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THE GLOBAL ENVIRONMENT FACILITY AND NON-GOVERNMENTAL ORGANIZATIONS

David Reed*

INTRODUCTION

During the past decade, protecting a country's environmental patrimony has become more widely accepted as the third pillar of national security. This position places environmental protection on par with promoting a country's economic vitality and ensuring its geo-political integrity as fundamental concerns of domestic policy and international relations. The new status comes directly from the growing seriousness of global environmental threats and from the very real constraints that environmental degradation already places on the economic activities and options of virtually every country.

In response to the burgeoning environmental crisis, the international community has begun to establish new standards designed to control the negative impact of economic and social activities on global, regional, and local ecosystems. These new standards have often required basic reforms in the nature of economic performance. The standards have been codified in new regulatory codes and implemented through incentive and command-and-control systems. International conventions and protocols have also established standards by which the impact of economic activities on global commons are measured and protected.

Some of the emerging environmental standards have been adopted as policy and project guidelines of multilateral and bilateral development agencies. Many of these institutions, including the World Bank, have not been effective in actually translating environmental standards into their day-to-day operational activities. Compliance with the emerging stan-

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dards by individual governments has also been very uneven. Governments perceive that complying with new environmental requirements will entail additional investments to mitigate negative environmental externalities. As a result, governments often resist these new environmental standards, especially when compliance with the standards is required as a condition for obtaining multilateral and bilateral financial resources. Governments also claim that these new conditions violate national sovereignty and intrude on the rights reserved to governments.

The purpose of this Article is to examine how non-governmental organizations (NGOs), and to a lesser degree, local communities, have contributed to the evolution of environmental standards, thereby influencing the environmental performance of multilateral development institutions. This discussion will use as its case study the Global Environment Facility (GEF)¹ in its pilot phase, a three-year period during which GEF invested approximately US\$1.2 billion² under the auspices of the World Bank, the United Nations Development Programme (UNDP), and the United Nations Environment Programme (UNEP).

This Article is organized in three main sections. The first section reviews the salient features of the GEF's pilot phase operations and includes a summary of the reform process currently unfolding in the GEF. The second section summarizes the contributions and limitations of NGOs in the GEF's pilot phase operations and in the current reform period. The final section identifies the challenges and opportunities that await NGOs in trying to further shape the GEF's environmental policies and programs.

I. THE GEF'S PILOT PHASE

In March 1990, at a meeting in Paris convened by the World Bank, seventeen donor countries affirmed their interest in forming a facility to fund global environmental programs.³ Approval was given to the World

1. See WORLD BANK, FUNDING FOR THE GLOBAL ENVIRONMENT: THE GLOBAL ENVIRONMENT FACILITY 1 (Nov. 1990) [hereinafter GLOBAL ENVIRONMENT FACILITY] (illustrating that developing countries can obtain concessional loans and grants from the GEF, a program designed to protect the global environment).

2. See UNCED Chief Says GEF Funding Could Hit \$10 Billion, 2 WORLD BANK WATCH 1 (1992) [hereinafter UNCED] (calculating that GEF participants accumulated about US\$1.2 billion for the three-year pilot period).

3. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 2 (indicating that the initial donor countries were Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Italy, Japan, The Netherlands, Norway, Spain, Sweden, the United

Bank, UNDP, and UNEP, as co-sponsoring agencies, to continue the development of proposals necessary for official formation of the new facility. Two subsequent meetings in 1990 enabled the donor governments, then joined by seven developing countries, to approve the evolving funding mechanisms.⁴ Subsequent refinements for funding modalities, governance, program priorities, and institutional arrangements, drafted by the co-sponsoring agencies, and then refined by the donor governments (Participants), established the institutional and policy framework of the GEF.⁵

The GEF's momentum during the past two years has been facilitated by the convergence of several favorable international factors. Foremost among them was the emergence of international diplomatic momentum to launch a new era of collaboration on environmental issues at the United Nations Conference on the Environment and Development (UNCED).⁶ The resulting marshalling of international resources, national and international efforts to find new common ground, and a new willingness to modify national agendas to address global problems strengthened the evolving international agenda. The agreement on the need for an acceptable funding mechanism contributed to the success of UNCED since, without such a fund, the evolving environmental accords would

Kingdom, and the United States). At the second meeting, New Zealand joined the other donor countries. *Id.*

4. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 2 (indicating that Brazil, China, Cote d'Ivoire, India, Mexico, Morocco, and Zimbabwe participated in these meetings).

5. See *Funding For The Global Environment: The World Bank*, U.N. Environment Programme, 11th Sess., CIDIE/90/4.1/2 (1990) (stating that the members discussed approaches to funding environmental activities and issues); WORLD BANK, FUNDING FOR THE GLOBAL ENVIRONMENT: ORGANIZATION ARRANGEMENTS AND GOVERNANCE 15 (May 1990) (describing that the UNEP, UNDP, and the World Bank make up the tripartite institutional arrangement of the GEF); WORLD BANK, FUNDING FOR THE GLOBAL ENVIRONMENT: PROPOSED FUNDING MODALITIES 1 (Aug. 1990) (confirming that the meetings held to discuss the GEF produced agreement about the possible roles for the GEF).

6. See Convention on Climate Change, *opened for signature* June 5, 1992, 31 I.L.M. 851 [hereinafter Climate Convention] (stating that nations sought to improve the global climate system by stabilizing the emission of greenhouse gases); Convention on Biological Diversity, *opened for signature* June 5, 1992, U.N. Doc. UNEP/Bio.Civ./Conf/L.2 (1992) [hereinafter Biodiversity Convention] (stating that nations sought to promote the conservation of biological diversity and the beneficial use of genetic resources). The Climate Convention and the Biodiversity Convention are the two conventions that were signed at the United Nations Conference on Environment and Development (UNCED) in June 1992. *Supra*, 31 I.L.M. 851.

lack practical means of implementation.

Underlying the global diplomatic impetus were internal pressures in a growing number of countries for governments to take more decisive action on local, national, and global environmental threats. Domestic political pressures in industrialized countries, in particular, including Group of 7 (G-7) countries such as France and Germany that were central in promoting the GEF, helped to maintain the GEF's momentum.

