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**TRACING THE ORIGINS OF THE KYOTO PROTOCOL:
AN ARTICLE-BY-ARTICLE TEXTUAL HISTORY**

Technical paper

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I. GLOSSARY

| | |
|------------------|---|
| AGBM | Ad Hoc Group on the Berlin Mandate |
| AIJ | Activities implemented jointly under the pilot phase |
| AOSIS | Alliance of Small Island States |
| CDM | Clean development mechanism |
| CERs | Certified emission reductions (under the CDM) |
| CFCs | Chlorofluorocarbons |
| CH ₄ | Methane |
| CNT document | Consolidated negotiating text by the Chairman (13 October 1997) |
| CO ₂ | Carbon dioxide |
| COP | Conference of the Parties |
| COP/MOP | Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol |
| CoW | Committee of the Whole |
| CRP document | Conference room paper |
| EITs | Economies in transition |
| FC document | Framework Compilation (3 and 26 February 1997) |
| GWP | Global Warming Potential |
| HFCs | Hydrofluorocarbons |
| ICAO | International Civil Aviation Organization |
| IEA | International Energy Agency |
| IMO | International Maritime Organization |
| INF document | Reports by the Chairmen of the informal consultations conducted at AGBM 7 (22 September 1997) |
| IPCC | Intergovernmental Panel on Climate Change |
| JI | Joint implementation |
| JUSSCANNZ | A loose coalition of non-EU Annex I Parties, centered around Japan, the United States of America, Switzerland, Canada, Australia, Norway and New Zealand. |
| LDC | Least developed country |
| MCP | Multilateral consultative process |
| N ₂ O | Nitrous oxide |
| NT document | Negotiating text (22 April 1997) |
| OECD | Organization for Economic Co-operation and Development |
| PFCs | Perfluorocarbons |
| ppmv | parts per million by volume |
| QELROs | Quantitative emission limitation and reduction objectives |
| OLA | Office of Legal Affairs |
| REIO | Regional economic integration organization |
| RTUN document | Revised text under negotiation (12 November 1997) |
| SBI | Subsidiary Body for Implementation |
| SBSTA | Subsidiary Body for Scientific and Technological Advice |
| SF ₆ | Sulphur hexafluoride |
| SoP document | Synthesis of proposals (19 November 1996) |

II. INTRODUCTION

1. This paper seeks to trace the evolution of each provision of the Kyoto Protocol during its negotiation process, from the original proposals submitted by Parties through to the final authentic text. By providing an eye-witness account of the textual construction of the Kyoto Protocol, the paper aims to contribute to the historical record and institutional memory of the intergovernmental climate change process.
2. For each Article or provision, the paper tracks its textual development, from proposals by Parties through the negotiating documents. Unless otherwise indicated, the proposals from Parties referred to in the paper may be found in the April 1997 negotiating text¹ (see “documents” below). The paper should be read together with the text of the Kyoto Protocol and, if possible, the other cited documents. All documents referenced in this paper may be obtained from the secretariat, and most can be found on the secretariat web site (www.unfccc.int).
3. Each of the provisions, along with the Protocol as a whole, was carefully negotiated, with trade-offs both among and within the Articles. In the interests of clarity, the paper deals with the various provisions separately; however, the interlinkages between them during the negotiations should be borne in mind.
4. In order to assist the reader and place the textual analysis in context, the paper begins by presenting background information on the forums for negotiation and the main negotiating documents. A brief chronology of the negotiations is also provided in Annex I. Annex II includes a marked-up version of the Kyoto Protocol which shows the point in time when each provision appeared in its final substantive form in the protocol draft. Annex III provides a list of proposals submitted by Parties, and the documents in which these may be found.
5. The paper has been reviewed by Ambassador Raúl Estrada-Oyuela, who chaired the Protocol negotiations; several key individuals involved in the negotiations have also commented on it. The content of the paper, however, remains the responsibility of the author. It does not necessarily reflect the opinion of the secretariat, or that of any Party.

III. BACKGROUND

6. Negotiations on what was to become the Kyoto Protocol were launched by the Conference of the Parties (COP) at its first session (Berlin, March/April 1995) when it adopted its decision 1/CP.1 (the “Berlin Mandate”). This decision established that the commitments in Article 4.2(a) and (b) of the Convention² were “not adequate”, and launched a process to “take appropriate action beyond 2000, including the strengthening of the commitments of Annex I Parties ... through the adoption of a protocol or another legal instrument”. The Berlin Mandate stated that the process should, to this end, “elaborate policies and measures” for Annex I Parties, as well as “set quantified emission limitation and reduction objectives” (QELROs) for these

¹ See FCCC/AGBM/1997/3/Add.1.

² Article 4.2(a) and (b) include a specific commitment for Annex I Parties to aim to return their greenhouse gas emissions to 1990 levels by 2000.

Parties. The decision also specified that the negotiation process should “not introduce any new commitments” for non-Annex I Parties, “but reaffirm existing commitments in Article 4.1 [on general commitments for all Parties] and continue to advance the implementation of those commitments in order to achieve sustainable development...”.

Forums for negotiation

7. As part of the Berlin Mandate, COP 1 established an “open-ended ad hoc group of Parties” to conduct the negotiations, which became known as the Ad Hoc Group on the Berlin Mandate (AGBM). Also at COP 1, Parties designated Ambassador Raúl Estrada-Oyuela (Argentina) to serve as Chairman of the AGBM. The AGBM met eight times over the course of 1995-1997, including a half day resumed session immediately prior to COP 3 (see table 1 and also the chronology in Annex I below). At COP 3, negotiations were conducted in a Committee of the Whole (CoW) convened by the COP, also under Ambassador Estrada’s chairmanship.

8. At AGBM 6 (March 1997), Chairman Estrada convened two so-called “non-groups” to take up specific issues under discussion. The term “non-group” was used to underline the informal status of the groups, in particular that they had no mandate to take decisions. The first non-group took up issues relating to “institutions and mechanisms and introductory and final clauses” and was chaired by Mr. Takao Shibata (Japan). The second addressed the question of “continuing to advance the implementation of existing commitments in Article 4.1” under the chairmanship of Mr. Evans King (Trinidad and Tobago). At AGBM 7 (July/August 1997), two further non-groups were convened, one on policies and measures, under the chairmanship of Mr. Mahmoud Ould El Ghaouth (Mauritania), and one on QELROs, chaired by Mr. Luiz Gylvan Meira Filho (Brazil). These four non-groups continued to meet until the close of AGBM 8 (October 1997), and through to COP 3, where they were known as “negotiating groups”. The change in name sought to signal that Parties would now be entering into the final stage of negotiations.

9. Ambassador John Ashe (Antigua and Barbuda) took over the chairmanship of the non-group on continuing to advance existing commitments in Article 4.1 at AGBM 8, when Mr. King was required to attend to business in his home country. Ambassador Bo Kjellén (Sweden) joined Ambassador Ashe as co-chair of the negotiating group on this same issue at COP 3. At AGBM 8, Mr. Bakary Kanté (Senegal) took on the chairmanship of the non-group on policies and measures, as Mr. El Ghaouth was not present for most of that session. Mr. El Ghaouth resumed his role as Chairman of the negotiating group on policies and measures at COP 3. Also at AGBM 8, Chairman Estrada enlisted the help of Ambassador Kjellén to assist Mr. Meira Filho with the heavy work load of the QELROs non-group. For the final negotiations in the CoW, Chairman Estrada took on the responsibility of this crucial issue himself. Also at COP 3, Chairman Estrada convened a legal drafting group, under the chairmanship of Mr. Patrick Széll (United Kingdom) (UK), to advise on consistency, coherence and legal accuracy in the drafting of the protocol.

