administrative arrangements and delegations of authority so as to avoid opening up the division of responsibilities provided for in the GEF Instrument. At the December 2001 Council meeting, the CEO suggested two possible options for achieving greater autonomy with respect to entering into arrangements with the COPs, Implementing Agencies, and Executing Agencies: (i) enhance administrative arrangements between the GEF Secretariat and the World Bank, including instruments of delegation of authority, to enable the CEO to enter into certain arrangements on behalf of the GEF with external parties; and (ii) amend the GEF Instrument as necessary to afford the CEO such authority. At the Council’s request, the CEO agreed to pursue the implications of both options further with the Implementing Agencies before pressing for an amendment to the GEF Instrument. At the next Council meeting, held in May 2002, the CEO proposed a matrix, which the Council endorsed, setting out which of the GEF constituent bodies would assume the lead role for a list

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188 Id. at p. 3.
189 See id.
190 Id. at pp. 3–4.
193 See id. at para. 63.
194 Id. at paras. 64–65. This change responded to the objections of the Implementing Agencies to the CEO’s original proposal. UNEP had urged that the suggestion to amend the GEF Instrument be dropped, and the World Bank and UNDP urged, forcibly, that the GEF Instrument should only be amended as a last resort, if efforts to reach a détente through administrative arrangements proved of no avail. See id. at Annex C (Comments from the Vice President of the World Bank for Environmentally and Socially Sustainable Development).
195 See id. At Annex A (Letter from the Administrator of the United Nations Development Programme).
of tasks. Covered responsibilities included managing relations with the COPs for the increasing number of conventions for which the GEF was being designated as the financing mechanism, recipient country coordination and programming, GEF policy and program development, programmatic approaches, monitoring and evaluation, and knowledge dissemination.

Separately, the CEO proposed some administrative changes in the interaction between the CEO, Implementing Agencies, Council, and the World Bank as Trustee. The changes focused on the issues of the CEO’s signature authority and his desire for greater independence from the World Bank on human resources issues, and they gave the CEO increased powers without necessitating an amendment to the GEF Instrument. The CEO would have the authority to enter into and sign, on behalf of the GEF, arrangements with a range of parties, including multilateral development banks, specialized agencies and programs of the UN, other international organizations, bilateral development agencies, non-government organizations, private sector entities, and academic institutions for the preparation and execution of projects supported by the GEF, whenever requested to do so by the Council. In addition, the CEO would be authorized to enter into and sign on behalf of the GEF arrangements and agreements with the COPs of the conventions for which the GEF already served, or in the future could serve, as the financing mechanism. The CEO’s proposal stopped short of giving the CEO the power to conclude arrangements that would give rise to financial obligations on the part of the GEF Trust Fund. Under the proposed changes, the CEO was required to request a delegation of signature authority from the World Bank as Trustee before entering into arrangements that give rise to any financial obligations. The CEO’s proposal expressed the expectation that the CEO would consult with the World Bank as Trustee when preparing arrangements for review by the Council on whether, in the Trustee’s view, they give rise to any financial obligation on the part of the GEF Trust Fund. It also stated the expectation that the World Bank as Trustee would routinely delegate signature authority when requested to do so by the CEO. This delegation would authorize the CEO to enter into and sign agreements and arrangements on behalf of the GEF and the Trustee.

These administrative changes, which the Council endorsed, had a powerful symbolic effect in re-affirming the central role of the GEF participants, acting through the Council and the CEO, in governing the GEF. The new procedures set out a modus operandi consistent with the GEF participants’

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198 See id. Although the Council endorsed the matrix, it requested the CEO to amend it to reflect anticipated development, in particular, the continuing expansion in the role of Executing Agencies and the implementation of a proposal to create a monitoring and evaluation unit within the Secretariat in the near future. It subsequently endorsed the revised matrix at its May 2003 meeting. Global Environment Facility, GEF Council Meeting, 14–16 May 2003, Joint Summary of the Chairs paras. 24–26 (20 May 2003), http://gefweb.org/Summary_of_the_Chairs.pdf
200 Id. paras. 9–14.
201 Id. paras. 9–12.
202 Id.
203 Id. para. 10.
204 Id.
205 Id. para. 11.
206 Id. para. 12.
208 The GEF Instrument already provided for the CEO, at the request of the Council, to enter into arrangements for project preparation and execution with the range of entities listed in the proposal, but gave no guidance on how that authority should be exercised when it implicated the resources of the GEF Trust Fund. See Instrument, supra note 41, at para. 28. Further, the GEF Instrument squarely vests the authority to approve arrangements with the COPs of the different conventions in the Council, id. at para. 27, but makes no mention of the role of the CEO or Secretariat with respect to such arrangements, simply naming the Trustee as the body with authority to “formalize” such arrangements. Id. at Annex B, para. 7. The practice for developing cooperative arrangements between the GEF and the COPs had been for the Secretariat and the convention secretariat to jointly prepare a memorandum of understanding detailing such arrangements, later approval by the Council. GEF Council Meeting, 15–17 May 2002, Clarifying the Roles, supra note 63, at paras. 6–7.
role as the ultimate arbiters of GEF arrangements. Finally, the CEO’s proposal to the May 2002 Council
meeting also advised the Council that the CEO and the World Bank were engaged in ongoing consultations
on affording the CEO the flexibility he sought on the application of the World Bank’s Human Resources
policies to the staff of the Secretariat. With that issue on the verge of being resolved, the bid for full
legal independence for the GEF was quelled. It has now re-emerged as a key issue to be resolved in the
fifth replenishment.

The Creation of a Monitoring and Evaluation Unit

Although the CEO’s bid for full legal independence for the GEF fell short, the power of the Secretariat to
interact with the COPs, and of the CEO to manage Secretariat staff, were expanded by the compromises
forged in response to that bid. One other area in which the Secretariat’s power expanded over the course
of the third replenishment was monitoring and evaluation. The Second Overall Performance Study of
the GEF recommended that the Secretariat’s Monitoring and Evaluation Team assume a strengthened,
strategic role in monitoring and evaluating GEF projects. In response, the Secretariat created a dedicated
Monitoring and Evaluation Unit during the third replenishment. Its creation reflected a desire on the
part of the GEF participants to have a watchdog who would oversee the activities of the Implementing
Agencies and the Executing Agencies. It was a precursor to a request the participants made subsequently,
in the course of the fourth replenishment negotiations, for the Trustee to perform a similar watchdog
role with respect to the Implementing Agencies’ and Executing Agencies’ performance of their fiduciary
responsibilities. The tendency of the contributors to enlist watchdogs is predictable. The assumption
of a watchdog role for either the Secretariat or Trustee of a collective financing effort, however, can be a
high-risk undertaking, given the limited control the watchdog has over the entities it has responsibility
to watch and the liability and reputational risks at stake. Liability risks can be partly mitigated by the
use of indemnification provisions. The reputational risks of assuming responsibility beyond the sphere
of control, however, are harder both to quantify and reduce. For this reason, a watchdog role should be
assumed with caution.

Arrears as a Stumbling Block to Further Contributions

The delicate negotiations amongst contributors over how to share the funding burden of a collective
financing effort are at constant risk of becoming unglued if a contributor fails to honor its commitment.
That risk was very apparent at the beginning of the third replenishment when substantial United States
arrears threatened to poison other contributors’ willingness to contribute further funds. Though
strongly committed to the GEF the other contributors expressed reluctance to contribute unless the
United States and others cleared their arrears. They decided to condition their contributions on having
the replenishment resolution include measures to deter contributors from falling into arrears in their
payments to the third replenishment. The stark reality, however, is that it is difficult to devise effective
arrears prevention measures. It is in the interests of all contributors to preserve some flexibility. Moreover,
the one preventive measure that does carry some heft, the imposition of procurement restrictions on
contributors in arrears, is cumbersome and expensive to conduct. Ultimately, the contributors agreed to
adopt several lesser measures to prevent arrears. Although the measures are of questionable effectiveness,
they demonstrate that each contributor took a stand and did not quietly condone others’ arrears.

The Failure of Contributors to Honor Their Commitments

When the prospective contributors to the third replenishment held a planning meeting on 30 October 2000, the US Congress had only appropriated 27.6% of the United States’ total pledged contribution to the second replenishment. In the eyes of many of the other contributors, this made a mockery of the carefully constructed burden-sharing framework to which they had agreed. The concern of the contributors who had made steady payment on their pledges was intensified by plans to expand the mandate of the GEF in the ensuing months to cover activities directed at persistent organic pollutants, desertification, and land gradation. Moreover, for those experiencing an economic downturn on the domestic front, notably Japan (the second largest contributor to the GEF), the United States’ delays would make securing parliamentary approval to maintain their level of support for the GEF doubly difficult.

For this reason, the desire to address arrears featured prominently at the first meeting for the third replenishment held on 7 May 2001. At that time, nine countries had failed to pay the full amount of their pledges then due under the second replenishment, including Argentina, Brazil, Egypt, the Russian Federation, Nigeria, France, Italy, Belgium, and the United States. Of the significant contributors in this group, France and Belgium advised that legislative measures were under way to make the payments due, and Italy advised that it had worked out a plan that would enable it to pay all contributions due by 30 June 2005. In contrast, the United States gave no predictions for when it would pay its pledged amounts. This revelation prompted a demand from the other contributors that the Secretariat and Trustee explore means of preventing arrears during the third replenishment.

The Provisions of the GEF Instrument Addressing Contributors’ Failure to Honor Their Commitments

Arrears to a collective financing vehicle such as the GEF Trust Fund present a conundrum. Contributors’ failure to honor their pledges in a timely manner has a severe impact on the fund but little impact on the dilatory contributors. In the GEF Trust Fund’s case, the operations of the fund grind to a halt when substantial amounts of pledged contributions are not immediately available. Under the GEF Instrument, the World Bank as Trustee can only commit GEF resources on the basis of immediately available funds actually received by the Trustee. Further, the Trustee’s commitment authority is limited by the contributors’ pro rata right, allowing them to demand that the Trustee withhold commitment of the resources they have contributed to the GEF Trust Fund in proportion to shortfalls in the United States’ payment of its contribution. In contrast, the only consequence delinquent contributors experience is a dilution of the voting rights they possess on the Council, as voting rights are commensurate with the amount of a contributor’s paid-in contribution. Given that the Council operates by consensus, however, this penalty has little deterrent effect.

217 Id.
218 See Instrument, supra note 41, at Annex C, para. 8(a).
219 See id. at Annex C, para. 8(c).
220 Under paragraph 25(c)(ii) of the Instrument, decisions requiring a formal vote by the Council are taken by a double-weighted majority that is an affirmative vote representing both a 60% majority of the total number of Contributing Participants and 60% of total contributions. Id. at paras. 25(c)(ii)–(iii).
International law offers no solace to the contributors of a fund such as the GEF Trust Fund, which is financed by voluntary contributions, seeking to take action against a contributor whose contributions are in arrears.\textsuperscript{221} It offers no ready-made mechanisms to address the failure of a contributor to meet either its express or its implied obligations to make timely contributions. Rather, the pressure on a contributor to make timely contributions is left either (a) to the action of other contributors, who may resort to countermeasures, or (b) to specific mechanisms within the GEF structure to accomplish a specific aim.\textsuperscript{222} Implementing the GEF contributors’ determination to prevent arrears accruing during the third replenishment, therefore, meant building mechanisms into the GEF structure that would have some sting if a contributor failed to pay.

As a preliminary step, the World Bank as Trustee set out to clarify the kind of contributor behavior the contributors wanted to address in seeking to deter arrears and the range of options for doing so.\textsuperscript{223} It presented these options to the contributors at the second meeting for the third replenishment, held in October, 2001.\textsuperscript{224} Contributors’ delays in honoring their express and implied obligations to the GEF can arise at several stages. Following an oral pledge to contribute made at a replenishment meeting and recorded in the minutes of such meeting, a contributor may fail to follow through with the deposit of its Instrument of Commitment with the Trustee.\textsuperscript{225} Alternatively, a contributor depositing a Qualified Instrument, which reflects an undertaking of its “best efforts to obtain legislative approval for the full amount of its contribution” by the payment dates set out in the pertinent Replenishment Resolution, may fail to obtain such approval.\textsuperscript{226} The United States consistently failed miserably in meeting this expectation.\textsuperscript{227} Neither the failure to deposit an Instrument of Commitment, nor the failure to unqualify a Qualified Instrument of Commitment, violate a firm undertaking on the part of a contributor. Still, the contributors wanted to find a way to force dilatory contributors’ hands even if such contributors’ actions did not reach the level of violating a firm commitment.

The contributors’ desire to prevent arrears also applied to delays occurring at the payment stage. Here, a nuanced approach was called for to avoid interfering with some necessary latitude that was built into the payment process. Delays at the payment stage arise when contributors fail to pay their contributions

\textsuperscript{221} See Amerasinghe, supra note 183, at 364. Indeed, even when contributions are obligatory, such as the annual contributions levied by the United Nations on its members, efforts to enforce the obligation to pay have met with little success. See generally Richard W. Nelson, International Law and US Withholding of Payments to International Organizations, 80 Am. J. Int’l L. 973 (1986).

\textsuperscript{222} In many cases, as in the case of the United Nations, African Development Bank (AfDB), ADB, IADB and IFAD, the consequences for a contributing member failing to make timely payment of its subscription of share of a capital increase is the loss or dilution of its voting rights. World Bank, Arrears and the GEF, paras. 19–25 (2001) (hereinafter World Bank, Arrears) (on file with the author). This document was incorporated by reference at the GEF’s Meeting on the Third Replenishment. GEF Meeting on the Third Replenishment, Summary of the Co-Chairs, supra note 192, at para. 4.

\textsuperscript{223} See generally World Bank, Arrears, supra note 223.

\textsuperscript{224} GEF Meeting on the Third Replenishment, Summary of the Co-Chairs, supra note 192.

\textsuperscript{225} Although neither the GEF Instrument nor the Second Replenishment Resolution specified a date by which an Instrument of Commitment had to be deposited or a Qualified Instrument unqualified, Annex C and the Second Replenishment Resolution set out clear expectations for when contributors should deposit and un qualify. For example, paragraph 6 of the Second Replenishment Resolution specified that the replenishment should become effective no later than 31 October 1998. GEF, Second Replenishment Resolution 98-, supra note 127, at para. 6(a). Effectiveness, however, depended on the Trustee’s receipt by that date of a certain amount of contributions from participants who had deposited Instruments of Commitment. Id. Further, it was clear from the timetable for payments set out in both Annex C of the GEF Instrument and the Second Replenishment Resolution that Instruments of Commitment were expected to be deposited 30 days before the date on which the first installment of the contributions were due. World Bank, Arrears, supra note 223, para. 5, at 2; Instrument, supra note 41, at Annex C, para. 3(c). See also Second Replenishment Resolution 98-, supra note 127, at para. 3(c).

\textsuperscript{226} Instrument, supra note 41, at Annex C, para. 2(b).

\textsuperscript{227} See e.g., Global Environment Facility, Burden Sharing GEF-2 Replenishment, supra note 125 (showing that as of 1 October 1997, the United States had not yet paid $132.50 million (41.09%) of its pledged contribution to the first GEF replenishment); Global Environment Facility, Meeting on the Third Replenishment of the GEF Trust Fund, 11–12 October 2001, GEF-2 Commitment Authority and Current Funding Status, Annex B at p. B1 GEF/R.3/12 (20 September 2001), www.gefweb.org/replenishment/Reple_Documents/R.3_12.pdf (showing that as of 31 August 2001, the United States had paid just $118.56 million of its $430.00 million, a mere 27.6% of its pledge to the second replenishment).
in accordance with the schedule for payment in installments set out in Annex C of the GEF Instrument or a subsequent Replenishment Resolution. To take account of contributors’ varying circumstances, the Instrument and Replenishment Resolutions afford contributors some accommodations in meeting the payment schedule. For example, the Trustee has a degree of discretion to allow a contributor to postpone paying all or a part of any installment up to the due date of the next installment.\textsuperscript{228} In considering options to prevent arrears, the contributors would have to confront whether they wanted to dispense with the latitude that several contributors had been glad to exploit over the years.\textsuperscript{229}

**The IDA Experience as a Precedent**

The key question was whether the GEF contributors wanted to follow a precedent set by the IDA in 1997, when contributor fury over the United States’ delays in paying funds it had pledged to the IDA (which, like the US contributions to the GEF Trust Fund, are subject to the annual approval of the US Congress) led the other IDA donors to set up an interim fund and to prohibit its resources from being used to pay for any goods or services procured from the United States.\textsuperscript{230}

The IDA donors’ quest for mechanisms to create incentives for countries to make fair and timely contributions ignited in the course of the 11th IDA replenishment in 1995.\textsuperscript{231} Under the terms of that replenishment, the IDA donors resolved to prohibit countries that had the ability to contribute to IDA but which had failed to do so, from competing for contracts financed by IDA resources.\textsuperscript{232} Accordingly, the terms of the eleventh IDA provide that the proceeds of financing made available under the eleventh replenishment “may be spent only in the territories of contributing members and members that are eligible borrowers of IBRD or IDA.”\textsuperscript{233} Subsequently, in 1996—when the US Congress failed to make an appropriation for IDA that year—the other IDA donors established the interim trust fund to be administered by IDA to help fund IDA operations during that fiscal year.\textsuperscript{234} They set up a separate project approval procedure for projects being funded by the interim fund.\textsuperscript{235} Only nationals of countries

\textsuperscript{228} See Instrument, supra note 41, at Annex C, para. 3(c); Second Replenishment Resolution 98–, supra note 127, at para. 3(c)(iii). The World Bank as Trustee has relied on this latitude to work out individualized payment schedules with several contributors, including Belgium, Canada, and Mexico, under this provision to accommodate their legislative processes. World Bank, Arrears, supra note 223, at para. 8. In addition, The Trustee may also agree with any contributor who is an eligible recipient of GEF Trust Fund resources and who is experiencing “exceptionally difficult budgetary circumstances” to postpone encashing any notes such contributor has deposited with the Trustee in payment of its GEF contribution for up to two years. Instrument, supra note 41, Annex C, at para. 4(b); Second Replenishment Resolution 98–, supra note 127, at para. 4(b). Pakistan and Cote D’Ivoire had availed themselves of this provision and, for contribution purposes, were accordingly considered as being in encashment arrears. World Bank, Arrears, supra note 223, at para. 9. Further, under the GEF Instrument and Replenishment Resolutions, a contributor that deposits or unqualifies its Instrument of Commitment after the date the first installment of all contributions are due, is given thirty days from the date of such deposit or act of un-qualifying to pay the first installment of its contribution. Instrument, supra note 41, at Annex C, para. 3(d); Second Replenishment Resolution 98–, supra note 127, at paras. 3(c)(iv), 3(d).

\textsuperscript{229} World Bank, Arrears, supra note 223, at paras. 23–26.