Another significant factor has been the success of previous efforts to address regional and global environmental problems through multilateral agreements and protocols. Based on twenty years of efforts, the 1980s saw a proliferation of international agreements ranging from the Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal⁷ (Basel Convention) to the Montreal Protocol on Substances That Deplete the Ozone Layer⁸ (Montreal Protocol).

These significant factors allowed the G-7 nations to move forward in building an operational platform to address the rising international concerns on environmental issues. Failure to do so would have heightened domestic pressures within many nations and would also have increased demands, particularly from the developing world, that the industrialized societies assume much greater financial responsibility in funding programs to alleviate the environmental crisis.

With expectations rising in the international community that UNCED would produce dramatic breakthroughs on environmental issues, the most powerful countries in the world had little choice but to show real progress in creating a viable funding mechanism, even if it meant overlooking many institutional and political challenges. Those countries were not blind to the possible weaknesses and shortcomings of the GEF, but agreed that it was more important to put something in place and resolve the problems later, than to postpone action until the ideal institutional mechanism was created.

The First Participants' Meeting of the GEF, held in Washington, D.C., in May 1991,⁹ together with the signing of the Tripartite Agreement¹⁰

7. See Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal, U.N. Environment Programme, U.N. Doc. IG.80/3 (1989) (stating that the Basel Convention governs the movement and disposal of hazardous wastes).

8. See RICHARD E. BENEDICK, OZONE DIPLOMACY, 1 (1991) (noting that the Montreal Protocol limited the use of several widely used chemicals such as chlorofluorocarbons and halons).

9. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 2 (stating that the meeting confirmed the World Bank's role in assisting the development of the GEF).

10. See WORLD BANK, REPORT BY THE CHAIRMAN TO THE PARTICIPANTS' MEET-

by the three co-sponsoring agencies in October 1991, formalized the governance and operational mechanisms of the GEF. With formal mechanisms in place, the GEF gained legitimacy to begin full operation in its pilot phase.

A. FEATURES OF THE GEF'S PILOT PHASE

Several salient features define the pilot phase of the GEF.

1. Duration

The pilot phase of the GEF will last for three years, from July 1991 to June 1994. Disbursements for pilot phase projects are likely to continue through 1998.¹¹

2. Scope of Work

The scope and priorities of the work program developed by the implementing agencies is determined by the mandate established by the Participants.¹² The mandate directs that the pilot phase will concentrate on subsidizing incremental costs of development activities in order to generate global environmental benefits that otherwise would not accrue to the global community. Program activities are limited to four categories: protecting biological diversity; reducing greenhouse gases; protecting international waters; and reducing substances that deplete the ozone layer.¹³

In addition, according to the mandate, the GEF's activities should be geared toward acquiring practical experience, on both technical and policy levels, that can later be replicated or extrapolated to diverse, more ambitious activities. Emphasis is placed on demonstration, experimentation, and innovation.¹⁴

ING TO DISCUSS THE GLOBAL ENVIRONMENT FACILITY 2 (Apr. 1991) [hereinafter CHAIRMAN'S REPORT] (illustrating that the three implementing agencies made a joint declaration at their perspective agencies to confirm the partnership arrangement).

11. See *id.* (noting that the pilot phase will last for three years); *Development Assistance Institutions and Sustainable Development*, 16 WASH. L.Q. 83 (1993) [hereinafter *Development Assistance*] (estimating that the disbursement of funds are projected to continue into 1997-98).

12. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 2 (stating that the meeting confirmed the World Bank's role in assisting the development of the GEF).

13. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 1.

14. CHAIRMAN'S REPORT, *supra* note 10, at 4.

The mandate further states that the GEF should acquire operational capability prior to the UNCED,¹⁵ and that the GEF should demonstrate its operational capabilities so it can serve as the funding mechanism for evolving environmental conventions.¹⁶

3. Funding

The resources pledged by donor governments total approximately US\$1.2 billion.¹⁷ They are separated into two distinct sources of funding. First, the Global Environment Trust Fund (GET) or "core fund" of the GEF. The GET holds US\$860 million in donations from twenty-six countries. All GET funds are provided through grants.¹⁸

Second, co-financing and parallel-financing arrangements account for the remaining funds, which totalled US\$342 million as of March 1992.¹⁹ In co-financing arrangements, donor governments provide funds for projects through bilateral aid agencies. Resources are provided through either grants or highly concessional lending operations.²⁰ To date, co-financing arrangements have been established with Australia and Switzerland; similar provisions are now being discussed with Austria, Belgium, Canada, and Japan. The United States, through its Agency for International Development (USAID), has established a parallel-financing arrangement with the GEF.²¹

Third, the Multilateral Fund,²² associated with the Montreal Protocol,

15. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 2 (suggesting that the Participants establish the GEF as soon as possible so that it can provide the UNCED with valuable practical advice).

16. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 5 (stating that as the GEF acquires greater knowledge and expertise in the global arena, it should expand into other environmental areas).

17. UNCED, *supra* note 2.

18. *GEF Participants Will Likely Ease Rules On Membership, Voting At Meeting April 29-30*, Int'l Envtl. Daily (BNA) (April 28, 1992), available in LEXIS, Nexis Library, OMNI File [hereinafter *GEF Participants*].

19. GEF COORDINATOR'S OFFICE, ENVIRONMENT DEPARTMENT, STATUS OF CO-AND PARALLEL-FINANCING ARRANGEMENTS 1-3 (1992).

20. *Id.*

21. *Id.* at 3.

