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Funding for Adaptation to Climate Change: UNFCCC and GEF Developments since COP-7

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INTRODUCTION

The United Nations Framework Convention on Climate Change (UNFCCC) aims to stabilize greenhouse gas concentrations in the atmosphere 'within a time-frame 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 sustainable manner'.[1] It is increasingly clear that this timetable will not be met, with potentially devastating effects.[2]

In 2001, the Intergovernmental Panel on Climate Change (IPCC) projected an increase in global average surface temperature by 2100 from 1.4 to 5.8 degrees centigrade over 1990 levels.[3] What does this mean for small island developing States (SIDS) in the Pacific and elsewhere that are vulnerable to sea-level rise from the expansion of warming oceans, and to the impacts of more frequent and severe typhoons and hurricanes? What does this mean for countries and communities dependent upon glaciers for their water supplies, or countries that already suffer from drought in Africa or floods in south-east Asia? The design and implementation of adaptation measures to address the needs of vulnerable countries has become more and more pressing, and now reflects a central challenge of the UNFCCC. The issue is one of equity that cannot be ignored, as often the countries that have the least adaptive capacity are also those that have contributed the least to the greenhouse gases (GHGs) that now threaten their physical and economic existence.

Section I of this article provides a brief overview of UNFCCC commitments on adaptation. Section II attempts to place adaptation funding in context within the Global Environment Facility's (GEF) overall portfolio of activities, looking at the GEF's focal areas, operational programmes, strategic priorities and governance as they impact climate change funding. Section III catalogues the existing sources of funding to address adaptation within the climate regime, including the GEF Trust Fund and its new strategic priority on adaptation, and the three new funds established by decisions taken at the UNFCCC's Seventh Conference of the Parties (COP-7) (Special Climate Change Fund, Least Developed Countries Fund and Adaptation Fund). It reviews related COP guidance and GEF actions to operationalize these funds. Section IV briefly describes UNFCCC reporting requirements on adaptation funding, noting efforts to develop markers to identify climate-related development funding. Section V outlines the GEF's newly adopted performance-based Resource Allocation Framework and its implications for adaptation funding. The article then draws lessons from these developments and highlights substantial gaps that remain to be addressed.

I. COMMITMENTS ON ADAPTATION

The UNFCCC contains very clear substantive obligations for all parties on adaptation to the adverse impacts of climate change, most of which are found in Article 4.[4] Under Article 4(1), all developed and developing countries agree to:

- formulate and implement national programmes containing measures to facilitate adequate adaptation to climate change (Article 4(1)(b));

[1] United Nations Framework Convention on Climate Change (New York, 9 May 1992) (UNFCCC), Article 2.

[2] By 2025, world emissions are projected to increase by 57%, with developed-country emissions increasing by 35% and developing-country emissions by 84%; see K. Baumert and J. Pershing, *Climate Data: Insights and Observations* (World Resources Institute, December 2004), at 15.

[3] Intergovernmental Panel on Climate Change, *Third Assessment Report, Working Group I, Summary for Policymakers* (Cambridge University Press, 2001), at 13, available at <http://www.grida.no/climate/ipcc_tar/wg1/008.htm>.

[4] For a very good discussion of obligations on adaptation, see R. Verheyen, 'Adaptation to the Impacts of Anthropogenic Climate Change – The International Legal Framework', 11:2 *RECIEL* (2002), 129. For a broad background paper, see M.J. Mace, *Adaptation Under the UN Framework Convention on Climate Change: The Legal Framework* (FIELD, August 2003), available at <http://www.field.org.uk>.

- cooperate in preparing for adaptation to the impacts of climate change (Article 4(1)(e));
- develop and elaborate plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas affected by drought, desertification and floods (Article 4(1)(e));
- take climate change into account in their social, economic and environmental policies and actions (Article 4(1)(f));
- employ relevant methods to minimize adverse effects on the economy, public health or the quality of the environment of methods undertaken by them to adapt to climate change (Article 4(1)(f));
- promote and cooperate in research, systematic observation and development of data archives related to the climate system to further the understanding and to reduce remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies (Article 4(1)(g)), and exchange information in these areas (Article 4(1)(h)); and
- communicate information related to implementation (Article 4(1)(j)).

UNFCCC Article 4(3), 4(4), 4(5), 4(7), 4(8) and 4(9) address funding to assist developing countries in meeting these commitments.

Under Article 4(3), Annex II parties[5] agree to provide '*new and additional funding* to meet the agreed full costs' (emphasis added) of developing countries' national communication obligations under Articles 4(1)(j) and 12(1), as well as 'such financial resources needed by developing county parties to meet the *agreed full incremental costs* of implementing measures covered by [Article 4(1)]' (emphasis added). These commitments 'shall take into account the need for *adequacy and predictability* in the flow of funds and the *importance of appropriate burden sharing among the developed country parties*' (emphasis added).[6]

Article 4(3) terminology is quite loaded. 'Agreed' means as negotiated between the developing-country party and the convention's financial mechanism – the GEF. 'New and additional' is understood to mean additional to expected flows of development assistance.[7] 'Incremental cost' refers to the cost differential between a baseline action to address a national need and the additional cost of an action that generates 'global environmental benefits'.[8]

Under Article 4(4), Annex II parties unequivocally commit to 'assist the developing-country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects'. Article 4(4) contains no limiting incremental cost formulation.

Under Article 4(5), Annex II parties agree to take steps to promote, facilitate and finance the transfer of technologies to developing-country parties to enable convention implementation. This is understood to include adaptive technologies. Article 4(8) requires the parties to consider fully what actions are necessary with respect to funding, insurance and technology transfer to meet the specific needs and concerns of developing countries arising from the adverse effects of climate change – especially on small island countries, countries with low-lying coastal areas, countries prone to natural disasters, countries liable to drought and desertification, and other listed groups. Article 4(9) requires the parties to take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology. Article 4(7) acknowledges that the extent to which developing countries will effectively implement their commitments under the convention will depend on the effective implementation by developed country parties of their own commitments on financial resources and the transfer of technology. Under Article 12(3), developed-country parties are required to incorporate details of the measures they have taken under Article 4(3), 4(4) and 4(5) in their national communications.

Against this backdrop of legally binding commitments, the following sections provide an overview of the mechanisms presently established for adaptation funding under the UNFCCC and Kyoto Protocol. However, first it is useful to place convention funding for adaptation in context within the GEF.

[5] Annex I to the UNFCCC lists industrialized countries who were members of the Organisation for Economic Cooperation and Development (OECD) in 1992 as well as a number of countries with 'economies in transition'. Annex II to the UNFCCC consists of the OECD subset of Annex I, and includes Australia, Austria, Belgium, Canada, Denmark, EEC, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, UK and USA. At COP-7, the parties agreed to amend the list of parties in Annex II by deleting Turkey. Developing countries are referred to under the convention as 'non-Annex I parties'.
[6] See UNFCCC, n. 1 above, Article 4(3).

[7] See Global Environment Facility, *Operational Strategy* (GEF, 1996) (hereinafter 'GEF Operational Strategy'), Chapter 1, Strategic Considerations. The GEF's Operational Strategy provides that 'the GEF should ascertain that its resources are applied as new and additional funding, not substitutes for regular sources of development finance. The principle that GEF funds will be additional to the funds required for national sustainable development helps to ensure that scarce resources are not diverted from development financing and to maximize global impact of GEF resources'.
[8] Ibid.

II. ADAPTATION FUNDING IN CONTEXT

THE GEF AND CLIMATE CHANGE

Article 11 of the UNFCCC creates a 'financial mechanism' for convention implementation, which is to function under the guidance of the UNFCCC COP and be accountable to the COP. Under Article 11(1), the COP is to decide on the financial mechanism's policies, programme priorities and eligibility criteria relating to the convention. Article 21 names the GEF to serve as the financial mechanism on an interim basis; Decision 3/CP.4 confirmed that arrangement.[9]

The GEF was established in 1991 by the World Bank in consultation with the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP), to provide funding to protect the global environment.[10] The GEF's governance, operational, financial and administrative oversight procedures are set out in the Instrument for the Establishment of the Restructured Global Environment Facility, which was adopted in 1994 and subsequently amended in 2002 (GEF Instrument).[11] The GEF now has six focal areas:

1. biological diversity;
2. climate change;
3. international waters;
4. land degradation, primarily desertification and deforestation;
5. ozone layer depletion; and
6. persistent organic pollutants.[12]

In each of these GEF focal areas, with the exception of international waters, the GEF has been named by a multilateral environmental agreement as its financial mechanism.[13] Activities in each of the GEF's six focal areas draw funds from the GEF as a whole. The percentage of funds going to each differs in each year,[14] with the biodiversity and climate change focal areas accounting for the majority of the GEF's project portfolio. From 1991 to March 2005, biodiversity accounted for 36% of total GEF funding; climate change accounted for 33%.[15] The GEF is funded through developed-country donations and is replenished every 4 years. It has been replenished three times thus far, with the third replenishment of US$2.9 billion to cover commitments from 1 July 2002 to 30 June 2006.[16] The GEF's fourth replenishment is now under negotiation.

In each focal area, the GEF serves to provide 'new and additional grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits'.[17] What precisely 'global environmental benefits' means for purposes of accessing GEF funding depends upon the goals of each convention and application of the GEF's Operational Strategy.[18] 'Global environmental benefits' are obtained 'whenever a global environmental objective is met', which includes the achievement of any of the conventions' environmental objectives.[19] However, 'global environmental benefits' are distinct from the achievement of development or local benefits.[20] According to the Third Overall Performance Study of the GEF (OPS-3), the GEF defines global environmental benefits for climate change as:

> Minimizing climate change damage through: mitigation measures that reduce greenhouse gas (GHG) emissions by means of the adoption of low- and zero-GHG-emitting technologies (for example, in the energy and transport sectors) or that protect or enhance the removal of atmospheric GHG by sinks, thus reducing the risk of climate change, and *adaptation activities that minimize the adverse effects of climate change*.[21] (emphasis added)

[9] *Report of the Conference of the Parties on its Fourth Session, held at Buenos Aires from 2 to 14 November 1998* (FCCC/CP/1998/16/Add.1, 20 January 1999); see specifically, Review of the Financial Mechanism (Decision 3/CP.4, 1998).
[10] See *Instrument for the Establishment of the Restructured Global Environment Facility* (Geneva, 14 March 2004) (hereinafter 'GEF Instrument').
[11] Ibid.
[12] Ibid, para. 2. The last two focal areas were included by amendment in 2002. See Proposed Amendments to the Instrument (GEF/A.2/9, 31 July 2002).
[13] The GEF supports the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) (CBD), UNFCCC, Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001) (POPs) and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (Paris, 17 June 1994) (UNCCD). The GEF also supports the Montreal Protocol to the 1985 Vienna Convention on Substances that Deplete the Ozone Layer (Montreal, 16 September 1987).
[14] From 1999 to 2002, GEF financing for the climate change focal area represented 27%, 40%, 38% and 35% of total GEF funds. See *Review of the GEF* (FCCC/SBI/2002/14, 11 September 2002), at 17.
[15] *Third Overall Performance Study of the GEF, Final Report* (ICF Consulting, 30 June 2005), at 13 (hereinafter 'OPS-3'). OPS-3 is an independent and external review of the GEF, intended to assess the extent to which the GEF has achieved its objectives as set out in the GEF Instrument and decisions of the GEF Council and Assembly.
[16] The initial pilot phase for the GEF allocated US$1 billion to the Global Environmental Trust Fund. The first 3-year replenishment was for US$2.2 billion and the second for US$2.7 billion. See *Review of the GEF*, n. 14 above, para. 130. Discussions on the fourth replenishment were initiated in March 2005 and a final agreement is expected by December 2005 or early 2006.
[17] GEF Instrument, n. 10 above, at I.2.
[18] See GEF Operational Strategy, n. 7 above; and see OPS-3, n. 15 above, at 84 (listing global environmental benefits under each GEF focal area).
[19] OPS-3, ibid., at 84, citing Incremental Costs (GEF/C.7/Inf.5, 29 February 1996).
[20] Ibid.
[21] Ibid.

GEF OPERATIONAL PROGRAMMES ON CLIMATE CHANGE

There are presently four operational programmes (OPs) through which the GEF provides funds within the climate change focal area:[22]

1. OP 5: removal of barriers to energy efficiency and energy conservation;
2. OP 6: promoting the adoption of renewable energy by removing barriers and reducing implementation costs;
3. OP 7: reducing the long-term costs of low greenhouse gas emitting energy technologies;
4. OP 11: promoting environmentally sustainable transport.

