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2. Climate change adaptation under the United Nations Framework Convention on Climate Change and related documents

Jonathan Verschuuren

1 INTRODUCTION

It is fair to say that adaptation law originates at the international level. Both the 1992 United Nations Framework Convention on Climate Change (hereafter: UNFCCC),¹ and the 1997 Kyoto Protocol² comprise various obligations for the parties to these international agreements to adopt and implement adaptation policies. The documents also impose upon developed countries the duty to, both financially and practically, assist developing countries with their adaptation actions. In the international arena, most attention is going to the latter issue, as will be obvious from the overview of the most important adaptation related actions both under the UNFCCC (section 2) and under the Kyoto Protocol (section 3). In section 4, some remarks will be made as to the impact of the UNFCCC's work on adaptation on regional and domestic law and policy.

2 INTERNATIONAL ADAPTATION LAW UNDER THE UNFCCC

2.1 Adaptation in the UNFCCC

The primary objective of the UNFCCC, as laid down in Article 2, is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a timeframe sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a

¹ United Nations Framework Convention on Climate Change (New York, 9 May 1992), (1992) 31 ILM 849, entered into force 21 March 1994.

² Kyoto Protocol to the United Nations Framework on Climate Change, UN Doc FCCC/CP/1997/7/Add. 1 (Kyoto, 10 December 1997), (1998) 37 ILM 22, entered into force 16 February 2005.

sustainable manner. Mitigation, according to the objective of the UNFCCC, is supposed to be successful so that ecosystems, food production, and the economy are more or less automatically kept as they were before.

Fifteen years later, the Intergovernmental Panel on Climate Change (IPCC) sounded the alarm bell. Adaptation is necessary to address impacts resulting from the warming which is already unavoidable due to past emissions. For impacts that already show or will show in the very near future, adaptation is *the only available and appropriate response*, according to the IPCC in 2007.³

Fortunately, we did not have to start from scratch after these alarming words of the IPCC had been published. As a matter of fact, other than the objective of the UNFCCC cited above suggests, the 1992 Convention focuses not just on combating climate change, but also on combating the adverse effects of climate change.⁴ This is obvious from the principles of the UNFCCC, laid down in Article 3. Developed country Parties, for instance, should take the lead in combating the adverse effects of climate change.⁵ Developing country Parties that are particularly vulnerable to the adverse effects of climate change should be given full consideration.⁶ Precautionary measures should be taken to mitigate the adverse effects of climate change.⁷

Under the commitments listed in Article 4 of the UNFCCC there are several that deal with adaptation. Parties to the Convention have to:

- formulate, implement, publish and regularly update national and regional programmes containing measures to facilitate adequate adaptation to climate change;⁸
- cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;⁹
- take climate change considerations into account in the relevant social, economic and environmental policies and actions, and employ appropriate methods, for example

³ M L Parry et al. (eds), *Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2007) 19.

⁴ M J Mace, 'Adaptation under the UN Framework Convention on Climate Change: the International Legal Framework' in W Neil Adger et al., *Fairness in Adaptation to Climate Change* (MIT Press 2006) 53.

⁵ Article 3(1).

⁶ Article 3(2).

⁷ Article 3(3).

⁸ Article 4(1)(b).

⁹ Article 4(1)(e).

impact assessments, with a view to minimizing the adverse effects on the economy, on public health and on the quality of the environment, of projects or measures taken to adapt to climate change;¹⁰

- promote and cooperate in research (scientific, technological, technical, socio-economic and other) intended to further the understanding and to reduce the remaining uncertainties regarding the economic and social consequences of various response strategies,¹¹ as well as exchange information on this;¹² and
- promote and cooperate in education, training and public awareness related to climate change in general, thus including adaptation issues.¹³

In addition to this impressive list of adaptation duties, further obligations have been imposed on developed country Parties. They also have to help developing countries with their adaptation policies by:

- assisting developing countries that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects;¹⁴ and by
- taking all practicable steps to promote, facilitate and finance the transfer of, or access to, environmentally sound technologies and know-how to developing country Parties, to enable them to implement the provisions of the UNFCCC;¹⁵ this obligation, thus, also relates to the adaptation provisions mentioned above. Hence, the transfer of technology not only applies to mitigation technologies, but also to technologies and know-how necessary to implement adaptation measures.