\textsuperscript{230} See World Bank, International Development Association, Report from the Executive Directors of IDA to the Board of Governors: The Interim Trust Fund for FY97 para. 2 (2 May 1996).

\textsuperscript{231} See generally World Bank, International Development Association, IDA Membership and Inducements to Fair and Timely Donor Contributions (November 1995); see World Bank, International Development Association, Report from the Executive Directors of IDA to the Board of Governors: The Interim Trust Fund for FY97, supra note 231.

\textsuperscript{232} World Bank, International Development Association, Report from the Executive Directors of IDA to the Board of Governors: Additions to IDA Resources: Eleventh Replenishment para. 45 (2 May 1996).

\textsuperscript{233} Id. Draft Resolution para. 10, at p. 29.


\textsuperscript{235} Under this procedure, operations to be funded from the Interim Fund were approved by the President of IDA after consultation with a committee composed of Executive Directors of IDA representing the contributors to the interim fund and eligible IBRD and IDA borrowers. Id.
contributing to the interim fund and nationals of countries eligible to borrow from the World Bank could bid on projects financed with interim fund resources.236

This precedent was fresh in the minds of the participants in the discussions of the third replenishment of the GEF Trust Fund as a possible means of staunching the recurring United States delays in paying its contribution. At the second meeting for the third replenishment, held in October 2001, they discussed adopting a similar procurement prohibition for the GEF, applicable both to non-contributors deemed to have the capacity to contribute and to contributors who fail to make good on their promised contributions.237 They also reviewed other means of deterring arrears, including the continued use of the pro rata right to defer the Trustee’s commitment of a contribution pending the action of other contributors, the continued use of suspension (a practice followed by the United Nations)238 or dilution of voting rights, and the imposition of penalty interest.239 Their views on the desirability of these options diverged. Some urged adoption of procurement restrictions prohibiting the hiring of consultants from countries failing to make timely contributions to the third replenishment.240 Others suggested imposing penalty interest, and still others cautioned against the introduction of arrears prevention schemes that might prove difficult and costly to implement and ineffective or counterproductive in achieving the ultimate goal of timely payments.241

The World Bank as Trustee advised that in the case of the IDA interim fund (which the World Bank administered), in the single instance of procurement restrictions being used as an inducement to clear arrears, implementation had proved complex, costly, and administratively cumbersome.242 It noted that these difficulties were likely to be exacerbated in the case of the GEF, given the multitude of Implementing Agencies and Executing Agencies involved, all of which would have to set up administrative processes to implement any such restrictions.243 The World Bank as Trustee also cautioned against the feasibility of imposing penalty interest, noting that the idea was rejected as impracticable in the eleventh replenishment of IDA. Such an approach, it said, would also be problematic for the GEF, as under the legislative procedures of many contributors, those on whom such interest was assessed would have to revert to their legislatures to secure an appropriation of the funds required to pay it.244 Contributors’ representatives who have fought hard in their legislatures to secure appropriation of their countries’ contributions would not welcome having to revert to the legislatures to press for funds to pay a penalty.245 The participants agreed to review the options further in their next meeting, scheduled for December 2001.246

Proposals for Arrears Prevention Mechanisms

Japan pressed hard for procurement restrictions as part of the terms and conditions of the third replenishment at the December 2001 meeting, and the other participants agreed that the World Bank as Trustee and


The procurement restrictions, however, became part of the twelfth replenishment of IDA under which procurement eligibility was limited to nationals of IDA 12 contributing member countries and countries eligible to borrow from the World Bank. See World Bank, Procurement Eligibility in IDA Operations, http://go.worldbank.org/Z5TJWOEV0 (last visited 1 December 2009).

237 World Bank, Arrears, supra note 223, at para. 23.
238 Amerasinghe, supra note 183, at paras. 114–15.
239 GEF Meeting on the Third Replenishment, Summary of the Co-Chairs, supra note 192, at para. 4.
240 Id.
241 Id.
242 World Bank, Arrears, supra note 223, at para. 25.
243 Id.
244 Id. at para. 26.
245 See id.
246 GEF Meeting on the Third Replenishment, Summary of the Co-Chairs, supra note 192, at para. 4.
the Secretariat should explore the feasibility of introducing such a provision with the Implementing and Executing Agencies. The Trustee and Secretariat hired a consultant to prepare a report on the agencies' inputs. The report, which was presented at the fourth meeting on the third replenishment, held 27–28 February 2002, revealed a parade of problems associated with using procurement restrictions as an arrears prevention mechanism.

All the agencies agreed that procurement restrictions would have a negative impact on the GEF. They indicated that such restrictions would undermine ongoing efforts to integrate GEF projects into the mainstream of their development activities. Moreover, they reported that restrictions would contradict the founding principles of their procurement policies, which aim to “[i] ensure[e] economy and efficiency in the procurement of goods, works, and services . . . ; [ii] give[e] eligible bidders from developed and developing countries a fair opportunity to compete in providing goods, works, and services; [iii] encourage[e] the development of domestic industries in developing countries; and [iv] provide transparency in the procurement process.” In addition, the agencies predicted that procurement restrictions would significantly increase the costs of GEF-financed operations and have a negative impact on their efficiency. The increased costs identified included costs associated with having to (i) separate GEF-funded contracts from others; (ii) modify information systems to integrate new procurement restriction information; (iii) institutionalize specialized control systems to monitor compliance with the restrictions; and (iv) train agency and recipient staff on the implementation of the restrictions.

The agencies' negative response mobilized several participants to oppose introducing any procurement restrictions. Other participants proposed limiting the restrictions to the procurement of consultants (rather than goods), while some suggested introducing milder measures, such as making a contributor's arrears one criterion (as distinct from an absolute bar) that the agencies should ask GEF grant recipients to meet.
to take into account in hiring consultants from other countries. Several simply wanted to stick with limiting the consequences for contributors in arrears to a dilution of their voting rights. One suggested introducing a provision into the Replenishment Resolution that would require the pertinent minister of any contributor falling into arrears to write a letter to the Council explaining the reasons for the arrears. To avoid a stalemate in the conclusion of the replenishment negotiations, the participants agreed that the Secretariat and the World Bank as Trustee should undertake bilateral consultations on a compromise with interested contributors. In the meantime, the United States reported that Congress had appropriated $100.5 million towards payment of its second replenishment contribution. It reported, further, that the funds would be paid into the GEF Trust Fund by May 2002, and that the Administration had proposed a three-year plan to clear its arrears to a number of international financial institutions, which included a request of $70.3 million for 2003 to clear in part its remaining arrears to the second replenishment. This development set the stage for some softening of attitudes on what form arrears prevention mechanisms should take for the third replenishment.

In the consultations that followed, the World Bank as Trustee and the Secretariat winnowed down the options for arrears prevention to four mechanisms: (i) prohibiting the procurement of consultants from countries that were in arrears in making contributions to the third replenishment; (ii) requiring that preference be given to the procurement of consultants from countries that were not in arrears in making their contributions to the third replenishment; (iii) limiting the voting rights of contributors who had failed to make timely contributions; and (iv) requiring the pertinent minister from each country in arrears to send a written explanation for the arrears to the Council. At the fifth meeting of the third replenishment, held 13–14 May 2002, the participants agreed that the proposal requiring the pertinent minister of a country in arrears to provide a written explanation to the Council of the reasons for the arrears should be adopted. They also agreed that the pro rata right should be continued and that the Third Replenishment Resolution should reiterate the fact that, under the GEF Instrument, voting rights on the Council accrue only for contributions actually paid into the GEF Trust Fund.

By then it seemed clear that the proposal for procurement restrictions had been rejected, but Japan continued to express reservations and held firm in its position that its contribution to the third replenishment was contingent on its being satisfied about the resolution of arrears prevention mechanisms. The World Bank as Trustee undertook extensive bilateral consultations with Japan and the United States after the May 2002 meeting to try to find a middle ground on the issue of arrears. The United States’ outstanding arrears meant that Japan had become de facto the largest contributor to the GEF Trust Fund. This situation made it difficult for Japan’s representatives in the GEF to secure their parliament’s support for Japan’s contribution at a time when Japan’s overseas development assistance was undergoing a significant contraction. In addition to the arrears prevention mechanism already agreed upon, at Japan’s insistence a further provision was added to the Third Replenishment Resolution. This provision requires the Trustee to send a notice to any contributor falling thirty days behind in paying

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255 Id.
256 Id.
257 Id.

258 The participants who indicated interest in being a part of the planned consultations were the representatives of Japan, the US, France, Germany, the UK, Portugal, Switzerland, and Sweden. See Model Form Letter from Motoo Kusakabe, Vice President, Resource Mobilization, World Bank (for Trustee) and Mohammed El Ashry, CEO and Chairman, GEF to Donor (2002) (concerning Discussion Paper for Consultations on Alternatives to Pro Rata Right to Defer) (on file with author).
262 Id. at para. 5.
263 See Yastuomo, supra note 216.
its contribution or in securing legislative approval to un-qualify a sufficient amount of its contribution to meet the payment dates set out in the resolution. Though this notice has limited coercive force, its inclusion gave Japan’s representatives a way of signaling to their parliament that the issue of the United States arrears had not gone unnoticed in the replenishment negotiations.

**Arrears Prevention Mechanisms Agreed Upon**

At the sixth and final meeting of the third replenishment, held in August 2002, the participants approved a draft replenishment resolution that included a new “Timely Availability of Resources” provision, which, *inter alia*, responded to Japan’s request. The provision requires the Trustee to reach out to any contributor that has fallen 30 days behind in paying its contribution (whether by simply failing to make a payment or failing to secure the necessary legislative authorization to un-qualify the required amount of its contribution) to request such contributor to make payment promptly, and to remind it of the consequences that will ensue if it fails to do so. The provision delineates two of those consequences. It introduces a requirement that the responsible minister of any contributor that has failed to make timely payment of its contribution provide the CEO with a written explanation of the reasons for the delay and the measures being undertaken to address it. And it reiterates the fact that under sub-paragraph 25(c) of the GEF Instrument, “for the purpose of determining voting power in the event of a formal vote by the Council, a Contributing Participant’s total contributions shall consist of the actual cumulative contributions made by a Contributing Participant to the GEF Trust Fund.” The draft resolution also retained the pro rata provision.

In addition to the new Availability of Resources provision, the draft resolution contained a number of other changes from prior replenishment resolutions that reflected the contributors’ concerns regarding arrears. For example, the participants placed limits on the Trustee’s power to allow a contributor to postpone the payment of any installment of its contribution. For the first two replenishments, the Trustee’s discretion to accede to such a request was relatively unfettered; the Trustee could allow a contributor to postpone payment of any installment up to the due date of the subsequent installment. The draft resolution limited the power of the Trustee to allowing a contributor to postpone payment of an installment until 30 June of the calendar year following the year in which the installment was due. The resolution specified, however, that payments so postponed made would count as “timely payments.”

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265 *Id.* at Intro. para. 12, p. 3.

266 As for earlier replenishments, contributors were required to pay their contributions in four equal installments. GEF, Meeting on the Third Replenishment, *Replenishment Document, supra* note 265, at para. 3(a), p. 2. The dates on which such installments were due to be paid, as set out in the resolution, were 30 November 2002, 2003, 2004, and 2005, subject to the replenishment becoming effective by 31 October 2002. *Id.* Such due dates would automatically be postponed if effectiveness was delayed. *Id.* at para. 3(a)(ii), p. 2.

267 *Id.* at para. 4(a), p. 5.

268 *Id.*

269 *Id.* at para. 4(b), p. 5.


273 *Id.* The contributors originally considered a proposal to limit postponements to 45 days. See Global Environment Facility, GEF, Meeting on the Third Replenishment of the GEF Trust Fund, 13–14 May 2002, *Revised Text of GEF Trust Fund Replenishment Document in the form of a World Bank Resolution, Introduction, GEF/R.3/31* (2002), www.gefweb.org/replenishment/Reple_Documents/R.3.31_Resolution.pdf. The length of time was increased to 30 June of the year following the year in which the postponed payment is due in order to accommodate the budgetary cycle of a number of contributors.
The participants to the third replenishment also decided to make the Trustee’s encashment practices explicit so as to clarify the distinction between a contributor’s obligation to contribute and its obligation to have funds available for encashment.274 The first two replenishment resolutions provided that the Trustee would cash contributors’ notes on a pro rata basis at reasonable intervals as needed.275 However, it gave the World Bank as Trustee the authority to postpone cashing a contributor’s note for a period of up to two years for any contributor that was also an eligible recipient of GEF Trust Fund resources and that had established to the Trustee that it was experiencing “exceptionally difficult budgetary circumstances.”276 The Third Replenishment Resolution provided more detail on what contributors could expect. It included an indicative encashment schedule which reflected the Trustee’s expectation that it would cash the notes deposited by contributors over a period of ten years. This expected encashment schedule closely replicated the usual 10-to-12-year disbursement period that had been the practice under the first two replenishments.277 The draft resolution retained the Trustee’s authority to postpone cashing the notes of contributors who were also GEF recipients for a period of up to two years but added the authority to postpone cashing any contributor’s note for up to 45 days. Again, the goal was to avoid having any contributor that needed that limited flexibility fall afoul of the arrears prevention mechanisms.278

The resolution also gave the Trustee express authority to agree to cash a contributor’s note on a basis other than a pro rata basis, provided that the agreed schedule of encashment would have no adverse financial impact on the GEF Trust Fund.279 Further, it provided that contributors whose deposited notes were insufficient to meet the indicative encashment schedule attached to the resolution should make “best efforts” to meet an encashment schedule on any notes subsequently deposited that would place the GEF Trust Fund in a position equivalent to where it would have been had the indicative schedule been met.280 The resolution stopped short, however, of equating encashment arrears with payment arrears for the purposes of determining when the resolution’s arrears prevention mechanisms would apply.281 Following the August 2002 replenishment meeting, the Secretariat sent the agreed upon draft resolution to the Council for endorsement.282 After Council endorsement, the World Bank’s Board of Executive Directors adopted it on 19 December 2002. The arrears prevention mechanisms set out in the resolution have since become a fixture of GEF replenishments.

The Trustee and Secretariats’ handling of the arrears issue in the third replenishment is informative for future collective funding efforts. It shows not only that contributors’ options are limited in dealing with the issue, but also that there is wisdom in treating the issue gingerly. Measures short of procurement restrictions preserve the fabric of cooperation while still conveying an important symbolic message, even if contributors ultimately depend on moral suasion and political pressure as the most potent arrears deterrent.

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275 Instrument, supra note 41, at Annex C, para. 4(b); Second Replenishment Resolution 98, supra note 127, at para. 4(b).
276 Second Replenishment Resolution 98, supra note 127, at para. 4(b).
277 See GEF, Meeting on the Third Replenishment, Replenishment Document, supra note 265, at Attachment 3, p. 11.
278 Id. at para. 3(c)(ii), p. 3.
279 Id. at para. 3(c)(iii), p. 3.
280 Id. at para. 3(c)(iv), p. 4.
281 See id. at para. 3(d), p. 4.
Supplemental Contributions’ Conditions and Contingencies

The contributors to the GEF found ways of advancing their agendas through the creative use of supplemental contributions subject to conditions and contingencies, an approach that blossomed in the third replenishment. Agreement on arrears prevention mechanisms cleared the way to agree upon a final replenishment amount for the third replenishment. In May 2002, the figure of $1.99 billion was floated. Several contributors, however, offered to make additional supplemental contributions to meet the critical need for funds in the face of an expanded GEF mandate. Accordingly, the final replenishment amount was increased by supplemental contributions to a total of $2,970 million. The final amount included $70 million from the United States that was subject to a catch. The United States agreed to pay the $70 million in the final year of the replenishment if, and only if, the GEF achieved a list of performance measures drawn up by the United States and set out in a schedule attached to the replenishment resolution. In response to Japan’s strong message on arrears, the United States sent a strong message regarding the importance it attached to the GEF adopting a performance-based allocation system.

Both messages were delivered at some cost to the cooperative ideal that spurred the GEF’s initial creation. The United States’ push for a performance measure matrix would subsequently haunt the fourth replenishment and put enormous pressure on the collective good will. At some point, the contributors to a collective financing effort have to accept that such an effort can only succeed with a considerable amount of give and take on all sides. The entity responsible for resource mobilization, like the Secretariat and the World Bank as Trustee for the GEF, takes the lead in forging a consensus among contributors. But it also has to rely on each individual representative reining him or herself in and making the case for the necessity of compromise and consensus to his or her home country.

The Creation of Separate GEF-Related Funds

The change in the GEF Trust Fund from a single fund addressing several focal areas to an umbrella governance structure for two additional smaller funds and then to a fund competing for resources with two additional separate funds raises the question of whether a globally focused collective financing effort can ever be flexible enough to meet the many priorities that lay claim on it. Given the inefficiencies of separate but overlapping efforts, all stakeholders would benefit from an end to unnecessary proliferation.

The GEF Trust Fund was conceived as a single, all-encompassing, international environmental trust fund. The contributing countries indicated that they would only support a unified financing mechanism for the Biodiversity and Climate Change Conventions and all subsequent international environment conventions. They wanted to avoid a “proliferation of funds going along with the proliferation of...
environmental treaties.”

This vision of a unified funding mechanism held firm for a while. A partial chink in its armor appeared, however, in 2001, when the COP to the Climate Change Convention at its seventh meeting (COP-7) decided to establish three new trust funds—a Special Climate Change Fund, a Least Developed Countries Fund, and an Adaptation Fund—the latter deriving from the Kyoto Protocol to the Climate Change Convention. True to the ideal of having a unified funding mechanism, however, the GEF was invited to make arrangements to establish and operate the new funds under its institutional umbrella. The Council invited the World Bank to serve as the funds’ Trustee.

The COP designed the Special Climate Change Fund (SCC Fund) to fund activities, programs, and measures relating to climate change that would be complementary to those funded by the GEF Trust Fund out of resources allocated to the climate change focal area. They also intended it to overlap in part with the Adaptation Fund and to finance adaptation activities. They designed the Least Developed Countries Fund (LDC Fund) to provide funding to support the efforts for the Least Developed Countries, to implement the goals of the Climate Change Convention, and, in particular, to fund the development of national adaptation programs of action. The Adaptation Fund was designed to fund the implementation of adaptation activities.