22. See *The Montreal Protocol Multilateral Fund: A Model For The Framework Convention On Climate Change*, Int'l Envtl. Daily (BNA) (Apr. 15, 1992), available in LEXIS, Nexis Library, OMNI File [hereinafter *Multilateral Fund*] (stating that the Multilateral Fund provides eligible developing nations with technical and financial aid in order to facilitate their compliance with control measures as set in the Montreal Protocol). At the Fourth Meeting of the Parties to the Montreal Protocol, held in

has been understood to be a separate trust fund operating under the institutional umbrella of the GEF. According to recent legal clarifications, however, an integration of the Multilateral Fund into the GEF would require that projects associated with the Montreal Protocol be subject to the Tripartite Agreement of the World Bank, UNDP, and UNEP. Such an arrangement would violate the governance and implementation measures established by the Montreal Protocol itself. Consequently, any legal relationship between the Montreal Protocol's fund and the GEF no longer exists. There is, however, an operational relationship between the Protocol and the GEF in that staff of the three implementing agencies who work on GEF projects also provide technical assistance in the development of Protocol projects. UNEP serves as Trustee of the Multilateral Fund.²³

4. GEF Governance

Governance of the GEF is exercised through the semi-annual Participants' Meetings. Three Participants' Meetings were held prior to UNCED.²⁴ Decisions made at the Participants' Meetings are to be sought on a consensus basis. No formal voting mechanisms have been established during the pilot phase.²⁵

To become a Participant, donor governments are required to make a direct contribution to the GEF "core fund" or to establish a co-financing relationship with the fund, as prescribed in the "Co- and Parallel-Financing Arrangements" document published by the World Bank.²⁶ Governments contributing to the core fund have been required to contribute a minimum of 4 million SDRs (approximately US\$5.7 million).²⁷ To help

Copenhagen in December 1992, the Interim Multilateral Fund was established as the permanent financing mechanism for the Montreal Protocol, and the "Interim" was dropped from its name. *Id.*

23. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 10.

24. See *Poland Forest Project Gets First Grant*, 1 WORLD BANK WATCH 1 (1991) [hereinafter *Poland Forest Project*] (indicating that the second meeting took place in Geneva and the third meeting took place in Washington).

25. See *Multilateral Fund*, *supra* note 22 (indicating that while voting is by consensus only, this policy is currently under review); *Development Assistance*, *supra* note 11, at 83 (explaining that the GEF is planning to restructure the voting system to maintain the equitable representation of developing countries and to give more power to developing nations who primarily fund the program).

26. See GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 13 (stating that only those countries that make contributions to the "core fund" or the joint financing agreement can attend the semi-annual Participants' Meetings).

27. *Multilateral Fund*, *supra* note 22.

some developing countries meet this financial requirement, and thereby encourage wider participation, bilateral agencies and the International Bank for Reconstruction and Development (IBRD), a division of the World Bank, have provided financial assistance to some governments. Countries do not have to be Participants to be eligible for GEF funding.²⁸

The World Bank serves as Chair of the GEF. The director of the World Bank's Environment Department is the current chairman of the GEF.²⁹

Participants have had several principle functions during the pilot phase. For example, the Participants have overseen the development of the institutional arrangements of the implementing agencies, such as the guidelines for working relationships. In addition, the Participants have been charged with reviewing and approving the work plans submitted by the implementing agencies; assessing the efficiency of the project development process; and guiding the reform process.³⁰

5. Responsibilities of the Implementing Agencies

The Tripartite Agreement signed on October 28, 1991, establishes the responsibilities of the three implementing agencies, UNEP, UNDP, and the World Bank, in carrying out the mandate of the Participants. The responsibilities of UNEP include ensuring that the global policy framework of GEF is consistent with existing and emerging conventions and protocols; disseminating information on technological developments; helping developing countries define their needs to deal with global environmental issues supported by GEF; and organizing the Scientific and Technical Advisory Panel (STAP) to provide scientific and technical advice to GEF operations.³¹

UNDP is responsible for playing the lead role in selecting, designing, and funding studies and technical assistance activities; ensuring GEF strategy planning fully promotes the "complementarity between developmental and environmental concerns;"³² and organizing studies and as-

28. See *GEF Participants*, *supra* note 18 (indicating that the donor nations have eased the membership requirements for developing countries).

29. See *Development Assistance*, *supra* note 11, at 83 (stating that Mohamed T. El-Ashry, the World Bank Environment Director, is the Chairman of the GEF).

30. *Multilateral Fund*, *supra* note 22.

31. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 11.

32. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 11.

assessments to serve as the basis for such strategies, and provide technical assistance, institution-building, and training activities to support those strategies. UNDP also manages the GEF's Small Grants Program and participates in the investment cycle, particularly in early stage of project identification. UNDP Resident Representatives will play a key role in coordinating activities at the country level.³³

The World Bank's share of the responsibilities include serving as Trustee and Administrator of GEF; encouraging inclusion of GEF investment areas in national environment programs of recipient countries; managing the project cycle for investment projects; and organizing GEF project identification, appraisal, and supervision process with the other agencies.³⁴

6. Projects

A Small Grants Program operates under the purview of UNDP. Projects financed through this window must be under US\$50,000 for country projects or US\$250,000 for regional projects, and are subject to special review and approval mechanisms. These projects must undergo technical review and approval by UNDP, through a country-level review mechanism that includes representatives from UNDP, the recipient government, and local communities or NGOs.³⁵

B. THE CURRENT GEF REFORM PROCESS

When the GEF was created in late 1990, donor governments expected that UNCED would be a watershed moment in the GEF's evolution. Prior to UNCED, donor governments had clearly signalled their intention to create a unified funding mechanism, rather than a multiplicity of financial institutions, to facilitate future environmentally-related North-South financial transfers.³⁶ This desire on the part of donor governments explains to a large degree why the pilot phase's implementation has proceeded with such speed.

Donor governments wanted the pilot phase to demonstrate its viability early and unequivocally, in order to ensure that the emerging interna-

33. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 11.

34. GLOBAL ENVIRONMENT FACILITY, *supra* note 1, at 11.

35. CHAIRMAN'S REPORT, *supra* note 10, at 7.

36. See *Multilateral Fund*, *supra* note 22 (stating that donor governments expected the GEF to assume financial responsibility for future environmental agreements).

tional conventions on biological diversity, global climate change, and perhaps tropical forests would accept the GEF as the most desirable funding mechanism. At the time of UNCED, for example, about seventy percent of GEF core funds had been indicated for program use, while only fourteen projects had actually been approved by the implementing agencies. Prior to UNCED, three tranches out of a likely total of five had been submitted to the Participants and the fourth was under preparation. By June 1992, no monitoring or evaluation mechanism had been put in place by the implementing agencies.