10. The groups convened during the protocol negotiations, along with their Chairmen, are summarized in table 1 below.

Table 1: Forums for negotiation and their chairmen

| Session | Negotiation forum | Chairman | |
|--|--|-----------------------------|--|
| AGBM 1 (Aug 1995) AGBM 2 (Oct/Nov 1995) AGBM 3 (March 1996) AGBM 4 (July 1996) AGBM 5 (Dec 1996) | AGBM plenary meetings only | Estrada | Argentina |
| AGBM 6 (March 1997) | QELROs and policies and measures discussed in plenary meetings | Estrada | Argentina |
| | Non-group on institutions & mechanisms | Shibata | Japan |
| | Non-group on continuing to advance Article 4.1 | King | Trinidad & Tobago |
| AGBM 7 (July/August 1997) | Non-group on institutions & mechanisms | Shibata | Japan |
| | Non-group on continuing to advance Article 4.1 | King | Trinidad & Tobago |
| | Non-group on policies and measures | El Ghaouth | Mauritania |
| | Non-group on QELROs | Meira Filho | Brazil |
| AGBM 8 (October 1997) | Non-group on institutions & mechanisms | Shibata | Japan |
| | Non-group on continuing to advance Article 4.1 | King followed by Ashe | Trinidad & Tobago Antigua & Barbuda |
| | Non-group on policies and measures | Kanté | Senegal |
| | Non-group on QELROs | Meira Filho Kjellén | Brazil Sweden |
| COP 3 (December 1997) | CoW plenary meetings | Estrada | Argentina |
| | Negotiating group on institutions & mechanisms | Shibata | Japan |
| | Negotiating group on continuing to advance Article 4.1 | Ashe Kjellén | Antigua & Barbuda Sweden |
| | Negotiating group on policies and measures | El Ghaouth | Mauritania |
| | Negotiating group on QELROs | Estrada | Argentina |
| | <i>Legal drafting group</i> | <i>Széll</i> | <i>UK</i> |

11. Chairman Estrada also convened three sets of inter-sessional informal consultations with a representative group of Parties. Two sets of informal consultations, on “strengthening the commitments in Article 4.2(a) and (b)” and on “continuing to advance the implementation of existing commitments in Article 4.1”, were held in June and July 1997 respectively, between AGBM 6 and 7. A further informal consultation on a draft of the consolidated negotiating text by the Chairman took place in October 1997, between AGBM 7 and 8 (see chronology in

Annex I below). It should be noted that Chairman Estrada also held numerous informal consultations with Parties during sessions of the AGBM throughout the negotiation process and at COP 3.

12. In addition, the Government of Japan organized three consultations during 1997 with a selected group of Parties. Although these took place outside the AGBM process, they were of particular importance given Japan's status as host country of COP 3. Where relevant, these consultations are referenced in this paper, and are also noted in the chronology of the negotiations in Annex I below. The President of COP 3, Minister Hiroshi Ohki, also held informal consultations with Parties during COP 3.

Documents

13. The main documents considered during the protocol negotiation process and referred to in this paper are as follows:

- **Miscellaneous documents** (issued with the symbol "MISC"): MISC documents were issued throughout the negotiation process. They simply reproduced proposals submitted by Parties to the secretariat, without translation and without formal editing. Annex III below indicates in which MISC documents the proposals from Parties may be found.
- **Synthesis of proposals (SoP)** (FCCC/AGBM/1996/10; dated 19 November 1996): At AGBM 4, Parties agreed that Chairman Estrada should produce a contribution to the fifth session that would synthesize all proposals relating to the elements of the Berlin Mandate. The SoP provided a narrative synthesis of proposals, without specifying their source. This was the first time that Parties had agreed to go beyond simply collating proposals in a MISC. The SoP was discussed at AGBM 5 (December 1996).
- **Framework compilation (FC)** (FCCC/AGBM/1997/2 and Add.1; dated 3 and 26 February 1997): Chairman Estrada had hoped to obtain a mandate at AGBM 5 to prepare a negotiating text. This did not prove possible. However, the AGBM requested him to "prepare a framework compilation, incorporating textual proposals from Parties as well as other proposals from Parties for the elements of a protocol or another legal instrument, and identifying the sources". The name "framework compilation" was an amalgam of two proposals, one from Samoa for a "framework text", the other from China for a "compilation". The proposals were reproduced verbatim in the FC, organized under common headings in the structure of a legal instrument. An addendum to the FC was prepared immediately before AGBM 6, to reflect additional proposals submitted since the preparation of the FC itself. Where relevant, references to the FC in this note refer to both the FC and its addendum. The FC formed the basis for debate at AGBM 6 (March 1997).
- **Negotiating text (NT)** (FCCC/AGBM/1997/3/Add.1; dated 22 April 1997): At AGBM 6, Parties gave Chairman Estrada a mandate to complete the negotiating text for a protocol or another legal instrument in time to enable the secretariat to make it available to the Parties in the six languages of the United Nations by 1 June 1997, and thereby meet the requirements of Articles 15.2 or 17.2 of the Convention. Articles 15.2 and 17.2 specified that the text of

any proposed amendment or protocol should be communicated to Parties at least six months before its adoption. The NT again reproduced proposals from Parties, although some of these had been merged and consolidated at AGBM 6. The names of proposing Parties were no longer included. The NT was considered at AGBM 7 (July 1997).

- **Reports by the Chairmen of the informal consultations conducted at AGBM 7 (INF)** (FCCC/AGBM/1997/INF.1; dated 22 September 1997): This document brought together the reports emanating from the four non-groups at AGBM 7, on QELROs, policies and measures, continuing to advance Article 4.1 and institutions and mechanisms (see “forums for negotiation” above). It was not translated. Although it remained on the table, it was not used again as the formal basis for negotiation.
- **Consolidated negotiating text by the Chairman (CNT)** (FCCC/AGBM/1997/7; dated 13 October 1997): At AGBM 7, Chairman Estrada was requested “to prepare a Chairman’s text to be the focus of work at the next session, drawing on the outcome of the work of the AGBM at its seventh session”. This text no longer simply reproduced the proposals from Parties, but put forward Chairman Estrada’s view of a possible compromise text. Alternatives on key substantive issues were bracketed. In order to promote consensus on the text, Chairman Estrada convened informal consultations on a draft version in early October 1997. Parties agreed to use the CNT as the basis for negotiation at AGBM 8 (October 1997).
- **Revised text under negotiation (RTUN)** (FCCC/CP/1997/2; dated 12 November 1997): This text was the result of negotiations on the CNT at AGBM 8. It was forwarded to COP 3 as the outcome of the work of the AGBM. The text was also prepared in the form of a possible amendment to the Convention (FCCC/CP/1997/2/Add.1; dated 26 November 1997). The RTUN was used as the main negotiating document in the first week of the CoW.
- **Conference room paper 2; Non-paper by the Chairman of the Committee of the Whole (CRP.2)** (FCCC/CP/1997/CRP.2; dated 7 December 1997): This in-session document prepared during COP 3 was issued as a status report on progress in negotiations (side bars were used to denote those issues requiring further negotiation). In preparing the document, Chairman Estrada had in mind the impending arrival of ministers in Kyoto for the high-level segment which was due to begin on Monday, 8 December. CRP.2 was discussed in the CoW on 8 December.
- **Conference room paper 4; Draft text by the Chairman of the Committee of the Whole (CRP.4)** (FCCC/CP/1997/CRP.4; dated 9 December 1997): This next status report included, for the first time, a list of proposed emission targets for Parties put forward by Chairman Estrada. Where provisions were not agreed, Chairman Estrada again presented proposals of his own. This text also benefited from the input of the legal drafting group convened by the CoW. CRP.4 was taken up by the CoW on 9 December.
- **Conference room paper 6; Final draft by the Chairman of the Committee of the Whole (CRP.6)** (FCCC/CP/1997/CRP.6; dated 10 December 1997): This was the text presented to the final meeting of the CoW in the early morning of 11 December. Again, it benefited from

Chairman Estrada's input on certain issues on which consensus had not yet been reached, and also from the legal drafting group.