The funding provided by the contributors to the SCC Fund and the LDC Fund was in addition to their GEF Trust Fund contributions. The purposes of those funds could have been achieved by channeling that funding directly to the GEF Trust Fund, but this option was unavailable because some GEF participants—notably the United States—did not support providing extra funding in this manner, hence the need to create separate trust funds. The Adaptation Fund was always destined to be a separate fund, because it is financed by a unique mechanism whereby it receives the proceeds of a levy imposed on certified emission reductions generated by the Clean Development Mechanism set up

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287 Id.
288 Id.
289 Id.
291 Id. at para. 13.
292 The category of “Least Developed Country” is determined by an index maintained by the UN. UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, List of Least Developed Countries, www.un.org/special-rep/ohrlls/ldc/list.htm (last visited 16 November 2009).
295 See GEF, Climate Change, Special Climate Change Fund, www.gefweb.org/interior_right.aspx?id=192 (last visited 16 September 2009). Contributors to the Special Climate Change Fund include: Canada, Denmark, Finland, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the UK. Id.
under the Kyoto Protocol. The World Bank's functions as Trustee of the three new funds differ in some respects from the functions it performs as Trustee of the GEF Trust Fund. The contributors to the SCC and LDC Funds opted to make the Secretariat, acting alone, rather than jointly with the Trustee, responsible for resource mobilization. Several years after creating the funds, however, the contributors agreed that the Secretariat should call a meeting of the contributors every two years to review the Funds' replenishment needs.

The COPs' original intention was to have the operational policies and procedures and governance structure of the GEF apply to the operation of all three funds unless the COPs determined otherwise. This approach prevailed in the first few years of the existence of the SCC and LDC Funds. In August 2006, however, contributors to those funds decided that they wanted to reserve the power to allocate the resources of those funds for themselves, rather than have the entire Council weigh in on allocation decisions. Accordingly, at the request of the contributors to the SCC and LDC Funds, the Council decided that as of August 2006, the Council would meet separately as the LDCF/SCCF Council on matters concerning those Funds. Although any Council member remains eligible to participate in the LDCF/SCCF Council, formal votes of that council are conducted by a double-weighted majority, consisting of an affirmative vote representing both a 60% majority of participants in the GEF represented on the LDCF/SCCF Council and a 60% majority of the total contributions to such funds.

The original GEF ideal of a single international environmental fund and, indeed, even of a single umbrella fund, was destined to be whittled down even further. In 2008, as discussed below, donor countries determined that climate change should be accorded priority attention and chose to set up two additional funds to address it, rather than work under the GEF umbrella.


The early replenishments of the GEF Trust Fund show that there is merit in having a formalized replenishment process for a collective financing vehicle proceed through replenishment meetings that

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297 GEF, Council Meeting, 15–17 May 2002, Arrangements, supra note 292, at para. 27 n.4. The Clean Development Mechanism is a mechanism created under Article 12 of the Kyoto Protocol to the UNFCCC which allow industrialized countries (and any greenhouse-gas emitting entities within such countries) to obtain certified emission reductions (which they can apply towards meeting their legal obligation to reduce their greenhouse gas emission) by making investments in projects in developing countries which result in such projects emitting less greenhouse gases than they would without the investment. See Ernestine Meijer and Jacob Werksman, Keeping it Clean—Safeguarding the Environmental Integrity of the Clean Development Mechanism, in Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work 191, 191–92 (David Freestone & Charlotte Streck, eds., 2005).


301 Id. at para. 21. The ultimate governance structure of the Adaptation Fund differed markedly from the original vision of COP-7. In an about turn from the approach taken by COP-7, the third Meeting of the Parties to the Kyoto Protocol (which had been charged with responsibility for developing and launching the Adaptation Fund), decided at the United Nations Climate Change Conference in Bali, Indonesia in December 2007, that the fund would not be operated as a special fund under the GEF. Instead, they formed a newly constituted Adaptation Board to operate it pursuant to the provisions of a newly negotiated Adaptation Fund instrument. The role of the World Bank as Trustee, however, remains unchanged from that envisaged by COP-7. Adaptation Fund: Draft Conclusions, supra note 296.

302 See discussion of the creation of the Clean Technology and Strategic Climate Funds infra at 78–81.
are kept separate from the regular meetings of a contributor/participant council responsible for allocating a fund’s resources. There is a discrete financial agenda to be addressed for a replenishment: how much funds are needed, who will pay, how much, in what form, on what terms, and in accordance with what timeframe. These issues are different from issues concerning specific allocations to a work program. Inevitably, however, as the fourth replenishment of the GEF Trust Fund shows, this separation has its limits. At the end of the day, “money talks,” and contributors are keenly aware that the point at which they make their pledges is the point at which they have the greatest leverage to shape a financing vehicle in accordance with their priorities. One of the greatest challenges faced by a Trustee or CEO managing a replenishment is to prevent the contributors’ differences in priorities from overwhelming the process and to ease contributors to a solution that allows replenishment to occur. In the fourth replenishment of the GEF, policy differences between contributors came dangerously close to overwhelming the process.

The GEF’s failure to meet the condition the United States imposed on $70 million of its contribution to the third replenishment—the adoption of a performance-based allocation system for the use of GEF Trust Fund resources—formed the starting backdrop for the fourth replenishment. The beginning of the negotiations for the fourth replenishment was infused with the sour taste of that failure and the United States’ resulting withholding of its supplemental contribution. Not surprisingly, the need to institute such a system dominated the planning meeting for the fourth replenishment, held on 5 June 2006, and would become the primary issue throughout the replenishment negotiations. The other major issue that dominated the fourth replenishment negotiations was the development of a set of policy recommendations based on the findings of the Third Overall Performance Study of the GEF (OPS-3). This independent review of the results achieved by the GEF during the third replenishment had been commissioned by the Council in May 2004 and was under way at the time of the replenishment planning meeting.

Unlike the planning meeting for the third replenishment, there was little controversy over the financial status of the GEF Trust Fund. Contributors’ payments to the third replenishment had been relatively timely. The United States was 0.2% in arrears (although it had still failed to pay 33% of the contribution it had committed to the second replenishment) and four other donors—Spain, Belgium, Finland, and Nigeria—had arrears in varying amounts. Meanwhile, Italy still had not deposited its Instrument of Commitment to the third replenishment despite having pledged to contribute approximately $110 million. By the time of the first replenishment meeting, however, Italy had signed its Instrument of Commitment to the third replenishment and announced its intention to pay 75% of its contribution during 2006. Further, the United States announced that it had fully funded its contribution to the third replenishment and reduced its outstanding arrears to the second replenishment by $70 million.

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504 GEF Fourth Replenishment, Trustee Interpretation: Deferment Right of the Contributing Participants With Respect to Conditional GEF-3 Contribution, supra note 286.


508 Id.

509 Id. at para. 3.


511 Id.
Achieving consensus on a performance-based allocation system and on a response to the recommendations of the Third Overall Performance Study were of over-arching importance to the fourth replenishment negotiations.\(^{312}\) Neither issue had direct implications for the financial management aspects of the GEF Trust Fund.\(^{313}\) Two issues of financial management however, did surface for discussion: (i) the viability of the pro rata right as an arrears prevention mechanism in the face of a changed financing framework, and (ii) a proposal that the Trustee exercise a greater degree of oversight over the Implementing Agencies and Executing Agencies’ discharge of their fiduciary responsibilities. Both issues were significant. However, in light of the time exhausted on resource allocation they received short shrift.

\(^{312}\) The need for a framework for the allocation of GEF resources dated back to the policy recommendations of the Third Replenishment, which called upon the Secretariat to work with the Council to establish a framework for allocating GEF Trust Fund resources to global environment priorities and to countries based on performance. See Global Environment Facility, GEF Council, 8–10 November 2005, *The GEF Resource Allocation Framework*, GEF/C.27/Inf.8/Rev.1 para. 1 (17 October 2005), www.gefweb.org/COUNCIL/GEF_C27/Inf.8.Rev.1_RAEPdf (hereinafter, *GEF RAF*). Efforts to develop a system for allocating resources that would be responsive to this mandate became a key focus of the Council over the course of the third replenishment and were still continuing at the time of the March 2005 initial planning meeting for the fourth replenishment. The Council finally approved such a system, which became known as the GEF Resource Allocation Framework (RAF) at a Special Meeting of the Council, held 31 August–1 September 2005, a month before the third meeting on the fourth replenishment. Global Environment Facility, Special Meeting of the Council, 31 August–1 September 2005, *Joint Summary of the Chairs* (18 October 2005), www.gefweb.org/COUNCIL/GEF_C26/C.26.Joint_Summary_Chairs.pdf

The central aim of the RAF is to target GEF resources to countries that have demonstrated capacity and commitment to implementing projects that advance the GEF’s goals. Global Environment Facility, Special Meeting of the Council, 31 August–1 September 2005, *Technical Paper on the GEF Resource Allocation Framework* GEF/C.26/2/Rev.1 para. 4 (24 August 2005) (hereinafter *GEF RAF Technical Paper*), www.gefweb.org/COUNCIL/GEF_C26/C.26.2.Rev.1.pdf. To accomplish this goal, the Secretariat devised a two-pronged assessment tool, made up of a “GEF Benefits Index” and a “GEF Performance Index.” *Id.* at para. 4. The Benefits Index is a measure of a country’s potential to generate global environmental benefits in a particular focal area. *Id.* at para. 4(a). The Performance Index is a measure of a country’s capacity, policies, and practices relevant to successfully implementing GEF programs and projects. *Id.* at para. 4(b).

Rather than attempting to implement the RAF in all of the GEF focal areas at once, the Council approved the Secretariat’s recommendation that the approach first be piloted in the climate change and biodiversity focal areas. GEF RAF, *supra*, at n.4.

The Secretariat developed separate indices for each of these two focal areas. *Id.* at para. 5. The biodiversity index seeks to measure the global benefits that can be realized from a country’s biodiversity-related activities. *Id.* at para. 6. It uses a range of indicators, ranging from detailed to broad, depending on the availability of data, and is aligned with the targets set by the Convention on Biological Diversity. *Id.* at para. 6. The climate change index seeks to measure the potential global benefits that can be realized from a country’s climate change mitigation activities. *Id.* at para. 7. The GEF Performance Index, which seeks to measure a country’s capacity to implement GEF programs and projects based on its performance, relies on three indicators; a Portfolio Performance Indicator (PPI), a Country Environmental Policy and Institutional Assessment Indicator, and a Broad Framework Indicator. *Id.* at para. 8. All three indicators draw upon ratings and assessment methodologies used by the World Bank in other contexts, such as project implementation reviews, environmental sustainability and public sector assessments, and post-project reviews done by the World Bank’s Operations Evaluation Department. *Id.* at Annex 3.

The RAF is designed to control and direct the use of GEF resources, and, in that way, sets firm limits on the discretion of the Council in allocating GEF resources. It is intended to guide the allocation of GEF resources at the outset of each replenishment. *Id.* at para. 9. The resources for each focal area are first set, based on a programming recommendation (a recommendation prepared by the Secretariat at the beginning of each replenishment process and reviewed, negotiated with, and eventually approved by the contributors). *Id.* at para. 9. Once final amounts are agreed on for each focal area, those amounts are allocated to several individual countries and the group of remaining countries based on the indices developed for the respective focal areas. *Id.* at paras. 10–17.

Allocations of resources under the RAF are intended to serve as envelopes of resources against which countries may request GEF grants, and are subject to a midterm review in the course of a replenishment period. *Id.* at paras. 18–21. Further, a certain percentage of GEF resources will continue to be made available to the focal areas outside the RAF, namely 5% of the resources for each focal area for global and regional projects, and 5% of the resources available for each focal area for small grants and capacity-building activities that cut across more than one focal area. *Id.* at para. 22. In addition, the RAF places a ceiling on the amount of GEF resources that may be allocated to any one country for a given focal area. For example, for biodiversity no country can receive more than 10% of the resources allocated to biodiversity for any one replenishment period. *Id.* at para. 23.

In the course of approving the RAF, the Council also clarified the eligibility of countries to receive GEF financing, ruling that a country is eligible to receive GEF financing in a given focal area if: (i) the Convention Secretariat for the pertinent focal area confirms that the country meets the eligibility criteria established by the pertinent convention’s Conference of the Parties; or (ii) if the country is eligible to borrow from the World Bank or to receive country assistance from UNDP and is a party to the convention pertaining to the pertinent focal area. *Id.* at paras. 24–27.

\(^{313}\) This assumes that a consensus on these issues was reached, absent which the replenishment would fail and leave the Trustee without resources to administer.
The Dilution of the Pro Rata Right

The GEF’s failure to meet the condition for receiving the United States’ supplemental contribution of $70 million to the third replenishment had a significant impact on the replenishment’s burden-sharing framework. Without that $70 million, the United States’ actual share in the third replenishment dropped to just below 18%. This reduction set a norm for the United States contributing less than 20% of total replenishment resources, which carried over into the fourth replenishment. As the pro rata right was conditioned on a participant that had pledged more than 20% of the total funds in a given replenishment (the United States being the only participant that met that description) incurring delays, the failure of the United States to contribute at least 20% of the third replenishment contributions meant that the pro rata right could never be exercised.

The fourth replenishment, lacking the outsized pledge from the United States, had a burden-sharing framework that looked quite different from earlier replenishments. With several participants pledging relatively similar percentages of the replenishment resources, they chose to forgo creating a meaningful pro rata provision. To create a provision that could be exercised would have meant a provision that could be triggered when a participant whose pledge was less than 20% of the total resources to be contributed incurred delays. The participants did not want to risk becoming contributors whose delays might trigger the right. Thus, although the original pro rata provision remains a part of the fourth replenishment resolution with its reference to a contributor contributing at least 20% of the total resources for the replenishment, it has become even more of a toothless tiger than it was in the past, because no such contributor to that fourth replenishment meets its description.

The Trustee’s Fiduciary Oversight over Agencies

The rapid expansion in the access accorded the Executing Agencies to GEF Trust Fund resources, from resources for preparation activities to resources for full scale projects, generated concern among some participants about the robustness of those agencies’ fiduciary standards. This concern prompted the participants to include within the policy recommendations of the fourth replenishment a call upon the World Bank as Trustee to develop a set of policy proposals on strengthening the accountability of the Implementing Agencies and the Executing Agencies.

The participants asked that such proposals set minimum financial standards, consistent with international best practices, on a sweeping list of issues: independent oversight, audit, evaluation and investigation functions, external financial audits, financial management and control frameworks, project appraisal standards, monitoring and project-at-risk systems, procurement, financial disclosure, hotline and whistleblower protection, and codes of ethics. They indicated that each agency would be expected...
to implement the fiduciary standards, or to have a program with a target date for implementation, within one year of the Council’s approval of such standards. Any agency failing to do so would be disqualified from further GEF funding until it implemented the standards.

This recommendation reflected a greater concern regarding fiduciary capacity than was evidenced by the Council when it previously approved the criteria for expanding opportunities for Executing Agencies, at which time its key concerns related to an agency’s capacity to fulfill one of the GEF’s strategic needs. It also constituted a significant increase in the expectations of the Council with respect to the role and responsibilities of the World Bank as Trustee. To the extent that it included requirements connected with overseeing projects, it reflected a very broad understanding of the mandate of the Trustee, far beyond the mandate that the Council had agreed the Trustee would be expected to assume at the time the Executing Agencies’ direct access to GEF resources was expanded. Nonetheless, in June 2007, the World Bank, acting as Trustee, presented to the Council a set of policy proposals for minimum fiduciary standards to strengthen the accountability of the agencies to the Council.

The standards, which were prepared by an international accounting firm in consultation with the agencies, detailed specific requirements in all of the areas the Council had asked to be addressed, grouping them broadly into: (i) an audit, management and control framework; (ii) project and activities processes and oversight; and (iii) investigations (the latter comprising an independent, objective process for investigating allegations of fraud and corruption, and hotline and whistleblower protection). The Council asked each agency to implement the standards within a year and to report to the Secretariat on their progress in doing so. The Council also agreed to review the standards every four years to take account of evolving international practices. To a large extent, the minimum standards tracked the kinds of practices and norms already being followed by the agencies. As a result, it is not clear what, if anything, this initiative on the part of the Council added to the fiduciary soundness of the GEF. The Council’s ruling, requiring the agencies to report to the Secretariat, rather than the Trustee, on their compliance with the minimum standards, was an appropriate return to the proper balance between the Secretariat’s and the Trustee’s functions within the GEF structure. For the World Bank as Trustee to be charged with a watchdog function over such a sweeping compendium of standards would materially alter the prior understanding, endorsed by the Council, as to the scope of the World Bank’s fiduciary duty to the contributors.

Further Fragmentation and Ongoing Developments

Recent developments affecting the GEF suggest that the cohesiveness of a collective financing vehicle with a global reach and a broad agenda may be time-bound, despite the administrative inefficiencies and added costs that accompany a proliferation of funds. Further, wide-sweeping changes, proposed by the Secretariat in the early stages of the fifth replenishment, test the durability of a financing effort structured like the GEF and the terms of engagement for the World Bank in similar financing efforts.

320 Id. at Annex A, para. 23.
321 Id.
323 See discussion supra note 65 & pp. 35–43, Expanding the Intermediary Umbrella.
325 Id. at para. 1.
326 Id. at Council Decision, para. 2.
327 Id. at Council Decision, para. 4.
The GEF marked a major milestone in the battle to protect the global environment, and the focal areas it addressed remain central in that battle. Today, the debate over how best to wage that battle has shifted towards placing key emphasis on one of those focal areas in particular: that of climate change. In 2008, the United States, the United Kingdom, and Japan asked the World Bank to set up a multi-billion dollar trust fund to finance the deployment of clean technology in the developing world. The United States promised to contribute $2 billion to the initiative, the United Kingdom, $1.6 billion, and Japan, $10 billion. This initiative has since evolved into the creation of two new global environmental trust funds: a Clean Technology Fund and a Strategic Climate Fund.

The Clean Technology Fund finances investments in developing countries that contribute to lowering a country’s greenhouse gas emissions with the objective of achieving transformational change towards a low carbon and climate sensitive market environment. The Strategic Climate Fund funds the piloting of new approaches to preventing climate change, such as a pilot program to explore ways to mainstream climate resilience into a country’s development planning and budgeting process. Both funds operate through the World Bank, the International Finance Corporation, and the multilateral development banks, which are accorded a central role. Proposals for trust fund financing, which originate in potential recipient countries, are routed in the first instance to the World Bank and/or the pertinent multilateral development bank for the area. Following identification of proposals, the World Bank and/or the regional development bank conduct a joint programming mission to engage the recipient government, private industry, and other stakeholders on how the funds’ resources may be used to catalyze transformation to a low carbon development path or address a specific climate change challenge.