Despite the rush to make the GEF operational, the Participants have been increasingly aware of the need for institutional and managerial reforms that would allow the GEF to reflect more fully its universal avocation. Pressure for these changes has arisen from two main sources. The first push came from the Participants themselves. At the Second Participants' Meeting, held in Geneva in December 1991,³⁷ governments asked the implementing agencies to develop option papers describing the possible approaches that a post-pilot phase GEF might pursue with regard to its governance, information policy, and voting mechanisms. In the ensuing months, various proposals developed by the GEF Administrator's office were reviewed by participating governments, and were submitted in a more refined form for formal review at the Third Participants' Meeting in Washington, D.C., in May 1992.³⁸

Throughout this process, the list of issues needing clarification continued to grow. The list now includes, *inter alia*, legal status of the Participants' Assembly; representational mechanisms for Participants; definition of "incremental costs" that justify the use of GEF financial resources; and an information disclosure policy.

The second push for reform of the GEF emerged at UNCED, in provisions of the Convention on Biological Diversity³⁹ (Biodiversity Convention), the Convention on Climate Change⁴⁰ (Climate Convention), and Agenda 21 (Chapter 33) regarding financial mechanisms.⁴¹ The conventions accepted the GEF on an interim basis, but specified that a

37. See *Poland Forest Project*, *supra* note 24 (reporting that the Participants agreed at the second meeting that the GEF was proceeding too quickly and that greater discussion about it was necessary).

38. See *GEF Approvals Set*, 2 WORLD BANK WATCH 3 (1992) (indicating that the World Bank in Washington held the third Participants' Meeting).

39. Biodiversity Convention, *supra* note 6.

40. Climate Convention, *supra* note 6.

41. *Agenda*, UN Doc. A/Conf.151/26 (3 vols. 1992). "Agenda" is a plan of action for sustainable development adopted by UNCED on June 14, 1992.

permanent institutional relationship would be contingent on reforms that ensure the GEF has variously an equitable and balanced system of representation, a democratic and transparent system of governance, and universal leadership.⁴² The conventions also state that the financial mechanisms shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for the purposes of the conventions.⁴³

II. NGO INTERACTION WITH THE GEF

For NGO's, the GEF has been a moving target, a vaguely-defined institutional arrangement that has defied access and traditional political lobbying pressures. For example, the GEF's statement of purpose has changed; institutional relations among implementing agencies⁴⁴ and Participants have been vague and fluid during the pilot phase; lines of accountability have been imprecise; and investment criteria have been difficult to understand.⁴⁵

While this evolving mercurial character has complicated efforts of NGO's to reform the GEF, an objective assessment of the impact of NGOs on the GEF is almost impossible. Perhaps the only reliable method of obtaining a somewhat impartial assessment of the NGOs' impact would be through an inclusive interview process with GEF managers and staff, members of the Participants' delegations, staff of the implementing agencies, and NGOs themselves. Although carrying out such an assessment is clearly beyond the scope of this Article, the comments offered constitute a subjective assessment as viewed by the representative of an international NGO that has had sustained interaction with the

42. Climate Convention, *supra* note 6, art. 21, para. 3 (describing the selection of the GEF as the international entity entrusted with the operation of financial mechanisms pursuant to universal membership, as outlined in article 11 of the Climate Convention).

43. See Climate Convention, *supra* note 6, art. 11, paras. 3-4 (describing the role of the Conference of the Parties as that of agreeing upon financial arrangements made to give effect to the preceding paragraphs concerning financial mechanisms).

44. GLOBAL ENVIRONMENT FACILITY, 1 MAIN REPORT BY THE CHAIRMAN TO THE PARTICIPANTS' MEETING TO DISCUSS THE GLOBAL ENVIRONMENT FACILITY 2, para. 2 (Apr. 1991) [hereinafter CHAIRMAN'S APRIL REPORT] (announcing that the formal approval of the GEF is complete with a partnership among three implementing agencies, the UNDP, UNEP, and the World Bank).

45. WORLD BANK, FUNDING FOR THE GLOBAL ENVIRONMENT: FRAMEWORK FOR PROGRAM DESIGN AND ALLOCATION CRITERIA (May 1990) (outlining the three contingencies under which countries would be eligible for GEF funding).

GEF on policy and project levels.

A. HISTORICAL CONTEXT

NGO interaction with the GEF, including Participants and the three implementing agencies, must be understood as an extension of a decade-long international effort to reform the environmental performance of multilateral lenders, in particular the World Bank.⁴⁶ This reform effort began primarily in the Washington-based NGO community in the early 1980s and has now expanded to include NGOs from other industrialized and developing countries.

The NGO campaign effort has been responsible for two very significant changes in the environmental behavior of international institutions. First, these efforts have helped establish methods of public scrutiny and accountability of multilateral development institutions. The most salient example of successful NGO reform lobbying is the establishment of the Early Warning System (EWS), mandated by the U.S. Congress, through which government agencies, in collaboration with NGOs, scrutinize Multilateral Development Bank (MDB) investments.⁴⁷ This screening process, which includes monthly review meetings, serves to identify MDB projects that may generate negative environmental impacts and allows the U.S. Government to conduct further research and take appropriate steps to pressure for changes in the projects.⁴⁸ Similarly, NGO's use the EWS meetings to plan lobbying activities and to coordinate efforts to inform NGOs around the world of current developments.

46. Mohamed T. El-Ashry, The Center for Strategic and International Studies and the Massachusetts Institute for Technology, Development Assistance Institutions and Sustainable Development, *The Environment After Rio*, 16 WASH. Q. 83 (1993) (El-Ashry is World Bank's Environment Director and Chairman of the GEF) [hereinafter *After Rio*] (describing NGO pressure on the World Bank in concert with its shareholders as early as 1979 to press for more substantive environmental policies by the World Bank). The article indicates that other major concerns include poverty reduction, efficient use of environmental sources and economic funds, and the promotion of institutional support. *Id.*

47. Appropriations Act, 1988, P.L. 100-202, Title III, Item 389, §h(1), *codified at* 22 U.S.C. §262r-2 (1993) (instructing overseas missions of the Agency for International Development and embassies of the United States to analyze the impact of MDB loans well in advance of loan approval).