- **FCCC/CP/1997/L.7 and L.7/Add.1; Adoption of the Kyoto Protocol to the United Nations Framework Convention on Climate Change** (dated 10 December 1997): Document L.7 included the decision on adoption of the Kyoto Protocol, while L.7/Add.1 contained the text of the Kyoto Protocol itself, as forwarded to the COP by the Committee of the Whole. The texts were dated 10 December 1997, despite being issued on 11 December (see Article 28 below).
- **Authentic text:** The authentic text is the final version of the Protocol, which was opened for signature at UN Headquarters on 16 March 1998. It was subject to a post-Kyoto technical review, where a number of editorial and technical changes were made to the text in L.7/Add.1. The authentic text may be found in part II of the report on COP 3 (FCCC/CP/1997/7/Add.1), as well as in the booklet issued by the secretariat.
- **Technical reviews by the secretariat:** The secretariat conducted two technical reviews of the protocol text; one immediately prior to COP 3, which fed into discussions in the CoW, and one after COP 3, when preparing the authentic text. The suggestions of the pre-Kyoto technical review can be found in FCCC/CP/1997/CRP.1, while a list of the changes made to the protocol text resulting from the post-Kyoto technical review may be obtained from the secretariat.

IV. ELEMENTS OF THE KYOTO PROTOCOL

Form of the legal instrument: Protocol vs amendment

14. The Berlin Mandate stated that the outcome of negotiations should be agreement on a "protocol or another legal instrument". In practice, this meant reaching agreement on a protocol or an amendment to the Convention.

15. The Alliance of Small Island States (AOSIS), the European Union (EU), Japan and the Russian Federation all supported the option of a protocol by presenting proposals for a full *protocol* structure. Other Parties explicitly supporting a protocol included Switzerland and Bulgaria, Estonia, Latvia, Poland and Slovenia in their common proposal.

16. Some other Parties preferred to keep both options open, with some noting that consensus would be needed to adopt a protocol, given the absence of rules of procedure³ and the provisions of Article 17 of the Convention, which do not specify a voting rule for adopting protocols. An amendment, on the other hand, would, as a last resort, only require a three-fourths majority vote

³ According to Article 7.3 of the Convention, the COP should, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies, including decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. However, these rules of procedure have not yet been adopted, due primarily to lack of agreement on the voting rule (rule 42). The draft rules of procedure have thus been "applied" at each session of the COP, with the exception of rule 42.

for adoption, as stipulated by Article 15 of the Convention (although ratification by three-fourths of Parties would then be required for entry into force).

17. The Australian proposal submitted for inclusion in the NT was based on a protocol structure, but was titled “Elements of a legal instrument”. The US proposal for the NT similarly put forward a protocol structure and was titled “Draft Protocol framework”, but with the qualification “submitted without prejudice to ultimate form of agreement”. The Group of 77 (G-77) and China referred to “protocol/another legal instrument” in their proposals. Kuwait and Nigeria noted that their proposals assumed a protocol, and that they would need to be modified if another legal instrument were adopted. No Party explicitly proposed an amendment.

18. Chairman Estrada based the FC and the NT on a protocol structure, but made a specific reference to the possibility of adopting an amendment. He did this partly because of his concern that the adoption of a protocol might be blocked, due to the need for consensus.

19. Chairman Estrada prepared his CNT in the form of a protocol, while again recalling that the option of adopting an amendment was still open. The RTUN emerging from AGBM 8 retained the form of a protocol. Chairman Estrada requested, however, that a document⁴ be prepared for COP 3 demonstrating how the provisions in the RTUN could be adapted if agreement was reached on an amendment. During informal consultations immediately prior to AGBM 8, part II (30 November 1997) where Chairman Estrada invited participants to suggest names for the new instrument (see “title” below), he mentioned once again the possibility that COP 3 could result in an amendment. However, given that there were no requests from Parties to explore the amendment option, CRP.2 and subsequent texts were prepared as draft protocols. The amendment option was never invoked, and an implicit decision was thus taken to adopt a protocol.

20. Another element worthy of note is the proposal for an amendment to Article 17 of the Convention, submitted by the Netherlands on behalf of the EU in a letter dated 28 May 1997⁵, which would have allowed the protocol to be adopted by a three-fourths majority vote. This proposal was aimed at averting the danger that lack of consensus would block the adoption of a protocol. The proposal, along with another proposed amendment submitted by Kuwait, this time to Article 4.4 of the Convention extending the scope of eligibility for financial assistance⁶, was considered by the Subsidiary Body for Implementation (SBI) during the AGBM 8 sessional period in October 1997. Neither proposal, however, received much support. They were taken up by the COP plenary during COP 3, but both proposals were eventually withdrawn.

21. The United Kingdom (UK) submitted a further proposal, dated 29 May 1997⁷, including provisions to allow an amendment to define its own entry into force procedures, thus bypassing Article 15 of the Convention. This proposal would have avoided the lengthy entry-into-force requirements for an amendment under Article 15, and would therefore have overcome one of the barriers to adopting an amendment. The proposal, however, was never taken up.

⁴ See FCCC/CP/1997/2/Add.1.

⁵ See FCCC/SBI/1997/15.

⁶ See also FCCC/SBI/1997/15.

⁷ See FCCC/AGBM/1997/MISC.1/Add.3.

Title: Kyoto Protocol to the United Nations Framework Convention on Climate Change

22. No textual proposal was put forward for a title to the protocol, although oral suggestions were made at informal consultations with Chairman Estrada immediately prior to AGBM 8, part II (30 November 1997). These included: Kyoto Protocol to the UNFCCC on Greenhouse Gases, Kyoto Protocol on the Limitation and Reduction of Greenhouse Gases, Kyoto Protocol on Greenhouse Gas Emissions and the Estrada Protocol (in a light-hearted manner). Participants at the consultations agreed that, in the event of the adoption of an amendment, it would simply be called “Kyoto Amendment to the UNFCCC”.

23. Agreement could not be reached, however, at AGBM 8 part II on a title to the protocol, and the issue was not formally discussed again.

24. The first title to the draft protocol appeared in CRP.6, a proposal from Chairman Estrada. It remained unchanged in the authentic text.

Untitled articles

25. AOSIS, Australia, the EU, Japan, the Russian Federation and the United States of America (US) all included titles to their draft articles in their proposed protocols. Titles also prefaced the sections in the FC, NT and INF.

26. The draft articles in the negotiating documents from Chairman Estrada’s CNT through to the authentic text were, however, left untitled at his request. Chairman Estrada was of the opinion that the negotiation of titles would only generate time-consuming discussion, and could also open up unproductive debates over their legal interpretation⁸.

V. TEXT OF THE KYOTO PROTOCOL

Preamble

27. Preambular text was negotiated at AGBM 6, 7 and 8 in the non-group on institutions and mechanisms chaired by Mr. Shibata, and at COP 3 in the negotiating group of the same name.

28. The preamble appeared in its final form, with the exception of changes made by the legal drafting group at COP 3, in the RTUN. It was unchanged in substance from Chairman Estrada’s proposal contained in the CNT.