Clearly, these four operational programmes address mitigation,[23] rather than adaptation to the impacts of climate change. There is as yet no established operational programme for adaptation, although adaptation was part of the original goal of the GEF's Climate Change Programme.[24] In 1995, the GEF Operational Strategy stated that:

> [t]he overall strategic thrust of GEF-financed climate change activities is to support sustainable measures that minimize climate change damage by reducing the risk, or the adverse effects, of climate change. The GEF will finance agreed and eligible enabling, mitigation, and *adaptation* activities in eligible recipient countries.[25] (emphasis added)

By June 2004, the GEF had committed approximately US$1.8 billion in grants for climate change projects,[26] with the largest part of this funding committed to large-scale, long-term mitigation projects (approximately US$1.3 billion).[27] A share had also been committed to short-term measures, to address low-cost emission-reduction strategies (US$112 million), amounting to 6% of funding.[28] A more limited portion had been committed for enabling activities – which include inventories, compilation of information, policy analysis, and strategies and action plans.[29] Most of the funding for adaptation has taken place in the context of enabling activities, such as vulnerability and adaptation studies to support national communications, and relevant capacity building.[30] Mitigation funding in the climate change focal area has been directed primarily to larger developing countries that offer opportunities for substantial GHG reductions and are best able to penetrate the GEF bureaucracy to access funding. Over 130 developing countries are parties to the UNFCCC. Twenty countries have received 63% of global climate change funding; 10 countries have received 52%; and China and India together received 25% of these funds.[31] Most of the GHG reductions achieved have come from projects in China.[32]

The GEF's near-exclusive focus on mitigation activities in the climate change focal area (in funding terms) has led to frustration for many SIDS and other countries vulnerable to the impacts of climate change, who have called repeatedly during the climate negotiations for greater attention to convention commitments on adaptation. OPS-3 notes that many developing countries cite adaptation as a higher priority than mitigation, and would like to see further support from the GEF for adaptation measures.[33] The study further acknowledges that the global insurance industry expects the magnitude and frequency of extreme weather events to increase – hitting developing countries the hardest and highlighting the need for adaptation measures.[34] OPS-3 finds it critical that a comprehensive strategy be found that looks both at adaptation and mitigation.[35]

OPS-3 concludes that the overall GHG-reduction impact of the GEF climate change portfolio, although successful by the GEF's own standards, has been marginal compared to the overall climate problem.[36] It is clear that GHG emissions as a whole continue to increase at an alarming rate, and GEF financing for mitigation is not altering this trend.[37]

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[22] See the GEF website, listing operational policies and operational programmes, available at <http://www.gefweb.org>. Activities in other GEF focal areas, such as biodiversity and land degradation, may also contribute to the reduction of GHG emissions through the uptake of greenhouse gases, for example through forestry projects.

[23] 'Mitigation' in this context refers to the reduction of GHG emissions, rather than the lessening of risks from exposure to the impacts of climate change.

[24] See OPS-3, n. 15 above, at 39.

[25] Ibid., at 39; Revised Programming Document GEF-4 (GEF/R.4/9/Rev.1, 23 September 2005), at 35.

[26] *Report on the Assessment of Funding Necessary to Assist Developing Countries in Fulfilling their Commitments under the Convention Prepared in the Context of the Memorandum of Understanding between the Conference of the Parties and the Council of the Global Environment Facility* (FCCC/SBI/2004/18, 21 October 2004) (hereinafter 'the Report on the Assessment of Funding'), at 9.

[27] See OPS-3, n. 15 above, at 77 and Report on the Assessment of Funding, ibid., at 10.

[28] Report on the Assessment of Funding, ibid., at 10. Short-term measures accounted for 6% of funding and 4% of projects; ibid.

[29] Ibid. By June 2004, the GEF had provided approximately US$70 million for first national communications. Another US$60 million is earmarked for second national communications; ibid., at 11. See GEF Operational Strategy, n. 7 above (defining 'enabling activities').

[30] See OPS-3, n. 15 above, at 32; and Report on the Assessment of Funding, n. 26 above, at 10.

[31] See OPS-3, ibid., at 31. Similarly, there has been a strong correlation between 'megadiverse' countries and the largest allocations of GEF biodiversity funds; ibid., at 27.

[32] Ibid., at 34.

[33] Ibid., at 39. Stakeholders in several OPS-3 regional workshops, particularly in the Pacific region, commented that the GEF must fund activities in the area of adaptation to climate change, since adaptation is addressed in guidance from the UNFCCC and, as smaller emitters, the mitigation of GHGs is not a high national priority.

[34] Ibid., at 39.

[35] Ibid., at 38.

[36] Ibid., at 34.

[37] Ibid.

TABLE 1 GEF-3 CLIMATE CHANGE STRATEGIC PRIORITIES (2003–2006)[38]

STRATEGIC PRIORITIES		*PROJECTED FUNDING (US$MILLION)*
SP1	Transformations of markets for high volume products and processes	78
SP2	Increased access to local sources of financing for renewable energy and energy efficiency	84
SP3	Power sector policy frameworks supportive of renewable energy and energy efficiency	128
SP4	Productive uses of renewable energy	95
SP5	Global market aggregation and national innovation for emerging technologies	65
SP6	Modal shifts in urban transport and clean vehicle/fuel technologies	79
SP7	Piloting an operational approach to adaptation (SPA) (2005–2007)	50

GEF'S STRATEGIC PRIORITIES WITHIN THE CLIMATE CHANGE FOCAL AREA

The Second Overall Performance Study of the GEF (OPS-2) suggested that the GEF undertake strategic business planning to enhance the impacts of GEF-supported activities. The GEF's financial year 2004–2006 business plan took this suggestion on board and, in May 2003, identified strategic priorities in each of the GEF's six focal areas. In the climate change focal area, six strategic priorities were identified – all addressing mitigation. A seventh strategic priority, on adaptation ('Piloting an Operational Approach to Adaptation'), was finally added by the GEF Council in November 2003 and relates to funding for the 2005–2007 financial years.[39] See table 1 above.

For the GEF's fourth replenishment (GEF-4), which will begin in the second half of 2006, eight strategic objectives are contemplated in the climate change focal area that address mitigation,[40] together with the above-mentioned Strategic Priority on Adaptation (SPA) – 'Piloting an Operational Approach to Adaptation' – which remains in the pilot phase.

GEF GOVERNANCE

The UNFCCC requires that the GEF follow guidance provided by the COP. Nevertheless, the GEF Council takes decisions that have a substantial impact on the way funding is allocated by the GEF within the climate change focal area. At the UNFCCC COP, each State party theoretically has an equal vote. The same is not true in the GEF.

Decisions within the GEF are made by the GEF Council. The Council consists of 32 members, representing constituency groupings that, according to the GEF Instrument, 'tak[e] into account the need for balanced and equitable representation of all Participants and giv[e] due weight to the funding efforts of all donors'.[41] As of 31 July 2002, the GEF had 173 'participating countries'.[42] Participants are grouped into 32 constituencies, with 18 constituencies composed of 'recipient countries' and 14 constituencies composed principally of 'non-recipient countries'.[43] There are 16 GEF Council members from developing countries, 14 members from developed countries and 2 members from the countries of central and eastern Europe and the former Soviet Union. Members and alternates are appointed by the members of their constituency groupings and represent their constituencies at GEF meetings. Ten council members represent a single country constituency. These countries currently are Iran, UK, USA, Canada, China, France, the Netherlands, Italy, Germany, Japan. The remaining Council members represent groups of countries.[44]

[38] See Report on the Assessment of Funding, n. 26 above, at 13, table 2.

[39] Ibid., at 13. This report notes that allocations were based on projected levels of financing of US$527 million for climate change in GEF-3; ibid. The allocation for the Strategic Priority on Adaptation is discussed in greater detail below.

[40] See Revised Programming Document GEF-4, n. 25 above, at 34–45.

[41] See GEF Instrument, n. 10 above, para. 16.

[42] *Report on Membership* (GEF/A.2/8, 19 August 2002).

[43] *Rules of Procedure for the GEF Council* (GEF, 2000), citing the GEF Instrument, n. 10 above, Annex E, para. 1.

[44] For example, Austria, Belgium, Czech Republic, Hungary, Luxembourg, Slovak Republic, Slovenia and Turkey constitute a single grouping, with one GEF Council representative. Another grouping consists primarily of 12 Caribbean small island States: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica and St Kitts. Yet another consists primarily of Pacific island States: Cook Islands, Fiji, Indonesia, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. See the GEF website for a list of current GEF representatives and GEF Council constituencies, available at <http://thegef.org/participants/Council/council_members/council_members.html>.

Decisions of the GEF Council are taken by consensus. However, 'in the consideration of any matter of substance, if all practicable efforts by the Council and its Chairperson have been made and no consensus appears attainable', any member of the Council may require a formal vote.[45] Decisions requiring formal votes are generally taken by a double-weighted majority, which requires an affirmative vote representing both a 60% majority of the total number of participants and a 60% majority of the total contributions.[46] For this reason, major donor countries are the most influential in the system.[47] The USA is the largest donor to the GEF[48] and hence wields substantial influence, as has been seen in connection with the GEF's new Resource Allocation Framework, which the USA has promoted in connection with its contributions to the GEF's third and fourth replenishments.[49]

Donor influence has also directly impacted the criteria developed for accessing the Least Developed Countries Fund and Special Climate Change Fund, for which the GEF serves as administrator.[50] This has been seen in the linkage of these funds – new and theoretically more flexible funds deliberately created outside the GEF – back to GEF co-financing requirements. It has also been seen in the shaping of the kinds of projects and programmes to be addressed by these funds. This is discussed in greater detail below.

III. EXISTING ADAPTATION FUNDING

There are presently four sources of funding for adaptation managed by the GEF, each subject to different criteria: (1) the GEF Trust Fund, under Article 4(3), based on traditional incremental cost guidance, which provides funding for vulnerability and adaptation assessments as part of national communications and enabling activities, and contains a new Strategic Priority on Adaptation for pilot and demonstration projects; (2) the Special Climate Change Fund (SCCF), which addresses adaptation as one of four funding priorities; (3) the Least Developed Countries (LDC) Fund, which addresses a work programme for LDCs; and (4) the Adaptation Fund, which will finance concrete adaptation projects and programmes for developing countries – with no criteria yet established for how the fund will be operated.[51]

The SCCF, LDC Fund and Adaptation Fund were created as part of the package of decisions adopted at COP-7, called the Marrakesh Accords, through a series of related decisions: 5/CP.7, 6/CP.7, 7/CP.7 and 10/CP.7.[52] These three funds were intended to sweeten the Marrakesh package of decisions for developing countries, and were supported by:

> [a] joint political declaration made by the European Community and its member States, together with Canada, Iceland, New Zealand, Norway and Switzerland, on their preparedness to collectively contribute €450 million/US$410 million annually by 2005, with this level to be reviewed in 2008.[53]

The COP, in Decision 7/CP.7, explicitly decided that there is a need for funding, including funding that is new and additional to contributions allocated to the GEF's climate change focal area, and that *predictable and adequate* levels of funding 'shall' be made available to developing-country parties.[54] The parties further agreed that to meet commitments under Article 4(1), 4(3), 4(4), 4(5), 4(8) and 4(9) of the convention, Annex II parties, and other Annex I parties in a position to do so, should provide funding for developing country parties through the following channels:

- increased GEF replenishment;
- a newly established LDC Fund;

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45 GEF Instrument, n. 10 above, para. 25(c).

46 Ibid.

47 C. Streck, 'The Global Environment Facility – A Role Model for Global Governance?', 1 *Global Environmental Politics* (2001), 17.

48 *Fact Sheet: US Contribution to the Global Environment Facility* (Bureau of Oceans and International Environmental and Scientific Affairs, 23 August 2002), available at <http://www.state.gov/g/oes/rls/fs/2002/12954.htm>.

49 See discussion of the GEF Resource Allocation Framework below.

50 According to OPS-3, when the COP reaches a new decision concerning the GEF, members of the GEF Inter-Agency Task Force develop proposals for the GEF on how to interpret and implement the new guidance. The GEF Council agrees on the final interpretation of COP guidance. See OPS-3, n. 15 above, at 73.