48. *Id.* subsection (i) (explaining if a review required by subsection (h) identifies adverse impacts to the environment, natural resources, or indigenous peoples, the Secretary of the Treasury shall instruct the United States executive director of the appropriate MDB to seek changes to the project necessary to eliminate or mitigate those impacts).

Another example of NGO success in establishing methods of review of MDB environmental performance is inclusion of environmental impact assessments of each investment project in the Monthly Operational Summary (MOS) of the World Bank.⁴⁹ Through this monthly statement, governments and the public can be informed as to the status of each project; its potential environmental impact; and the status of efforts to address anticipated adverse environmental impacts.⁵⁰

Second, NGOs have been pivotal in establishing the very standards by which multilateral institutions are held accountable for the environmental performance by the public. For example, NGO pressure was the force that compelled the World Bank to establish its Operational Director on Environmental Assessment.⁵¹ This environmental impact assessment determines potential environmental consequences early in the project cycle, establishes criteria for determining its potential impact, and prescribes procedures for addressing those potential negative externalities.

Another important example has been NGO success in requiring the World Bank to review and reform its specific lending policies. For instance, NGO pressure induced the World Bank to evaluate its forest policy. NGO lobbying, based on analysis conducted by the World Wildlife Fund (WWF), led to a one-year moratorium on lending for forest projects until the World Bank had completed a review and revision of its forest policy.⁵² Moreover, NGO lobbying on specific World Bank investment projects has forced revision of MDB lending standards and procedures.

49. *American Banker-Bond Buyer, Congress Pressed on Need for More U.S. Procurement*, 5 WORLD BANK WATCH 1 (1992) (describing the perceived need for better information from banks such as the World Bank by pointing to that the World Bank's continuing practice of a Monthly Operational Summary, which is designed for the board of directors, provides little information to the general public).

50. Stephen L. Kass & Michael B. Gerrard, *Environmental Law: International Impact Assessment*, N.Y.L.J., Oct. 25, 1991, at 3 (providing an excellent overview of the increasing use of environmental impact assessments in an international context and the information such assessments provide).

51. WORLD BANK, ENVIRONMENTAL ASSESSMENT, OPERATIONAL DIRECTIVE 4.01 (1991) (providing guidance on consultation with and disclosure of information to affected groups and NGOs).

52. WORLD WILDLIFE FUND, A REVIEW OF THE WORLD BANK FORESTRY SECTOR PROJECT TO THE REPUBLIC OF COTE D'IVOIRE (1990) (urging the World Bank to revise the forestry sector loan to the Republic of Cote d'Ivoire to address WWF's concerns that the loan would open up large areas of forest to commercial logging without government agencies or private companies having to demonstrate their ability to manage such areas in a sustainable manner).

While NGO involvement in the GEF must be understood as the logical and important extension of the long-term effort to correct the deficient development approaches of the multilateral lending community, involvement with the GEF was not a foregone conclusion. Since the inception of the GEF, whether and how NGOs should engage the GEF has been the subject of serious strain and controversy within the NGO community. Many NGOs initially condemned the GEF as a "green wash" or "green veneer"⁵³ that would allow the World Bank to camouflage its environmental failures in other areas.⁵⁴ Direct involvement with the GEF was therefore seen as a cooperation that would allow the World Bank to continue its environmentally damaging investment schemes. Other NGOs, while recognizing the environmental failures of the World Bank, argued that the GEF was an established fact and that direct involvement was the only option that would reduce the potential damage of the GEF and perhaps allow its resources to be used for more productive ends.

While a more pragmatic approach has prevailed, dissatisfaction with the GEF still runs very deep in the NGO community both in the North and South. As replenishment of the GEF approaches in 1994, the rejectionist voice in the NGO community will most likely increase in volume and influence.⁵⁵

B. CONSTRAINTS FACING NGOS AND THE GEF

Despite the tentative willingness of the NGO community to work with the GEF, NGO efforts are constrained by basic institutional arrangements of the GEF that explicitly exclude NGOs or render their direct involvement difficult. First, the most serious constraint is NGO exclusion from formal decision making processes of the GEF, an area which is reserved exclusively for the Participants.⁵⁶ Any NGO influence on basic

53. Andrea Shalal-Esa, "Green" Issues Nearly Invisible at World Bank, *IMF Meetings*, REUTERS, Sept. 25, 1992 (quoting Greenpeace's David Batker as charging that the GEF may be merely a "thin green veneer" for destructive World Bank practices).

54. *See id.* (reporting Greenpeace's charges that while the World Bank is administering the GEF, which is charged with implementing the Climate Convention, it has no policy on carbon dioxide emissions caused by World Bank projects).

55. *GEF Fixes Target for Replenishing Funds, Gains Backing From Developing Countries*, 16 Int'l Envtl. Rep. (BNA) No. 11, at 387 (June 2, 1993) [hereinafter *GEF Fixes Target*] (describing the meetings to be held in the second half of 1993 beginning with talks at Beijing in late May and culminating in the December meeting in Geneva held to discuss restructuring the GEF and its replenishment).

56. *Special Report: The Montreal Protocol Multilateral Fund: A Model for the*

policy, project portfolios, or institutional issues, therefore, has been expressed at the level of national capitals and to the corresponding delegations and ministries. With few exceptions, finance ministries have been responsible for determining country policy for the GEF and, by nature, have tended to focus on matters of contributions and institutional arrangements. Because these agencies do not have expertise in environmental and development policy, NGOs have experienced considerable difficulty making their opinions understood by government officials.