⁸ Titles of articles were a source of debate in the negotiation of the Convention. A particular bone of contention was the potential legal implications of the title of Article 3 - “Principles”. A footnote was thus included in the Convention applying to all titles stating “Titles of articles are included solely to assist the reader”. Chairman Estrada wanted to avoid such debates in the Protocol.

“The Parties to this Protocol,”

29. This standard introductory phrase did not feature in any Party submission. It first appeared in the preamble proposed by Mr. Shibata (as Chairman of the AGBM 7 non-group) in the INF, and then in Chairman Estrada’s CNT. It was included unchanged in the authentic text.

“Being Parties to the United Nations Framework Convention on Climate Change...,”

30. AOSIS, the EU and the Group of 77 and China all proposed texts similar to this first paragraph. This precise wording first appeared in Mr. Shibata’s proposed preamble in the INF, and Chairman Estrada used it in his CNT. The paragraph was included almost intact in the authentic text.

“In pursuit of the ultimate objective of the Convention...,”

31. The specific text was not proposed by any Party. However, the proposed preambles from AOSIS, the G-77 and China and Uzbekistan⁹ all alluded to the ultimate objective of the Convention. Australia, the EU, the Islamic Republic of Iran et al.,¹⁰ Japan and the Russian Federation also advocated applying the Convention objective to the protocol in their proposals for an article on “objective” (see “objective and principles” below).

32. This particular wording first appeared in Mr. Shibata’s proposed preamble in the INF and was included by Chairman Estrada in his CNT. It remained unchanged through to the authentic text.

“Recalling the provisions of the Convention,”

33. This text was proposed by the EU. In addition, the proposals for preambular text from AOSIS, the G-77 and China and the Islamic Republic of Iran et al., all repeated certain selected Convention provisions.

34. Mr. Shibata used this text in his proposal in the INF, as did Chairman Estrada in his CNT, although at this point it was linked to an additional clause referring specifically to the Convention’s principles. Chairman Estrada considered that a general reference to all the provisions of the Convention would help to circumvent attempts by Parties to selectively quote Convention text in the protocol.

35. The paragraph appeared in its final form in the RTUN, from which it remained intact through to the authentic text.

“Being guided by Article 3 [*principles*] of the Convention,”

36. This specific text was not proposed for inclusion in the preamble by any Party. However, the EU, the G-77 and China and the Russian Federation all advocated, in their proposals for an

⁹ Uzbekistan, on behalf of Armenia, Azerbaijan, Georgia, Moldova and Turkmenistan.

¹⁰The Islamic Republic of Iran, on behalf of Saudi Arabia, United Arab Emirates and Venezuela.

article on “principles” (see “objective and principles” below), that the Convention principles apply to the protocol. In addition, AOSIS, the G-77 and China and the Islamic Republic of Iran et al. repeated some of the Convention principles in their proposals, either for preambular text or for an article on principles.

37. In his proposal in the INF document, Mr. Shibata put forward the clause “...being guided by the principles contained in its Article 3”, which appeared as part of the preambular paragraph recalling the provisions of the Convention.

38. Chairman Estrada used this preambular paragraph in his CNT. However, the mention of “principles” was removed following the informal consultations on the Chairman’s text in October 1997, where concern was expressed at the use of this word.

39. At AGBM 8, the preambular paragraph was split, resulting in a separate paragraph “being guided by its Article 3” appearing in the RTUN. The pre-Kyoto technical review highlighted a potential legal ambiguity in the use of the word “its” in this paragraph (which could refer to the Convention or the protocol), and this was changed to refer specifically to Article 3 “of the Convention” in CRP.2. The paragraph then remained unaltered through to the authentic text.

“Pursuant to the Berlin Mandate...,”

40. Although no Party proposed this specific text, the EU and the G-77 and China both alluded to the Berlin Mandate in their proposals. In his proposed preamble in the INF, Mr. Shibata included a three paragraph summary of the Berlin Mandate.

41. The agreed preambular paragraph is derived from the text proposed by Chairman Estrada in his CNT. The words “in fulfilment of” were replaced with “pursuant to” at AGBM 8 as proposed by Kiribati, and the resulting text, which appears in the RTUN, was included unchanged in the authentic text.

“Have agreed as follows:”

42. This standard legal clause, was included in the EU proposal. It appeared in Mr. Shibata’s proposal in the INF document and in Chairman Estrada’s CNT, from which it was included intact in the authentic text.

Article 1: Definitions

43. Article 1 was negotiated at AGBM 6, 7 and 8 in the non-group on institutions and mechanisms chaired by Mr. Shibata, and at COP 3 in the negotiating group of the same name. The pre-Kyoto technical review proposed some possible terms requiring definition, but these were not taken up, and were not included in the final text.

44. The protocol definitions were agreed in substance by CRP.4. Six of the seven definitions proposed by Chairman Estrada in the CNT were included, with some technical changes, in the authentic text, and just one further definition was added.

Chapeau

45. Although not phrased in the same way, the proposals from the G-77 and China, Kuwait, Nigeria and the Russian Federation all called for the definitions in Article 1 of the Convention to apply to the protocol.

46. The agreed chapeau first appeared in Chairman Estrada's CNT and remained unchanged through to the authentic text.

Definition 1: Conference of the Parties

47. This first definition was put forward in the proposals from AOSIS, the Islamic Republic of Iran et al., Kuwait and Nigeria.

48. Chairman Estrada did not include this definition in his CNT. It was added, however, in CRP.4. The definition then remained intact in the authentic text.

Definition 2: Convention

49. AOSIS, the Islamic Republic of Iran et al., Japan, Kuwait, Nigeria and the US all proposed similar definitions. Chairman Estrada included this precise wording in the CNT, and it did not change through to the authentic text.

Definition 3: Intergovernmental Panel on Climate Change

50. This definition did not appear in the submission of any Party and was first put forward by Chairman Estrada in his CNT following the informal consultations on the Chairman's text in October 1997. It remained unchanged in substance, with some technical modifications introduced in CRP.4.

Definition 4: Montreal Protocol

51. This definition was originally proposed by AOSIS, and Chairman Estrada repeated it in his CNT. Chairman Estrada viewed the absence of this definition in the Convention as an omission that should be rectified in the protocol. Technical adjustments were made to the definition at COP 3, and the final agreed wording appeared in CRP.4.

Definition 5: Parties present and voting

52. This fifth definition was first included in the CNT at Chairman Estrada's own initiative, and did not appear in any proposals from Parties. The definition allowed the deletion of a corresponding clause in the draft articles on amendments to the protocol and adoption and amendment of annexes. It remained unchanged through to the authentic text.

Definition 6: Party

53. AOSIS, the Islamic Republic of Iran et al., Japan, Kuwait, Nigeria, the Russian Federation and the US all proposed defining this term, and a definition was included by Chairman Estrada in his CNT. Aside from a change in CRP.2, where "text" was substituted for "context", the definition was included intact in the authentic text.

Definition 7: Party included in Annex I

54. This last term was defined by AOSIS and the Islamic Republic of Iran et al. in their proposals, but without the reference to a notification under Article 4.2(g)¹¹ of the Convention. This precise definition was first included in Chairman Estrada's CNT following the informal consultations on the Chairman's text.

Article 2: Policies and measures

55. A roundtable on policies and measures was held at AGBM 3, chaired by Mr. Kok Kee Chow (Malaysia), and at AGBM 4, chaired by Mr. Suphavit Piamphongsant (Vice-Chairman of the AGBM - Thailand).