51 Ibid., at 80.

52 *Report of the Conference of the Parties on its Seventh Session, held at Marrakesh from 29 October to 10 November 2001* (FCCC/CP/2001/13/Add.1, 21 January, 2001) ('Marrakesh Accords'). See specifically: Implementation of Article 4, paras 8 and 9, of the Convention (Decision 3/CP.3) and Article 2, para. 3, and Article 3, para. 14, of the Kyoto Protocol (Decision 5/CP.7, 2001); Additional Guidance to an Operating Entity of the Financial Mechanism (Decision 6/CP.7, 2001); Funding under the Convention (Decision 7/CP.7, 2001); Funding under the Kyoto Protocol (Decision 10/CP.7, 2001); and Guidance to an Entity Entrusted with the Operation of the Financial Mechanism of the Convention, for the Operation of the Least Developed Countries Fund (Decision 27/CP.7, 2001).

53 See Decisions 7/CP.7 and 10/CP.7, ibid.; see also Implementation of the Buenos Aires Plan of Action, Statements made in Connection with the Approval of the Bonn Agreements on the Implementation of the Buenos Aires Plan of Action (Decision 5/CP.6) (FCCC/CP/2001/MISC.4, 23 October 2001), at 6–7: 'We are prepared to contribute US$410 million, which is 450 million Euro, per year by 2005 with this level to be reviewed in 2008. Funding to be counted can include: contributions to GEF climate change related activities; bilateral and multilateral funding additional to current levels; funding for the special climate change funds, the Kyoto Protocol Adaptation Fund and the LDC fund; and funding deriving from the share of proceeds of the Clean Development Mechanism following entry into force of the Kyoto Protocol. We invite all the Parties to contribute also'. The fact that contributions to the GEF and the share of the proceeds from CDM projects may count toward this overarching goal, significantly reduces its ambition.

54 See Decision 7/CP.7, ibid.

TABLE 2 CLIMATE CHANGE FUNDS FOR ADAPTATION

FUND	*CREATED UNDER*	*GLOBAL ENVIRONMENTAL BENEFITS?**	*BENEFICIARIES*	*FUNDING SOURCE*	*SELECTED COP AND GEF GUIDANCE***
GEF Trust Fund	UNFCCC	Incremental cost to achieve global environmental benefits	Developing countries	GEF	1/CP.11, 5/CP.7 GEF/C.23/Inf.8
GEF Strategic Priority on Adaptation (SPA)	UNFCCC	Incremental cost to achieve global environmental benefits	Developing countries	GEF	6/CP.7 GEF/C.23/Inf.8
Special Climate Change Fund (SCCF)	UNFCCC	Additional costs of adaptation measures Uses sliding scale	Developing countries	Developed country Discretionary pledges	5/CP.7, 7/CP.7, 5/CP.9 GEF/C.24/12; GEF/C.25/4/Rev.1
Least Developed Countries Fund (LDC Fund)	UNFCCC	Additional cost of adaptation measures Uses sliding scale	Least developed countries	Developed country Discretionary pledges	5/CP.7, 7/CP.7, 27/CP.7, 28/CP.7, 29/CP.7, 6/CP.9 GEF C/24/Inf.7; GEF/C.24/Inf.8/Rev.1; GEF/C.25/4/Rev.1
Adaptation Fund	Kyoto Protocol	To be determined	Particularly vulnerable developing countries	Share of proceeds from Clean Development Mechanism, other sources	5/CP.7, 10/CP.7, 17/CP.7

*See B. Biagini, *Financing Provisions for Technologies for Adaptation under the UNFCCC: The Role of the GEF*, presented at the UNFCCC Seminar on Technology Transfer for Adaptation (Tobago, 14–16 June 2005).

**GEF Assistance to Address Adaptation (GEF/C.23/Inf.8, 28 April 2004); Programming to Implement the Guidance for the Special Climate Change Fund Adopted by the Conference of the Parties at its Ninth Session (GEF/C.24/12, October 2004); Elements to be Taken into Account in Funding the Implementation of NAPAs under the LDC Fund (GEF C/24/Inf.7, October 2004); Status Report on the LDC Fund (GEF/C.24/Inf.8/Rev.1, November 2004); *Status Report on the LDCF and SCCF*, n. 112 below.

- a newly established SCCF; and
- bilateral and multilateral sources.

Decision 7/CP.7 established the LDC Fund and SCCF under the convention. Decision 5/CP.7 listed certain activities to be supported through each funding source, although the specific allocation of these activities among these funding sources, and the full scope of the adaptation measures to be funded from each source, was left to be decided by future COPs. Each of these three funds, the LDC Fund, SCCF and Adaptation Fund, is distinct from the GEF Trust Fund, but it was agreed that they would be administered by the GEF.[55] Decision 10/CP.7 separately established the Adaptation Fund under the Kyoto Protocol.

The creation of the SCCF and the LDC Fund responded to developing countries' mounting frustration with the GEF, which included the difficulty of accessing GEF funding, the GEF's slow disbursement process and the problematic concept of incremental costs in the context of adaptation. For these reasons, it was understood that the new funds would operate under a different set of rules from existing GEF funding – though these rules had not been agreed at the time the funds were established. After the SCCF and LDC Fund were established with initial pledges from developed-country parties, negotiations began in earnest on how the resources in these two funds would be allocated and to what priority areas. Negotiations on criteria for accessing the Adaptation Fund have awaited the entry into force of the Kyoto Protocol, and will begin at COP-11 – the first COP serving as the first Meeting of the Parties to the Kyoto Protocol.

These four sources of adaptation funding – the GEF Trust Fund, the SCCF, LDC Fund and Adaptation Fund – are discussed in turn below.

GEF TRUST FUND

The GEF's provision of resources for adaptation is constrained by its own constitutional structure, internal operational principles and established operating programmes. It is also constrained by the guidance provided to it by the COP.

Under the GEF's operational principles, in order to be eligible for GEF funding, a project must reflect national or regional priorities and improve the global environment or advance the prospect of reducing risks to it.[56] The GEF's project-screening policy allows the funding of only the extra project costs associated with transforming a project with national benefits into one with global environmental benefits.[57] The GEF divides project budgets into 'baseline' and 'incremental' costs, and funds only the additional, or incremental, cost of activities that produce benefits to the global environment. All other costs of the project must be covered from other sources. A 'global environmental benefit' is distinct from the achievement of a development benefit or local environmental benefits.[58] This renders the incremental cost concept problematic in the context of adaptation, as most adaptation projects are adopted for their local benefits, rather than their 'global environmental benefits'.

The parties gave initial broad guidance to the COP on adaptation funding in Decision 11/CP.1, in 1995. That decision envisaged that adaptation would require short-, medium- and long-term strategies to be implemented sequentially in stages. Stage I would address planning, including studies of possible impacts of climate change, to identify particularly vulnerable countries or regions and policy options for adaptation and appropriate capacity building. Stage II would address measures, including further capacity building, which may be taken to prepare for adaptation, as envisaged in Article 4(1)(e). Stage III would address measures to facilitate adequate adaptation, including insurance, and other adaptation measures as envisaged by Article 4(1)(b) and Article 4(4).[59] COP-1 gave the GEF the mandate to fund Stage I activities through national communications. COP-4 subsequently gave the GEF the mandate to fund and implement Stage II activities in particularly vulnerable countries and regions identified in Stage I (Decision 2/CP.4).[60]

The movement to Stage III activities has been troubled, reflecting challenges in applying the GEF's incremental costs and global benefits criteria to adaptation projects, GEF donors' discomfort in committing GEF funds to what they may see as open-ended adaptation, and a lack of success by developing countries in securing clear guidance to the GEF to support Stage III adaptation

[55] Ibid., paras 3 and 6 ('which shall be operated by an entity entrusted with the operation of the financial mechanism').

[56] See GEF, *Eligibility Criteria and Project Cycle* (GEF, 2005), available at <http://gefweb.org/Operational_Policies/eligibility_criteria/eligibility_criteria.html>.

[57] See Incremental Costs, n. 19 above, Introduction. An example is given of choosing solar energy technology over coal or diesel fuel, which meets the same national development goal – power generation – but is more costly. GEF grants cover the difference or 'increment' between a less costly, more polluting option and a costlier, more environmentally friendly option that is associated with the global environmental benefit of a reduction in greenhouse gas emissions.

[58] See OPS-3, n. 15 above, at 84.

[59] *Report of the Conference of the Parties on its First Session, held at Berlin from 28 March to 7 April 1995* (FCCC/CP/1995/7/Add.1, 6 June 1995); see specifically, Initial Guidance on Policies, Programme Priorities and Eligibility Criteria to the Operating Entity or Entities of the Financial Mechanism (Decision 11/CP.1, 1995).

[60] See *Report of the Conference of the Parties on its Fourth Session*, n. 9 above; see specifically, Additional Guidance to the Operating Entity of the Financial Mechanism (Decision 2/CP.4, 1998).

measures.[61] For example, SIDS have repeatedly called for insurance mechanisms to enhance their adaptive capacity to increasingly frequent and severe extreme weather events, and to storm surges worsened by sea-level rise. These calls have been burdened by linkages with Organization of Petroleum Exporting Countries (OPEC) issues, and undermined by US efforts to downplay any relationship between extreme weather events and human-induced climate change.[62]

At COP-7, as part of the Marrakesh Accords, Decision 5/CP.7 provided a list of activities related to information and methodologies, and to vulnerability and adaptation, to be funded by the GEF and other bilateral and multilateral sources. These largely consisted of enabling activities, capacity building and the promotion of adaptation technologies. In a step forward, the COP decided, among other things, that the GEF 'should' in accordance with Articles 4(3), 4(5) and 11(1), provide financial resources to developing-country parties, and 'in particular the least developed and the small island developing States among them', for:

> pilot or demonstration projects to show how adaptation planning and assessment can be practically translated into projects that will provide *real benefits*, and may be integrated into national policy and sustainable development planning, on the basis of information provided in the national communications, or of in-depth studies including NAPAs [National Adaptation Programmes of Action] *and of the staged approach* endorsed by the Conference of the Parties in its decision 11/CP.1.[63] (emphases added)

The parties also decided that the GEF should provide financial resources to developing-country parties, in particular LDCs and SIDS, for 'developing and implementing, as appropriate, prioritized projects identified in national communications'.[64] The GEF was further encouraged to improve its responsiveness to country needs.

At COP-8, by Decision 6/CP.8, the parties directed the GEF to provide financial resources sufficient to cover the requirements of the revised national communication guidelines on an agreed full-cost basis, as well as capacity-building activities relating to the preparation of national communications – which include support for vulnerability assessments and consideration of measures to prepare for adaptation.[65]

At COP-9, by Decision 3/CP.9,[66] parties noted that the GEF had established a new strategic priority in the climate change focal area (Piloting an Operational Approach to Adaptation) 'that will build upon and demonstrate linkages to activities in the other focal areas by expanding opportunities within those focal areas to demonstrate important adaptation response measures'. Decision 4/CP.9 urged the GEF to operationalize the GEF's new strategic priority in the climate change focal area as soon as possible.[67]

A year later, at COP-10, concluding numerous negotiating sessions under the agenda item on 'Progress in the Implementation of Decision 5/CP.7', the COP requested that the GEF report at subsequent sessions on how vulnerability and adaptation activities under Decision 5/CP.7 have been supported, and the barriers, obstacles and opportunities to their implementation, through the strategic priority 'Piloting an Operational Approach to Adaptation'; the GEF's small grants programme (SGP); efforts to address adaptation in the climate change focal area and mainstream adaptation into other focal areas of the GEF; the LDC Fund; and

[61] See, for example, 'Comments Received from the United States of America, September 20, 2005 (Reinterpreting COP Guidance on Stage III Adaptation)', in Comments Received from Participants on the Revised Programming Document for GEF-4 (GEF/R.4/9) (GEF/R.4/Inf.12, 23 September 2005), at 33.