The second serious constraint to NGO influence has been their exclusion from meetings of the Implementation Committee.⁵⁷ These meetings, conducted approximately every six weeks, are the principal mechanism for promoting coordination among the three agencies and for ensuring that agencies' respective work plans correspond to the mandate given to them by the Participants.⁵⁸ NGOs have remained quite distant from the deliberations of the Implementation Committee and usually gain access to decisions only on a secondhand basis when documents are semi-annually presented by the implementing agencies to the Participants. NGO input into these discussions, therefore, is quite indirect and is accomplished through instructions given by the Participants to the implementing agencies.

The third major constraint is the lack of NGO representation on the Scientific and Technical Advisory Panel (STAP).⁵⁹ The general purpose of this scientific panel is to establish criteria for assessing the integrity and soundness of specific projects and for reviewing each project under consideration by the implementing agencies.⁶⁰ Although the panel does not have formal veto power, its review is given considerable weight in assessing the merits and viability of projects. The thirteen-member panel consists of eleven scientists, one economist, and one lawyer. NGOs are not represented on the panel, nor are anthropologists, sociologists, or

Framework Convention on Climate Change, Int'l Env't Daily (BNA) (Apr. 15, 1993), available in, LEXIS, Nexis Library, OMNI File [hereinafter Montreal Model] (noting that while the Montreal Protocol Multilateral Fund (MPMF) permits NGO attendance at its Executive Committee meetings as observers, NGOs are barred from GEF Participants' Meetings).

57. CHAIRMAN'S APRIL REPORT, *supra* note 44, at 3, para 6 (describing the role to date of the Implementation Committee and its anticipated functions).

58. CHAIRMAN'S APRIL REPORT, *supra* note 44, at 3, para. 6.

59. CHAIRMAN'S APRIL REPORT, *supra* note 44, Annex 1, at 1 (describing the purpose and composition of the Advisory Panel as created by UNEP as requested by the GEF).

60. CHAIRMAN'S APRIL REPORT, *supra* note 44, Annex 1, at 1.

other development experts.⁶¹

Two years of direct NGO lobbying efforts have led to the convocation of an NGO-Participants Consultation one or two days prior to the formal Participants' Meetings. Although attendance of the Participants has been sporadic, this consultative process has allowed governments to hear NGO concerns on a wide range of issues including governance mechanisms, legal issues, project priorities, and specific GEF projects. The GEF Administrator's office has provided financial and professional resources to try to ensure that these exchanges between Participants and NGOs contribute to the reform of the GEF and its long-term viability.⁶²

Given these constraints, NGOs have frequently resorted to using public channels to promote for their points of view. At times, NGOs involve the written press and other media. More often, they directly engage their government representatives in face-to-face meetings, lobbying campaigns, and press activities.

One of the most important accomplishments of the NGO community in this regard is found in the United States. In the United States, NGOs successfully lobbied legislators to include in a Conference Report on appropriations for foreign operations a series of requirements that the GEF must comply with before the U.S. Government can make its contribution of \$30 million available for the GEF "core fund."⁶³ The conditions include establishing clear public access to information pertaining to GEF projects and associated World Bank investments,⁶⁴ ensuring clear procedures for consultation with peoples affected by GEF projects and operations,⁶⁵ and providing for local government oversight of GEF projects and participation of local NGOs in all phases of GEF project de-

61. CHAIRMAN'S APRIL REPORT, *supra* note 44, Annex 1, pt. 3 (describing STAP membership as one that was to draw on those with expertise in climate change, ocean and fresh water management, ozone depletion, biodiversity, forestry and desertification policies and efficiency). *Id.* Notably, NGO participation in this panel was envisioned at least at the outset. *Id.*; *supra*, at 6, para. 23 (describing an expectation that STAP membership would be drawn in part from the NGO community).

62. *Talks to Begin in Early 1993 on Re-Funding of GEF*, 15 Int'l Env't Rep. (BNA) No. 25, at 814 (Dec. 16, 1992) (describing NGO participation in meetings prior to the Abidjan Participants' Meeting in December as contributing to discussions surrounding better GEF consultation with NGOs).

63. H. REP. NO. 1011, 100th Cong., 2d Sess., [hereinafter Conference Report] (amending H.R. 5368). *See also President Signs Measure Linking Funds for Global Environment Facility to Reform*, 15 Int'l Env't Rep. (BNA) No. 21, at 677 (Oct. 21, 1992).

64. Conference Report, *supra* note 63, at 1, amend. 1.

65. Conference Report, *supra* note 63, at 2, amend. 1.

velopment and implementation.⁶⁶

To date, the GEF has clearly failed to comply with these requirements and therefore has jeopardized participation of the United States in future GEF operations.⁶⁷

C. INFLUENCE OF NGOS ON THE GEF

NGOs' influence on GEF policies and projects can be affirmed in the following areas.

1. Reform of GEF's Information Policy

The UNDP and UNEP, two of the implementing agencies, have publicly stated that all information on GEF projects and activities in which they are involved will be placed in the public domain. Both United Nations agencies have provided requested documentation to NGOs and to the public. The World Bank, in contrast, has consistently resisted granting the public access to information regarding its investment projects. This attitude is consistent with the World Bank's refusal since its founding in 1946 to revise its information disclosure policies. The World Bank continues to presume that "client privilege" protects the confidentiality of information between the lender (the World Bank) and the client (the borrowing government).⁶⁸

Global environmental crises, coupled with the well-documented negative environmental impact of numerous World Bank lending operations, has increased public pressure on the World Bank to provide more information to concerned parties, public and private, about upcoming lending activities. NGOs have criticized the World Bank about the inadequacy of its current information disclosure policies.

Despite this intense pressure, the World Bank has only contemplated sharing information about GEF projects with the public when the projects are submitted to the Participants' Assembly. Although this reform

66. Conference Report, *supra* note 63, at 2, amend. 1.

67. *\$30 Million Earmarked for GEF in 1993 Going to A.I.D.*, *Treasury Official Says*, Int'l Env't Daily (BNA) (Oct. 4, 1993), available in LEXIS, Nexis Library, OMNI File (reporting that the GEF, despite recent reforms, failed to meet the congressionally established criteria by the last day of the fiscal year, Sept. 30, thus diverting the United States' first contribution to the fund to the U.S. Agency for International Development).