An especially interesting provision on adaptation commitments is Article 4(8), in which all Parties are compelled to focus on the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and the impact of the implementation of response measures. A whole range of countries especially vulnerable to the effects of climate change is mentioned here: small island countries, countries with low-lying coastal areas, countries with arid and semi-arid areas, forested areas and areas liable to

¹⁰ Article 4(1)(f).

¹¹ Article 4(1)(g).

¹² Article 4(1)(h).

¹³ Article 4(1)(i).

¹⁴ Article 4(4).

¹⁵ Article 4(5).

forest decay, countries with areas prone to natural disasters, countries with areas liable to drought and desertification, countries with areas of high urban atmospheric pollution, countries with areas with fragile ecosystems, including mountainous ecosystems, countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products, and landlocked and transit countries.

All subsequent provisions of the UNFCCC, on such issues as research and systematic observation, education, training and public awareness, the financial mechanism, etc., apply to both mitigation and adaptation.¹⁶ The two subsidiary bodies that are established by the UNFCCC,¹⁷ the Subsidiary Body for Scientific and Technological Advice (hereafter: SBSTA), and the Subsidiary Body for Implementation (hereafter: SBI), are both competent to deal with adaptation issues.

Finally, it should be mentioned that the UNFCCC stipulates some general principles that apply to mitigation as well as adaptation: equity, solidarity, precaution, sustainability, and good neighbourliness.¹⁸

2.2 National Adaptation Programmes of Action

Many countries have developed national adaptation programmes pursuant to Article 4(1)(b) of the UNFCCC. Developing countries, however, appeared to be largely unable to draft such programmes. Since such a programme is considered to be the first step towards financing and implementation of adaptation measures, the Conference of the Parties (COP), in its 2001 session in Marrakesh, adopted guidelines for the preparation of National Adaptation Programmes of Action (hereafter: NAPA) to assist the least developed countries in the process,¹⁹ and established a Least Developed Countries Fund (hereafter: LDCF).²⁰ This has been quite successful. By 2011, 45 least developed countries had submitted their NAPAs, containing detailed priority policies to respond to their urgent and immediate needs to adapt

¹⁶ Articles 5, 6 etc.

¹⁷ Articles 9 and 10.

¹⁸ Article 3, sections 1 to 5 respectively. See further P J J Driessen and H F M W van Rijswijk 'Normative Aspects of Climate Adaptation Policies' (2011) 2 *Climate Law* 559–581.

¹⁹ Decision 28/CP. 7, FCCC/CP/2001/13/Add. 4, 7–13.

²⁰ Decision 7/CP. 7 FCCC/CP/2011/13 Add. 1, 43–45.

to climate change.²¹ Each NAPA reports on the urgent and immediate needs for which further delay could increase vulnerability to climate change or lead to increased costs at a later stage.

The 2010 Nepal NAPA, for instance, formulates extensive policies to increase communities' resilience in the fields of water management, agriculture, disaster management, forest and ecosystem management, public health, and others.²² Associated with these policies is an impressive list of over one hundred specific climate adaptation options for agriculture and food security, for the water sector, for the energy sector, for forests and biodiversity, for public health, for urban settlements and infrastructure, and to address climate-induced disasters. Concrete measures range from simple practical measures, such as tree planting around farm lands and water resources in mountainous regions²³ and better rain water collection,²⁴ to complex legal measures such as a zoning programme to adapt to water induced disasters and the associated activation of an inundation committee,²⁵ and the enforcement of planning regulations and building codes in urban areas incorporating climate change dimensions.²⁶

The process of drafting and implementing NAPAs in the least developed countries always involves issues of equity and justice, as the interests of the poorest and most vulnerable may be neglected by those in charge of the process. A participatory process is therefore advocated.²⁷

After submission to the secretariat, the NAPA enters the so-called GEF cycle, which allows for funding of the projects identified in the NAPA under the LDCF and which is administered by the Global Environment Facility (hereafter: GEF). The GEF is a financial organization instituted by governments, international organizations, such as the World Bank and the United Nations Environment Programme (UNEP), non-governmental organizations (NGOs) and the private sector, to fund environmental projects in developing countries.²⁸

²¹ The secretariat of the UNFCCC makes all of these available through their website, http://unfccc.int/cooperation_support/least_developed_countries_portal/submitted_napas/items/4585.php, accessed 5 October 2012.

²² Government of Nepal, National Adaptation Programme of Action (NAPA) to Climate Change, Kathmandu 2010, available at the UNFCCC's website mentioned in the previous footnote.