[62] See, for example, 'Summary of the Tenth Conference of the Parties to the UN Framework Convention on Climate Change: 6–18 December 2004', 12:260 *Earth Negotiations Bulletin* (2004), 1; and daily *Earth Negotiations Bulletin* coverage of COP-10, available at <http://www.iisd.ca/climate/cop10/>, noting US resistance to discussion of the Barbados Programme of Action for Small Island States or outcomes of the World Conference on Disaster Reduction within the UNFCCC process. SIDS have called for insurance mechanisms to enhance adaptive capacity to the adverse impacts of climate change in a sequence of negotiating sessions under the agenda item on 'Progress in the Implementation of Decision 5/CP.7'. OPEC countries have called for parallel insurance mechanisms, to compensate fossil-fuel-producing countries for the theoretical financial impacts on them of measures taken by UNFCCC parties to reduce greenhouse gas emissions. The IPCC has noted that equity issues and development constraints are likely to arise if weather risks become uninsurable, insurance prices increase, or the availability of insurance or financing becomes limited as a result of actuarial uncertainty linked to climate change; conversely, more extensive insurance penetration and access to insurance and disaster preparedness and recovery resources would increase the ability of developing countries to adapt to climate change. See IPCC, *Third Assessment Report, Working Group II: Impacts, Adaptation and Vulnerability* (Cambridge University Press, 2001), at 417 (Chapter 8 on Insurance and Other Financial Services), and Technical Summary at 38 (Insurance and Other Financial Services). A range of insurance schemes and alternative risk transfer instruments have been identified to address these challenges. See, for example, J. Parry, A. Hammill and J. Drexhage, *Climate Change and Adaptation* (International Institute for Sustainable Development, August 2005), at 11–12; J. Linnerooth-Bayer, M.J. Mace and R. Verheyen, *Insurance-Related Actions and Risk Assessment in the Context of the UNFCCC*, background paper prepared for the UNFCCC Secretariat (UNFCCC, 2003), available at <http://unfccc.int/meetings/workshops/other_meetings/items/1043.php>.

[63] See Decisions 5/CP.7 and 6/CP.7, n. 52 above.

[64] Decision 6/CP.7, ibid., at para. 1(g).

[65] See GEF Assistance to Address Adaptation (GEF/C.23/Inf.8, 28 April 2004), Annex B. These guidelines are annexed to Additional Guidance to an Operating Entity of the Financial Mechanism (Decision 17/CP.8, 2002).

[66] *Report of the Conference of the Parties on its Ninth Session, held at Milan from 1 to 12 December 2003* (FCCC/CP/2003/6/Add.1, 22 April 2004). See specifically, Report of the Global Environment Facility to the Conference of the Parties (Decision 3/CP.9, 2003).

[67] Ibid. See, specifically, Additional Guidance to an Operating Entity of the Financial Mechanism (Decision 4/CP.9, 2003).

the SCCF.[68] The GEF was requested to make further resources available to implement activities under Decision 5/CP.7 and to expand support for the elaboration of adaptation strategies as part of the national communication process in developing-country parties.[69]

To date, most GEF Trust Fund resources for adaptation have been provided in the context of the preparation of national communications, which are enabling activities.[70] Stage III adaptation activities have not been funded by the GEF in the climate change focal area other than on a pilot basis. Nevertheless, many developing countries are eager to begin concrete adaptation projects. This has caused a good deal of frustration among many parties, particularly SIDS and LDCs,[71] and there have been repeated calls for more flexible GEF approaches to the issue of incremental costs and global environmental benefits in the context of adaptation. Over time, COP guidance to the GEF has become layered and repetitive, creating its own confusion and presenting still greater challenges for under-resourced developing countries trying to parse its language and build upon this previous guidance.[72]

National Communications Most developing countries have completed their first national communications and are preparing to undertake their second national communications.[73] Most have used the GEF's expedited procedures to access funding for national communications, avoiding the more cumbersome application procedures involved in accessing greater resources through full-size project proposals. For first national communications, a maximum of US$130,000 (out of a total of US$350,000) was available to each non-Annex I party for assessing both mitigation and vulnerability and adaptation under the GEF's expedited procedures. Guidelines for second national communications contain an expanded scope for vulnerability and adaptation assessments. For non-Annex I parties, a ceiling of $150,000 (out of a total of $420,000 through the expedited procedures) is available for assessing both mitigation and vulnerability and adaptation.[74] Countries can allocate these resources according to their national priorities. This is a relatively insignificant amount of funding for these assessments, given that their results are supposed to be sufficient to support development planning.

GEF Strategic Priority on Adaptation In 2003, the GEF Secretariat proposed, as noted above, a new strategic priority on adaptation (SPA) called 'Piloting an Operational Approach to Adaptation', to allocate US$50 million over 3 years as part of the GEF's financial year 2005–2007 business plan.[75] Activities financed under the SPA would:

> build upon and demonstrate linkages to activities in other GEF focal areas by expanding opportunities within those focal areas to demonstrate important adaptation response measures, consistent with the evolving guidance from the UNFCCC. The approach would also build upon previous GEF funding for analysis of vulnerability and adaptation and initial response measures.[76]

At COP-9, in November 2003, the COP requested that the GEF operationalize the new strategic priority as soon as possible.

In May 2004, the GEF Secretariat produced a document on 'GEF Assistance to Address Adaptation', which provided guidelines on how the strategic priority would be implemented in order to ensure that resources allocated under the priority would lead to 'broad based results and lessons that will inform the international community as its seeks effective ways to respond to the issue of adaptation'.[77] The paper makes clear that the overall goal of the GEF's support in the area of adaptation is to assist countries to mainstream adaptation into their development planning.[78] In that context, the paper goes on to explain how the SPA will respond to guidance given by the COP in Decision 6/CP.7, which called for the GEF to establish:

[68] *Report of the Conference of the Parties on its Tenth Session, held at Buenos Aires from 6 to 18 December 2004* (FCCC/CP/2004/10/Add.1, 19 April 2005); see specifically, Buenos Aires Programme of Work on Adaptation and Response Measures (Decision 1/CP.10, 2004); and Additional Guidance to an Operating Entity of the Financial Mechanism (Decision 8/CP.10, 2004).

[69] Decisions 1/CP.10 and 8/CP.10, ibid.

[70] See GEF Assistance to Address Adaptation, n. 65 above, at 5. Over 130 non-Annex I parties received financial support for initial national communications.

[71] See OPS-3, n. 15 above, at 39. The UNFCCC's Preamble recognizes that 'low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountain ecosystems are particularly vulnerable to the adverse effects of climate change'; see UNFCCC, n. 1 above, Preamble.

[72] Compare, for example, Decisions 5/CP.7, n. 52 above, and Decision 1/CP.10, n. 68 above.

[73] GEF Assistance to Address Adaptation (GEF/C.23/Inf. 8/Rev.1, 11 May 2004), at 5.

[74] GEF Assistance to Address Adaptation, n. 65 above, at 5. Of the US$420,000, US$15,000 is available for a preliminary self-assessment process and US$405,000 is then available for second national communications. See Report on the Assessment of Funding, n. 26 above, at 10; and Operational Procedures for the Expedited Financing of National Communications from Non-Annex I Parties (GEF/C.22/Inf.16, 4 November, 2003).

[75] GEF Business Plan FY05–07 (GEF/C.22/6, 17 October 2003), at 5–7. Funds proposed for the SPA were reallocated from elsewhere in the climate change focal area; see ibid., at 7. At its November 2003 meeting, the GEF Council agreed to the business plan on a provisional basis for programming GEF resources. See *Joint Summary of the Chairs*, GEF Council Meeting, 19–21 November 2003 (GEF, 25 November 2003), at 3.

[76] See GEF Business Plan FY05–07, ibid., at 5, n. 6.

[77] See GEF Assistance to Address Adaptation, n. 73 above, at 1.

[78] Ibid., at 5; *Report of the Global Environment Facility to the Conference of the Parties* (FCCC/CP/2004/6, 22 November 2004), at para. 55.

pilot or demonstration projects to show how adaptation planning and assessment can be practically translated into projects that will provide real benefits, and may be integrated into national policy and sustainable development planning, on the basis of information provided in the national communications, or of in-depth national studies, including NAPAs.

According to the GEF, the SPA will support a portfolio of projects that are representative of particularly vulnerable regions, sectors, geographic areas, ecosystems and communities and designed to maximize the opportunity for learning and capacity building.[79] It will offer the opportunity to test selected adaptation measures in key vulnerable sectors, with the selection of particularly vulnerable sectors based on information contained in national communications to the UNFCCC, NAPAs and other major national or regional studies.[80] It will also assist the GEF in mainstreaming adaptation into other GEF focal areas.[81] Projects under the SPA must assist countries in meeting their national development objectives, and be integrated into national sustainable development planning and poverty-reduction strategies.[82] They must include: (i) activities within a natural resources management context that generate global environmental benefits, and (ii) adaptation measures that provide other major development benefits (e.g. WEHAB, i.e. water, energy, health, agriculture, biodiversity).[83]

For those projects, the GEF will fund 'the incremental cost of adaptation activities that generate global environmental benefits as well as the incremental cost of selected adaptation activities that are identified as high priorities by national communications'.[84] Baseline activities will be funded by the governments, nongovernmental organizations, bilateral and other sources of financing.[85] The GEF has provided a diagram of what this might mean in practice, which seems well intentioned, but does little to clarify the above.[86] The GEF's approach to incrementality and co-financing for SPA projects will be consistent with the GEF's practices and overall portfolio experience.[87] As stated in the document:

The level of GEF financing will be determined on the basis of incremental cost reasoning. GEF resources will be related to the generation of global environmental benefits and will be determined on the basis of the incremental cost principle. In addition, GEF, when appropriate, will finance the incremental cost of additional activities that a country must include within its development planning in order to address climate change impacts.[88]

The same paper explains that:

co-financing for each project will depend on the delivery of global environmental benefits, additional costs associated with actions necessitated by climate change, and the degree of capacity building. The larger the project the greater the expected cost sharing.[89]

About US$5 million of the SPA resources were proposed for allocation in the Small Grants Programme to pilot community-based adaptation initiatives.[90]

At the end of the day, the call by developing countries for GEF funding for pilot and demonstration adaptation projects that will generate 'real benefits' (rather than 'global environmental benefits') has been re-cast into what appears to be yet another capacity-building exercise – this time, capacity building in connection with development planning frameworks. For countries that presently lack funding actually to implement adaptation projects on the ground, or to absorb the additional costs of climate-proofing infrastructure, this turn is quite disappointing.

OPS-3 concludes that the GEF has 'much to sort out' in terms of its funding for adaptation activities, and suggests that the GEF will need to develop plans for a more strategic response to adaptation following the pilot programme, including how it will mainstream adaptation into the other focal areas of the GEF portfolio.[91]

Unfortunately, GEF-4 programming may not build in any substantial way on the SPA. In 2003, the GEF allocated US$50 million for financial year 2005/2007 to support adaptation activities with global environmental benefits. To meet that initial commitment, US$30 million is likely to be allocated from the GEF's fourth replenishment resources, with no bump up for expanded activities.[92] The expected outcomes and targets of the SPA for GEF-4 are a scant 5–10 'market

[79] See GEF Assistance to Address Adaptation, n. 73 above, at 7 and Annex C, para. 4. A number of these projects are listed in B. Biagini, *Financing Provisions for Technologies for Adaptation under the UNFCCC: The Role of the GEF*, presented at the UNFCCC Seminar on Technology Transfer for Adaptation (Tobago, 14–16 June 2005).
[80] See GEF Assistance to Address Adaptation, ibid., at 7.
[81] Ibid., at 10.
[82] Ibid.
[83] Ibid., Annex C; and see *Report of the Global Environment Facility to the Conference of the Parties*, n. 78 above, at para. 51.
[84] See GEF Assistance to Address Adaptation, n. 73 above, at 7.
[85] Ibid.
[86] Ibid., at 9, figure 1. The diagram contains an 'adaptation increment', which reflects 'additional actions necessitated by climate change'. The adaptation increment is somewhat cryptically described as including 'the incremental cost of adaptation activities that generate global environmental benefits as well as the incremental cost of activities that increase resilience to climate change vulnerability not directly overlapping with [global environmental benefits] but part of a strategy to help the global community to address the global dis-benefit of climate change'.
[87] Ibid., Annex C.
[88] Ibid., at 8.
[89] Ibid., Annex C.
[90] Ibid., at 10 and Annex C.
[91] See OPS-3, n. 15 above, at 76.
[92] See Revised Programming Document GEF-4, n. 25 above, at para. 78 and table at 44.

or sector interventions' – project activities focusing on a specific sector in a particular country.[93] A project that focuses on both water in highlands and coastal areas might be counted as two market or sector interventions.[94] Moreover, the revised GEF-4 Programming Document, issued in August 2005, states that adaptation projects under the SPA will:

> focus on ensuring the viability of global benefits in biodiversity conservation, protection of international waters, arresting land degradation, reducing greenhouse gas emissions, or reducing releases of [persistent organic pollutants].[95]

In other words, the SPA will assist the GEF in mainstreaming climate change impacts in its own portfolio of projects and will not fund stand-alone adaptation projects.