Further Fragmentation


329 Henry Paulson, Alistair Darling, and Fukushiro Nukaga, Financial Bridge from Dirty to Clean Energy, Fin. Times, 8 February 2008, at 13. This request followed upon the meeting of the 13th session of the COP to the Climate Change Convention (COP-13) in Bali, Indonesia, in December 2007. At that meeting, the COP identified moderating and managing climate change as central to every aspect of poverty reduction in the developing world and determined that climate change should be addressed through the deployment of clean technology in a number of sectors. See World Bank, The Clean Technology Fund, supra note 329, at para. 1. COP-13 noted that the ongoing huge growth in demand for energy in the power, transport, building, and industrial sectors in the developing world (which is projected to last for the next 10 to 15 years) presents a finite window of opportunity to invest in clean forms of energy that will prevent irreversible climate change. Id. at para. 3. Further, the findings of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change estimate that billions of dollars in investments in environmentally friendly technology are needed to stall the increase of global greenhouse gas emissions. See, e.g., Global Environment Facility, GEF Council, Meeting, 22–25 April 2008, Elaborating a Strategic Program to Scale-Up the Level of Investment in the Transfer of Environmentally-Sound Technologies, GEF/C.33/7 para. 2 (21 March 2008), www.gefweb.org/uploadedFiles/Documents/Council_Documents_%28PDF_DOC%29/GEF_33/C.33.7%20Technology%20Transfer.pdf. In the face of these findings, COP-13 issued a plan of action. The “Bali Action Plan” launched a comprehensive process for long term cooperative action addressing climate change. United Nations Framework Convention on Climate Change, Conference of the Parties, Thirteenth Session, Bali, 3–14 December 2007, Ad Hoc Working Group on Long-term Cooperative Action Under the Convention, FCCC/CP/2007/L.7/Rev. 1 (2007).

330 See World Bank, Climate Investment Funds (1 December 2008) http://siteresources.worldbank.org/INTCC/Resources/World_Bank_Climate_Investment_Funds_(CIF).pdf (reporting on the creation of the Clean Technology Fund and the Strategic Climate Change Fund). Japan, the United Kingdom, and the United States are among the contributors to the funds. Id. at 5.


333 See World Bank, The Clean Technology Fund; supra note 329, at para. 12; World Bank, Strategic Climate Fund, supra note 334, at paras. 8, 14(e).

334 See World Bank, The Clean Technology Fund, supra note 329, at Annex A, para. 2; World Bank, Strategic Climate Fund, supra note 334, at paras. 8, 14(e).

The goal of such missions is to agree on an approach for using the funds’ resources in targeted sectors through a joint multilateral development bank program.337

The governance structures and operating modalities for these funds reflect a considerable amount of learning from the GEF, including the delineation of the functions of the Trustee of an international trust fund that occurred in the evolution of the World Bank’s role as Trustee of the GEF Trust Fund. They also reflect lessons learned from the interaction of the World Bank in its role as Trustee of the GEF Trust Fund with the multilateral development banks as Executing Agencies and the World Bank as Implementing Agency, and with the Secretariat. As with the GEF Trust Fund, the power to allocate the new trust funds’ resources is vested in a group comprised primarily of representatives of the contributors and of countries eligible to receive trust fund resources (the Trust Fund Committee), and not in the World Bank as Trustee.338 The Trustee’s role in the proposed funds consists of financial management, investment, accounting, and financial reporting.339 The Trustee’s financial management function for the proposed funds is likely to be more complex than for the GEF Trust Fund because the proposed funds may use a wide variety of financing instruments in addition to grants, including guarantees, credit lines and loans, and equity investments.340

From the start, the multilateral development banks have had direct access to the trust funds’ resources, which was a hard-won achievement under the GEF. The proposals for the new Funds contemplate that the multilateral development banks will submit the joint programs they have developed, in response to country requests for financing, directly to the Trust Fund Committee for approval. The Trustee is described as playing the role of “financial intermediary” between the Trust Fund Committee and the multilateral development banks for the Clean Technology Fund.341 Each multilateral development bank will have an equal opportunity to propose programs to the Trust Fund Committee for financing, and each will report directly to the Trust Fund Committee and be responsible for the use of trust fund resources in accordance with its own fiduciary framework.342

The governance structures of the proposed funds do not provide for functionally independent Secretariats or CEOs as exist in the GEF. Instead, they provide for the fund Secretariat responsibilities to be discharged by an “Administrative Unit” within the World Bank.343 This delegation reflects a marked evolution in the contributors’ views of the role and credibility of the World Bank as a leader in addressing the need for environmentally friendly development from the time when the GEF was restructured.

At present, the new funds do not detail a long-term financing strategy, because they are viewed as an interim measure, designed to provide a way forward, pending negotiation of a new international climate change agreement that stretches beyond 2012, the target date set for the Kyoto Protocol.344 In due course,

337 See, e.g., World Bank, Climate Investment Funds, supra note 332.
338 See World Bank, The Clean Technology Fund, supra note 329, at Annex A, paras. 34–35; World Bank, Strategic Climate Fund, supra note 334, at paras. 14–20. The Trust Fund Committee will be comprised of an equal number of contributor representatives and representatives from countries eligible to receive trust fund resources, a senior representative from the World Bank, and a representative from the Regional Development Banks. Id. at para. 14. All decisions, however, will be by consensus. World Bank, The Clean Technology Fund, supra note 329, at para. 32; World Bank, Strategic Climate Fund, supra note 334, at para. 22. The funds do not have a weighted voting procedure such as that which applies to the GEF Council.
341 World Bank, The Clean Technology Fund, supra note 329, at para. 43.
342 See World Bank, The Clean Technology Fund, supra note 329, at paras. 12–13; World Bank, Strategic Climate Fund, supra note 334, at paras. 41, 55.
344 World Bank, The Clean Technology Fund, supra note 329, paras. 56–57; World Bank, Strategic Climate Fund, supra note 334, at para. 56.
they, or whatever future international climate change financing mechanism follows, will benefit from the road map the GEF Trust Fund replenishments provide for building and maintaining a collective financing vehicle with a long-term financial framework.

The Beginnings of the Fifth Replenishment of the GEF Trust Fund

The Secretariat has raised major issues for review in the fifth replenishment, including the desire of the Secretariat for the GEF to have legal personality and legal capacity, which are reminiscent of the issues raised by the Secretariat in the third replenishment. The re-emergence of these issues puts into question the sustainability of the GEF’s structure. The manner in which they are resolved will signal whether the innovations in a trust fund administered by the World Bank, which the GEF’s structure achieved, can withstand the test of time and whether the GEF structure is viable and replicable. Perhaps the GEF is more properly viewed as an interim step, which advanced the concept of an international collective financing effort beyond the idea of a World Bank (or United Nations) dominated account but stopped short of what future collective financing efforts need. The renewed challenges to the GEF’s structure prompt consideration of whether collective financing efforts addressing global issues need a modality which allows them to act with full legal capacity while still availing themselves of the services of a financial institution experienced and credible enough to handle the effort’s financial management.

The planning meeting and the first meeting of the fifth replenishment, which took place in November, 2008 and March, 2009, respectively, focused primarily on the GEF’s funding needs and the possibility of using innovative financing mechanisms to boost its resources. However, at the second meeting of the fifth replenishment, held in June 2009, the Secretariat put forward a wide-sweeping proposal for institutional and governance reforms. The Secretariat’s proposals seek legal personality and legal capacity for the Secretariat in addition to a number of suggestions for expanding the Secretariat’s powers and, concomitantly, reducing the powers of the World Bank and, to some degree, the powers of the Implementing Agencies and other entities authorized to serve as financial intermediaries for the GEF.

The Secretariat’s suggestions for change include giving the GEF the authority, to be exercised through the Secretariat, to provide funding directly to recipients instead of channeling the funds through the Implementing Agencies and executing agencies, as provided for in the Instrument. The Secretariat also seeks exclusive responsibility for mobilizing resources for the GEF, exemption for the GEF from aspects of the World Bank’s employment policies and certain other World Bank policies, and the application of GEF-specific trust fund and currency-hedging policies to the management of the GEF Trust Fund’s resources.

Several of the Secretariat’s proposals will require amending the GEF Instrument if they are adopted. The Secretariat takes the position, however, that the terms of the GEF Instrument, and principles of international law and practice, already confer upon it sufficient legal personality and legal capacity to enter into legally binding agreements, including agreements with recipients to accord them direct access to GEF resources. At the second meeting of the fifth replenishment, the Secretariat suggested that the GEF Instrument be amended to clarify or confirm that the GEF has such personality and capacity.

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346 See generally Draft GEF Policy, supra note 165.

347 See id. at Executive Summary.

348 Id. at para. 34.

349 Id. at App. 1, Joint Legal Note Between the World Bank Legal Vice Presidency and the Secretariat on Restructuring Options for the GEF, para. 1.

350 Id. at para. 91.

351 Id. at para. 93.
The World Bank holds to the position, which it expressed when the GEF was created and again when
the issue arose in the third replenishment, that the GEF, as currently constituted, has neither legal personality
nor legal capacity. Accordingly, while it agrees with the Secretariat that the Secretariat’s proposals could be
implemented by a combination of amendments to the GEF Instrument and changes in certain World Bank
policies as applied to the GEF, it maintains that conferring legal personality and capacity on the GEF would
require reconstituting the GEF as a separate legal entity under a new governing instrument.

The World Bank suggests that independent legal status could be achieved either by reconstituting the
GEF as an organization established by a treaty or other instrument governed by international law or by
establishing the GEF as a legal entity under the laws of a host state. Short of taking such measures to
confer independent legal personality and capacity on the GEF, the World Bank suggests that the Secretariat
could secure the requisite legal authority to sign direct funding agreements on behalf of the GEF by a
delegation of signature authority from the World Bank. Without the buffer of an agency between the
GEF and the recipients, however, the risk of third party liability to the World Bank and GEF participants
would have to be mitigated by indemnifying both out of the resources of the GEF Trust Fund.

How the contributors proceed will be influenced by the report of the Overall Performance Study of the
fourth replenishment, which is due to be completed before the next meeting of the fifth replenishment.
Whatever the result, the final response to the Secretariat’s quest for increased powers will serve as a lesson
about the optimal approach to take in structuring new collective financing efforts.

**Conclusion**

The GEF is a paradigm-altering, collective financing effort that clearly demonstrates the hard choices
that must be confronted in creating such a vehicle if the effort is to succeed. Critical decisions about
the effort’s financial management and corporate governance must be made. On the financing side, for
example, the contributors have to decide how they will share the financial burden and also seek to deter
arrears. Additionally, they have to address the threshold issue of whether they want to create a short-term
or a long-term financing vehicle. On the governance side, the threshold question is who will control the
allocation of the financing vehicle. The contributors have to decide whether they will retain that power for
themselves or delegate it to an intermediary. The GEF pioneered a participant-controlled approach with
consequent teething pains. Contributors choosing a similar approach must decide on the composition
and mandates of the governance organs, such as a Secretariat and a financial manager, or Trustee, which
are necessary to facilitate the participants’ choice. They must also decide on the flow of funds from the
financing effort—whether, for example, they should go directly to beneficiaries or through a pre-approved
list of intermediaries. Finally, they must create a flexible financing vehicle that can adapt to changing
demands while at the same time guarding against mission creep.

In the realm of international cooperation, there are no stock answers for these decisions. On the
contrary, they are fraught with political and other considerations. Nonetheless, it is important that the
framers of collective financing efforts are aware of the choices and learn from the mistakes and triumphs
of landmark precedents such as the GEF. This article aims to serve as that consciousness-raising tool and
analytical road map.

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352 See generally id. at App. 1.
353 Id. at App. 1, para. 23.
354 Id. at App. 1, para. 28.
355 Id. at App. 1, para. 20.
356 Id. at App. 1, paras. 21–22.
21 September 2009).
Chapter 10

Global Fund to Fight AIDS, Tuberculosis and Malaria: A New Legal and Conceptual Framework for Providing International Development Aid*

Anna Triponel+

Introduction

Over the past decade, the development community has witnessed the unprecedented proliferation of innovative mechanisms designed to fund specific global issues.1 Usually initiated as partnerships between governments, intergovernmental organizations, the private sector, and civil society, these funding instruments address global public goods such as health, environment, and microfinance.2 The appearance of multilateral funding mechanisms on the international scene has changed the understanding of development.

There are several reasons for the appearance of multilateral funding mechanisms. First, given the urgency of achieving the Millennium Development Goals (MDGs),3 programs with a narrower mandate can act more quickly than other institutions and financing channels.4 The programs can thus concentrate their advocacy and funding efforts on one specific global target seen as particularly urgent.5 Second, the new century brought new ways of channeling aid that required integration into new funding structures.6 Third, unlike the traditional way of providing development aid, these programs seek “to realize the

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1 Various terms are used to describe these multiactor funding mechanisms, including “multisectoral global funds,” “multilateral financing mechanisms,” or “global programs and partnerships,” which is the term used by the World Bank.
2 A “global public good” is defined as an area that requires collective action to achieve results. See, e.g., Dev. Ctr., Org. for Econ. Co-operation and Dev., Integrating Global Partnership Programs with Country-led National Programs: Synthesis of Findings and Recommendations 4 (2006); see also Providing Global Public Goods: Managing Globalization 22–23 (Inge Kaul et al. eds., 2003) (analyzing the concept of global public goods across different levels and sectors).
5 Id. at 2–3.
6 See High Level Forum on Aid Effectiveness, Paris Declaration on Aid Effectiveness 1(2005).
benefits of multi-stakeholder collaboration” by allowing increased participation of nontraditional actors such as civil society and the private sector.7

Beginning in 1971 with the Consultative Group on International Agricultural Research (a strategic alliance of countries, international and regional organizations, and private foundations working to achieve sustainable food security and reduce poverty in developing countries through scientific research), these multiactor programs have developed in a remarkable fashion over the past decade.8 Such programs are usually created as (i) “new entities with their own legal identity” or as (ii) “alliances with legally constituted financing arms.”9 Examples include:

- The Global Environment Facility (the GEF), established in 1991 “to help developing countries fund projects and programs that protect the global environment”;10
- The Consultative Group to Assist the Poor, created by aid agencies and industry leaders in 1995 to help create permanent financial services for the poor on a large scale;11
- The Global Alliance for Vaccines and Immunisation (GAVI Alliance), created in 1999 as a public-private partnership focused on increasing children’s access to vaccines in poor countries;12
- The Education for All Fast Track Initiative (EFA FTI), created in 2002 “to ensure accelerated progress towards the MDG of universal primary education by 2015”;13 and
- The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund or the Fund), created in 2002 as a partnership between governments, civil society, the private sector, and affected communities to dramatically increase resources to fight AIDS, tuberculosis, and malaria and to direct those resources to areas of greatest need.14

Many other programs exist, focusing on different areas of global concern, including the Program on Fisheries, created in 2005 to strengthen governance of the world’s marine fisheries;15 Cities Alliance, created in 1999 as a “global coalition of cities and their development partners [to increase] successful approaches to poverty reduction;”16 and the Integrated Framework, which supports the least-developed countries in improving their trade capacity, mainstreaming trade into their development strategies and coordinating trade-related donor support.17

The creation of new vehicles for development funding has also resulted in increased scrutiny of the ways these programs operate in order to draw lessons for the creation and management of subsequent programs. In effect, “the matter of …. effective governance [of partnerships] and the manner in which they can be held to account is, equally, becoming a mainstream issue.”18 Partnerships face good governance issues such as “accountability, transparency, legitimacy, disclosure, participation, decision-making,

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7 Heimans, supra note 4, at 2.
9 Heimans, supra note 4, at 1.
15 Agriculture & Rural Development—Global Program on Fisheries (PROFISH), http://go.worldbank.org/0I0GPE15Y0 (last visited 20 October 2009).
16 Cities Alliance, About Cities Alliance 1 (2009).
grievance management and performance reporting.”19 Although work is under way to identify key good practice principles for these global programs and partnerships,20 “[m]any partnerships operate either in a regulatory vacuum, or at a junction point of multiple regulatory regimes, or at best within relatively new, still immature, regulatory frameworks focused on partnerships.”21 An analysis of the different structures of various global programs and partnerships can reveal key lessons for the identification and promotion of good practices in international governance and accountability.

This article presents the key innovative features of the Global Fund and discusses how its features adapted to changing circumstances. The Global Fund was created due to the urgency of combating three of the world’s most devastating diseases—AIDS, tuberculosis, and malaria. Its “advocates also believed that a new, unbureaucratic and lean financing agency was needed to tap the additional funds expected from donors to confront HIV/AIDS, and also tuberculosis and malaria.”22 Indeed, the Global Fund’s “structure resulted from the strong belief held by some of its founders that it should differ from and operate more effectively than existing bilateral and multilateral aid mechanisms.”23 This explains why the design of the Global Fund represents such a departure from existing financial or development institutions. The Global Fund’s innovative arrangements can be observed in particular when analyzing the Fund’s legal status; organizational arrangements; concessional financing modalities; and resource mobilization mechanisms.

Background

History

On July 23, 2000, leaders of the Group of Eight (G8) countries recognized that HIV/AIDS, tuberculosis, and malaria threatened to “reverse decades of development and to rob an entire generation of hope for a better future.”24 The leaders of the 26th G8 Summit agreed to “implement an ambitious plan on infectious diseases, notably HIV/AIDS, malaria and tuberculosis.”25 The idea of a Global Fund was initiated during a special summit of the Organization of African Unity,26 where African leaders supported the proposal of then-United Nations (UN) Secretary-General Kofi Annan for “the creation of a Global Fund, dedicated to the battle against HIV/AIDS and other infectious diseases.”27

Secretary-General Annan announced the creation of a “global HIV/AIDS and health fund to finance an urgent and expanded response to the epidemic” at the conclusion of the UN General Assembly

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Special Session on HIV/AIDS (June 2001) and welcomed pledges from donor nations and the private sector. During their July 2001 meeting in Genoa, the G8 countries expressed their determination “to make the Fund operational before the end of the year” and called on other countries and the private sector to also contribute to this fund.

A transitional working group (TWG) was subsequently created, comprised “of nearly 40 representatives of developing countries, donor countries, NGOs, the private sector, and the UN system,” to reflect on how the Fund was to be created. The TWG’s task was to “develop a new structure and working methods that [would] enable the Fund to spend resources most cost-effectively and in ways that produce measurable results.” The TWG met three times between August and December 2001 and produced summary papers on governance, country processes, eligibility criteria, technical review, accountability, legal issues, and fiduciary arrangements, which were then integrated into the Global Fund’s framework document.


**Leading Principles**

The Global Fund’s operations are guided by seven general principles.

**Financial Instrument, Not Implementing Entity**

“The Fund is a financial instrument, not an implementing entity.” This is consistent with the Fund’s statement of purpose to “attract, manage and disburse additional resources” to fight HIV/AIDS, tuberculosis, and malaria. The Fund therefore relies on other multilateral and bilateral organizations involved in health and development issues to implement projects with the funds received.

**Programs Funded**

The Global Fund “make[s] available and leverage[s] additional financial resources to combat HIV/AIDS, tuberculosis and malaria.” The Fund does this by actively seeking to “complement [programs] of other donors, and seeks to use its own grants to stimulate further investment by both donors and recipients.”