56. The article was negotiated in plenary at AGBM 6 and in the non-groups on policies and measures chaired by Mr. El Ghaouth at AGBM 7 and by Mr. Kanté at AGBM 8. The RTUN emanating from AGBM 8 included two alternatives for certain paragraphs in this draft article, with Alternative A reflecting the position of the G-77 and China and Alternative B representing the EU position. Most JUSSCANNZ¹² Parties generally allied themselves with Alternative A concerning the listing of policies and measures (see Article 2.1(a) and Article 2.1(a)(i)-(viii) below), but supported the EU's Alternative B on provisions to address adverse effects of the implementation of response measures (see Article 2.3 below).

57. At COP 3, the article was dealt with in the negotiating group on policies and measures (again chaired by Mr. El Ghaouth).

58. The article was agreed in substance in CRP.4. In the final CoW plenary, it was challenged by Kuwait, calling for the deletion of article 2.1(a)(vii) and part of article 2.1(a)(v),

¹¹ Article 4.2(g) allows any non-Annex I Party to notify the Depositary that it intends to be bound by the commitments of Annex I Parties in Article 4.2(a) and (b) of the Convention.

¹² See glossary. It should be noted, however, that Switzerland tended to ally itself more with the EU position on policies and measures.

but the only changes made in the authentic text were as a result of the post-Kyoto technical review.

Article 2.1: Chapeau

59. The main part of this chapeau, “Each Party included in Annex I ... shall”, implicitly or explicitly featured in the proposals from all Parties, and was included in Chairman Estrada’s CNT.

60. With regard to the second clause (“...in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development...”), all proposing Parties linked policies and measures to the achievement of emission commitments or generally to the mitigation of climate change. No Party, however, made specific reference to sustainable development in this context.

61. A similar clause, “to assist in the fulfilment of its commitments under Article 3”, was included in Chairman Estrada’s CNT, but without reference to sustainable development.

62. At AGBM 8, the term “to assist in the fulfilment” was changed to “in achieving”, and the reference to “Article 3” commitments was amended to “quantified emission limitation and reduction objectives under Article 3”. The phrase “in order to promote sustainable development” was also added for the first time at this session, in line with a proposal by the G-77 and China.

63. At COP 3, the clause was shifted to the overall chapeau to article 2.1 in CRP.2, from its previous position in the sub-chapeau to the list of policies and measures (see below). The phrasing was changed slightly in CRP.4, and in particular the reference to “objectives” was replaced by “commitments”, at the request of Chairman Estrada. The final version appears in CRP.4, with the exception of a small technical change made as a result of the post-Kyoto technical review.

Article 2.1(a): Sub-chapeau to list of policies and measures

64. This “sub-chapeau”, introducing a list of policies and measures, includes three substantive elements, as discussed below:

“Implement and/or further elaborate policies and measures...”

65. All proposals included a general commitment to take policies and measures. The way in which this was phrased, however, differed. In their proposals, Parties made reference to the “adoption” (AOSIS, Canada, Costa Rica, EU, G-77 and China, Hungary et al., Japan) and/or “implementation” (Canada, EU, Hungary et al. and Russian Federation) of policies and measures, and in some cases to the “taking” of measures (Canada, EU, Japan). No Party used the term “further elaborate”.

66. Chairman Estrada used “adopt and implement” in his CNT, and this was retained in the RTUN and CRP.2. However, the outcome of negotiations led to agreement on “implement and/or further elaborate” in CRP.4, which remained unchanged in the authentic text.

“in accordance with its national circumstances,...”

67. The reference to “national circumstances” appeared in the proposals on policies and measures from New Zealand, and also the EU (in the context of its “menu” list of policies and measures). Chairman Estrada used the term in his CNT to refer to the implementation of policies and measures listed in an annex, but in a separate paragraph, rather than a chapeau. In the RTUN, the reference to “national circumstances” was moved to the sub-chapeau in Alternative A (supported by the G-77 and China and many JUSSCANNZ Parties), but did not appear in Alternative B (the EU position). By CRP.2, agreement had been reached to include “national circumstances” in the sub-chapeau. The reference and its placement were retained through to the authentic text.

“such as:”

68. These two words encapsulate the main substantive area of debate over policies and measures in the protocol negotiations, that is, whether or not the protocol should define specific mandatory policies and measures. Debates over the extent to which policies and measures should be coordinated were also integrally tied up with differences over their mandatory nature. This discussion therefore also touches on coordination, in cases where the proposals from Parties linked the two questions. Specific issues and proposals relating to coordination are discussed in the context of Article 2.4 below.

69. The EU argued strongly throughout the AGBM process for including some mandatory and coordinated policies and measures within the protocol. A proposal submitted early on in the negotiation process by Spain on behalf of the EU included a call for the elaboration, in three annexes, of policies and measures “common” to all Annex I Parties, policies and measures to be given “high priority”, and policies and measures “to be considered, as appropriate”. The EU refined its proposal for inclusion in the FC, which was discussed at AGBM 6. It now stated that “Annex A” would include policies and measures which Parties “shall adopt and implement”, “Annex B” would list policies and measures to which Parties “shall give high priority to [their] adoption and implementation ... and shall work towards their early coordination, by applying the guidance set out in the Annex”, while “Annex C” would set out policies and measures to which Parties “shall give ... priority for inclusion in national programmes, as appropriate to national circumstances”. The EU also put forward a preliminary list of those policies and measures that could be included in these annexes.

70. The “annexes” listing policies and measures were renamed “lists” at AGBM 6 by Chairman Estrada, who feared confusion over the various annexes proposed, and recognized that the formality of the annex structure could be a barrier to their acceptance by other Parties. By AGBM 7, for inclusion in the NT, the EU identified a long list of policies and measures to be included in its list C, which was dubbed a “menu” as Parties would be able to choose which policies and measures they wanted to implement from the long list. The EU also identified

policies and measures which could be placed in either list A or list B, with those to be given priority (therefore presumably for inclusion in list A) earmarked with an asterisk.

71. Switzerland and Hungary et al.¹³ also proposed the inclusion of some mandatory policies and measures in the protocol, to be included in annexes, aligning themselves with the EU proposal. Switzerland specifically made reference to its support of the EU structure, while Hungary et al. proposed two shorter annexes (dispensing with the “menu”), with different contents to those of the EU.

72. Germany put forward a list of mandatory policies and measures in an early proposal (see FC). This did not appear in the NT, after EU countries withdrew their proposals to align themselves with the common EU position. France also proposed an annex listing mandatory common and/or coordinated policies and measures and “removal of all kinds of subsidies to carbon-intensive activities...” (FC), but its proposal was likewise later withdrawn.

73. New Zealand and Norway both proposed mandatory removal of subsidies, on “fossil fuels” and those “that run counter to the objectives of the Convention”, respectively. The Islamic Republic of Iran, et al. and Saudi Arabia also proposed the elimination of subsidies, as well as the identification of policies and measures that Parties should not implement, notably, “CO₂ and energy taxation”, “new or increased oil taxation” and “new greenhouse gas taxes”. Japan proposed five broad areas in which policies and measures should be implemented, using the verb “shall” (implying a mandatory element), while the Islamic Republic of Iran also put forward five areas, but as options.

74. Poland et al. (FC)¹⁴ and the Russian Federation put forward an alternative approach, whereby Parties would choose the policies and measures they would implement from a “menu”, and these would then become mandatory, once declared in the Parties’ national communications.

75. Other Parties (e.g. Australia, US) were generally opposed to mandatory policies and measures. The US draft protocol, for example, did not include an article on policies and measures. Both Canada and New Zealand stated in their proposals that Parties should retain flexibility in selecting policies and measures. The G-77 and China proposal simply stated that policies and measures should address all greenhouse gases, emissions and removals, and all relevant sectors. The Group did not support the introduction of a paragraph on the coordination of policies and measures at AGBM 8.