Comments by Canada, submitted with those from other GEF participants on the GEF-4 Programming Document, underscore fundamental problems with the GEF's proposed approach:

> . . . we would note that the priority assigned to the strategic approach to adaptation isn't, in our view, consistent with the increased attention being paid to adaptation in the convention and COP decisions. Also, if the purpose of the strategic priority on adaptation is to help address the need for climate resilience in all GEF focal areas and ensure the viability of global benefits, then it needs to be larger than what is proposed in all three replenishment scenarios. For us, the voluntary climate funds [SCCF and LDC Fund] are meant to address different adaptation needs and priorities. And just because a number of us are making voluntary contributions to these funds, *doesn't mean that we can ignore adaptation in the GEF Trust Fund*.[96] (emphasis added)

SPECIAL CLIMATE CHANGE FUND (SCCF)

The SCCF was established by the COP in Marrakesh in 2001, by Decision 7/CP.7.[97] It is to finance activities, programmes and measures that are complementary to those funded by the climate change focal area of the GEF in four broad areas, corresponding to paragraphs 2(a)–(d) of Decision 7/CP.7 as follows:

(a) adaptation, in accordance with paragraph 8 of Decision 5/CP.7;
(b) transfer of technologies, in accordance with Decision 4/CP.7;
(c) energy, transport, industry, agriculture, forestry and waste management; and
(d) activities to assist developing-country parties referred to in Article 4(8)(h) (fossil fuel dependent economies) in diversifying their economies.[98]

Adaptation activities that are to be supported in accordance with paragraph 8 of Decision 5/CP.7 include:

- starting to implement adaptation activities promptly where sufficient information is available to warrant such activities, *inter alia*, in the areas of water resources 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 early warning systems;
- supporting capacity building for preventative 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 national and regional centres and information networks for rapid response to extreme weather events, utilizing information technology as much as possible.[99]

There have been a number of challenges in the initiation of the SCCF. Particular challenges have included the tension among developing countries in prioritizing activities among paragraphs 2(a)–(d) of Decision 7/CP.7 (with vulnerable countries highlighting adaptation needs under paragraph 2(a), and OPEC countries resisting this prioritization); the tension between potential donors and developing countries regarding full-cost funding for adaptation activities; the scope of technology-transfer activities under paragraph 2(b); and serious donor discomfort with the breadth and potential scope of activities listed under paragraphs 2(c) and 2(d) of Decision 7/CP.7.

At the Eighteenth Session of the UNFCCC's Subsidiary Body on Implementation (SBI), in May 2003, negotiations took place to provide guidance to the GEF for operationalization of the SCCF. The SBI's chief progress was made in concluding that, of the four categories of

[93] Ibid., at para. 158 and table at 44.
[94] Ibid., at para. 158.
[95] Ibid., at 42.
[96] 'Comments Received from Canada, September 16, 2005', in Comments Received from Participants on the Revised Programming Document for GEF-4, n. 61 above, at 2. Following this round of comments, a further revised version of the Revised Programming Document was issued that states: 'The new funds especially the LDCF [LDC Fund] and the SCCF may be called upon to support adaptation activities that generate benefits by alleviating barriers to development caused by the adverse impacts of climate change. In contrast to support under the SPA where the goal is the attainment of global environmental benefits, projects supported under the new funds are expected to produce benefits that are primarily local in nature. This is a key distinction between these sources of adaptation funding and is fully consistent with Convention guidance'; see Revised Programming Document GEF-4, n. 25 above, at 42.
[97] See Decision 7/CP.7, n. 52 above.
[98] Ibid.
[99] Ibid., at para. 8.

activities set out in paragraphs 2(a)–(d) of Decision 7/CP.7, adaptation activities to address the adverse impacts of climate change were a 'top priority' for funding, and technology transfer and capacity building were 'also essential'.[100] While a number of developing-country parties pushed for explicit recognition that adaptation is of global benefit, this concept did not find support within the SBI as a whole.

In November 2003, at COP-9, parties still were unable to reach agreement on detailed guidelines for SCCF funding. Decision 5/CP.9, which resulted from these negotiations, largely repeated text from Decision 7/CP.7 and requested the GEF to arrange for expedited access to the SCCF, in keeping with current GEF practices, taking into account the need for adequate resources to implement eligible activities, programmes and measures.[101] Parties further agreed that the SCCF 'should serve as a catalyst to leverage additional resources from bilateral and other multilateral sources'; activities to be funded should be country-driven, cost-effective and integrated into national sustainable development and poverty-reduction strategies; 'adaptation activities to address the adverse impacts of climate change shall have top priority for funding'; and 'technology transfer and its associated capacity-building activities shall also be essential areas to receive funding from the Special Climate Change Fund'. These elements did not add significantly to what had been previously agreed in May 2003 within the SBI.

The GEF, in order to respond to the COP's request in Decision 5/CP.9, convened donor meetings that heavily influenced the development of the SCCF. At a July 2004 meeting, attended by 14 potential donor countries, as well as representatives of multilateral organizations, participants discussed how to find an appropriate niche for the SCCF, and, in particular, a way to distinguish SCCF activities from those funded under the GEF Trust Fund.[102] Potential donor countries recommended that an objective should be to:

> make development lending 'climate-proof' by supporting preparatory work, constituency building, awareness raising and sharing of lessons, and assist countries in assessing to what extent development projects are at risk from the impacts of climate change.[103]

It was requested that the GEF's programming paper seek to highlight the link between adaptation and poverty reduction, and it was emphasized that the SCCF should serve as a catalyst to leverage additional resources from bilateral and multilateral sources.[104] There was further agreement within the donor group that it would be appropriate for the SCCF to fund the 'adaptation additionality' of project activities, and that a sliding proportional scale of co-financing might be a simplified way to apply this principle.[105]

The GEF also found a way to address donor discomfort with the open-ended nature of paragraphs 2(c) and 2(d). In October 2004, the GEF produced a document entitled 'Programming to Implement the Guidance for the Special Climate Change Fund', which addressed how the resources of the SCCF could be programmed during an initial 5-year period to respond to guidance provided at COP-9. The document addressed only paragraphs 2(a) and 2(b) of Decision 7/CP.7, providing that '[a]s additional guidance is approved, additional programs will be developed if necessary to respond to such guidance'.[106] To further assuage donor concerns, the programming document makes clear that separate trust fund administration agreements will be concluded with each individual donor, governing the uses of the donor's contributions to the fund.[107] The creation of distinct programmes and use of separate administration agreements, in essence, allowed donors to fund only the elements of Decision 7/CP.7 that they care to fund – although Decision 7/CP.7, agreed by the COP, provides that the SCCF is to finance activities in all four areas.

At the subsequent donor meeting, in November 2004, and based on the GEF's programming document that had been prepared based on donor consultations, US$34 million was pledged to the SCCF. Donors emphasized that their pledges to the SCCF were contingent upon the Council's endorsement of the programming document.[108] Some specified that their pledges were made toward the Programme for Adaptation only.[109] The recognition of distinct 'Programmes' within the SCCF, and pledging toward particular programmes, highlights the political nature of the GEF and the control individual developed-country donors wield in reshaping COP guidance to the GEF. At its meeting in November 2004, the GEF Council endorsed the GEF

[100] *Report of the Subsidiary Body for Implementation on its Eighteenth Session, held at Bonn, from 4 to 13 June 2003* (FCCC/SBI/2003/8, 31 July 2003), at 7–8.
[101] *Report of the Conference of the Parties on its Ninth Session*, n. 66 above; see, specifically, Further Guidance to an Entity Entrusted with the Operation of the Financial Mechanism of the Convention for the Operation of the Special Climate Change Fund (Decision 5/CP.9, 2003).
[102] See *Summary of Meeting of Potential Donors to the Special Climate Change Fund* (GEF, 1 July 2004); and *Meeting of Potential Donors for Special Climate Change Fund (GEF/SCCF)* (GEF, 1 July 2004) (containing a list of participants).
[103] Ibid.
[104] Ibid.
[105] Ibid.
[106] Programming to Implement the Guidance for the Special Climate Change Fund Adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its Ninth Session (GEF/C.24/12, 15 October 2004), at para. 5.
[107] Ibid., at paras 36–37.
[108] Summary of Meeting of Potential Donors to the Special Climate Change Fund (GEF/C.24/CRP.2/Rev.1, 18 November 2004).
[109] Ibid. Pledges from the Netherlands, Portugal and the UK were made toward the Programme for Adaptation. Germany's pledge was to be 'primarily' for the Programme for Adaptation.

TABLE 3 SCCF – PROPOSED SLIDING SCALE FOR CO-FINANCING

PROJECT SIZE (US$)	*FUND PAYS*
Under 1 million	up to 50%
1–5 million	up to 33%
Over 5 million	up to 25%

programming document for the SCCF and approved it as an operational basis for funding activities under the SCCF.[110]

The SCCF programming document endorsed by the Council includes a proposed 'presumptive co-financing sliding scale' (represented in table 3 above) for developing-country access to the fund, under which the SCCF would provide a portion of the funds needed, dependent upon the overall scale of the project. In proposing this approach, the GEF relied on Decision 5/CP.9's agreement that the SCCF 'should serve as a catalyst to leverage additional resources from bilateral and multilateral sources' and that 'expedited access' should be arranged to the SCCF 'in keeping with current practices of the GEF, taking into account the need for adequate resources to implement eligible activities'. Where projects fall within the 'presumptive' sliding scale, they may go forward without project-by-project negotiations on the determination of additional costs of adaptation. For projects that require proportionally more co-financing than is allowed by the scale, a 'justification' for the additional costs must be made.[111]

At COP-10, the Alliance of Small Island States (AOSIS), the LDC Group and the African Group registered concerns with the sliding scale contained in the GEF programming document for the SCCF, arguing that the co-financing required would preclude many countries from accessing the fund.[112] They also objected to what they perceived as the GEF's creation of new conditionalities for accessing these funds in its programming document, emphasizing that under UNFCCC, Article 11, it is for the COP, rather than the GEF, to decide on the GEF's 'policies, programme priorities and eligibility criteria'.[113] At COP-10, the COP urged the GEF to continue its efforts to mobilize additional resources to support the implementation of eligible project activities under the Fund, and noted the concerns of some parties on the co-financing proportional scale proposed for the SCCF.[114] At the twenty-second session of the SBI, in May 2005, developing-country concerns were raised again, and reflected in the draft text forwarded to the SBI's twenty-third session, to be held in Montreal in November 2005.[115]

By May 2005, the Fund had received only US$6.5 million in cash receipts, with US$5.6 million dedicated to the Programme for Adaptation and US$1.1 million for the Programme for Transfer of Technology.[116]

LEAST DEVELOPED COUNTRIES FUND

The LDC Fund was established in Marrakesh in 2001 by Decision 7/CP.7 – the same decision that established the SCCF. However, its focus was to support a work programme for LDCs.[117] The centrepiece of the LDC work programme is the preparation of and implementation of national adaptation programmes of action (NAPAs). The NAPA process is a bottom-up, country-driven process intended to result in a prioritized list of *urgent and immediate* adaptation projects, identifying those priority activities 'whose further delay could increase vulnerability, or lead to increased costs at a later stage'.[118] National multidisciplinary NAPA teams synthesize available information on adverse effects of climate change and coping strategies, assess vulnerability to current climate variability and extreme weather events, assess where climate change is increasing associated risks and identify key adaptation measures.[119]

[110] Programming to Implement the Guidance for the Special Climate Change Fund, n. 106 above, at 12.

[111] Ibid. If this justification entails an explanation of how the GEF's diagram, presented as figure 1 of the programming document, applies to a country's unique situation, this is likely to be a Herculean task. See ibid., at 11–12.