²³ Ibid. at 69.

²⁴ Ibid. at 68.

²⁵ Ibid. at 70.

²⁶ Ibid. at 77.

²⁷ Saleemul Huq and Mizan R Khan, 'Equity in National Adaptation Programs of Action (NAPAs): The Case of Bangladesh' in W Neil Adger et al., *Fairness in Adaptation to Climate Change* (MIT Press 2006) 199.

²⁸ For more information, see the GEF's website, <http://www.thegef.org>, accessed 5 October 2012.

2.3 The Buenos Aires Programme of Work on Adaptation and Response Measures and the Nairobi Work Programme on Impacts, Vulnerability and Adaptation to Climate Change

Since its adoption in 1992, adaptation has been an issue during several Conferences of the Parties, particularly those held in Buenos Aires in 2004 and in Cancun in 2010. COP10 in Buenos Aires led to the adoption of the Buenos Aires Programme of Work on Adaptation and Response Measures, which is a rather weak attempt to push adaptation, especially in developing countries, forward. Developing countries were requested to make use of the NAPA opportunities mentioned above; developed countries were asked to make available additional funding for adaptation measures under NAPAs; and the GEF was requested to step up its activities in the implementation phase of the NAPAs. In addition to this, the Buenos Aires Programme of Work initiated additional information gathering and capacity-building measures. Finally, the SBSTA was requested to develop a five-year programme of work on scientific, technical and socio-economic aspects of impacts, vulnerability and adaptation to climate change.²⁹

This five-year programme was adopted one year later during COP11 in Montreal,³⁰ and had as its main objective to assist the parties, especially developing countries, to improve their understanding of impacts, vulnerability and adaptation, and to make informed decisions on practical adaptation actions. The SBSTA operationalized this again one year later during COP12 in Nairobi,³¹ hence its current name: Nairobi Work Programme on Impacts, Vulnerability and Adaptation to Climate Change (NWP) ‘Understanding Vulnerability, Fostering Adaptation’. This programme has been running ever since and acts as a coordination mechanism for a wide variety of capacity-building and information dissemination activities by some 200 organizations, including private companies such as insurance firms and consultancy firms, universities and other research institutes, development banks and other financial organizations, NGOs and charitable organizations.³²

2.4 The Cancun Adaptation Framework and the Adaptation Committee

²⁹ Decision 1/CP.10, FCCC/CP/2004/10/Add. 1.

³⁰ Decision 2/CP.11, FCCC/CP/2005/5/Add. 1, 5–11.

³¹ FCCC/SBSTA/2006/11, 5–13.

³² Information on activities and organizations involved can be found at the UNFCCC’s website, http://unfccc.int/adaptation/nairobi_work_programme/items/3633.php, accessed 5 October 2012.

It was only in 2010 that the COP placed adaptation high on its agenda. In the Cancun Agreements, adopted in 2010, the conference dealt with adaptation first (before mitigation), stating that enhanced action on adaptation was urgently needed.³³ The conference decided to establish the Cancun Adaptation Framework under which all parties to the UNFCCC will:³⁴

- plan, prioritize and implement adaptation actions;
- assess adaptation actions, including economic, social and environmental evaluation of adaptation options;
- strengthen institutional capacities for adaptation;
- build resilience of socioeconomic and ecological systems;
- enhance climate change related disaster risk reduction strategies, taking into consideration early warning systems, risk assessment and management, and sharing and transfer mechanisms such as insurance;
- take measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation;
- research, develop and diffuse technologies, practices and processes for adaptation;
- strengthen information, education and public awareness;
- improve climate related research in order to help decision-makers at the national and regional levels.

The Adaptation Committee was established to promote the implementation of all this³⁵ and to function as the overall advisory body to the COP on adaptation.³⁶ During COP17 in Durban, further decisions were taken on the role and composition of the Adaptation Committee.³⁷

From the instructions of the COP to the Adaptation Committee it seems that the committee will have to function as the principal coordinator in the field of adaptation. It has to engage and develop linkages with all adaptation related work programmes, bodies and institutions under the UNFCCC,³⁸ and it has to seek input from intergovernmental, international, regional, national and subnational organizations, centres and networks, the private sector and civil society.³⁹ Given the recent enormous rise in adaptation institutions and policies at international and other levels, such a role seems very timely. The Adaptation Committee has

³³ Decision 1/CP.16, FCCC/CP/2010/7/Add. 1.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Decision 2/CP.17, FCCC/CP/2011/9/Add. 1, 19.