76. In an attempt to bridge the gap between Parties, Chairman Estrada put forward his own textual proposal at AGBM 6, which appears in the NT. This included three lists. The first was a set of “policy objectives” for all Annex I Parties (Chairman Estrada had floated policy objectives as a possible compromise at previous sessions), the second, possible implementation mechanisms, and the third, a “menu”. Chairman Estrada’s lists, however, were not reproduced in the INF coming out of AGBM 7.

¹³ Hungary, on behalf of Bulgaria, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

¹⁴ Poland, on behalf of Bulgaria, Estonia, Latvia and Slovenia. This proposal was later withdrawn when Poland and other supporting countries allied themselves with the Hungary et al. proposal on policies and measures.

77. In his CNT, Chairman Estrada elaborated a list of “priority areas” of policies and measures which Parties should “aim” to implement, but with no mandatory element. This proposal was modified in negotiations at AGBM 8, as shown in the RTUN where two alternatives appear. Alternative A (supported by the G-77 and China and several JUSSCANNZ Parties) put forward the view that the listing of specific policies and measures should be for indicative purposes only, by using the introductory term “such as”. Alternative B (the EU position), however, by employing the term “in particular”, introduced mandatory policies and measures.

78. Chairman Estrada drafted his own text on policies and measures in late November just before COP 3 in which he tried to combine elements of the EU and G-77 and China texts. He sent this text informally to Mr. Bert Metz (Netherlands), the main EU negotiator on this issue, and Mr. Mark Mwandosya (United Republic of Tanzania), Chairman of the G-77 and China. Chairman Estrada’s text was also passed on to Mr. El Ghaouth, who chaired the negotiating group on policies and measures in Kyoto, but it did not officially resurface, and the basis for negotiations at COP 3 remained the RTUN.

79. By CRP. 2, the whole debate over policies and measures had boiled down to two bracketed alternatives in this sub-chapeau: “[in particular/such as] the following”. “In particular” reflected a mandatory approach, as it would require the implementation of the subsequent list of policies and measures, among others, while “such as” reflected a non-mandatory approach, simply introducing examples of policies and measures that could be implemented. Agreement was reached by CRP.4 to retain the non-mandatory “such as”, and this remained unchanged in the authentic text to govern the subsequent list of policies and measures.

Article 2.1(a)(i)-(viii): List of policies and measures

80. As mentioned above, a number of Parties (Canada, EU, Hungary et al., Japan, Russian Federation, Switzerland) proposed to include lists of policies and measures in the protocol (although these varied in terms of their mandatory character and length). All these Parties proposed that the lists should be elaborated in annexes (or lists) to the protocol. The proposals from the Islamic Republic of Iran and New Zealand, however, referred to specific policies and measures in the main body of the policies and measures article. In a proposal submitted at AGBM 8¹⁵, the G-77 and China made clear their opposition to the listing of policies and measures in an annex.

81. In the CNT, Chairman Estrada kept to the annex approach, listing 11 “priority areas” for policies and measures in an “Annex A”. At AGBM 8, however, the annex was deleted, and the list was moved to the article on policies and measures in the main body of the protocol. This approach was retained through to the authentic text.

82. Nine out of the 11 “priority areas” proposed by Chairman Estrada appear in a recognizable form in the authentic text.

¹⁵ See FCCC/AGBM/1997/MISC.1/Add.8.

- **Article 2.1(a)(i): Enhancement of energy efficiency**

83. Reference to energy efficiency appeared in the proposals by AOSIS, Canada, the EU, Hungary et al., Japan, the Russian Federation and Switzerland, with most of these Parties proposing specific measures to enhance energy efficiency in particular economic sectors.

84. Based on these proposals, Chairman Estrada included “enhancement of energy efficiency in all sectors, including the energy production and transformation, industrial, transport, residential and commercial and agricultural sectors” as one of his priority areas in the proposed “Annex A” of the CNT. This was retained in Alternative B (EU) in the RTUN, with Alternative A (G-77 and China) deleting the examples and simply stating “in all sectors of the national economy”. The Alternative A option was agreed in CRP.2. After changing the phrasing to “relevant sectors” in CRP.4, the paragraph remained intact through to the authentic text.

- **Article 2.1(a)(ii): Protection and enhancement of sinks and reservoirs**

85. AOSIS, the EU, Hungary et al., the Islamic Republic of Iran, Japan and the Russian Federation all included the forestry sector or sink protection/enhancement in their proposals on policies and measures (positions on the inclusions of sinks to meet the protocol target were different). In addition, the EU, Hungary et al. and Japan specifically mentioned sustainable management or practices, afforestation and reforestation.

86. The paragraph that was eventually agreed for inclusion in the Kyoto Protocol was proposed for the first time in Chairman Estrada’s CNT, and appeared unchanged in the authentic text (although an extra clause on relevant international agreements was inserted between its two elements, as discussed below). Chairman Estrada’s proposed paragraph was included substantively unchanged in Alternative B (EU) of the RTUN, but Alternative A (G-77 and China) included only the first element on “protection and enhancement of sinks and reservoirs”, and not the second element on “promotion of sustainable forest management practices, afforestation and reforestation”. Agreement was reached on the Alternative B paragraph in CRP.2, with an upward shift in its position in the list to second place.

87. Regarding the clause on relevant international agreements, the EU proposal, in its “menu” Annex C of policies and measures, made reference to the linkages between the UNFCCC, the Convention on Biological Diversity and the UN Conference on Environment and Development Forest Principles on the matter of carbon sinks and forestry policy. However, the issue was not raised in any subsequent text. The phrase which was eventually included referring to relevant international agreements was proposed by Norway at a late stage during COP 3, and first appeared in CRP.4. Norway’s aim was to establish a link in the protocol between the climate change process and other environmental agreements.

- **Article 2.1(a)(iii): Promotion of sustainable forms of agriculture**

88. AOSIS, Canada, the EU and the Russian Federation all mentioned the agricultural sector in their proposals on policies and measures. Specific references to “sustainable agriculture” and “climate change considerations” can be found in the Canadian and EU proposals, respectively.

Chairman Estrada brought these two specific elements together in a proposed paragraph for his CNT. This paragraph was included in Alternative B (EU) of the RTUN, but was omitted from the draft text in CRP.2. The paragraph was reintroduced in CRP.4, with some changes to its order and phrasing (moving the clause on “promotion...” to the start of the paragraph, and replacing “integration of climate change considerations” with “in light of climate change considerations”). It then remained unchanged in the authentic text.

- **Article 2.1(a)(iv): New and renewable forms of energy, carbon dioxide sequestration and environmentally sound technologies**

89. The EU, Hungary et al., the Islamic Republic of Iran and Japan made reference to supporting renewable energy in their proposals. Carbon sequestration technology did not figure so strongly in proposals: it was included in the EU proposal, but only in the long “menu”. Canada made reference to agricultural practices that increase carbon sequestration and Japan called for research and technological development on carbon dioxide “separation and fixation...”. The promotion of environmentally-friendly technologies formed part of proposals on policies and measures from the EU, Hungary et al. and Japan.

90. In the CNT, Chairman Estrada included “promotion, development and increased use of renewable forms of energy” in his list of policies and measures. He did not cover carbon sequestration technologies, but included an additional, separate paragraph on “research on, and development of, innovative climate-friendly technologies...”.