[112] See 'UNFCCC COP-10 Highlights: Tuesday, 7 December 2004', 12:251 *Earth Negotiations Bulletin* (8 December 2004), 1, available at <http://www.iisd.ca/download/pdf/enb12251e.pdf>, noting that the Association of Small Island States, supported by the African Group, LDCs, Namibia, Cuba and Uganda, expressed concern over the interpretation of COP guidance by the GEF in the context of the SCCF and that vulnerable countries would face difficulty in accessing these funds due to the burden of co-financing requirements, the existence of additional criteria and indicators not adopted by the COP, and the narrow scope of adaptation projects eligible. See also *Status Report on the Least Developed Countries Fund for Climate Change and the Special Climate Change Fund* (GEF/C.25/4/Rev.1, 2 May 2005), at 4.

[113] See *Earth Negotiations Bulletin*, ibid. There was a sense among some developing-country negotiators that the programming document had converted the 'should', agreed in Decision 5/CP.9, to 'shall' in the context of co-financing (catalyst to leverage additional resources) and in the context of integration into national sustainable development and poverty-reduction strategies.

[114] Ibid., at 4.

[115] *Report of the Subsidiary Body for Implementation on its Twenty-Second Session, held at Bonn from 20 to 27 May 2005* (FCCC/SBI/2005/10, 29 July 2005), at 9 and Annex I.

[116] *Status Report on the Least Developed Countries Fund*, n. 112 above.

[117] See Decisions 5/CP.7 and 7/CP.7, n. 52 above. See also Guidelines for the Preparation of National Adaptation Programmes of Action. Establishment of a Least Developed Countries Expert Group (Decision 28/CP.7, 2001) and Establishment of a Least Developed Countries Expert Group (Decision 29/CP.7, 2001), Annex.

[118] Decision 28/CP.7, ibid., Annex.

[119] Ibid.

NAPA priorities are to be made available to the GEF and to other sources of funding.[120] The first NAPAs will be completed in 2005.

The issue of how funds contributed to the LDC Fund should be accessed and allocated has proven extremely difficult for the UNFCCC parties to resolve. In 2003, at COP-9, when no full decision could be agreed on how funds should be allocated under the LDC Fund and to what activities, by Decision 6/CP.9, the parties requested that the GEF develop operational guidelines based on a number of agreed elements. These elements included:

- ensuring a country-driven approach, in line with national priorities, which ensures cost effectiveness and complementarity with other funding sources;
- equitable access by LDCs to funding for the implementation of national adaptation programmes of action;
- criteria for supporting activities on an agreed full-cost basis, taking account of the level of funds available;
- guidelines for expedited support;
- urgency and immediacy of adapting to the adverse effects of climate change; and
- prioritization of activities.[121]

Decision 6/CP.9 called upon the LDC Fund to support the implementation of NAPAs as soon as possible after their completion.

In response, the GEF Secretariat produced a proposal on the process to be followed in funding the implementation of NAPAs, entitled 'Elements to be Taken into Account in Implementing NAPAs under the LDC Fund'.[122] The proposal contained a 'presumptive co-financing sliding proportional scale' for the LDC Fund. Projects within the sliding scale could go forward without project-by-project negotiations on the determination of additional costs of adaptation. For projects that required more co-financing, a justification would have to be made. The GEF's full project cycle would be followed for full-sized projects, while projects up to US$1 million would use the GEF's medium-size project modalities.

The GEF's proposal was submitted to the November 2004 GEF Council Meeting and to COP-10 in December 2004.[123] As with the SCCF programming document, it was not well received at the COP by developing-country parties. The LDC Group and the African Group objected to the co-financing requirements the GEF had proposed and to what they perceived as new conditionalities for accessing the LDC Fund.[124] They argued (as was argued with respect to the SCCF), that it is for the COP, rather than the GEF, to decide on eligibility criteria for convention funding.[125] Many stressed the need for full-cost funding for adaptation activities highlighted in NAPAs – echoing long-standing negotiating positions. Negotiations continued into COP-10's closing hours, but were ultimately inconclusive.

TABLE 4 LDC FUND – PROPOSED SLIDING SCALE FOR CO-FINANCING

PROJECT SIZE (US$)	*FUND PAYS*
Under $250,000	up to 75%
Less than $2 million	up to 50%
$2 million–$5 million	up to 33%
Over $5 million	up to 20%

In May 2005, the SBI finally reached conclusions that recommended a draft decision with further guidance for the operation of the LDC Fund.[126] This draft decision will be passed to COP-11 for adoption. Under the draft decision:

- full-cost funding shall be provided by the LDC Fund to meet the 'additional costs' of activities to adapt to the adverse effects of climate change as identified and prioritized in the NAPAs;
- the GEF will develop a co-financing scale for supporting activities identified in NAPAs, taking into account the circumstances of LDCs;
- activities identified in NAPAs that are not supported through full-cost funding (described above) will be co-financed through the co-financing scale.

'Additional costs' are defined as the costs imposed on vulnerable countries to meet their immediate adaptation needs. Overall, this result is not significantly different from that contained in the GEF's first proposal, although it remains to be seen how 'additional costs' will be understood in practice, and how and if the new co-financing scale differs from that first proposed by the GEF. Under the draft decision, the SBI will review experiences gained from NAPA implementation and

[120] Ibid., Annex, para. 4.

[121] *Report of the Conference of the Parties on its Ninth Session*, n. 66 above; see, specifically, Further Guidance for the Operation of the Least Developed Countries Fund (Decision 6/CP.9, 2003).

[122] Elements to be Taken into Account in Funding the Implementation of NAPAs under the LDC Fund (GEF/C.24/Inf.7, 26 October 2004).

[123] See *Status Report on the Least Developed Countries Fund*, n. 112 above, at 3.

[124] See 'UNFCCC COP-10 Highlights: Monday, 6 December 2004', 12:250 *Earth Negotiations Bulletin* (2004), 1, available at <http://www.iisd.ca/download/pdf/enb12250e.pdf>.

[125] Ibid.

[126] *Report of the Subsidiary Body for Implementation on its Twenty-Second Session, held at Bonn from 20 to 27 May 2005, Addendum* (FCCC/SBI/2005/10/Add.1, 29 July 2005), at 4–5.

experiences in accessing funds from the LDC Fund in 2007. Progress in the implementation of the decision and potential further guidance would then be considered at COP-14.

The lesson to be learned from the SCCF and the LDC Fund negotiations is that despite the historical and continuing difficulties developing countries have in accessing GEF funding for adaptation, and despite their success in obtaining the establishment of new, potentially more flexible funding sources through the creation of new funds in Marrakesh, this momentum was lost when developing countries ceded responsibility back to the GEF for developing guidelines for accessing these funds.[127] If new funds are truly to operate under different criteria, but are to be managed by the GEF, the guidance for these funds must be absolutely clear and detailed from the outset.

Twelve donors have pledged funds to the LDC Fund. As of April 2005, the GEF had received approximately US$32 million, with US$21.9 million available for allocation to the fund.[128] As of March 2005, projects for the preparation of NAPAs had been approved in 43 of 48 LDC countries, as well as for two global support programmes, for a funding total of US$9.4 million.[129]

ADAPTATION FUND UNDER THE KYOTO PROTOCOL

Article 12(8) of the Kyoto Protocol provides that the COP serving as the meeting of the parties to the Protocol 'shall ensure that a share of the proceeds' from certified Clean Development Mechanism (CDM) activities is used 'to assist developing countries that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation'. The CDM is a Kyoto Protocol 'flexible mechanism' that permits developed countries with emission-reduction or limitation commitments to earn credits toward those commitments through GHG mitigation projects undertaken in developing countries. The purpose of the CDM is two-fold: to assist non-Annex I parties in achieving sustainable development and in contributing to the ultimate objective of the convention; and to assist Annex I parties in complying with their mitigation commitments. The language of Article 12(8) of the protocol echoes Article 4(4) of the convention, in which developed-country parties agree to 'assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects'.

At COP-7, in 2001, the parties agreed to establish an Adaptation Fund 'to finance concrete adaptation projects and programmes in developing-country parties, as well as activities identified under paragraph 8 of Decision 5/CP.7'.[130] In addition to the share of the proceeds from CDM activities, Decision 10/CP.7 makes plain that the Adaptation Fund is also to be financed from other sources.[131] Annex I parties that have ratified or intend to ratify the protocol have been invited to provide additional funding.[132] In a separate decision, the parties agreed that the 'share of the proceeds' referred to in Article 12(8) of the protocol would be 2% of the certified emission reductions (CERs) issued for a CDM project activity.[133] CDM activities in LDC countries are exempt from the share of the proceeds, so that these projects can be more competitive with projects in other non-Annex I parties.[134] The share of the proceeds for the Adaptation Fund will be automatically forwarded to an account in the CDM registry as CERs are issued.

The size of the Adaptation Fund will depend upon many factors, including the extent to which Annex I parties choose to meet their emission-reduction or limitation commitments through the CDM, the extent to which countries rely on the CDM under a second Kyoto Protocol commitment period and the extent to which the fund is augmented from other sources.[135] The usefulness of the fund will depend upon how it is managed and how responsive it is to the needs of particularly vulnerable countries. Negotiations on modalities for operationalizing the Adaptation Fund begin at COP-11.

Controversy has surrounded the relationship between CDM investments and official development assistance (ODA) financial flows. Some Annex I parties investing in CDM projects have sought ODA credit for these

[127] The draft Third Overall Performance Study of the GEF noted that the requirement that projects have up-front co-financing poses difficulty for many stakeholders in accessing GEF funds, and that building more flexibility into co-financing would be useful. See *Third Overall Performance Study, Draft Final Report* (GEF, 20 May 2005), at 172–173.

[128] See *Status Report on the Least Developed Countries Fund*, n. 112 above, at 7.

[129] See OPS-3, n. 15 above, at 78.

[130] See Decision 10/CP.7, n. 52 above.

[131] Ibid.

[132] Ibid.

[133] Modalities and Procedures for a Clean Development Mechanism, as defined in Article 12 of the Kyoto Protocol (Decision 17/CP.7, 2001), at para. 15, and annexed draft Decision, at para. 66. Certified emission reductions (CERs) are units issued under Article 12 of the Kyoto Protocol that are equal to one metric tonne of carbon dioxide equivalent. These credits may be traded or credited toward the quantified emission limitation or reduction commitments of Annex B parties under the Kyoto Protocol.

[134] Ibid., para. 15.

[135] See UNFCCC, *Registered CDM Projects* (UNFCCC, undated), available on the UNFCCC website at <http://cdm.unfccc.int/Projects/registered.html>, with an estimate of the number of metric tonnes of carbon dioxide reduction anticipated. Decision 10/CP.10 provides that 'the adaptation fund shall be financed from the share of proceeds on the Clean Development Mechanism project activities and other sources of funding' and invites Annex I Kyoto parties to provide funding 'additional to the share of the proceeds'. See Continuation of Activities Implemented Jointly under the Pilot Phase (Decision 10/CP.10, 2004).

investments, as development assistance provided to developing countries.[136] However, anticipating this possibility, in agreeing on modalities and procedures for the CDM in the Marrakesh Accords, the parties agreed that:

> public funding for clean development mechanism projects from parties in Annex I is not to result in the diversion of official development assistance and is to be separate from and not counted towards the financial obligations of parties included in Annex I.[137]

This language reflects a clear intent that funds invested in CDM projects be distinct from and additional to ODA funding. Nevertheless, some developed countries, under pressure to increase their ODA experditures, and looking to maximize political returns from CDM investments, have emphasized the contribution of CDM projects to sustainable development in host countries and sought ODA credit.

Since the COP's agreement in Marrakesh, discussions have taken place on this issue within the Organization for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC). At a DAC senior-level meeting in November 2003, some DAC members argued that CDM expenditures should be reportable as ODA without restriction, since the CDM fosters sustainable development in the recipient country; others argued that public expenditures for activities under the CDM should not be counted as ODA because the resulting CDM CERs benefit the donor.[138] Because no consensus could be reached, a compromise resulted under which the value of CERs resulting from ODA-financed CDM projects will be considered as a return to the donor, and give rise to a deduction of equivalent value from ODA flows, regardless of whether CERs are sold or retained by the donor. However, if a donor has agreed with the host country not to receive any of the CERs generated by a project, no deduction from ODA is required. ODA funds that are used to purchase CERs cannot be counted as ODA. Left unresolved was how to price CERs.[139] Accordingly, it appears that developed-country parties with Annex B commitments will receive ODA credit for their investments in CDM projects, until such time as these projects yield returns in the form of CERs that can be priced and deducted from earlier-reported ODA flows. This result again underscores the ability of donor countries to influence the interpretation and application of COP decisions outside the setting of the COP.