68. *World Bank Opens Door to Win Support*, INT'L TRADE FIN., Sept. 10, 1993 (quoting a World Bank staffer who explained that recent reforms will not reach the World Bank's client privilege policy, because clients would block such efforts).

does provide general background information, material submitted to the Participants' Assembly predates actual appraisal of the project by professional staff. Consequently, the information offered does not provide the baseline data, environmental impact assessments, social impact assessments, and other pertinent information.

Even this minor policy recommendation has required the World Bank's management to submit an operational directive on GEF information policy. The recommendation, however, has not been accepted by the World Bank's Executive Board; some of the executive directors consider the policy revision to be woefully inadequate. The struggle over this issue will undoubtedly continue.

2. Evaluation of the GEF Pilot Phase

One of the earliest criticisms of the GEF was the failure of the implementing agencies to identify ways in which GEF investments would inform and possibly change the standard operations of the implementing agencies. This failure was most evident in the total absence of evaluation requirements and standards in the mandate given by the Participants to the implementing agencies. NGOs, including World Wildlife Fund (WWF), strongly criticized the implementing agencies for the failure to identify ways to evaluate the impact of the GEF.⁶⁹

Recently, the implementing agencies, under pressure from the Participants, agreed to conduct an evaluation of the GEF's pilot phase prior to beginning replenishment negotiations for the GEF's operational phase.⁷⁰ Unfortunately, the evaluation currently proposed will be limited to a managerial audit of GEF's operational capability and will not include a project impact evaluation. As a consequence, NGOs have initiated a concerted effort to broaden the scope and purpose of the initial evaluation.⁷¹

69. *Success of Global Environment Facility Depends on World Bank Reforms, Report Says*, 14 Int'l Env't Rep. (BNA) No. 7, at 195 (Apr. 10, 1991) (listing rigorous evaluation of the overall effectiveness of GEF projects as first among the WWF's recommendations for improving operations of the GEF).

70. *Talks to Begin in Early 1993 on Re-Funding, Abidjan Meeting Decides*, Int'l Env't Daily (BNA) (Dec. 9, 1992), available in LEXIS, Nexis Library, OMNI File (reporting that discussion continues on restructuring reforms in the GEF prior to replenishment in 1994 following pre-meeting discussions with NGO's at the GEF Participants' Meeting held in Abidjan).

71. *Id.*

3. Project Portfolio of the GEF

NGOs are also influencing project portfolio decisions. Biodiversity, one of the four thematic areas of the GEF, is a field in which NGOs enjoy significant comparative advantage in terms of expertise over the implementing agencies. Consequently, the agencies have consistently turned to international and local NGOs in developing their biodiversity portfolios.⁷² International NGOs such as WWF and International Union for Conservation of Nature and Natural Resources (IUCN)⁷³ have provided complete project proposals to governments who in turn have requested financial support for projects of local, regional, and national impact. Both the World Bank and UNDP have contracted technical services from international and local NGOs and their staff members to conduct consultations on a local level, to appraise projects, and to provide technical background to complete specific projects. NGO involvement in international waters and greenhouse gases projects has been less numerous.

4. NGOs and GEF Project Design

NGOs have been instrumental in exposing inadequate GEF project design. Participants have not been very active in reviewing the quality of individual GEF projects. A few Participants have sought technical review of specific projects by their respective bilateral aid agencies and have suggested project modifications. NGOs, upon obtaining background information about specific projects, have lobbied actively and publicly to modify project design and to force consideration of the impact of GEF projects on local communities.

One recent example was the debate that emerged during the NGO-Participants' Consultation in Abidjan in December 1992,⁷⁴ regarding a GEF forestry project in Ecuador that also involves the International

72. CHAIRMAN'S APRIL REPORT, *supra* note 44, at 6, para. 24 (describing the expectation that NGOs would have a strong role to play in the area of biodiversity and help establish priorities for actions taken to preserve biodiversity).

73. United Nations Environment Program, Brussels May 14-16 (1990). THE WORLD BANK, FUNDING FOR THE GLOBAL ENVIRONMENT 2 (Feb. 1990), UN Doc. CIDIE/90/4.1/2, Background Note 2 (listing the IUCN as one of the leading NGOs concerned with biodiversity matters).

74. John Chiahemen, *World Bank Under Attack at Environment Meeting*, REUTERS, Dec. 3, 1992 (reporting on a NGO-developing country coalition that demanded reforms by the GEF at its Participants' Meeting in Abidjan).

Finance Corporation (IFC), the private investment arm of the World Bank. On that occasion, a local Ecuadoran NGO challenged many assertions made by representatives of the GEF and the IFC and promptly elicited promises from the GEF Administrator that a complete review of the project would be carried out and that new consultations on a community level in the Ecuadoran Amazon would be conducted.

5. NGOs Raise Issues for Debate

A final impact NGOs have had on the GEF is that NGOs have regularly raised issues for debate. The extent to which NGOs have successfully forced the Participants and implementing agencies to discuss and act on issues that otherwise would be overlooked is difficult to measure.

Several examples can be cited, however, where NGOs have publicly focused on issues that are now finding resonance in the internal debates of the Participants and implementing agencies. For example, NGOs have attacked proposals that renew the GEF's legal status through a second resolution of the Executive Board of the World Bank. NGOs have urged Participants to establish the Participants' Assembly as an independent, legally constituted body that could establish contracts with the two framework conventions, the Biodiversity Convention and Climate Convention.

In addition, NGOs have encouraged Participants to establish a Secretariat, outside and independent of the World Bank, to encourage greater autonomy from World Bank operations.

III. FUTURE OPPORTUNITIES AND CHALLENGES

Despite the current process of reform, NGOs do not expect the GEF to grant them any decision making power. As a result of the consistent pressure they have placed on the GEF, however, NGOs will most likely be given observer status at the Participants' Assembly meetings, in accordance with terms established at other United Nations fora.⁷⁵ NGOs will also most likely be invited to join the delegations of several countries. These are important improvements, reflecting the contributions of NGOs to shaping the evolution of the GEF over the past two years.