³⁷ Ibid. at 19–22.

³⁸ Ibid. at 20.

³⁹ Ibid. at 21.

to comprise 16 members, two from each of the five UN regional groups, one from a small island developing country, one from a least developed country, two from Annex I parties and two from non-Annex I parties.⁴⁰

3 INTERNATIONAL ADAPTATION LAW UNDER THE KYOTO PROTOCOL

3.1 Adaptation in the Kyoto Protocol

Five years after the adoption of the UNFCCC, the Kyoto Protocol mainly focused on the reduction of greenhouse gas emissions and not on adaptation. Given the stage of international discussions on climate change at that time, this was to be expected: a substantial first step towards greenhouse gas emission reductions was within reach. This explains why the Kyoto Protocol's provisions on adaptation are a bit meagre.

The Protocol does work out the general provisions of the UNFCCC mentioned above a little further. It states that the programmes to facilitate adequate adaptation to climate change have to concern the energy, transport and industrial sectors as well as agriculture, forestry and waste management, and that adaptation technologies as well as spatial planning are important elements in such adaptation policies.⁴¹ In addition, the Kyoto Protocol regulates that information on such national adaptation policies has to be integrated into the communication that has to be submitted to the secretariat of the UNFCCC.⁴² From a practical point of view, probably the most important provision on adaptation in the Kyoto Protocol is a section in the provision on the Clean Development Mechanism (CDM), stating that money generated through CDM projects should be used to assist developing countries to meet the costs of adaptation.⁴³ It was this provision that, four years later, formed the basis for the establishment of the Adaptation Fund.

3.2 Adaptation Fund, Special Climate Change Fund, Least Developed Countries Fund and Green Climate Fund

The Adaptation Fund was established during COP7 of the UNFCCC in Marrakesh in 2001,⁴⁴ but it operates under the Kyoto Protocol. Its aim is to finance concrete adaptation projects in

⁴⁰ Ibid. at 20.

⁴¹ Article 10(b)(i).

⁴² Article 10(b)(ii).

⁴³ Article 12(8).

⁴⁴ Decision 10/CP.7, FCCC/CP/2001/13/Add. 1, 52.

developing country Parties to the Kyoto Protocol, as well as some specific adaptation activities that are not limited to developing countries. The latter is a consequence of another decision taken in Marrakesh which aimed at the following activities:⁴⁵

- starting to implement adaptation activities promptly where sufficient information is available to warrant such activities, in the areas of water resource management, land management, agriculture, health, infrastructure development, fragile ecosystems, including mountainous ecosystems, and integrated coastal zone management;
- improving the monitoring of diseases and vectors affected by climate change, and related forecasting, and improving disease control and prevention;
- supporting capacity-building for preventive measures, planning, preparedness and management of disasters relating to climate change, including contingency planning, in particular for droughts and floods in areas prone to extreme weather events;
- strengthening and, if necessary, establishing national and regional information networks for rapid response to extreme weather events.

It was not until the COP serving as the meeting of the Parties to the Kyoto Protocol first convened in 2005 (in Montreal), that the Adaptation Fund materialized.⁴⁶ In the next few years, various decisions were taken to operationalize the Fund, first, in 2006, by adopting its guiding principles,⁴⁷ then, in 2007, more importantly, by instituting the Adaptation Fund Board (hereafter: AFB) as the operating entity of the Fund.⁴⁸ Although the COP serving as the meeting of the Parties to the Kyoto Protocol remains in control over the Adaptation Fund, the AFB has considerable power over the actual funding process.⁴⁹ The AFB is a legal entity under German law,⁵⁰ with involvement from both the GEF and the World Bank, acting as secretariat and trustee respectively.⁵¹ The Adaptation Fund is financed by a fixed share of 2 per cent of the proceeds of all CDM project activities (to be precise, 2 per cent of the Certified Emission Reductions, or CERs, issued for a CDM project), as well as individual donations by countries.

⁴⁵ Decision 5/CP.7, FCCC/CP/2001/13/Add. 1, 32.

⁴⁶ Decision 28/CMP. 1, FCCC/KP/CMP/2005/8/Add. 4, 3.

⁴⁷ Decision 5/CMP. 2, FCCC/KP/CMP/2006/10/Add. 1, 28.