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36 Id.
37 See, e.g., id.
38 Id.
Thus, the Global Fund only finances programs when its assistance “neither replace[s] nor reduce[s] other sources to fight AIDS, tuberculosis, and malaria.”40

National Ownership

The Global Fund commits to “base its work on programs that reflect national ownership and respect country-led formulation and implementation processes.”41 Thus, selection for funding requires that programs show national ownership. The Global Fund requires “that all areas of society with a stake in public health be involved in the development process, including civil society and private sector.”42

Fund Priorities

The Global Fund aims to “operate in a balanced manner in terms of different regions, diseases and interventions.”43 This means that the Fund gives priority to countries and regions with the greatest need and also to areas with emerging epidemics.44

Integrated and Balanced Approach

The Fund seeks to “pursue an integrated and balanced approach covering prevention, treatment, and care and support in dealing with the three diseases.”45 Thus, proposals to be funded can include “both prevention and treatment based on locally determined needs.”46

Independent Review Process

The Global Fund “evaluate[s] proposals through independent review processes.”47 The governance of the Global Fund is designed to ensure the independent evaluation of proposals by experts in the area.

Simplified Grant-Making Process

The Global Fund seeks to “establish a simplified, rapid, innovative” grant-making process and operate “in a transparent and accountable manner.”48 The Fund “require[s] comprehensive plans for assessing programmatic accountability, including monitoring, evaluation, and auditing,” and “provide[s] incentives to grant recipients to achieve more, faster, and better results.”49 Moreover, the Fund allows the public to view all approved proposals, signed grant agreements, and ongoing grantee reports.50

An Innovative Legal Status

The choice of legal status for the Global Fund was at the heart of the TWG discussions in 2001. The first decisions of the Fund’s creators involved choosing between a formal or informal organization and determining which legal form would best suit the Fund’s needs. The decisions of the TWG, combined

40 Id.
42 How the Fund Works, supra note 39.
44 See id. at 9.
45 Id. at 2.
46 How the Fund Works, supra note 39.
48 Id.
49 Id. at 14–15.
with subsequent decisions, resulted in the development of a groundbreaking legal status that is unique to the international legal arena.

Defining the Organizational Structure

Upon recommendations from a sub-working group, the TWG initially preferred to create an informal alliance using an existing international organization, which had been the structure used for the GEF and GAVI Alliance.

However, three main arguments informed the decision to establish the Fund as an independent legal entity. First, the Fund needed to be a legal entity in order “to enter into legally enforceable contracts in the ordinary course of business.” Second, an independent formal organization could help promote public confidence in the institution. Third, a formal status would enable the Fund to receive contributions from both public and private sources. Ultimately, the arguments that prevailed were that the Fund needed “autonomy” and an “ability to enter into robust collaborations with national and international partners.” Thus, the TWG recommended to the Global Fund’s first board meeting that “the Fund [be] provided with an independent legal personality of its own.”

Creation of a Private Foundation

The next step was to “explore which legal form would suit the needs of the Fund.” During its first meeting on 28–29 January 2002, the Global Fund’s board approved bylaws for the Fund, which provided that the Fund would take the legal form of a “non-profit foundation.” The Fund was organized as a private entity to “[balance] the need to urgently get the Fund up and running and at the same time assure independent authority.” The next step was “incorporating the Fund legally in Switzerland.” Geneva was chosen as an appropriate location, due in part to its proximity to the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

The Global Fund was incorporated as a nonprofit foundation under Swiss law on 22 January 2002 and registered in the Geneva Trade Register on 24 January 2002. It is “governed by [its] Bylaws and the

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53 “Renting office space, acquiring equipment, securing telephone service, hiring staff etc. are examples of the normal housekeeping duties of the Fund that will require some legal status.” See First Meeting of the Transitional Working Group, supra note 51, at 4.

54 See Second Meeting of the Transitional Working Group, supra note 51, at 4.

55 See First Meeting of the Transitional Working Group, supra note 51, at 4.


58 Id.


60 Report on Legal Status Options, supra note 56, at 2.

61 Third Meeting of the Transitional Working Group, supra note 32, at 2.

62 See Third Meeting of the Transitional Working Group, supra note 32, at 1.

applicable provisions of Swiss law” and “operates under the supervision of the Federal Supervisory Board for [f]oundations.”64 With this incorporation, the Global Fund “acquired a legal personality under Swiss law.”65

Since the Global Fund is a foundation under private law and fulfills the conditions of the European Convention on the Recognition of the Legal Personality of Non-Governmental Organizations,66 it is considered a nongovernmental organization (NGO).57 This European Convention requires signatory states to “recognize the legal personality [of this entity] as acquired within (the territory of) the party in which it has its statutory headquarters [i.e., Switzerland].”68

In addition, the Fund, at its creation, benefited from certain privileges and immunities resulting from the agreements it signed with existing organizations, such as an administrative services agreement with the WHO69 and a trustee agreement with the World Bank.70 The Fund subsequently decided to discontinue the administrative services agreement with the WHO no later than 31 December 2008.71 Accordingly, on 1 January 2009, the Global Fund “became an autonomous, international financing institution with its own information technology platform, employment contracts, human resource policies, pension fund, health insurance scheme, grade and salary structure, payroll, accounting, procurement, security, travel, occupational health and other administrative services.”72 A working group is currently examining ways of conferring diplomatic immunities, privileges and exemptions to the Fund’s assets, including staff, outside Switzerland and the United States.73

Enhancing the Global Fund’s Status

No sooner had the Global Fund acquired a separate legal entity status than the board mandated the secretariat to start exploring an enhanced legal status74 due to the following reasons.

First, political momentum in 2001 was such that the Global Fund had been created quickly. Therefore, other options for independent legal entities had not been pursued at that time.75

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64 Global Fund Bylaws, supra note 59, at 2.
65 Annex 6, supra note 63, at 8 (stating that the Global Fund is a private foundation “in the sense of articles 80 ff. of the Swiss Civil Code,” incorporated pursuant to a public deed dated 22 January 2002 and registered in the Geneva Trade Register on 24 January 2002).
66 The European Convention on the Recognition of the Legal Personality of Non-Governmental Organizations signed in Strasbourg on 24 April 1986 and entered into force in Switzerland on 1 January 1991 is applicable to foundations that: “1) have a non-profit objective of international utility; 2) have been created through an act under the national law the Convention; 3) be effectively active in at least two States, 4) and have its statutory headquarters on the territory of this or another party.” Id.
67 Id.
68 Id.
69 See Report on Legal Status Options, supra note 56, at 6 (stating that the administrative services agreement with WHO provided the Fund with “fiscal and legal protections” including benefits such as “VAT and personal tax exemptions, work permits, diplomatic privileges, and laissez-passer. . . .”); see Annex 6, supra note 63, at 3 (illustrating the advantages and disadvantages of the administrative services agreement with WHO).
70 See Annex 6, supra note 63, at 3 (discussing details on the advantages provided by the trustee agreement with the World Bank).
73 See id. at 27–28.
74 In particular, the possibility of establishing quasi-intergovernmental status with greater autonomy was initially explored. See The Global Fund to Fight AIDS, Tuberculosis and Malaria. Report of the Third Board Meeting 31 (2002) (hereinafter Global Fund’s Third Board Meeting) (“The possibility of the Swiss Government conferring Quasi-Intergovernmental Status on the Global Fund was explored by the Secretariat and presented as a viable solution for the Fund. This exploration was mandated by both the First and Second Board meetings.”).
75 See Annex 6, supra note 63, at 2.
Second, in its joint bid with the WHO to locate the organization in Geneva, “the Swiss Government committed to providing the Global Fund with quasi-intergovernmental status which, at a minimum, would provide certain tax exemptions and other benefits similar to the privileges allowed other international organizations.”

Finally, the experience of the Global Fund in its first months of existence demonstrated that an appropriate fiscal and legal status would improve operations. The Global Fund’s board noted in particular the need to secure the privileges and immunities essential to protect the Fund; facilitate efficient and least-costly secretariat administration; and align staff contractual obligations to the independent needs of the Fund. For example, as employees of WHO, the secretariat staff had a dual duty to serve the WHO and the Global Fund, creating confusion regarding their accountability in the event of a challenge to the Fund’s activities. In addition, the Global Fund’s status as a foundation provided no protection for the Fund as an institution.

Thus, subsequent to its creation as a private foundation, the board explored the following options for changing the Fund’s legal status:

1. Quasi-governmental organization,
2. Intergovernmental organization,
3. Specialized institution within the UN system,
4. Retaining private foundation status but with expanded board immunities, and
5. Grant of immunities and privileges equal to those granted to international organizations.

**Quasi-governmental Organization**

Quasi-governmental organizations are international NGOs recognized by governments as having “partial or limited international legal personalities … which translates into the ability to conclude treaties under international law (treaty-making power).” The Swiss authorities have adopted this practice in the past to recognize the “evolution of international law and the development of international cooperation which implies an increased participation of actors of a private nature in international relations.”

To attain the status of a quasi-governmental organization under Swiss law, an organization must meet five conditions:

1. the organization must be a legal entity; 2. the structure of the organization must be close to that of an intergovernmental organization; 3. the majority of the financing should come from states; 4. the functions of the organization should serve the public good; and 5. the Swiss should have an interest in hosting the organization.

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76 Report on Legal Status Options, supra note 56, at 2.
77 See, e.g., Report on Legal Status Options, supra note 56, at 3–4; see generally Global Fund’s Third Board Meeting, supra note 74, at 31–32 (summarizing the advantages of establishing quasi-intergovernmental status).
78 See Report on Legal Status Options, supra note 56, at 4 (stating that “employees of the Secretariat have a duty to serve their employer, WHO, while also having a duty to serve the Global Fund as a private entity. The differing and distinct mandates of WHO and the Global Fund create chronic conflicts of interest for Global Fund staff.”).
79 Id. at 6 (“maintaining the current status provides no protection for the Fund as an institution—it remains institutionally liable for any claims brought against it in Switzerland.”).
80 Annex 6, supra note 63, at 10 (“Because of their content, these treaties are sometimes called ‘agreements of a fiscal nature.’”). Both terms “quasi-governmental organization” and “quasi-intergovernmental organization” are used to describe these entities. Id.
81 Id. Similar agreements were entered into by Switzerland, such as those with the International Air Transport Association, the International Council of Airports (1997), and the International Society of Aeronautical Communication (1992). Id. at 10–11.
82 Global Fund’s Third Board Meeting, supra note 74, at 31.
The Global Fund anticipated no difficulty in qualifying as a quasi-governmental organization. If the Global Fund decided to pursue this option, it was advised to follow the example of the Geneva International Centre for Humanitarian Demining, a Swiss foundation that “obtained a status [taking] into consideration the international tasks …. assigned to it.” Following this precedent, an agreement could be reached with the Swiss government to extend immunities to the members of the Global Fund’s board while maintaining the civil servant status of the secretariat staff.

However, the governance and partnership committee did not recommend this option due to “higher employment costs” and “limited benefits” and immunities for board members, and the board subsequently decided not to pursue this option.

**Intergovernmental Organization**

An international organization has been defined as an “association of states, established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfill particular functions within the organization.” Such entities have also been termed intergovernmental organizations.

According to the secretariat, the intergovernmental organization option would have offered the Global Fund “the greatest range and level of benefits.” It would have permitted the establishment of a cost-effective administrative system, made accountabilities and responsibilities clear and transparent, provided the best platform for building robust collaborations with the UN and other development partners, provided full fiscal benefits for the institution and its individuals, and improved the Global Fund’s immunities.

Nevertheless, this option was ultimately rejected due to several disadvantages. First, there were concerns that the creation of a new intergovernmental organization “would result in redundant and costly processes and systems that would confound versus leverage well functioning international expertise and services.”

Second, the creation of an intergovernmental organization via a multilateral treaty was viewed as a cumbersome and lengthy process. All states participating in the Global Fund would have needed to approve the constituting document for this new intergovernmental organization in accordance with their constitutional procedures. There had been precedent to the contrary in that the establishment of the International Federation of Red Cross and Red Crescent Societies required merely a headquarters agreement with the Swiss government to be “considered as being the holder of the rights and obligations..."
not only under Swiss, but also under international law.” Nevertheless, this precedent was only possible because of the “specific place [this federation] occupies in international humanitarian relations.”94 This international legal personality was “demonstrated notably in the conclusion of a large number of agreements which define the legal status in the contracting [s]tates and which are authentic international treaties.”95

However, the Global Fund could not follow this precedent because “it was created as a non-profit foundation ruled by its own statutes and by the articles 80 ff. of the Swiss Civil Code. Its legal personality is therefore anchored mainly, if not exclusively in Swiss internal law.”96 A multilateral treaty would therefore have been required to create an intergovernmental organization in the case of the Global Fund. Third, because only states are parties to the constituting act of an intergovernmental organization, transforming the Global Fund into such an organization could have discriminated against the private sector. The proposed change could upset “the subtle balance established between the private and public sectors, notably as concerns the [f]oundation [b]oard of [d]irectors, which will become the [e]xecutive [b]oard of the new international organization to be created.”97 In particular, signatory states may not wish to be “on an equal footing, that is to say with the right to vote” with representatives of civil society and the private sector on the board.98

Since the Global Fund was intended to be a new financing instrument with specific emphasis on including the private sector and civil society, the intergovernmental organization option was deemed too burdensome to pursue.99

Specialized Institution within the United Nations System

The secretariat for the Global Fund also explored the option of organizing the Fund as a specialized institution within the UN system. This would have enabled the Fund’s staff to profit from a UN laissez-passer100 and the benefits and immunities of specialized institutions.101 However, this option was quickly rejected because the creation of a specialized institution is at least as burdensome as creating a new intergovernmental organization.102 Furthermore, the Global Fund “was never intended to be part of the UN system.”103

Expanded Board Privileges and Immunities

To remedy the disadvantages of the previous options, the Swiss authorities offered the Global Fund the option of expanding the board’s and the secretariat’s privileges and immunities in Switzerland.104 This would have allowed the Global Fund to remain a Swiss foundation with “immunities of jurisdiction in Switzerland for members of the [b]oard of the Global Fund,” immunity of jurisdiction for certain secretariat staff, and “international recognition of a status as an international NGO.”105 Although the

94 Id. at 13.
95 Id.
96 Id.
97 Id. at 18.
98 Id.
99 See Annex 6, supra note 63, at 6.
100 A laissez-passer is a permit or pass for official travel. Webster’s Third New International Dictionary of the English Language Unabr. 1265 (Philip Babcock Gove, PhD Ed, Merriam Webster Inc. 1993) (1961).
101 Annex 6, supra note 63, at 6.
102 See id.
103 Id.
104 See id. at 4 (detailing the benefits arising from this option).
105 Id. at 4–5.
secretariat recommended this option because of the disadvantages of the other options,\(^\text{106}\) the board decided that this solution did not provide the Global Fund with enough protection.\(^\text{107}\)

**Immunities and Privileges Equal to an International Organization**

As none of the options explored suited the specific needs of the Fund, the “Swiss authorities came forward with a significant new proposal for the Global Fund [l]egal [s]tatus.”\(^\text{108}\) Switzerland offered to create a unique status for the Global Fund whereby the latter would remain a Swiss foundation and be accorded immunities and privileges in Switzerland equal to those granted to international organizations. This would be achieved solely through the conclusion of a headquarters agreement.

This option would provide “increased legal protections for the Global Fund [s]ecretariat and its [b]oard and its assets.”\(^\text{109}\) The headquarters agreement would also enable the Global Fund “to undertake a number of administrative changes which will make the organization more effective and efficient.”\(^\text{110}\) Indeed, the headquarters agreement provided that the Global Fund, its assets, income and other property are tax exempt,\(^\text{111}\) and immune “from every form of legal process and enforcement” in the conduct of its business.\(^\text{112}\) In addition, board members and all Global Fund officials would enjoy certain privileges, including (a) “immunity from jurisdiction” for acts performed in the discharge of their duties, (b) “inviolability of all official papers, data storage media and documents,” and (c) tax exemptions.\(^\text{113}\)

The headquarters agreement would also continue to allow the equal participation of the private sector and other actors on the Global Fund’s governing bodies. As this option was “a substantial improvement over the proposed quasi-intergovernmental status in terms of immunities, privileges and costs”\(^\text{114}\) and “an important improvement over the current offer to extend immunities to the [b]oard and the prospect of seeking intergovernmental organization status,” the Global Fund, during its fifth board meeting, asked the Swiss authorities to further examine this possibility.\(^\text{115}\)

On 19 September 2003, the “Swiss Federal Council took the decision of principle to grant to the Global Fund privileges and immunities similar to those of an international organization.”\(^\text{116}\) The Swiss authorities made this decision, the first of its kind in Switzerland,\(^\text{117}\) because they viewed strengthening the global fight against AIDS as especially important for Switzerland.\(^\text{118}\) During its eighth board meeting, the Global Fund authorized the signing of the headquarters agreement.\(^\text{119}\)

\(^\text{106}\) Annex 6, supra note 63, at 6.

\(^\text{107}\) Global Fund’s Fifth Board Meeting, supra note 87, at 33 (stating that the option of “adding immunities from jurisdiction for the Board and Secretariat to the current arrangement [is] not optimal.”).

\(^\text{108}\) Id. at 32.


\(^\text{110}\) Id.

\(^\text{111}\) The Global Fund to Fight AIDS, Tuberculosis and Malaria, Agreement Between the Swiss Federal Council and the Global Fund to Fight AIDS, Tuberculosis and Malaria art. 7 (2004).

\(^\text{112}\) Id. art. 5.

\(^\text{113}\) Id. arts. 13,15.

\(^\text{114}\) Global Fund’s Fifth Board Meeting, supra note 87, at 33.

\(^\text{115}\) Id.


\(^\text{117}\) See Global Fund’s Fifth Board Meeting, supra note 87, at 33.

\(^\text{118}\) See Global Fund’s Sixth Board Meeting, supra note 116, at 9 (referring to Swiss President Pascal Couchepin’s intervention at the UN Special Session on AIDS on 22 September 2003).

Swiss Federal Council and the Global Fund, which determined the final legal status of the Global Fund in Switzerland,\textsuperscript{120} was finally signed on 13 December 2004.\textsuperscript{121}

Thus, the Global Fund remains a Swiss foundation and also benefits from privileges and immunities in Switzerland similar to those of an intergovernmental organization. This unique status is an intermediate step to the precedents of the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, which were fully assimilated into intergovernmental organizations through the conclusion of headquarter agreements. This new status designed for the Global Fund demonstrates the flexibility granted by Switzerland in creating original legal solutions to accommodate the special needs of such global instruments.