91. Following discussions at AGBM 8, Alternative A in the RTUN (G-77 and China) linked together renewable energy and environmentally-sound technology concerns in a single short paragraph. Alternative B (EU) reproduced the substance of the CNT paragraphs on both issues, adding a specification in the case of renewable forms of energy that each Annex I Party should “ensure that a significant increase of the share of its energy supply is realized”.

92. By CRP.2, negotiations had resulted in an agreed text, based on the Alternative A paragraph, but now including, for the first time, carbon sequestration technologies. A reference to “research” was also added. This agreed paragraph remained unchanged, except for a grammatical revision as part of the post-Kyoto technical review.

- **Article 2.1(a)(v): Market imperfections and market instruments**

93. Addressing market imperfections at odds with climate change mitigation featured in the proposals from the EU, the Islamic Republic of Iran, the Islamic Republic of Iran et al., New Zealand, Norway, Saudi Arabia and Switzerland. The specific reference to policies that “run counter to the objective of the Convention” can be found in the Norwegian proposal. The particular term “market instruments” does not appear in proposals, although the EU refers to “economic instruments” and the Russian Federation to “market mechanisms”. The term could also be seen as covering various market-based proposals by Parties, including for environmental taxation (EU, Hungary et al., Switzerland) and even emissions trading.

94. In the CNT, Chairman Estrada sought to reconcile the differing emphases in the various proposals by including a general reference to the “progressive phasing out of market imperfections and fiscal incentives that run counter to the objective of the Convention” and “including, *inter alia*, subsidies on all fossil fuels”. This paragraph was reproduced almost exactly in Alternative B (EU) in the RTUN. However, it was the modified version in Alternative A (G-77 and China), which introduced a reference to “tax exemptions”, replaced “fossil fuels” with “all greenhouse gas emitting sectors” and deleted “progressive”, that was to form the basis for agreement.

95. The Alternative A version was included in CRP.2, but with the addition of “duty” exemptions. By CRP.4, the option of “progressive reduction or” was included as well as “phasing out”, and “apply market instruments” was added. As noted above, the reference to market instruments was intended to cover a range of differing demands, from environmental taxation to emissions trading schemes. The paragraph remained unchanged from CRP.4, with the exception of a grammatical revision as part of the post-Kyoto technical review.

- **Article 2.1(a)(vi): Appropriate reforms in relevant sectors**

96. Parties specifically referring to “reforms” in their proposals included the EU (“reforms of energy markets”) and Switzerland (“reform of subsidies in the energy sector”).

97. In his CNT, Chairman Estrada included the “encouragement of appropriate reforms in the energy sector aimed at promoting policies and practices which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol” in his list of priority areas for policies and measures. This paragraph formed the basis for the final agreed text. It was included in Alternative B (EU) of the RTUN, but not Alternative A (G-77 and China), and then in CRP.2.

98. By CRP.4, the specific reference to the “energy sector” was replaced by “relevant sectors” and “regulatory regimes” was deleted. The text as it appears in CRP.4 was unchanged in the authentic text.

- **Article 2.1(a)(vii): Transport sector**

99. The transport sector was covered in proposals from Canada, the EU, Hungary et al., Japan, the Russian Federation and Switzerland.

100. Chairman Estrada singled out transport for special treatment in the CNT, devoting a separate paragraph to this sector in his list. Following AGBM 8, this paragraph was omitted from Alternative A (G-77 and China) in the RTUN, but included and further elaborated in Alternative B (EU), with added reference to particular policy instruments for the transport sector.

101. No separate paragraph on the transport sector was included in CRP.2. However, the language on this sector in the CNT was reintroduced in CRP.4, following requests by the EU that this sector should be given special consideration, with some modification: the reference to “limit

the growth” was expanded to “limit and/or reduce emissions”. This paragraph then remained unchanged in the authentic text.

- **Article 2.1(a)(viii): Methane emissions**

102. The EU proposal made specific reference to addressing methane emissions from the transportation and distribution of energy and, in list C, to the waste sector. Japan included the “efficient use of waste biomass energy” in its proposal and Canada similarly spoke of “on-farm energy use of methane”. The Russian Federation singled out the reduction of methane leakages. Hungary et al. referred to reducing greenhouse gas emissions in general from energy production, transport and distribution.

103. Chairman Estrada did not refer specifically to any of these points in his CNT. It was in CRP.2 that these issues were addressed for the first time, in a paragraph that remained substantively unchanged in the authentic text, with the exception of an editorial modification in the post-Kyoto technical review.

Article 2.1(b): Cooperation

104. As noted above, the EU advocated coordinated policies and measures. Its proposal would have required Parties to work towards the “early coordination” of policies and measures listed in its proposed list B, by applying the guidance set out in that list. Another group of Parties advocating coordination was AOSIS, whose proposal contained an advisory “coordination mechanism” to improve the effectiveness of policies and measures. Switzerland likewise made specific reference to international coordination with regard to its list of policies and measures, as did Hungary et al. Switzerland mentioned that voluntary agreements, such as those developed by the International Energy Agency (IEA), could be used in this respect.

105. Norway used mandatory language (“shall”) to require Parties to cooperate specifically to “establish internationally coordinated cross-sectoral, cost-effective policy instruments...”. Canada also used “shall” to call for “coordinated or common policies and measures”, but focused on “information sharing, common underlying messages and voluntary activities”. Canada noted that provisions should be “sufficiently flexible” to allow “additions/amendments” “in an expeditious manner”.

106. Using different language, New Zealand “urged” Parties “to cooperate” to address aviation and marine bunker fuels, through the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO). Taking yet another approach, the Russian Federation stated that Parties “can agree to elaborate common directions of policies and measures...”. Finally, the Islamic Republic of Iran called for coordinated actions to be ruled out.

107. Deliberations at AGBM 7 resulted in a revised proposal from the EU, included in the INF¹⁶, for a so-called “coordination process”, instituted by the Convention’s Subsidiary Body for Scientific and Technological Advice (SBSTA) for adoption by the “COP”

¹⁶ See paragraph 1.10 of Annex II in the INF.

or “MOP”¹⁷ to the protocol. This new text was intended to incorporate elements of the AOSIS, Canadian and New Zealand proposals. AGBM 7 also came out with two new paragraphs reflecting the views of many JUSSCANNZ Parties, in particular the US. These noted that Parties “may, as desired, undertake policies and measures jointly or in coordination with any other Party” and called on the secretariat to compile a list of these and “circulate a description ... to all Parties for their consideration”¹⁸.

108. In his CNT, Chairman Estrada did not provide for coordination of policies and measures. He based the relevant provisions (draft article 2.1(d) in the CNT) on three elements: an exhortation to cooperate in accordance with Article 4.2(e)(i) of the Convention¹⁹; a specification that Parties should, to this end, take steps to share their experiences and exchange information on policies and measures; and a mandate to the “MOP” to consider modalities to facilitate policy cooperation.

109. The first clause, calling on Parties to cooperate pursuant to Article 4.2(e)(i) of the Convention, remained almost unchanged from the CNT to the final text. This reference was proposed to Chairman Estrada for inclusion in the CNT by the secretariat, based on the reasoning that the inclusion of an existing reference to coordination appearing in the Convention might assist in moving towards agreement. The Berlin Mandate also made specific reference to Article 4.2(e) as an element to be considered in the negotiations. The phrase “with other such Parties” was included at AGBM 8 to ensure that the text referred only to Annex I Parties. “Pursuant to” replaced “in accordance with” in CRP.2 to better reflect the nature of the reference to Article 4.2(e)(i) of the Convention, as proposed in the pre-Kyoto technical review.