⁴⁸ Decision 1/CMP. 3, FCCC/KP/CMP/2007/9/Add. 1, 3. On the functioning of the Adaptation Fund, see in more detail R Czarnecki and K Guilanpour, 'The Adaptation Fund after Poznań' (2009) 1 Carbon and Climate Law Review 79–87.

⁴⁹ Its rules of procedure were adopted in 2008, Decision 1/CMP. 4, FCCC/KP/CMP/2008/11/Add. 2.

⁵⁰ Decision 5/CMP. 6, FCCC/KP/CMP/2010/12, Add. 1, 13.

⁵¹ MOU's with both institutions have been concluded to formalize this involvement. Decision 1/CMP. 4, FCCC/KP/CMP/2008/11, Add. 2, 11 and 12 respectively.

Finally, in 2010, so almost ten years after the decision was taken to establish an adaptation fund, the AFB took its first decision to fund an adaptation project, namely an adaptation project to combat coastal erosion due to sea level rise in Senegal. Since then, many other projects have been financed by the Adaptation fund, mostly on coastal adaptation and flood prevention, but also on adaptation in agriculture.⁵² A troublesome review process of the AFB has been underway since 2010, which was concluded at COP18 in Doha in December 2012.⁵³ One of the issues at hand is the relationship to two other funds (SCCF and LDCF – see below) and the administrative costs involved in maintaining these three funds. It was concluded that the interim institutional arrangements are extended until 2015, and that another review needs to have been conducted by COP20 in December 2014.⁵⁴

Besides the Adaptation Fund, there are – indeed! – two more funds, both of which operate under the UNFCCC. Like the Adaptation Fund, the Special Climate Change Fund (hereafter: SCCF) and the Least Developed Countries Fund (hereafter: LDCF) were established during COP7 of the UNFCCC in Marrakesh in 2001.⁵⁵ The SCCF is a general fund, aimed at financing activities, programmes and measures relating to climate change in a number of areas, one of which is adaptation (the others being transfer of technology, energy, transport, industry, agriculture, forestry, waste management, and activities that assist developing countries to diversify their economies). The LDCF, as its name already indicates, is specifically aimed at financing projects in the least developed countries, particularly, as indicated above in section 2.2, projects related to their NAPAs. Both the SCCF and the LDCF are operated by the GEF, their councils have joint meetings, and they both rely mainly on voluntary contributions from Annex I states.

Examples of projects funded under the joined funds are, for instance: a project to promote the implementation of national and transboundary integrated water resource management that is sustainable and equitable given expected climate change in Swaziland; a project integrating climate change risks into water and flood management by vulnerable mountainous communities in the Greater-Caucus region of Azerbaijan; and a project to promote a value chain approach to adaptation in agriculture in Ghana.⁵⁶

⁵² Information on the projects funded under the Adaptation Fund is available from the AFB's website, <http://www.adaptation-fund.org>, accessed 5 October 2012.

⁵³ As reported at UNFCCC website, http://unfccc.int/cooperation_and_support/financial_mechanism/adaptation_fund/items/3659.php, accessed 21 January 2013.

⁵⁴ Ibid.

⁵⁵ Decision 7/CP.7, FCCC/CP/2001/13/Add. 1, 43.

⁵⁶ GEF/LDCF/SCCF.9/Joint Summary, 18 November 2010.

With the proliferation of funds, there is a clear risk of overlap and inefficiency. The GEF, involved in all of them as well as in their own GEF Trust Fund, which initially also had funding of adaptation measures as one of its main goals,⁵⁷ is aware of this risk. In its 2010 Revised Programming Strategy on Adaptation to Climate Change, the GEF Council tried to show how the different adaptation related funds were all complementary.⁵⁸ However, the arguments used are not particularly strong. For instance, the fact that the LDCF and the SCCF have a mandate under the UNFCCC and the Adaptation Fund a mandate under the Kyoto Protocol, is but a formal argument. The fact that the funds' revenues come from different sources is not a strong argument either; nor is the argument that the LDCF and the SCCF, other than the Adaptation Fund, are aimed at more issues than just adaptation.