Although the privileges and immunities granted to the Global Fund were not intended by the Swiss authorities to extend outside Switzerland,\textsuperscript{122} certain states have subsequently recognized the Global Fund as a public international organization, enabling it to also benefit from privileges and immunities in other countries.\textsuperscript{123} Nevertheless, this “designation of [t]he Global Fund as a public international organization differs from the definition of public international organizations under other international law instruments.”\textsuperscript{124} Although the Global Fund does not satisfy all the requirements of an intergovernmental organization, its designation as such “expands the traditional definition” of a public international organization to include such entities that are not considered intergovernmental entities but are granted privileges and immunities by a sovereign government.\textsuperscript{125}

**Organizational Arrangements**

**Governance Arrangements**

The creators of the Global Fund wanted a light-touch governance system that was accountable and transparent; supportive of country decision-making; technically sound; inclusive of all partners; and that minimized transaction costs and transferred resources rapidly.\textsuperscript{126} The current governance structure is laid out in the Global Fund’s framework document,\textsuperscript{127} bylaws\textsuperscript{128} and board operating procedures,\textsuperscript{129} which

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\textsuperscript{121} See Privileges and Immunities, supra note 109.

\textsuperscript{122} See Global Fund’s Fifth Board Meeting, supra note 87, at 33 (“It was also clarified that this proposal did not provide immunities outside of Switzerland. Currently, WHO provided some degree of immunity for Secretariat staff in certain countries outside of Switzerland, however these immunities were not extended to the Fund itself or Board members.”).


\textsuperscript{124} JusCogens.net, supra note 123.

\textsuperscript{125} Id.

\textsuperscript{126} Governance papers were discussed during the three TWG meetings. A final governance paper was adopted by the TWG at its last meeting (13–14 December 2001) to be submitted to the Board. See, e.g., First Meeting of the Transitional Working Group, supra note 51, at 3; see also Third Meeting of the Transitional Working Group, supra note 32, at 1.

\textsuperscript{127} See generally The Global Fund Framework Document, supra note 32.

\textsuperscript{128} See generally Global Fund Bylaws, supra note 59.

\textsuperscript{129} The Global Fund to Fight AIDS, Tuberculosis and Malaria, Board Operating Procedures (amended 5 May 2009).
have frequently been revised to clarify outstanding governance issues. At the third board meeting, the decision was made to create temporary committees to work with specific terms of reference, “established on a temporary basis, to be briefly reviewed at every board meeting.” The four initial committees were: (1) Monitoring, evaluation, finance, and audit; (2) portfolio management and procurement; (3) resource mobilization; and (4) governance and partnership.

The Global Fund also entered into a trust agreement with the World Bank, which serves as trustee of the monies entrusted to the organization, and an administrative service agreement with the WHO. Professor Richard Feachem was appointed as the first executive director of the Global Fund.

**Governance Structure**

The Global Fund has both a country and a global level governance structure (Figure 1). The Fund relies on three mechanisms to develop proposals for Fund financing at the country level: (1) A country coordinating mechanism (CCM), (2) the principal recipient, and (3) a local fund agent. At the global level, the Fund's constituent bodies include the board, partnership forum, chairpersons, secretariat, and the technical review panel. Finally, the World Bank, as trustee, plays a financial management role.

**Recipient Country Structures**

The creators of the Global Fund agreed that its structures should enhance local ownership and participatory decision-making. Thus, the Global Fund does not have a country-level presence, but relies instead on existing in-country mechanisms and contracts with in-country experts for independent advice.

**The Country Coordinating Mechanism**

The CCM is a coordination and partnership mechanism that, ideally, should have already existed prior to the Global Fund. It includes “broad representation from governments, NGOs, civil society, multilateral and bilateral agencies and the private sector.”

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130 The fourth Board meeting, for example, adopted revisions to the effect that the chair and vice-chair would be elected for a period of two years, and the chair and vice-chair were given decision-making authority between Board meetings. See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Report of the Fourth Board Meeting 12 (2003).

131 Global Fund's Third Board Meeting, supra note 74, at 7.

132 Id. at 7–10.

133 See Global Fund’s First Board Meeting, supra note 33, at 4.

134 See id.

135 See Global Fund’s Third Board Meeting, supra note 74, at 5.


137 Id.

138 Global Fund Bylaws, supra note 59, at art. 5.


140 See First Meeting of the Transitional Working Group, supra note 51, at 3; see also Third Meeting of the Transitional Working Group supra note 32, at 3.

141 See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Fiduciary Arrangements for Grant Recipients 3 (2003) (hereinafter Fiduciary Arrangements for Grant Recipients).


The CCM evaluates the submitted country proposals and channels one coordinated country proposal (CCP) to the Global Fund. The CCP is usually composed of an existing health sector plan and a request for funding for specific aspects of the plan. After grant approval, the CCM also oversees program implementation.

The novelty of the CCM is that it attempts to bring together, within one single structure, all actors working on AIDS, tuberculosis, and malaria at the country level. In addition, the Global Fund places particular emphasis on the inclusion of civil society and key affected populations. In this aspect,
it “contrasts with the typical structure of the donor-recipient relationship in organizations like the World Bank, which is focused almost exclusively on national governments and with the model used by the GEF, where governments develop and implement proposals in cooperation with international organizations . . .”149 One issue up for debate is whether “multisectoral participation in Country Coordinating Mechanisms should be *promoted* or actually *mandated* and, if the latter, what percentages should be cited.”150 The Global Fund currently recommends that at least 40% of the members represent non-government sectors.151 Despite the difficulties that can arise with such a structure (e.g., the burden created if the CCM did not exist before or the risk that the CCM will be dominated by one group), this country-level approach tends to be valued as a way “to bring all key national stakeholders together.”152

**Principal Recipients**

A principal recipient is a “legally-constituted entity that can enter into a grant agreement with the Global Fund.”153 The principal recipient is often a government ministry but can also be “a nongovernmental or faith-based organization, a private sector firm or foundation . . .”154 Principal recipients “are expected to be local stakeholders rather than United Nations agencies or other multilateral or bilateral development partners.”155 Principal recipients are also required to join the CCM.156

The principal recipients are selected by the CCM to be the lead implementers of the grants.157 They are responsible for program management and financially accountable for the Global Fund-financed program.158 Therefore, principal recipients carry out and oversee program implementation, report on results, and request additional disbursement of funds.159 In addition, they often disburse the grants from the Global Fund to subrecipients, who accomplish “much of the implementation work.”160 The principal recipient then oversees the financial arrangements and prepares a plan for the annual audit of subrecipient activities under the grant.161

**Local Fund Agents**

Local fund agents are in-country experts selected by the Global Fund through a competitive bidding process.162 Usually, the Global Fund contracts one local fund agent per grant-receiving country.163

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151 See *supra* text accompanying note 143.


154 *Id.*

155 *Id.*

156 See Fiduciary Arrangements for Grant Recipients, *supra* note 141, at 3.


158 See Fiduciary Arrangements for Grant Recipients, *supra* note 141, at 3.

159 See Proposals Round Seven, *supra* note 153, at 35–36.

160 Examples of sub-recipients include “academic/educational sector; government (including ministries of health as well as other ministries involved in a multi-sectoral response, such as education, agriculture, youth, information, etc.); non-governmental and community-based organizations; people living with HIV, tuberculosis, and/or malaria; the private sector; religious/faith-based organizations; and where no national recipient is available, upon justification multi-/bilateral development partners.” *Id.* at 36 n.3.

161 See *id.* at 36–37.


163 *Id.*
The local fund agents are hired to assess whether the proposed principal recipients have the minimum capacity required to assume financial and program accountability for the grants. Once the grant has been disbursed, the local fund agent “provide[s] independent oversight and verification of program progress and financial accountability.”

Grants from the Global Fund can cover a wide range of activities. The proposals may seek to prevent the spread of HIV/AIDS, tuberculosis, or malaria; treat people who are ill from these diseases; or provide care and support for affected people and communities by scaling up existing effective interventions or piloting new and innovative responses. Proposed activities may include efforts to improve the availability of health services; strengthen health systems and human resource capacity; promote behavior change; provide critical health products (such as antiretroviral therapy; drugs for tuberculosis, and anti-malarial drugs), or conduct operational research.

**Global Fund Constituent Bodies**

The CCMs submit their country’s proposals to the Global Fund’s constituent bodies where the proposals are assessed and approved.

**Secretariat**

The secretariat is headed by an executive director who reports to the board on “the day-to-day management of the [f]oundation, and the specific duties and responsibilities assigned to him or her by the [f]oundation [b]oard.” The executive director selects the secretariat staff, who are responsible for receiving and reviewing “grant applications and negotiat[ing] and execut[ing] grant agreements; commission[ing] the [r]eview [p]anel and ensuring the independence of the review process; coordinat[ing] the preparation of issues papers and operational strategies for foundation board meetings . . .; and oversee[ing] the monitoring and evaluation process.” The secretariat has grown significantly and had 456 full-time staff in March 2009, compared to 346 in March 2008.

In facilitating the application process, the secretariat receives proposals for funding from the CCM, ensures that all the required information is included in these proposals, and then forwards the proposals to the technical review panel.

**Technical Review Panel**

“The [r]eview [p]anel is an independent and impartial team of scientific and programmatic experts appointed by the [f]oundation [b]oard . . .” The members have “expertise in HIV/AIDS, tuberculosis, malaria and cross-cutting issues.” Also, “balances in terms of gender, regional representation and a mix of sectoral experience are taken into consideration in the composition of the panel.”

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164 Id.
165 Fiduciary Arrangements for Grant Recipients, supra note 141, at 3.
166 See Proposals Round Seven, supra note 153, at 18–39.
167 See id. at 31.
168 See Global Fund Bylaws, supra note 59, art. 8.
169 Id. art. 8.1.
170 See id.
171 See id. art. 8.2.
172 See Report of the Executive Director, supra note 72, at 28.
173 See Global Fund Bylaws, supra note 59, art. 8.2.
174 Id. art. 9.
176 Id. at 18.
The number of permanent members on the technical review panel has recently been expanded from 35–40 persons in light of the increasing number of proposals the Fund considers and typically serve for a period of up to four rounds of funding. In addition, the technical review panel now has a second vice-chair.

The technical review panel is responsible for “review[ing] eligible grant proposals for technical merit ([i.e.,] soundness of approach, feasibility and potential for sustainability).” The panel uses a set of proposal review criteria established by the board and recommends for funding only those CCP that reflect genuine, broad participation and ownership of all interested groups.

**Foundation Board**

The Global Fund’s board “is the supreme governing body of the [f]oundation” and brings together a broad range of stakeholders.

**Composition of the Board.** The board consists of “twenty voting members and six nonvoting members.” Voting members include “seven representatives from developing countries[,] eight representatives from donors [and] five representatives from civil society and the private sector.”

During TWG discussions, it was agreed that the eight donor seats should be “comprised of either a single country or a group of like-minded or geographically linked countries who have combined to form a constituency.” To determine the developing country constituencies, the six WHO regions (Africa, the Americas, Southeast Asia, Europe, Eastern Mediterranean, and Western Pacific) are used, with an additional representative from Africa. The five remaining seats include civil society representatives from developed and developing countries, a private foundation and a private sector representative, and a civil society representative who is living with HIV/AIDS or is from a community living with tuberculosis or malaria.

The nonvoting members include WHO, UNAIDS, the World Bank, a Swiss member, the executive director, and a member representing the “Partners Constituency.” The recent addition of the member representing the “Partners Constituency” is intended to include key partners “whose mission is directly related to the Global Fund and who are not currently represented on the [b]oard.” The founding members of the “Partners Constituency” are Stop TB Partnership, Roll Back Malaria and UNITAID, and any additional key partner can be considered by the board for inclusion in the “Partners Constituency.”

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177 See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Decision Point Master List Nineteenth Board Meeting 17 (2009) (hereinafter Nineteenth Board Meeting); see also id. at 18 (approving a number of individuals as permanent members of the technical review panel to serve up to four rounds of funding). The individuals appointed were “recommended by the Portfolio Committee and the Executive Director upon consideration of required technical expertise, as well as geographical distribution and gender balance.”.

178 Technical Review Panel, supra note 175, at 18.

179 Id.

180 Proposals Round Seven, supra note 153, at 18–39.

181 See Global Fund Bylaws, supra note 59, art. 7.4.

182 Id. art. 7.1.

183 Id.


185 See Global Fund Bylaws, supra note 59, art. 7.1.

186 Id.

187 See Nineteenth Board Meeting, supra note 177, at 12.

188 Id.

189 Id.
This new nonvoting member highlights the Fund’s wish “to make the representation of the three diseases on the [b]oard more equitable”\textsuperscript{190} and in particular to increase representation of the malaria and tuberculosis constituencies.\textsuperscript{191}

Constituents have great flexibility in determining their own rules for representation. Each group determines a selection process for its representatives,\textsuperscript{192} assisted by guidelines issued by the Global Fund.\textsuperscript{193} For example, representative groups from the private sector and NGOs were consulted in the selection of representatives from those sectors.\textsuperscript{194} Each representative serves its constituency for two years, unless the board decides on another term.\textsuperscript{195} Each constituency may choose to have an alternate, who serves in place of a board member,\textsuperscript{196} and is requested to designate a “communication focal point,” who contributes to the process of information sharing and exchange within constituencies.\textsuperscript{197} Members of these constituencies can be included in delegations to the board, as long as the number does not exceed ten.\textsuperscript{198} It is recommended that constituencies arrive at board meetings with a unanimous position on the issues to be discussed and the Global Fund suggests certain mechanisms to assist constituencies in reaching this consensus.\textsuperscript{199}

These elements are inspired by an earlier funding mechanism, the GEF. In the GEF, each constituency has significant ownership of its representation process and agrees on how to select its representative and alternate as well as how long the representative will serve on the GEF council, with a maximum of three years.\textsuperscript{200} The GEF secretariat similarly assists in the representation of constituencies in a light-handed manner.\textsuperscript{201} Similar to the Global Fund, the GEF constituting documents specify the regions for allocation of the developing country seats but not for the developed countries.\textsuperscript{202}

\textbf{Role, Responsibilities, and Decision-Making Process of the Board.} The board appoints board members and “set[s] policies and strategies for the [Fund]; set[s] operational guidelines, work plans, and budgets for the [s]ecretariat and the [t]echnical [r]eview [p]anel; make[s] funding decisions; selects and, if necessary, replaces the [e]xecutive [d]irector …. and generally exercises all other powers required to carry out the purposes of the [Fund].”\textsuperscript{203}

\begin{thebibliography}{99}
\item \textsuperscript{190} Report of the Seventeenth Board Meeting, \textit{supra} note 71, at 15.
\item \textsuperscript{191} See \textit{id.} at 16.
\item \textsuperscript{192} See Global Fund Bylaws, \textit{supra} note 59, art. 7.2.
\item \textsuperscript{193} Guidelines on Constituency Processes, \textit{supra} note 184, at 1.
\item \textsuperscript{194} For example, “the Global Business Coalition on HIV/AIDS, Tuberculosis and Malaria arranged consultations on the election of the Private Sector Member, and the International Council of AIDS Service Organizations organized the election for the NGO positions.” \textit{Id.} at 3.
\item \textsuperscript{195} Global Fund Bylaws, \textit{supra} note 59, art. 7.2.
\item \textsuperscript{196} See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Board Operating Procedures 2 (amended 5 May 2009) [hereinafter Board Operating Procedures]; see also Guidelines on Constituency Processes, \textit{supra} note 176, at 7 (stating that “[i]f constituencies representing a broad range of interests (including diverse countries or organizations) it seems most effective if the alternate comes from a country/organization other than that of the Board Member”) (emphasis in original).
\item \textsuperscript{197} See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Guidelines on Constituency Process Annex 6, at 5 (2003). The Guidelines state that “it is useful if the Focal Point is close to the Board Member either as part of the same office or based in the same country. In any case, the main criterion should be access to a reliable communications infrastructure.” (emphasis in original) \textit{Id.} at 3; see also Board Operating Procedures, \textit{supra} note 196, at 4.
\item \textsuperscript{198} See also Board Operating Procedures, \textit{supra} note 196, at 2–3.
\item \textsuperscript{199} \textit{Id.} at 4. Such mechanisms include preparing position papers to be discussed among the constituency, holding side meetings during other regional or international events, setting up conference calls, and holding constituency meetings before the board meetings. \textit{Id.}
\item \textsuperscript{201} For example, the GEF’s Secretariat organizes constituency meetings before GEF Council meetings so that delegates are well informed of the issues and the decisions to be made.
\item \textsuperscript{202} See GEF, \textit{supra} note 200, at 36.
\item \textsuperscript{203} See Global Fund Bylaws, \textit{supra} note 59, art. 7.4.
\end{thebibliography}
The Global Fund’s board decides by consensus. If the board and the chair, despite best efforts, cannot reach a consensus, any voting member may call for a vote. The voting process separates the voting members into two groups: one encompassing the eight donor seats and the two private sector seats, and the other encompassing the seven developing country seats, the two NGO seats, and an NGO representative who lives with HIV/AIDS or is from a community living with tuberculosis or malaria (Figure 2). A decision can be made only if a majority of the two groups is present and requires a “two-thirds majority of those present of both” groups. Therefore, both the quorum and the voting process allow for equal representation of the donor and the developing country constituencies.

The Global Fund’s decision-making process is inspired by the GEF council, which also relies on consensus as the preferred process. The GEF’s chairperson is charged with making “all practicable efforts” to obtain a consensus. If this appears impossible, any member of the GEF council may require a formal vote. The voting system on the GEF council is also divided into two groups and a decision requires

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204 See id. art. 7.6.
205 Id.
206 Id. art. 7.6.
207 Id. art. 7.7.
208 Id. art. 7.6.
209 GEF, supra note 200, at 17.
210 Id. In practice however, neither the GEF nor the Global Fund tend to use their voting systems and have relied first and foremost on achieving consensus. See Charles Streck, Global Public Policy Institute, The Network Structure of Global Environment Facility 23 (2005).
an affirmative vote representing both a 60% majority of the total number of participants and a 60% majority of the total contributions." This double-weighted majority system ensures that contributors to the GEF are accorded adequate importance in the decision-making process. This presents a major difference from the Global Fund, whose voting groups aim to ensure that all constituencies are equally represented on the vote.

Furthermore, the Global Fund’s decision-making process gives the private sector, NGOs, and affected communities a real voice on the board and, therefore, on funding decisions. This is a clear departure from other concessional financing models, wherein aid recipients are encouraged to participate in discussions but are not entitled to vote during funding decisions. For example, although other constituencies are allowed to attend GEF council meetings, the GEF allows only governments from developing and developed countries to vote on funding decisions. Similarly, the International Development Association (IDA) invites representatives from borrower countries to attend discussions to “increase openness and help ensure that IDA’s policies are responsive to country needs and circumstances.”

IDA donors and borrower representatives have also consulted civil society representatives to gain additional insights from borrower countries, however, neither borrower countries nor civil society representatives can vote on IDA funding decisions. The EFA FTI also encourages participation by actors working at the country level in its strategy committees, which makes decisions on the destination of trust fund monies, but only donor governments make funding decisions.