It must not be forgotten that CDM projects in developing countries permit increased emissions in developed countries under the Kyoto Protocol. Every metric tonne of carbon dioxide equivalent emission reductions that yields a CER in a developing country, through a CDM project, becomes available to offset an equivalent additional metric tonne of carbon dioxide equivalent emissions in an Annex I party with a commitment under Annex B of the Kyoto Protocol.[140] Ironically, a substantial flow of adaptation funding may ultimately come from the 2% share of the proceeds resulting from CDM projects – in a sense leaving developing countries as a whole to fund their own adaptation needs, as they simultaneously enable ever greater domestic emissions in Annex I parties.

In addition, Annex II parties have agreed under Article 4(4) of the convention to assist particularly vulnerable developing countries in meeting the costs of adaptation. Annex II parties that have not ratified the Kyoto Protocol, or that do not utilize the CDM, will not be contributing to the Adaptation Fund by generating a share of the proceeds from CDM projects. Thus, like the discretionary SCCF and LDC Fund, the Adaptation Fund does not reflect an equitable sharing of the burden of adaptation among developed countries. A means will have to be found to institutionalize funding for adaptation under the convention, so that the parties who are the most responsible for historical and present emissions, including the USA, contribute.[141]

IV. REPORTING ON ADAPTATION FUNDING UNDER THE UNFCCC

All UNFCCC parties are required to submit national communications to the COP. Under Article 12(3), Annex II parties are required to incorporate details in their national communications of measures taken in accordance with Article 4(3), 4(4) and 4(5).[142]

Guidelines for national communication reporting have been developed separately for Annex I and non-Annex I parties, based on the different commitments each group has undertaken. Under Annex I reporting guidelines, parties with funding obligations under the UNFCCC are asked to:

[136] See ODA Eligibility Issues for Expenditures Under the Clean Development Mechanism (DAC/CHAIR(2004)4/FINAL, 30 April 2004) (endorsed at the DAC High-Level Meeting on 15–16 April 2004). Developed countries have pledged since 1970 to achieve a target of 0.7% of gross national product as ODA to developing countries.
[137] Ibid., at 3; and Decision 17/CP.7, n. 133 above.
[138] See ODA Eligibility Issues, ibid., at 2.
[139] Ibid.

[140] See Kyoto Protocol to the UNFCCC (Kyoto, 11 December 1997), Article 12.
[141] The USA is not a party to the Kyoto Protocol and thus does not participate in the CDM. It also does not contribute to the LDC Fund or SCCF. The USA was responsible for approximately 35% of Annex I party carbon dioxide emissions in 1990.
[142] See UNFCCC, n. 1 above, Article 12.

- provide details of measures taken to give effect to their commitments under Article 4(3), 4(4) and 4(5);
- indicate what 'new and additional financial resources' they have provided under Article 4(3); and
- provide detailed information on the assistance provided 'to assist developing countries that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects', including through bilateral, regional and other multinational channels.[143]

Following Decision 7/CP.7, Annex II parties are now required to report on their financial contributions, on an annual basis, for COP review.[144] Decision 4/CP.8 urged Annex I parties to submit their fourth national communications by 1 January 2006.[145] Decision 1/CP.9 stressed the need for parties included in UNFCCC Annex II to provide detailed information, including in their national communications, on their assistance to developing-country parties who are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.[146] Decision 1/CP.10, taken in December 2004, requested Annex II parties to provide detailed information, including in their national communications, on progress made on support programmes to meet the specific needs and circumstances of developing-country parties arising from the adverse effects of climate change.[147]

The nature of the existing Annex I reporting guidelines makes it difficult to assess how Annex II parties, either individually or as a whole, are implementing their convention obligations on adaptation funding. For example, while parties are asked to note their contributions to the GEF, they are not required to (and likely cannot) disaggregate climate funding from contributions to other GEF focal areas (such as biodiversity), let alone further disaggregate adaptation funding from mitigation funding. In addition, a number of new EU Member States and Annex I parties – including Cyprus, Malta, Bulgaria, Poland, Russia and Ukraine – benefit from GEF funding. This makes reporting on GEF contributions even less relevant for the purpose of assessing compliance with the legally binding requirements of Article 4(3) and 4(4) on Adaptation Funding. With respect to reporting on assistance given to vulnerable countries, the question of how 'particular vulnerability' has been determined is left to each donor government. This makes it difficult to review the existing burden sharing of adaptation costs among developed countries, or to review the distribution of these efforts across developing-country beneficiaries.

The UNFCCC's country profiles, posted on the UNFCCC website, provide only aggregated data on funding and technology transfer under the UNFCCC and Kyoto Protocol. The country profile for the Netherlands is set out as an example in table 5 and this illustrates the challenge of accessing, and assessing, information on Annex II transfers for developing-country adaptation within the UNFCCC process.[148]

In cooperation with the secretariats of the three Rio conventions (Convention on Biological Diversity,[149] UNFCCC, and Convention to Combat Desertification[150]), the OECD DAC has developed a set of three 'Rio markers' in an effort to measure the size of aid flows that are grant or concessional and intended principally or significantly to achieve the objectives of the Rio conventions.[151]

According to a special 2002 OECD report, from 1998 to 2000, climate-change-related ODA totalled approximately US$8.1 billion from 19 members of the OECD, or approximately 7.2% of total bilateral ODA commitments over this 3-year period.[152] Using these broad markers, countries reported that a significant share of their aid activities were climate-change related in the energy field (44%), in the forestry field (48%), general environmental protection (43%) and in transport (21%). In all other sectors (agriculture, rural development, water supply, industry) the share was small.[153] However, these data do not permit a determination of whether this reported aid was 'new and additional' as stipulated by the UNFCCC.[154] Developed countries have long committed to an ODA target of 0.7% of

[143] Review of the Implementation of Commitments and of other Provisions of the Convention, UNFCCC Guidelines on Reporting and Review (FCCC/CP/1999/7, 16 February 2000), at 91–92.

[144] See Decision 7/CP.7, n. 52 above, at para. 1(e) and 1(f).

[145] National Communications from Parties included in Annex I to the Convention (Decision 4/CP.8, 2002).

[146] National Communications from Parties included in Annex I to the Convention (Decision 1/CP.9, 2003).

[147] See Decision 1/CP.10, n. 68 above.

[148] See, also, National Communications from Parties included in Annex I to the Convention, Compilation and Synthesis of Third National Communications – Executive Summary (FCCC/SBI/2003/7, 16 May 2003), at 13–14, paras 55–60 (noting gaps and inconsistencies in Annex I party reporting on financial transfers). For more detail, see National Communications from Parties included in Annex I to the Convention – Compilation and Synthesis of Third National Communications, Addendum (FCCC/SBI/2003/7/Add.1, 29 May 2003), at 43–51.

[149] See CBD, n. 13 above.

[150] See UNCCD, ibid.

[151] See Organization for Economic Cooperation and Development, *Aid Targeting the Objectives of the Rio Conventions, 1998–2000* (OECD, August 2002). 'Climate-change-related aid' is defined as 'activities that contribute to the objective of stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system by promoting efforts to reduce or limit GHG emissions or to enhance GHG sequestration'; ibid., at 4. Reporting is based on a marking system with three values: 'principal objective', 'significant objective', and 'not targeted to the policy objective'. Each activity can have more than one policy objective; ibid., at 3.

[152] Ibid., at 4.

[153] Ibid., at 4–5.

[154] Ibid. The study looked at data accounting for 97% of bilateral ODA commitments by DAC bilateral donors in 1998–2000, with 20 out of 23 DAC members contributing to the study. Nineteen members reported 5124 individual 'climate-change-related activities'; ibid., at 4.

TABLE 5 UNFCCC COUNTRY PROFILE FOR THE NETHERLANDS. FUNDING AND TECHNOLOGY TRANSFER UNDER THE UNFCCC AND THE KYOTO PROTOCOL

SUMMARY INFORMATION ON FUNDING AND TECHNOLOGY TRANSFER	
Official Development Assistance (ODA)	US$3.34 billion in 2002 (0.81% of gross national income)
Climate-related aid in bilateral ODA	2.3% (OECD/DAC estimate for 1998–2000)
Climate-related support programmes	Netherlands' Climate Programme (covering capacity building, mitigation, adaptation) including Climate Change Studies Assistance Programme (1996)
Contributions to GEF (US$million)	Pilot phase: 51.56. GEF-1: 71.4 GEF-2: 72.8
Pledge for third GEF replenishment	US$82.11 million
Activities Implemented Jointly (AIJ)	25 AIJ projects funded in 14 countries
Joint Implementation (JI) and CDM under the Kyoto Protocol	Use of JI and CDM is planned
Other (bilateral/multilateral)	Long-term cooperation programmes with 22 developing countries; cooperation with 15 developing countries; cooperation with countries with economies in transition in Central and Eastern Europe; Miliev Programme to support private-sector initiatives; participation in the development and application of the FINESSE concept for 'green energy supply'
Designated national authority for CDM	See <http://cdm.unfccc.int/DNA/>

Data Source: UNFCCC, *Country Profiles* (UNFCCC, undated), available at <http://unfccc.int/parties_and_observers/parties/annex_i/country_profiles/items/3370txt.php>.

gross national product.[155] Few countries have attained this level and most are far below. Total ODA has increased over the last few years, as a result of a number of unusual events, including efforts to rebuild Iraq and Afghanistan.[156] However, ODA to SIDS, in particular, has decreased.[157]

In January 2004, the executive heads of the Rio conventions expressed the hope that Rio markers could assist in streamlining reporting on aid-related activities under the Rio conventions, to ensure consistent reporting and avoid double reporting to the DAC and to the conventions in national communications and reports.[158] In June 2004, the DAC Working Party on Statistics decided to incorporate the Rio markers in regular reporting for a trial period of 3 years (2001–2003), with the understanding that coverage and quality of the data received would be reviewed in 2007.[159] The Rio markers are still under development and may become a fixed element of ODA reporting. However, these markers are unlikely to provide information at a level of detail that will assist in assessing financial transfers to assist vulnerable countries in adapting to climate change.

V. THE GEF'S NEW PERFORMANCE-BASED RESOURCE ALLOCATION FRAMEWORK

After much heated debate, in September 2005, the GEF Council adopted a Resource Allocation Framework (RAF) for the allocation of GEF funding. The RAF will radically alter the existing system for the distribution of resources for the GEF's climate change programme.[160] GEF funds have traditionally been accessed on a first-come first-served basis, based on project proposals that are submitted for funding. Under the RAF, at the beginning of the replenishment period, a country score will be calculated for the climate change focal area, a country share will be determined and a preliminary allocation will be made based on total GEF resources available. Some countries will have individual allocations, while other countries with smaller shares

[155] See Indicators for Assessing Progress Towards the 2010 Target: Official Development Assistance Provided in Support of the Convention (UNEP/CBD/SBSTTA/10/INF/22, 17 December 2004).
[156] See OECD, *Official Development Assistance Increases Further – But 2006 Targets still a Challenge* (OECD, 11 April 2005), noting that ODA to developing countries increased to US$78.6 billion in 2004, its highest level ever.
[157] See L. Nurse and R. Moore, 'Adaptation to Global Climate Change', 14:2 *RECIEL* (2005), 100, at 106, figure 2.
[158] See Indicators for Assessing Progress Towards the 2010 Target, n. 155 above, at 3.
[159] Ibid.
[160] See Joint Draft Summary of the Chairs (GEF/C.26/CRP.1, 2 September 2005).

will be part of a group allocation. Funding floors and ceilings will apply.