The biggest problem of the funds, however, is the lack of available funds. In the 42 NAPAs that had been submitted by 2009, urgent adaptation measures have been laid down of a total cost of around USD 2 billion.⁵⁹ In 2010, however, the LDCF received total pledges of USD 131.5 million, and the SCCF a total of USD 49.8 million from Annex I states. The largest contributors for both funds in 2010 were the United States and Germany, both with donations of around USD 50 million in total (for both funds together). Current funding is totally inadequate to address even the most urgent and immediate adaptation needs of the least developed countries. It is, therefore, not surprising that the least developed countries raise this issue in every COP, and not without success. At the Copenhagen and Cancun meetings in 2009 and 2010, pledges were made by developed countries to provide new and additional resources approaching USD 30 billion for the period 2010 to 2012, with a balanced allocation between adaptation and mitigation, and with prioritized funding for adaptation for the most vulnerable developing countries, such as the least developed countries, small island developing states and Africa.⁶⁰ In addition, the developed countries even committed to the goal of jointly mobilizing USD 100 billion per year by 2020 to address the needs of developing countries.⁶¹ These funds should be channelled through, again, a new fund, the Green Climate Fund (hereafter: GCF), established in Cancun in 2010.⁶²

⁵⁷ Through its Strategic Priority on Adaptation, a USD 50 million allocation inside the GEF Trust Fund. As of 2010, the SPA was merged with the SCCF/LDCF; see <http://www.thegef.org/gef/adaptation>, accessed 5 October 2012.

⁵⁸ GEF/LDCF.SCCF.9/4/Rev. 1, October 2010, 7–9.

⁵⁹ See the LDC Expert Group report *The Least Developed Countries: Support needed to fully implement national adaptation programmes of action (NAPAs)* (UNFCCC 2009) 17.

⁶⁰ FCCC/CP/2010/7/Add. 1, 16.

⁶¹ FCCC/CP/2010/7/Add. 1, 17.

⁶² Ibid.

The setting up of the GCF, however, saw a slow start, with the first meeting of the Transitional Committee, entrusted with the task of drafting the operating documents of the GCF, postponed to April 2011 because of lack of agreement over the composition of this committee.⁶³ During COP17, convened in Durban in December 2011, the GCF was officially designated as an operating entity of the financial mechanism under Article 11 of the UNFCCC.⁶⁴ The GCF has a Board, which oversees the operation of the fund and a whole range of other more specific tasks⁶⁵ and which consists of an equal number of members from developing and developed countries.⁶⁶ The GCF's main goal is to 'promote the paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change'.⁶⁷ It will do so by 'channeling new, additional, adequate and predictable financial resources to developing countries' and by catalysing 'climate finance, both public and private, and at the international and national levels'.⁶⁸ In the governing instrument, specific mention is made of the role of the GCF on financing adaptation measures:⁶⁹

In allocating resources for adaptation, the Board will take into account the urgent and immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change, including LDCs [Least Developed Countries, JV], SIDS [Small Island Developing States, JV] and African States, using minimum allocation floors for these countries as appropriate. The Board will aim for appropriate geographical balance.

Final arrangements on the location of the GCF were concluded at COP18 in Doha, in December 2012. Here Songdo, Incheon, Republic of Korea, was selected to host the GCF.⁷⁰

⁶³ The Transitional Committee delivered its final report to the COP in Durban, FCCC/CP/2011/6.

⁶⁴ Decision 3/CP.17, FCCC/CP/2011/9/Add.1, 55.

⁶⁵ Ibid. at 60.

⁶⁶ Ibid. at 59.

⁶⁷ Ibid. at 58.

⁶⁸ Ibid. at 58.

⁶⁹ Ibid. at 64.

⁷⁰ As reported at UNFCCC website, http://unfccc.int/cooperation_and_support/financial_mechanism/green_climate_fund/items/5869.php, accessed 21 January 2013.

4 THE UNFCCC'S IMPACT ON REGIONAL AND DOMESTIC ADAPTATION LAW AND POLICY

The call for cooperation in addressing climate change adaptation in Article 4 of the UNFCCC has not been unheard, although regional adaptation efforts have been slow and limited, especially when compared to mitigation efforts. By 2012, many regional organizations drafted policies and programmes detailing their adaptation efforts. One of the first examples is the ClimDev Africa initiative ('Climate for Development in Africa') prepared by the African Union Commission, the UN Economic Commission for Africa and the African Development Bank, and endorsed by African leaders under coordination of the African Union in 2006. The initiative's main aim is to enhance information on Africa's climate, and to integrate climate risk assessment into planning and other decision-making processes throughout the continent, so as to address Africa's limited adaptation capacities due to widespread poverty. In 2010, the African Development Bank established a Special Fund to finance projects under the programme.⁷¹ It was not until December 2011, however, that the inaugural ClimDev Africa conference was held (in Durban, coinciding with UNFCCC COP17).⁷²