Therefore, although there is a trend toward actively including recipients and other constituencies on the governance bodies of international funding mechanisms, the Global Fund is unique in allowing other constituencies make funding decisions on an equal basis with donors. Thus, the organization of the Global Fund’s decision-making body represents a departure from previous models of cooperation.

Chair and Vice-Chair

The board selects the chair and the vice-chair of the Global Fund from among its voting members. These two positions alternate every two years between the two voting groups: The donors and the private sector on the one hand, and developing countries, NGOs and affected communities on the other. Providing the developing country constituency with the opportunity to chair meetings represents another innovation that subsequently inspired other global programs, such as the EFA FTI, which subsequently decided to allow the possibility of a developing country co-chair.

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211 GEF, supra note 200, at 18.
212 The GEF Council has an open door policy toward NGOs and representatives of civil society; however, these observers do not participate in decision-making. See GEF Council, www.gefweb.org/participants/council/council.html (last visited 20 October 2009).
213 The GEF Council is made up of members representing thirty-two constituencies. There are 16 members from developing countries, 14 members from developed countries and two members from the countries of Central and Eastern Europe and the former Soviet Union. See GEF, supra note 200, at 13.
214 “[The] representatives [from] borrower countries have been invited to [attend discussions] since the IDA 13 [Negotiations which concluded in July 2002].” International Development Association, IDA Replenishments, http://go.worldbank.org/7ARHOU1WK0 (last visited 20 October 2009).
216 See The Educ. Program Dev. Fund & The Catalytic Fund, Education for All Fast Track Initiative Fact Sheet 1–2 (2008). The EFA FTI has two trust funds, the Catalytic Fund and the Education Program Development Fund, which disburse funds to developing countries to finance their national education sector plans and capacity development. These funds are managed by strategy committees composed of donors who make the funding decisions. Id.
217 See Global Fund Bylaws, supra note 59, art. 7.3.
218 Id.
219 The idea that the FTI steering committee could invite a developing country to chair the FTI Partnership in addition to the two donor co-chairs received strong support. See Education for All Fast Track Initiative, Cairo Partnership Meeting Minutes 9 (2006).
Elected for two-year terms, the chair and vice-chair play advocacy and fund raising roles and make urgent decisions on behalf of the board that the board can subsequently modify or reverse.\textsuperscript{220}

**Partnership Forum**

The Global Fund’s partnership forum is “open to a wide range of stakeholders that actively support the [f]oundation’s objectives, including representatives of donors, multilateral development cooperation agencies, developed and developing countries, civil society, NGO and community based organizations, technical and research agencies, and the private sector.”\textsuperscript{221} This forum meets every twenty-four to thirty months.\textsuperscript{222}

The Global Fund’s partnership forum aims to “provide persons and entities concerned about the prevention, care, treatment and eventual eradication of HIV/AIDS, tuberculosis and malaria, a forum to express their views on the [f]oundation’s policies and strategies.”\textsuperscript{223} To date, the Global Fund has held three partnership forums: the first in Bangkok (2004),\textsuperscript{224} the second in Durban (2006),\textsuperscript{225} and the third in Dakar (2008).\textsuperscript{226} The partnership forum has introduced certain novel elements to enhance Fund ownership. For example, all stakeholders can assist in the shaping of the discussions through an online discussion forum.\textsuperscript{227}

**Financial Structures**

While the Global Fund was being organized, a World Bank presentation on fiduciary arrangements highlighted the importance of accountability in ensuring the financial integrity of the Fund.\textsuperscript{228} The presentation further emphasized that the trustee should play an active role and have close relations with the secretariat, as the World Bank’s experience with trust funds stressed that fiduciary responsibility must go beyond banking arrangements.\textsuperscript{229}

This was not, however, the role given to the World Bank in the final composition of the Global Fund’s governance and fund management structures. The board decided that the World Bank would hold the donor funds in trust and disburse them to national-level entities on instruction of the board.\textsuperscript{230} The Global Fund would retain principal responsibility for program accountability.\textsuperscript{231}

In addition, the World Bank collects, invests, and manages the donor funds, reports on the financial management of the Fund to Global Fund stakeholders, and is a signatory to the contribution agreements with each donor.\textsuperscript{232}

Thus, the World Bank’s role as trustee of the Global Fund represents a departure from prior practice. As an ex officio member, the World Bank lacks voting rights on the board and therefore cannot influence

\begin{itemize}
\item \textsuperscript{220} See Global Fund Bylaws, supra note 59, art. 7.3.
\item \textsuperscript{221} Id. art. 6.1.
\item \textsuperscript{222} See Global Fund Bylaws, supra note 59, art. 6.3.
\item \textsuperscript{223} Global Fund Bylaws, supra note 59, art. 6.1.
\item \textsuperscript{224} For more information on the Bangkok Forum of 2004, see The Global Fund, First Biennial Partnership Forum Report 3 (2004).
\item \textsuperscript{228} See First Meeting of the Transitional Working Group, supra note 51, at 2.
\item \textsuperscript{229} Id.
\item \textsuperscript{230} See Global Fund’s First Board Meeting, supra note 33, at 4.
\item \textsuperscript{231} See id.
\item \textsuperscript{232} See generally World Bank, Trust Fund Handbook (2004).
\end{itemize}
the direction of the funds. Once the board has decided on the fund recipients, the World Bank transfers the donor funds to an agreed third party or entity. The World Bank is not responsible for monitoring the grant recipients’ use of funds or supervising their activities. Instead, the recipient or executing entity is directly accountable to the Global Fund for the use of the funds.

Therefore, the World Bank performs limited services for the Global Fund, equivalent to those of a fiscal agent. The World Bank agreed to such a role because there was no other suitable agency through which to channel the trust funds, and also because the World Bank is a leading advocate in the fight against AIDS, tuberculosis, and malaria. However, the World Bank may be reluctant to agree to such a limited role for future global financing mechanisms because of high reputational risks, particularly when it has no role in the selection of recipients or the supervision of a recipient’s use of resources.

Concessional Financing Modalities

Funding Proposals: Eligibility Criteria and Contents

The Global Fund considers proposals from all countries except high income countries. Nevertheless, the requirements for the funding proposals differ depending on the World Bank income classification of the applicant (Figure 3).

Financing from the Global Fund must be in addition to, rather than in replacement of, existing efforts to combat HIV/AIDS, tuberculosis, and malaria. The Fund encourages proposals that build upon existing systems for program implementation, financial reporting, procurement and supply management, and monitoring and evaluation. In particular, the Global Fund imposes a requirement that its total country support not exceed 65% of overall disease program need in lower-middle income countries and 35% in upper-middle income countries. This helps ensure that the Global Fund complements existing funding for these diseases. Examples of activities funded worldwide by the Global Fund include antiretroviral treatments for HIV; tuberculosis treatment under directly-observed treatment, short course; and insecticide-treated bed nets distributed to protect families from malaria.

Funding Modalities

The Global Fund disburses its funding in the form of “grants to public, private and non-governmental programs.” It provides money solely on a grant basis, without any obligation of repayment.

This differs from other financing vehicles, which allow both grants and loans. In the GEF, “possible non-grant modalities for concessional funding include concessional loans, guarantees (contingent grants),

234 See Fiduciary Arrangements for Grant Recipients, supra note 141, at 3 (Figure 1 demonstrating the manner in which funds are disbursed by the World Bank as trustee to the country level and reporting is provided from the country level directly to the Global Fund’s constituent bodies).
235 In exceptional cases, the World Bank can act as fiscal agent. See World Bank, Trust Fund Handbook 3 (2004).
238 See Proposals Round Seven, supra note 153, at iv.
239 See Proposals Round Nine, supra note 236, at 10.
Grants are the modality most used in the GEF, although contingent loans have proved useful in "renewable energy projects" as “[m]any businesses are willing to invest … if the public sector shares the risks.”

The IDA also provides both grants and interest-free loans, called credits. IDA credits “have no interest charge and repayments are stretched over thirty-five to forty years, including a ten-year grace period.” The amount of funding spent on grants has risen considerably since the establishment of IDA, in amounts ranging from negligible to 18%–20% during IDA13 (2002–2005) to 30% during IDA14 (2005–2008). Thus, IDA14 brought an increase in the use of grants, as IDA deputies agreed that “countries facing the toughest debt problems—most of them in Sub-Saharan Africa—will get all of their support in the form of grants, while less debt-burdened countries will receive IDA’s highly concessional long-term loans.”

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243 “One example is the large solar PV and hydro hybrid grid-connected power plant of the Philippine utility, CEPALCO. In this case, a GEF-financed contingent loan is providing funds for the costs of the PV systems and the debt will be forgiven upon satisfactory completion of the project.” GEF, Financing for Renewable Energy 2 (2005) (stating that “a contingent loan has an interest rate and payment schedule similar to a traditional loan, but the loan would be forgiven if certain conditions are met.”).


245 Id.

246 During IDA13, IDA extended grant financing based on multiple criteria—to poorest countries, to debt-vulnerable poor countries, to post-conflict countries, and for HIV/AIDS and natural disasters. The overall grant share in total IDA lending for IDA13 was set at 18%–21%. The fact that the grant share during IDA14 was determined "endogenously" led to a higher percentage of IDA being used for grants. See International Development Association, Implementation of the IDA14 Grant Allocation Framework in FY06: A Status Report 1–2 (2005).

247 IDA14 Replenishment, supra note 215.
Duration of Funding

Funding commitments from the Global Fund consist of an allocation of funds for the entire term of the proposal (up to five years) and a financial commitment for the initial two years. The grant may be renewed for an additional three years depending on performance and the availability of funds. The CCM submits a request to the Global Fund secretariat to request funding for the full grant period. This differs from other financing mechanisms, where the duration of the grant tends to match the duration of the replenishment. For example, IDA14, which was finalized in February 2005, finances projects over a three-year period until the next replenishment.

The Fund’s rules guiding the commencement and termination of grants have evolved to adapt to lessons learnt. Although the Fund seeks to disburse its funds rapidly upon approval of a grant, it has also recognized “the value of aligning disbursements with national cycles” and, accordingly, the board recently allowed the secretariat to set the starting date for grants up to 18 months after board approval, taking into account alignment with national cycles and other donor-funded programs. In addition, the CCM can apply for continued funding for grants that are expiring under different conditions than those that would apply to new grant proposals. This system, known as the “rolling continuation channel,” provides an opportunity for grants that have the potential to have a measurable impact on the burden of the relevant disease to continue without necessarily going through the more burdensome channel used for new grants.

Fiduciary Arrangements for Grant Recipients

As a financing mechanism, the Global Fund “needs certain fiduciary arrangements to ensure that grant proceeds are used for the intended purposes and results [are] achieved without imposing unnecessary new burdensome requirements on grant recipients.” Therefore, the Global Fund “rel[ies] on local stakeholders at the country-level to implement programs and manage grant proceeds.” When designing its fiduciary arrangements, the organization strives to reach a balance between three priorities: [1] promoting the rapid transfer of resources to assist target populations; [2] ensuring that these resources are used accountably and achieve results; and [3] supporting ownership of country stakeholders and sustainable local organizational development. In this regard, all actors at the country-level play a certain role in financial reporting (Figure 4).

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249 Id.
250 Id.
251 See IDA14 Replenishment, supra note 215.
252 Nineteenth Board Meeting, supra note 177, at 20.
253 See The Global Fund, Decision Point Master List Fourteenth Board Meeting 11 (2006) (hereinafter Fourteenth Board Meeting). The board “may approve continued funding for grants through the Rolling Continuation Channel for up to a further six years” if certain conditions are met. The Global Fund, Comprehensive Funding Policy and Related Board Decisions 1 (2007) (hereinafter Comprehensive Funding Policy).
254 See Fourteenth Board Meeting, supra note 253, at 10.
255 Fiduciary Arrangements for Grant Recipients, supra note 141, at 1; see also Comprehensive Funding Policy, supra note 253, at 1.
256 Fiduciary Arrangements for Grant Recipients, supra note 141, at 2.
257 Id. at 1.
258 See id. at 4.
The secretariat, through the local fund agent, initiates assessments of the principal recipient before the recipient receives funds from the World Bank as trustee. The local fund agent ensures that the principal recipient meets certain minimum capacities:

- A financial management system,
- Management and programmatic capacity,
- A monitoring and evaluation system, and
- Procurement and supply management structures.

Once the local fund agent provides the secretariat with a positive assessment of the principal recipient, the latter typically receives portions of the grant on a quarterly basis for the first year and subsequently on a semi-annual basis. The principal recipient must provide a certain number of reports to the local fund agents who then report back to the secretariat.

The principal recipient is responsible for five types of reports.

(i) Disbursements of tranches of the grant are linked to satisfactory disbursement requests and progress updates submitted by the principal recipient.

(ii) At the end of the fiscal year, “the [principal recipient] submits a Fiscal Year Progress Report to the Global Fund with consolidated programmatic and financial information for the program.”

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259 See Proposals Round Seven, supra note 153, at viii; see also supra section IV (B)(1)(c) (information on the local fund agents).

260 See Proposals Round Seven, supra note 153, at 36; see also The Global Fund, Monitoring and Evaluation Toolkit (2009) (citing assessment tools used by the local fund agents).

261 See Fiduciary Arrangements for Grant Recipients, supra note 141, at 8.

262 Id. at 8–9.

263 Id. at 9.
The local fund agent reviews these progress reports and requests for disbursement of funds and advises the Global Fund on how much to disburse to the principal recipient.\textsuperscript{264}

(iii) The principal recipient also submits an audit report to the local fund agent who “advises the Global Fund on the appropriate response to any issues identified therein.”\textsuperscript{265}

(iv) The Global Fund decides whether to continue funding beyond the first two years based on a request for continued funding from the CCM and a review of overall program performance and financial accountability from the principal recipients.\textsuperscript{266}

(v) At the end of the grant, the local fund agent assists the Global Fund with closure of the grant and the principal recipients submit completion reports for this purpose.\textsuperscript{267}

The Global Fund bases its renewal of funding on performance. Among 229 phase two renewals approved by the board in 2005–2007, 172 were signed with performance shown on major indicators.\textsuperscript{268} Because the countries themselves choose the indicators used to assess performance, this modality increases the degree of country ownership of projects. The Global Fund’s use of performance-based funding has helped confirm the importance of demonstrating performance as a rule for receiving grants in the international aid arena.

Thus, the fiduciary arrangements and funding modalities put into place by the Global Fund reflect the current international trend of moving towards performance-based funding, with a focus on country ownership.

### Mobilizing Resources

The manner in which the Global Fund has evolved with regard to mobilizing resources provides another example of how it integrates lessons learned from past experience. While it initially mobilized resources through ad hoc contributions, it has evolved to an ad hoc replenishment system in response to the limitations of the ad hoc contribution system.

The Global Fund was created to mobilize, allocate, and disburse resources to mitigate the impact of HIV/AIDS, tuberculosis, and malaria.\textsuperscript{269}

Since its creation, nearly 50 countries as well as private foundations, corporations, and individuals have contributed significant resources to support the work of the Global Fund.\textsuperscript{270} There has been a considerable increase in funding to the Global Fund since its creation (Figure 5).\textsuperscript{271} As of March 31, 2009, $13.04 billion had been received in contributions and the World Bank had committed $10.48 billion for project grants, of which $7.40 billion has been disbursed.\textsuperscript{272} Annual disbursement in 2008 reached

\textsuperscript{264} Id. at 9–10; see also supra section IV (B)(1)(c) (information on the local fund agents).

\textsuperscript{265} Fiduciary Arrangements for Grant Recipients, supra note 141, at 9.

\textsuperscript{266} See id. at 10.

\textsuperscript{267} See also supra section IV (B)(1)(c) (information on the local fund agents).


\textsuperscript{269} See Global Fund Bylaws, supra note 59, art. 2.


Global Fund to Fight AIDS, Tuberculosis and Malaria

$2.25 billion\(^{273}\) and the amount pledged exceeded $3.20 billion.\(^{274}\) The disbursements in 2008 increased 45% above those in 2007.\(^{275}\)

The Global Fund contributes significantly to global international spending against HIV/AIDS, tuberculosis, and malaria.\(^{276}\) It is estimated that the Fund is the predominant international financer in the fight against malaria and tuberculosis, providing two-thirds of the total international funding for each.\(^{277}\) The Fund also ensures significant resources to combat HIV/AIDS, providing an estimated 25% of global resources.\(^{278}\)

Despite progress on increasingly available funding, the Global Fund’s biggest challenge is attracting the estimated resources necessary to combat these three diseases. The Fund estimates a funding gap of $4 billion to $5 billion for the period 2009–2010.\(^{279}\) UNAIDS, the Stop TB Partnership, and Roll Back Malaria estimated the total needs for these three diseases to be between $28 and $31 billion per year from 2008–2010.\(^{280}\) Given the urgent need to increase funding, the Global Fund has evolved from an ad hoc voluntary commitment system to one with regular replenishment meetings.\(^{281}\)

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\(^{273}\) See Report of the Executive Director, \textit{supra} note 72, at 12.

\(^{274}\) See Report of the Seventeenth Board Meeting, \textit{supra} note 71, at 3.

\(^{275}\) See Nineteenth Board Meeting: Trustee Report, \textit{supra} note 272, at 2.


\(^{278}\) Id.

\(^{279}\) See Report of the Executive Director, \textit{supra} note 72, at 1.


When the Global Fund was created, a system of ad hoc contributions was established for donors to contribute to the Fund.282 Countries would publicly declare contributions to the Global Fund. This voluntary contribution system would leave the size, timing, and duration of a contribution to the discretion of the donor.283

The key advantages of this ad hoc system are three-fold:

- Donors have the opportunity to see the added value of the Global Fund’s approach before committing additional resources.284 This can “attract new donors who may otherwise have been wary about committing large sums to an untested scheme.”285
- The ad hoc system is the “most flexible, as resources can increase rapidly (particularly if funding needs are known, potentially generating demand for larger contributions).”286
- This system facilitates the participation of the private sector and allows the “matching grant” concept, which may create a “virtuous cycle of increasing contributions.”287

Nevertheless, the Global Fund’s board decided that a voluntary ad hoc contribution system was not best suited for a fund of such size and importance, due to the resulting “difficulty to plan the work of the Fund and to provide sustained and predictable support.”288 The experience of the Fund highlighted the reality that the contribution size varied considerably between donors, while the timing of pledges frequently related to external events (such as summits of heads of state).289 Therefore, contributions were potentially smaller under the ad hoc system compared with a regular burden-shared pledging process.290 Furthermore, the duration of pledges varied considerably, although an emerging trend appeared to indicate that pledges increasingly covered a longer period of time.291

Therefore, the ad hoc contribution system did not create predictable and sustainable financing that would permit longer-term financial planning for either the Global Fund or the recipients of funding.292 This drawback was combined with the fact that the ad hoc system resulted in large cash balances, since liquid assets are needed to back financial commitments to recipients.293 For these reasons, the Global Fund decided to change its contribution system.294

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283 Id. at 3.