The RAF comes from a 2002 policy recommendation of the third replenishment of the GEF, which suggested that the GEF establish:

> a system for allocating scarce GEF resources within and among focal areas with a view towards maximizing the impact of these resources on global environmental improvements and promoting sound environmental policies and practices worldwide.[161]

It was recommended that such a system 'should establish a framework for allocation to global environmental priorities and to countries based on performance' and 'provide for varied levels and types of support to countries based on transparent assessments of those elements of country capacity, policies and practices most applicable to successful implementation of GEF projects'.[162] In response, the GEF proposed a performance-based RAF, intended initially to be applied to the climate change and biodiversity areas.[163]

The RAF will rely on two indices: (1) a GEF Benefits Index (GBI) – which seeks to measure the potential global benefits that can be realized from climate change mitigation activities in a country, and which expressly ignores adaptation needs;[164] and (2) a GEF Performance Index (GPI) – which seeks to measure a country's capacity to implement successfully GEF programmes and projects based on its current and past performance.[165]

The GBI for climate change will provide a relative ranking of countries for meeting the GEF's climate change objectives based on: (1) baseline emissions for the year 2000 in tons of carbon equivalent; and (2) a carbon intensity adjustment factor, computed as the ratio of carbon intensity in 1990 to carbon intensity in 2000.[166] Essentially, this formula will direct GEF funding to countries with the largest emissions. The rationale is that countries with greater GHG emissions will have lower abatement costs than countries with smaller emissions. The carbon intensity measure is intended to be a barometer of willingness or ability to reduce emissions over time, and to reward countries that have reduced their carbon intensity levels.[167]

The GPI for climate change is intended to provide a relative ranking of each country's capacity to deliver potential global environmental benefits based on current and past performance and on governance criteria. It is a weighted average of three indicators: (1) a project portfolio performance indicator (PPI), which looks at average ratings of GEF projects and World Bank projects; (2) a country environmental policy and institutional assessment indicator (CEPIA); and (3) a broad framework indicator (BFI) developed from the World Bank's Country Policy and Institutional Assessment (CPIA) indicator.[168] Disturbingly, the GPI was proposed and adopted despite the fact that none of the three indicators is available for 23 countries, and the GEF has acknowledged that the PPI is neither comprehensive nor robust because many countries have not hosted projects. In addition, indicators drawn from the CPIA for use in the broad framework indicator include indicators such as 'property rights and rule-based governance' – elements with cultural aspects.[169]

A country score will be calculated from the GBI and GPI. A country share for the climate change focal area will be determined by dividing the country score by the sum of all country scores. Floors and cellings will apply.

Prior to its adoption, the proposed RAF was heavily criticized by both developed and developing countries for seeking to use indicators (in effect, eligibility criteria for GEF funding) that have not been expressly agreed by the various convention COPs.[170] The Group of 77 and China expressed these concerns in a submission to the GEF in September 2004.[171] During the November

[161] Technical Paper on the GEF Resource Allocation Framework (GEF/C.26/2/Rev.1, 24 August 2005), at 1, citing Summary of Negotiations on the Third Replenishment of the GEF Trust Fund (GEF/C.20/4, 19 September 2002), Annex C, para. 16.

[162] Ibid., citing GEF/C.20/4, Annex C, para. 18.

[163] Resource Allocation Framework (GEF/C.24/8, 26 October 2004); Technical Paper on the GEF Resource Allocation Framework, ibid., at 1, n. 3. As part of the third replenishment of the GEF, the USA pledged to provide an additional amount of US$70 million in the final year of the replenishment cycle if an operational performance-based allocation system was in place by late 2004. The condition was not fulfilled and the US$70 million from the USA was not forthcoming. This has formed the backdrop for negotiations on the GEF-4 replenishment. See Trustee Interpretation Deferment Right of the Contributing Participants with Respect to Conditional GEF-3 Contribution (GEF/R.4/Inf.4, 8 June 2005), at 1; GEF Instrument for the Establishment of the Restructured Global Environment Facility (GEF, May 2004), Attachment 1 and Schedule 1 (calling for a performance-based allocation system). The USA has continued to push the RAF as a condition of its contribution to the GEF's fourth replenishment.

[164] See Technical Paper on the GEF Resource Allocation Framework, ibid., at 2, n. 4.

[165] Ibid., at 1.

[166] Ibid., at 16–17.

[167] Ibid., at 17.

[168] Ibid., at 20.

[169] Ibid. Cf. Technical Paper on the GEF Resource Allocation Framework (GEF/C.26/2, 19 July 2005), at 20–21 and nn. 29–30 with Technical Paper on the GEF Resource Allocation Framework (GEF/C.26/2/Rev.1, 24 August 2005), at 20–21, n. 29.

[170] See, for example, concerns expressed at the June 2005 GEF Council meeting: *Joint Summary of the Chairs*, GEF Council Meeting, 3–8 June 2005 (GEF, 1 July 2005) (revised), at 16 and Annex A. Many comments highlighted the lack of transparency likely to result from the RAF.

[171] See, for example, Submission of the G-77 and China (GEF/C.24/Misc, 22 September 2004), for the GEF Seminar on the Resource Allocation Framework; see also Proposed Decision Submitted by the Recipient Countries of the GEF Council on a Resource Allocation Framework (GEF/C.24/CRP.1, 17 November 2004).

2004 GEF Council Meeting, informal negotiating groups were created to assist in achieving agreement, but reported back to the Council with a range of distinct proposals for formal consideration by the GEF Council at its next meeting – to take place in June 2005. In December 2004, at UNFCCC COP-10, a number of countries, including SIDS and LDC members, expressed concerns about the proposed RAF.

When the June 2005 GEF Council Meeting subsequently took place, again many countries expressed serious concerns with the GEF proposal, questioning whether the RAF was in line with the GEF's mandate to protect the global environment and compatible with the spirit and letter of the multilateral environmental agreements that the GEF serves.[172] They additionally questioned whether it would lead to performance improvements, noted the lack of public disclosure in RAF, noted the absence of incentives for those considered to be poor performers, and specifically opposed the ranking and categorization of recipient countries through what they saw to be non-transparent assessments and questionable criteria.[173] The GEF Council agreed to suspend the three motions that had been tabled at the November 2004 meeting by different groups, with a view to reaching a final decision by consensus. The Council took note of a proposal made by the GEF Secretariat on a resource allocation framework,[174] and agreed to an extraordinary meeting of the Council to finalize the RAF. The GEF Council requested that the Secretariat prepare a comprehensive proposal for the Council's consideration at that future meeting.[175]

On 2 September 2005, the GEF Council, at this extraordinary session, continued discussions and agreed to implement a resource-allocation framework for the GEF-4 replenishment, structured for the most part as described in document GEF/C.26/2/Rev.1 ('Technical Paper on the GEF Resource Allocation Framework') with a few amendments and 'understandings'.[176] As a result of that agreement, a preliminary country allocation for each country in the climate change focal area will be computed as the product of the 'country share' and the total amount of GEF resources available for the focal area under the RAF, after excluding 5% of the focal area resources for global and regional allocations; and 5% of the focal area resources for the small grants programme and cross-cutting capacity-building activities. The RAF's explicit focus on countries offering the greatest GHG reductions will make access to adaptation funding within the climate change focal area more challenging still.

The RAF debate highlights the enormous impact internal GEF decisions have on UNFCCC funding, and the political aspect to many decisions taken within the GEF. It also serves as an illustration of how the GEF may be used as an agency to promote broader donor-country agendas.

CONCLUSION

Annex II parties, in ratifying the convention, have made a binding legal commitment to provide financial resources needed by developing countries to meet the incremental costs of implementing a range of adaptation measures covered by Article 4 of the UNFCCC. Annex II parties have also made a binding legal commitment to assist developing countries that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those effects.

Despite these commitments, the GEF Trust Fund continues to lack a formal operational programme on adaptation within its climate change focal area. The GEF's global environmental benefits requirement continues to raise challenges for the funding of adaptation measures that generate primarily local benefits. In response to the parties' request at COP-7 for GEF support for pilot and demonstration adaptation projects that will demonstrate real benefits, the GEF Trust Fund created a new Strategic Priority on Adaptation ('Piloting an Operational Approach to Adaptation'). Unfortunately, this strategic priority now seems focused on mainstreaming adaptation issues into other GEF focal areas, rather than providing a base for adaptation activities within the climate change focal area.

The SCCF and LDC Fund, which were created in Marrakesh in response to challenges posed by the GEF, and which were intended to have the flexibility to address local adaptation issues, are supported only by discretionary pledges from donors. Certain major Annex II GHG emitters, including the USA, have chosen not to lend their support to these funds. The countries that do contribute have clear ideas about the activities they wish to fund, which may not align with developing-country needs. The Adaptation Fund, also created in Marrakesh, will address concrete adaptation measures. However, the scope of this fund, and criteria for accessing it, remain to be agreed, and its size will depend upon usage of the CDM that generates the revenues to drive the fund – bearing in mind that Annex II parties who have not ratified the Kyoto Protocol, including the USA and Australia, will not participate in CDM projects. Making matters more

[172] See *Joint Summary of the Chairs,* n. 170 above, at 16 and Annex A, in which Azerbaijan, Kazakhstan, Kyrgyz Republic, Switzerland, Tajikistan, Turkmenistan and Uzbekistan expressed their concerns with the GEF proposal. These comments were supported by the GEF Council member representing Austria, Belgium, Czech Republic, Hungary, Luxembourg, Slovak Republic, Slovenia and Turkey.
[173] Ibid.
[174] Secretariat Proposal on RAF (GEF/C.25/CRP.5, 8 June 2005).
[175] See *Joint Summary of the Chairs*, n. 170 above, Decision on Agenda Item 13 Resource Allocation Framework.
[176] Joint Draft Summary of the Chairs, n. 160 above.

challenging still, the Marrakesh Accords call for complementarity in the activities to be addressed by the GEF, SCCF, LDC Fund and Adaptation Fund. A clear vision of how this is to be carried out in practice remains elusive. Strict complementarity may not be practical or desirable, and the notion of complementarity itself may have to shift over time, depending upon the success of these discrete funds in achieving their aims.

Article 11(1) of the UNFCCC clearly provides that the COP is to decide on the financial mechanism's policies, programme priorities and eligibility criteria in the climate change arena. Nevertheless, it is plain that influences outside the COP have played a substantial role in the criteria established for developing-country access to the GEF Trust Fund, LDC Fund and SCCF. This has been most clearly seen in the SCCF's programming and pledging mechanisms, and the GEF RAF's use of governance criteria to determine climate change funding allocations to developing countries.

The trajectory of negotiations on adaptation funding since Marrakesh provides a number of lessons. First, developing countries must take a proactive approach to the elaboration of appropriate frameworks to address their adaptation needs, tabling and defending their own well-defined and workable proposals, rather than floating general concepts for consideration.

Second, criteria for accessing future funds for adaptation must be carefully planned and articulated by the COP within the UNFCCC process, rather than delegated to the GEF, or these funds are likely to end up replicating existing challenges associated with accessing GEF funding. This is relevant for negotiations on the Adaptation Fund, which will begin in November 2005. As it has already been agreed that the GEF will manage the Adaptation Fund, consideration could be given to ways to compensate developing countries for the imbalance in power within the GEF. This might be done through the creation of a new decision-making body for the oversight and management of the fund within the UNFCCC process that directly reflects the interests of vulnerable developing countries.[177]

Third, a mandatory funding stream for adaptation is needed under the convention that is tied to GHG emissions, to underscore to governments and consumers the true cost of these emissions on vulnerable populations across the globe, to create greater room for responsiveness to developing-country needs, and to display international solidarity with those countries that are themselves powerless to affect the global GHG emissions that will directly impact their futures. This is not, however, to suggest that funding for adaptation can in any way be considered a substitute for mitigation measures by industrialized countries.

Fourth, many developing-country negotiators require a better understanding of how the COP relates to the GEF, and the role of COP guidance and the GEF Council in creating avenues for adaptation funding. Better communication between the GEF and developing-country parties will serve to increase trust in the process. The creation of a formal operating programme on adaptation within the GEF climate change focal area, to address adaptation issues that cannot readily be addressed under other GEF focal areas, may offer a way forward.

Fifth, greater accountability is needed for the provision of financial resources for adaptation by Annex II parties. It is extremely difficult to monitor the transfer of new and additional funding to developing countries through existing UNFCCC national reporting guidelines, and it is questionable whether the Rio markers can assist in this process.

It is plain that many vulnerable developing countries are already experiencing the impacts of climate change and already have sufficient information about their specific present vulnerabilities to move ahead with adaptation projects that go beyond planning and capacity building. A commitment must be made by developed-country parties to provide substantial, clearly identifiable and accessible funding for adaptation, to avoid the risk of losing developing-country faith in the UNFCCC process.

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[177] There is precedent for the creation of advisory bodies in the process. See, for example, the LDC Expert Group and compare the Expert Group on Technology Transfer, both established by the Marrakesh Accords. See n. 52, above, Establishment of a Least Developed Countries Expert Group (Decision 29/CP.7); Development and Transfer of Technologies (Decisions 4/CP.4 and 9/CP.5) and (Decision 4/CP.7).