Despite these improvements, however, the forum for NGOs to influence the GEF project portfolio will continue to be through national

75. See *GEF Fixes Target*, *supra* note 55 (stating that at the GEF's most recent meeting in Beijing, a proposal allowing NGO observer status at Participants' Assembly meetings was denied).

government agencies. The GEF is conducting a study at the request of the Swedish Government to explore the diverse ways of ensuring stable NGO participation in GEF activities, for submission to the Participants at the Participants' Assembly Meeting in Beijing in June 1993.⁷⁶

A. SHORT-TERM GEF REFORM OPPORTUNITIES FOR NGOS

NGOs will have several opportunities to influence GEF activities in the next two to three years. For example, during the next twelve to eighteen months, NGOs can continue to play an important role in shaping the outcome of the institutional reform process currently taking place in the GEF. NGOs can influence questions of governance of the Participants' Assembly; the legal status of the GEF; and the mandate transmitted from conventions to the Participants' Assembly.

One of the most important institutional issues will be the size and configuration of the constituencies in the new Participants' Assembly. With G-7 nations apparently unwilling to accept an equal balance with the Executive Committee of the Montreal Protocol,⁷⁷ some NGOs may be able to form an alliance with developing country delegations that look to the precedential character of the Montreal Protocol arrangement.⁷⁸ NGOs may try to stimulate public pressure in industrialized nations in an effort to maintain equitable numerical representation.

B. NGOS AND GEF PILOT PHASE PROJECTS

NGO opportunities to participate in the actual implementation of GEF pilot phase projects will depend on the technical requirements of the specific projects; the institutional weaknesses in specific technical areas of implementing agencies and host government agencies; and greater expertise of NGOs in those same areas. For the medium term, NGOs

76. *GEF Fixes Target*, *supra* note 55 (reporting on the results of the May 25-27 Beijing Participants' Assembly Meeting).

77. Montreal Model, *supra* note 56, part III (comparing the MPMF to the GEF, and noting that while the GEF requires a US\$5.7 million minimum contribution for membership in the GEF, all parties to the Montreal Protocol are members of the MPMF).

78. *GEF Fixes Target*, *supra* note 55, (reporting that membership jumped at the Participants' Assembly Meeting in Beijing from twenty-four to sixty members with the removal of the US\$5.5 million minimum contribution requirement, while noting progress towards a compromise between a contribution weighted system favoring donors with large sums in the GEF fund, and a one-country-one-vote system favored by developing countries).

will find broader opportunities for direct implementation responsibilities in biodiversity projects where NGOs still enjoy a clear advantage, in terms of expertise in specialized areas. Opportunity for comparable involvement in climate change and international waterways projects will remain limited in the future.

At present, the broad technical and managerial resources of international NGOs such as WWF and IUCN have given them a decisive advantage vis-a-vis local NGOs, particularly when NGOs assist in the design of projects and serve as partners with governments in promoting projects with the implementing agencies. That advantage will tend to diminish as more projects reach the implementation stage. At that point, local NGOs, with better understanding of local conditions, broader ties to local communities, and greater field implementation capacities will become indispensable partners in project implementation.

C. LONG-TERM GEF REFORM OPPORTUNITIES FOR NGOS

One of the most important, long-term opportunities NGOs will face as the GEF evolves is the ability to forge new relations with the governments of developing countries. Involvement of local NGOs will be critical to a project's success because NGOs are often able to serve as effective intermediaries between local communities and governments. For example, they can help tailor a general project funded by the GEF to respond to the needs and conditions of villages and microregions.

The possibility of increased interaction with governments holds many opportunities and risks for NGOs. Tensions between government agencies and NGOs in many countries are based on longstanding antagonisms and mistrust. In addition, special groups, represented by government agencies, often have a vested interest in exploiting natural resources as a source of wealth. The risks of exposing special interests and government inefficiency are real. On the other hand, NGOs and government agencies alike face new opportunities to forge new working relationships that will benefit of local communities. Recognition of the strengths and limitations of each partner will be essential to successful implementation of many projects.

D. NGOS AND THE FRAMEWORK CONVENTIONS

NGOs also have a role in the implementation of the two framework

conventions: the Biodiversity Convention and Climate Convention.⁷⁹ The framework conventions have accepted the GEF as their separate financial mechanisms on an interim basis.⁸⁰ As the Intergovernmental Negotiating Committees (INCs) begin defining their operating procedures, institutional arrangements, and strategies, NGOs will pressure delegations to those negotiations to implement for additional reforms in the GEF. Foremost in those demands will be parity in the balance between North and South in any governance arrangement of the GEF, and inclusion of strategies that promote sustainable development instead of merely mitigating existing development approaches.

E. NGOs AND GEF POLICY CHANGES

Finally, NGOs will be central in bringing any fundamental changes in the policies to be pursued by the GEF. Participant delegations, often dominated by finance ministries, have shown little willingness to doubt the overall policy competence of the implementing agencies. They have assumed that the policies pursued to date are appropriate and adequate and show little understanding of the environmental failures of the World Bank in previous decades. In order for governments to understand the NGO discontent with current GEF policies and practices, NGOs will have to assume a far more active educational role.

CONCLUSION

The task of NGOs will be to demonstrate in clear terms that the GEF is simply mitigating the worst aspects of the current development paradigm, rather than reforming the GEF's underlying premises, with the goal of achieving sustainable development practices.⁸¹ Persistent lobbying and education efforts will be required: the fundamental reforms are at stake, reforms that the NGOs have been seeking in the MDBs since the inception of their reform campaign well over ten years ago.

79. See Climate Convention, *supra* note 6; Biodiversity Convention, *supra* note 6.

80. See *After Rio*, *supra* note 46 (noting GEF status as interim financial mechanism for the Climate Convention and Biodiversity Convention).

81. *GEF Should Focus on Policy Changes, Not Just Cleaning Up*, WWF Report Says, 16 Int'l Env't Rep. Current Rep. (BNA) No. 7, at 246 (Apr. 7, 1993) (alleging that the GEF is unable to encourage countries to incorporate environmental into their economic analysis of industrial development plans, and is therefore missing the mark).