284 Id. at 4.


286 Sixth Board Meeting Options Paper, supra note 282, at 4–5.

287 Id. at 5.

288 Civil Society Update, supra note 281, at 1.

289 See Sixth Board Meeting Options Paper, supra note 282, at 3.

290 See id. at 5.

291 See id. at 3.


293 Sixth Board Meeting Options Paper, supra note 282, at 4–5.

294 See Civil Society Update, supra note 281, at 1.


After extensive consultations with the World Bank and others, the secretariat presented four options to the Global Fund’s board in 2003 to resolve the issues that arose from an ad hoc funding system, including:

(i) A voluntary system based on periodic contributions;
(ii) A burden-shared system based on periodic contributions;
(iii) A burden-shared system based on ad hoc pledging; or
(iv) A voluntary system based on ad hoc pledging.295

The board decided to implement a voluntary replenishment system for two main reasons. First, a replenishment system would allow a more predictable flow of funds.296 It would become easier to assess how much funding the Global Fund receives for a certain amount of years and therefore easier to plan disbursements to countries. Replenishment could also assert upward pressure on contributions.297 The Global Fund would still be able to use the “ad hoc resource channels, especially from non-government donors …. [to] respond promptly to unplanned contingencies between structured replenishment processes.”298 In addition, predictability would have trickle down effects, such as increased efficiency of the Fund’s liquidity management, as it would be able “to back commitments with instruments other than cash thereby reducing to a minimum idle cash balances.”299

Second, replenishment meetings provide a useful forum to discuss the activities of the Global Fund.300 Many current and potential donors had expressed the “need for a forum through which they [could] share and exchange views on the operations and effectiveness of the Fund when considering their future contributions.”301 The replenishment system would thus provide a process through which donors could discuss areas of success and areas for improvement of the Global Fund as they consider its funding needs.302

Once the board decided which resource mobilization modality to adopt, the Global Fund modified its comprehensive funding policy in 2004 to reflect this change.303 The revised policy states that “[r]esource-mobilization should use a periodic replenishment model on a voluntary basis for all public donors, complemented by additional ad hoc contributions for all donors, including new public donors, the private sector, and individuals.”304

However, the board did not change two important aspects of resource mobilization during this revision.305 First, the system of contribution remains ad hoc: there are no burden sharing arrangements, wherein the Global Fund determines the source and size of contributions.306 Burden sharing mechanisms aim “to ensure adequate funding for the intended objectives” and a fairness of contributions among

295 See Sixth Board Meeting Options Paper, supra note 282, at 4.
296 See Civil Society Update, supra note 281, at 1.
297 See Sixth Board Meeting Options Paper, supra note 282, at 5.
298 Civil Society Update, supra note 281, at 2.
299 Id.
300 Id. at 1; see also Replenishment Mechanism, supra note 292.
301 Civil Society Update, supra note 281, at 1.
302 See Global Fund Replenishment, supra note 276, at 1.
304 Comprehensive Funding Policy, supra note 253, at 1.
305 See id.
306 Id.; see also GEF, Meeting on the Third Replenishment of the GEF Trust Fund: Burden Sharing for the Third GEF Replenishment 2 (2001) (explaining burden sharing from an organization that employs burden sharing arrangements) (hereinafter Burden Sharing).
donors depending on their wealth. Instead, the Global Fund simply issues reports on how much will be needed to maintain present levels of funding and to increase funding for new grants. Donors are then “expected to meet a proportion of this estimate dependent on their GDP, though pledges are essentially made on a ‘goodwill’ basis.” Thus, the Global Fund’s decision not to use a burden sharing arrangement departs from previous replenishment systems such as the GEF and IDA, both of which have burden sharing modalities.

Second, since the Global Fund is designed as a multidonor trust fund, donors cannot earmark their contributions to the Global Fund for specific purposes. Countries and organizations cannot dictate where their money goes; the money contributed could be used for any purpose consistent with the overall goals of the Global Fund and in any country eligible for funding.

The Replenishment Process

The first replenishment consisted of three meetings. The first meeting was in March 2005 (hosted by the Swedish government); an interim meeting was held in June 2005 (hosted by the Italian government); and a final meeting was in September 2005 (hosted by the government of the United Kingdom). Then-UN Secretary-General Kofi Annan chaired the Global Fund’s first replenishment and second replenishments (2005 and 2007, respectively) with the assistance of Vice-Chair Sven Sandström, former chairman of the tenth replenishment of the African Development Fund.

The first replenishment cycle aimed to address funding needs for calendar years 2006 and 2007, and additionally looked at the anticipated resource shortfalls for 2005. The secretariat assisted in the preparation of this replenishment process by preparing reports on the resource needs for the period of replenishment and the associated funding scenarios, and informed constituencies about the replenishment.

A mid-term review of the first replenishment took place in July 2006 in Durban, South Africa, where the Global Fund reviewed the experience of the first replenishment to build on lessons learned when making future decisions.

The second replenishment for the period 2008–2010 held its first meeting in March 2007 in Norway which was attended by 32 delegations from donor countries, the private sector, civil society and UN partner organizations. The meeting discussed the results and impact of Global Fund activities, the funding status

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308 Comprehensive Funding Policy, supra note 253, at 2.
309 AVERT, supra note 285.
312 See AVERT, supra note 285.
314 Id.; see also Global Fund Replenishment, supra note 276, at 2.
315 See First Replenishment: Chair’s Report, supra note 313, at 1, 19.
316 Id. at 11, 18–19.
318 See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Sixteenth Board Meeting: The Second Global Fund Replenishment First Meeting Chair’s Summary 1 (2007) (hereinafter Sixteenth Board Meeting: Chair’s Summary); see also Replenishment Mechanism, supra note 292.
of the first replenishment, and the resource needs scenarios for the second replenishment. In September
2007, the second meeting was held in Berlin and provided, among other topics, an opportunity to discuss
the launch of the new initiative “Debt2Health,” whereby a creditor cancels a portion of a country’s debt
if such country invests a certain amount of money in a health program approved by the Global Fund.

A mid-term review of the second voluntary replenishment was held in Cáceres, Spain, in April 2009
and was attended by 28 delegations and chaired by Sven Sandström. Donors agreed to carry out a third
replenishment in 2010 “to provide funding for 2011 and beyond.”

Lessons from the First Replenishment (2005)

During the midterm review in Durban, the Global Fund elaborated upon lessons learned from the first
replenishment in order to integrate them into the second replenishment.

There were three major points for improvement. First, in order for replenishments to be most
effective, the Global Fund should “develop a long-term strategy and estimate the associated resource
requirements. This would enable donors during the replenishment to respond to clearly-articulated
proposals and advise the Global Fund on their feasibility from a financing perspective.” Thus, in 2007,
the Global Fund produced a four-year strategy to guide its work. To achieve the goal of ensuring
predictable and sustainable funding on a significant scale for the Global Fund, participants in the
midterm review suggested that a second replenishment should focus on three issues: performance and
results achieved, the board-approved strategy for the size of the Fund, and efforts to reach the target size.

Second, a longer replenishment period would enhance long-term predictability, reduce transaction
costs, and provide greater security for long-term planning. Thus, it was recommended that the second
replenishment last three years instead of two. This new schedule of replenishments accords with current
international trends: GEF replenishments occur every four years and IDA replenishments occur every
three years.

Third, two meetings within each replenishment should be sufficient instead of three. The Global
Fund has benefited from adopting a tailor-made replenishment process intended to be “lighter than [the]
replenishment processes for other international institutions.” In comparison, the last IDA replenishment

319 Sixteenth Board Meeting: Chair’s Summary, supra note 318, at 2, 4; see also Replenishment Mechanism, supra note 292.
320 See Mid-Term Review Progress Report, supra note 270, at 9; see also Replenishment Mechanism, supra note 292.
321 See Report of the Executive Director, supra note 72, at 12. See also The Global Fund to Fight AIDS, Tuberculosis and Malaria,
Mid-Term Review of the Second Voluntary Replenishment List of Participants 1 (2009), for a detailed list of participating
delegations.
322 Report of the Executive Director, supra note 72, at 26.
323 See 2006–2007 Mid-Term Review: Chair’s Summary, supra note 317, at 1.
324 See The Global Fund to Fight AIDS, Tuberculosis and Malaria, Technical Notes for the Mid-Term Replenishment Review 29
325 Id.
326 See Global Fund Completes Four-Year Strategy, Global Fund Newsl. (The Global Fund to Fight AIDS, Tuberculosis and Malaria,
327 See Technical Notes for Mid-Term Review, supra note 324, at 29.
328 See id.
329 See 2006–2007 Mid-Term Review: Chair’s Summary, supra note 317, at 3.
331 See IDA Replenishments, supra note 214.
332 See generally Technical Notes for Mid-Term Review, supra note 324, at 29 (discussing the Global Fund replenishment process).
333 Id. at 29.
consisted of five meetings, while the third GEF replenishment consisted of seven meetings. With three meetings over six months resulting in a ten-page final report, the Global Fund’s replenishment process appears to be more efficient at reducing transaction costs.

After its first replenishment, the Global Fund also noted that replenishments could indeed contribute to increasing resources. Although not solely attributed to the replenishment modality, the Global Fund noted an increase of funds after the first replenishment: A total of about $3.7 billion was pledged for 2006 and 2007, compared to a total of $2.9 billion for 2004–2005 and $1.9 billion for 2002–2003. The second replenishment meetings reported total pledges of $6.3 billion for the Global Fund and additional received contributions of $3.4 billion. Therefore, a total of $9.7 billion remained available after the second replenishment to meet the Global Fund’s needs in the next three years (2008–2010). This was welcomed as a significant increase in resources and ensured that the Global Fund would have resources to both approve the continuation of ongoing projects over the next three years (at an estimated cost of $6.0 billion as of March 2009) and launch new programs. In sum, from 2004–2005 to 2006–2007, when the replenishment system was established, pledges and contributions have increased by 49%.

Lessons from Other Replenishment Systems

The money raised by the Global Fund during its first replenishment ($3.7 billion for 2006 and 2007) is comparable to the financing of the GEF. In July 2006, 32 donor countries pledged $3.13 billion to the fourth GEF replenishment (GEF–4), which was to fund operations for four years, between 2006 and 2010. However, the IDA replenishments are significantly larger than the Global Fund’s replenishments; under IDA14 in 2005, approximately $33 billion was made available from 40 donor countries to the world’s 81 poorest countries to be disbursed over the next three years.

Thus, the Global Fund can learn from other replenishment systems like GEF and IDA, in particular, by investigating how other international funding mechanisms have solved the accumulation of liquidity issue. One key lesson in this regard is that such funding mechanisms not only relied on regular replenishments, but also established the use of promissory notes. Promissory notes enable donors to...
commit money without making a cash payment at the time of commitment. Because commitments to recipient countries can only be signed on the basis of cash or promissory notes, the use of such instruments reduces the quantity of cash carried by a funding entity. Therefore, promissory notes have the advantage of reducing fund liquidity while allowing the World Bank to enter into grant agreements with recipients on this basis.

Promissory note usage is customary in the GEF and IDA and accounts for the majority of donor contributions. Due to these institutions’ multiyear replenishment cycles, the use of promissory notes enables all donors, even those who cannot commit money on a multiyear basis, to provide money de facto each year to the fund, even if the payment is considered made from the date the promissory notes are given. An instrument of commitment given to the trustee after each replenishment delineates how the payment of the contribution will be made. The encashment schedule is the same for all donors to each funding mechanism. The GEF has four encashments per year for the next ten years. Thus, the encashment of promissory notes for one replenishment will overlap with the encashment of promissory notes for subsequent replenishments. The IDA mechanism is similar, with a basic encashment schedule set out over six to nine years.

These examples and an independent study of the Global Fund’s comprehensive funding policy, conducted by PriceWaterhouseCoopers in 2005, encouraged the replacement of cash contributions with promissory notes within the Global Fund to bring about a gradual reduction of its cash balance. The Global Fund has decided that it “shall consider as assets for the purposes of entering into grant agreements, both cash and promissory notes.” The independent assessment conducted in 2005, however, determined that only 10% of contributions were made by promissory notes, while the rest were made in cash. Furthermore, only two donors (France and the United Kingdom) used promissory notes to contribute to the Global Fund. Therefore, to change this figure, the Global Fund took advantage of the replenishment conferences to issue a technical note calling for an increased use of promissory notes after the September 2005 replenishment conference. Nonetheless, the use of promissory notes for the Global Fund has been far less widespread compared to the GEF or IDA.

In the future, the Global Fund may adopt other replenishment mechanisms, such as the advance contribution scheme, which allows financing mechanisms such as the GEF and IDA to start using resources before the replenishment becomes effective. Not all governments participate in the replenishment discussions at the same time since they have different budget cycles. Furthermore, some states require


348 See Sixth Board Meeting Options Paper, supra note 282, at 7.


352 Comprehensive Funding Policy, supra note 253, at 1.


356 See Fourteenth Board Meeting: Trustee Report, supra note 354, at 5.

357 See GEF, supra note 200, at 28–29.
more time for advocacy within governments. Therefore, the advance contribution scheme allows a certain
amount of the money to be secured, even if the negotiations subsequently fail.

In addition, in order to ensure that all donors share in the fight to eradicate HIV/AIDS, tuberculosis,
and malaria, the Global Fund may wish to adopt procedures such as burden sharing mechanisms. Burden
sharing allows the GEF and IDA, for example, to request a certain amount of funding from each donor
government, based on each country’s wealth. This system aims to ensure adequate funding for the
intended objective.358 Although a burden sharing system has been recommended by various actors for the
Global Fund, it has not been used to date.359

In addition, just as the Global Fund learned from other international funding mechanisms, other
global programs recognized the importance of predictability of funding and a forum to discuss donor
specific issues. For example, the EFA FTI recently created an expanded catalytic fund to provide longer-
term and more predictable funding than initially envisioned for education programs in developing
countries. Furthermore, the increased prevalence of donor technical meetings within the EFA FTI
demonstrates that organizations in the education field also recognized the importance of a forum to
discuss funding issues among donors.

Conclusion

The Global Fund to Fight AIDS, Tuberculosis and Malaria can demonstrate several results on the ground
in combating HIV/AIDS, malaria, and tuberculosis. Around 1.1 million people have begun antiretroviral
treatment through Global Fund supported programs; nearly 30 million insecticide-treated bed nets
have been distributed to prevent malaria; and 2.8 million cases of tuberculosis have been treated under
directly observed therapy, short-course, the internationally approved control strategy. In the course of
its operations, the Global Fund has introduced many original elements to the broader debate on the
design of global financing mechanisms. The Global Fund’s unique legal structure demonstrates that the
international arena can respond to urgent global issues with flexibility and innovative thinking. Although
many of these novel elements are in response to the Global Fund’s specific needs, they have a wide-
reaching impact, not only on other partnerships, but more broadly on emerging good practice concerning
the management of development aid.

The Global Fund integrates the realization that the inclusion of all interested stakeholders is best
accomplished by building collaboration into the actual governance structure. Although it is accepted good
practice in the development community to consult with local stakeholders, the Global Fund takes this a
step further and involves local stakeholders in all of its governance bodies. At both the global and country
levels, the Fund encourages governments to work with representatives of civil society, the private sector,
and communities living with the diseases. This enables the emergence of a consensus in Global Fund
operations that reflects views from each constituency, especially as each group has a say in the matters at
hand. Furthermore, NGOs are given decision-making powers equal to those given to donor governments.
This unprecedented principle shows a groundbreaking way of involving recipients of aid. Donors are no
longer the sole decision makers.

The Global Fund’s strengths can also be its weaknesses. Ensuring a true representation of all developing
countries is challenging and becomes a crucial issue if the representatives are to decide on behalf of their
delegation. Special care needs to be taken to ensure that the board members discuss the issues at hand
with their constituency group and act on behalf of this group. In addition, while the light-touch assistance

358 See Burden Sharing, supra note 306, at 2, for more information of burden sharing systems.
359 But see The Global Fund to Fight AIDS, Tuberculosis and Malaria, Second Replenishment Mid-Term Review Chair’s Summary 6
(2009) (proposing that the Fund discuss burden sharing at the next meeting).
provided by the Global Fund in the selection of board representatives and the CCM enables an increased ownership, it can also lead to a lack of transparency in the selection process.

Not only did the Global Fund introduce pioneering concepts at its creation, it has also managed to create mechanisms to adapt to lessons learned from experience. The realization that a financing mechanism of such magnitude required fund predictability and a forum for debate led to the establishment of a replenishment system in 2005. The benefits of these replenishment conferences are evident: they resulted in the creation of a long-term strategy needed to guide the work of the Global Fund, enabled a forum for debating certain issues, and resulted in an increase in funding. Another example is the creation of the Early Alert and Response System in August 2005 in response to the need for a systematic monitoring of grant implementation by stakeholders at all levels. This system enables the organization to identify as early as possible any potential problems in the use of resources.

In addition, the Global Fund has sought to build on the results of a five-year evaluation which focused on the period between 2002 and 2006 to restructure its governance arrangements. In particular, as a result of this evaluation, the Global Fund’s board has sought to increasingly focus on strategic issues and to delegate operational issues to committees of the board and the secretariat.

Evaluations of the Global Fund highlight both successes and shortcomings, but its significant impact in establishing a new legal mechanism for organizing the delivery of international development aid cannot be underestimated. The Global Fund provides a new legal and conceptual framework for delivering concessional financing which can guide the creation of future funding modalities.
Funds for Development
Multilateral Channels of Concessional Financing

This publication examines the concessional windows of the African Development Bank Group, Asian Development Bank, Caribbean Development Bank, International Fund for Agricultural Development, World Bank Group, and other multilateral financial development institutions. It also reviews trust funds, multipurpose vehicles, special facilities, and financial intermediary funds, such as the Global Environment Facility, and the Global Fund to Fight AIDS, Tuberculosis, and Malaria. The book analyzes different paradigms of organizational structures and the close connection between such structures and the institutional frameworks governing matters such as membership, representation in governing bodies, decision-making procedures, and voting rights—all of which play a part in the shaping of the development agenda. It extensively studies the legal frameworks of concessional windows, their modalities of concessional financing, resource structures and replenishment procedures, and analyzes how such replenishment efforts are implemented and impact on the development activities of these institutions.

In navigating the ever-increasingly complex landscape of aid architecture, this book is a valuable guide for all persons interested in concessional financing and the law of international organizations.

About the Asian Development Bank

ADB’s vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region’s many successes, it remains home to two-thirds of the world’s poor: 1.8 billion people who live on less than $2 a day, with 903 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.