The EU adopted its first policy document on adaptation only in 2009.⁷³ The White Paper on adaptation is a rather brief document that mainly proposes to integrate adaptation into existing policies, such as agriculture, fisheries, water and biodiversity. It does not, however, do more than briefly review these policies and conclude that most of them are already well equipped to integrate adaptation measures. Academic literature on several of these fields, however, shows that this conclusion is too optimistic.⁷⁴ It seems that changes to existing EU law are unavoidable, and it also seems that legally binding instruments aimed at the Member States cannot be excluded any longer, since not all EU Member States have

⁷¹ See the African Development Bank's website on this fund, <http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/climate-for-development-in-africa-climdev-africa-initiative/>, accessed 5 October 2012.

⁷² See the African Union's website, <http://www.au.int/pages/cop17/events/ccda>, accessed 5 October 2012.

⁷³ European Commission, White Paper – Adapting to Climate Change: Towards a European Framework for Action, COM 2009/0147 final.

⁷⁴ For example in the field of water management: Andrea M Keessen and Helena F M W van Rijswijk, *Adaptation in European Water Law and Policy* (Centre for Environmental Law and Policy, Utrecht University 2012), and on EU biodiversity law: Jonathan Verschuuren, 'Climate Change: Rethinking Restoration in the European Union's Birds and Habitats Directives' (2010) 28(4) *Ecological Restoration* 431–439.

adaptation policies in place.⁷⁵ Both conclusions now appear to have also been reached within the European Commission, as in October 2012, the European Commission published a proposal for a revised Directive on environmental impact assessment within which several provisions focus on climate change adaptation.⁷⁶ In the coming years, when up for general revision, EU legislation will be ‘climate proofed’. In addition, in March 2013 the European Commission is expected to publish its Adaptation Strategy, which will probably include a proposal for an Adaptation Directive, requiring EU Member States to develop national adaptation policies.⁷⁷

Meanwhile, the COP of the UNFCCC, in Durban in 2011, adopted a lengthy decision on national adaptation plans (NAPs).⁷⁸ The decision, among other things, detailed the elements that should be considered while developing NAPs, such as the design and development of plans, policies and programmes to address the weaknesses and gaps in adaptation enabling environments, the assessment of medium- and long-term adaptation needs, the integration of adaptation into national and subnational development and sectoral planning, participatory stakeholder consultations, communication, awareness raising, and education.⁷⁹

5 CONCLUSION

Although adaptation to climate change is, together with mitigation, the main aim of the 1992 UNFCCC, adaptation remained a neglected topic within the international arena until well beyond 2007, when the IPCC indicated that, for some impacts, adaptation is the only available and appropriate response. The international community did do some early work on adaptation, such as the adoption of guidelines in 2001 to help developing countries to draft NAPAs and the establishment of the Adaptation Fund in the same year. The lack of attention to adaptation was generated by fear among decision-makers that attention to adaptation would deflect attention from mitigation. It is only since the adoption of the Cancun Adaptation Framework and the establishment of the Adaptation Committee in 2010, that the

⁷⁵ An overview of the existing domestic adaptation policies is available at the European Commission’s website on adaptation, http://ec.europa.eu/clima/policies/adaptation/documentation_en.htm, accessed 5 October 2012.

⁷⁶ Proposal of 26 October 2012 for a Directive amending Directive 2011/92/EU, COM(2012) 628 final. See for more detail, Chapter 14.

⁷⁷ See http://ec.europa.eu/clima/sites/change/what_is_eu_doing/index_en.htm, accessed 29 October 2012.

⁷⁸ Decision 5/CP.17, FCCC/CP/2011/9/Add. 1.

⁷⁹ Ibid. at 85.

topic has been placed high on the agenda. Under the legal framework offered by the UNFCCC and Kyoto Protocol, international discussions on adaptation mainly revolve around the distribution of funds to developing countries to finance adaptation measures in these countries. Many such funds now exist, such as the Adaptation Fund, the Least Developed Countries Fund, the Special Climate Change Fund and the newly established Green Climate Fund. All of these funds finance adaptation projects, primarily in developing countries.