110. The clause on the sharing of experience and exchange of information remained substantively intact from the CNT to the final text. It was inspired by the Canadian proposal, which spoke of information sharing, as well as the Berlin Mandate, which referred to “the exchange of experience on national activities” as an element to be provided for in the new instrument.

111. The references to improving comparability, transparency and effectiveness in the authentic text first appeared in this paragraph in the RTUN, and remained unchanged in the final text. The clause picks up, in a more general manner, on provisions previously included in draft article 2.1(e) in the CNT, which referred to performance indicators and “the aim of improving comparability and transparency of reporting...”. These original references in the CNT were derived from proposals by Australia and Japan, which advocated performance indicators; Japan, in particular, called for indicators to be decided upon by the “MOP”.

112. The final sentence, calling on the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP) to consider ways to facilitate cooperation, is closely derived from that of draft article 2.1(d) in the CNT, and remained substantively unchanged after

¹⁷ Proposals from Parties differed as to whether the existing COP should serve as supreme body of the Protocol, or whether a new Meeting of the Parties (“MOP”) should be set up. References to action by the proposed “COP” or “MOP” to the Protocol that appear in proposals from Parties are thus placed in quotation marks.

¹⁸ See paragraphs 1.8 and 1.9 of Annex II in the INF.

¹⁹ Article 4.2(e)(i) calls on Annex I Parties to “coordinate, as appropriate ... relevant economic and administrative instruments developed to achieve the objective of the Convention”.

modifications made in the RTUN. The reference to the “first session” of the COP/MOP was included to accommodate the desire of the EU that such a discussion should take place as early as possible. The final clause in the CNT calling on the “MOP” to take into account “relevant work being done by other bodies” was expanded to refer to “all relevant information” in line with calls by some Parties that national circumstances should be taken into consideration, along with possible impacts on developing countries.

Article 2.2: Aviation and marine bunker fuels

113. Provisions concerning policies and measures to address aviation and marine bunker fuels, including specific reference to the role of ICAO and IMO, were included in the proposals from the EU and New Zealand. Switzerland’s proposal also made reference to aviation emissions and ICAO. The proposals from both the EU and Switzerland included the possibility of taxation, while New Zealand’s proposal simply covered “the development of policies and measures”.

114. A substantively similar paragraph was included as part of the list of priority areas put forward by Chairman Estrada in his CNT. It was then incorporated as one of the policies and measures listed in Alternative B (EU) in the RTUN, with some important modifications. The paragraph was redrafted to refer to “limitation or reduction of emissions” to be undertaken by Parties, “through ICAO and IMO” (rather than just cooperation with those organizations), and new language was included on “introducing aviation fuel taxation”. The paragraph did not appear, however, in CRP.2. As part of a compromise package on bunker fuel emissions, the provisions were reintroduced in CRP.4 as a stand-alone paragraph, using the word “shall”, rather than as part of the optional list in subparagraph 1(a). The reference to introducing taxation, however, was deleted.

115. A second component of this compromise package was the addition of a provision in decision 2/CP.3 (methodological issues related to the Kyoto Protocol) urging the SBSTA to further elaborate on the inclusion of emissions from bunker fuels in the overall greenhouse gas inventories of Parties²⁰. This provision was proposed by Switzerland (see Article 5 below).

Article 2.3: Minimization of adverse effects

116. This paragraph forms part of a package of provisions addressing adverse effects of climate change and adverse impacts of mitigation measures (including Article 3.14 and decision 3/CP.3) on developing countries. General issues regarding the concerns of the G-77 and China on this issue, and in particular those of the oil-exporting developing country Parties, are taken up under Article 3.14. The discussion below focuses only on the textual development of this paragraph.

117. The proposals from the G-77 and China, the Islamic Republic of Iran and the Islamic Republic of Iran et al. on policies and measures all included provisions addressing possible adverse effects of policies and measures on developing countries. The only textual proposal, from the G-77 and China, required Annex I Parties to “ensure” that such policies and measures

²⁰ Emissions from bunker fuels are currently not included in national greenhouse gas inventory totals under the Convention, but are reported separately.

had “no adverse impacts” on socio-economic conditions of developing country Parties, especially those listed in Article 4.8 of the Convention²¹.

118. A clause similar to that which was finally agreed was proposed by Chairman Estrada in the CNT, requiring Annex I Parties to “implement policies and measures ... in such a way as to minimize adverse effects on other Parties, especially developing country Parties and in particular those identified in Article 4.8 of the Convention”. The clause further stated that the “MOP” may “take further action, as appropriate, to promote the implementation of the provisions of this subparagraph”.

119. This draft clause was modified pursuant to debates at AGBM 8, with Alternative A (advocated by the G-77 and China) in the RTUN changing “minimize adverse effects” to the stronger “avoid adverse effects” and Alternative B (supported by Annex I Parties) preferring the weaker “taking into account the adverse effects”.

120. The final version of the clause, as it appears in CRP.2 and was later included in the authentic text, resembles in substance that put forward in Alternative A (G-77 and China) of the RTUN. However, the paragraph returned to using “minimize” and also introduced “strive to” prior to “implement”. These modifications were also in line with a paragraph setting out related provisions in the draft article on QELROs (see Article 3.14, below).

121. Regarding the particular type of adverse effects to be minimized, the G-77 and China proposal specifically referred to “socio-economic conditions”, while the Islamic Republic of Iran and the Islamic Republic of Iran et al. simply mentioned “development”. The G-77 and China proposal also called for Article 3.5 of the Convention²² to be taken into account in implementing policies and measures. The CNT provisions made only a general reference to adverse effects, without specifying their type.

122. The clause noting the type of adverse effects that was finally included in the Kyoto Protocol (“adverse effects on climate change, effects on international trade, and social, environmental and economic impacts, taking into account Article 3 of the Convention”) was first put forward as the G-77 and China proposal in the RTUN (Alternative A). In contrast, Alternative B (Annex I Parties) repeated almost exactly the relevant language of Article 4.8. Alternative A was eventually adopted almost unchanged. The only modification was a more general reference to all the principles of the Convention by citing “Article 3” rather than “Article 3.5”.

123. Concerning the Parties to be covered by the provisions of this paragraph, the G-77 and China proposal encompassed “developing country Parties, particularly those listed in Article 4.8 of the Convention”, while the Islamic Republic of Iran et al. made a more specific

²¹ Article 4.8 of the Convention lists nine categories of developing countries that may be particularly affected by “the adverse effects of climate change and/or the impact of the implementation of response measures” (e.g. small island countries, countries with areas prone to natural disasters, countries whose economies are highly dependent on income generated from fossil fuels).

²² Article 3.5 of the Convention calls on Parties, as one of the principles of the Convention, “to cooperate to promote a supportive and open international economic system ...” and states that “measures to combat climate change ... should not constitute ... arbitrary or unjustifiable discrimination or a disguised restriction on international trade”.

reference to “developing countries”, and particularly “fossil-fuel- exporting developing countries” and “oil-exporting developing countries”, respectively.

124. The CNT expanded the reference to cover all Parties, but also adopted the G-77 and China approach of referring in particular to countries identified in Article 4.8. The subsequent G-77 and China language in Alternative A of the RTUN continued to refer to all Parties and in particular countries identified in Article 4.8, but added a specific reference to developing countries identified in Article 4.9, that is, least developed countries. Alternative B (supported by Annex I Parties), however, mentioned only Article 4.8, and only developing countries. The G-77 and China Alternative A was retained through to the final text.

125. The final clause mandating further action by the COP/MOP was first included in the CNT (although the reference there was to the “MOP”, in line with the emphasis of the debate at that time), and was adopted substantively unchanged. The clause was inspired by a similar provision in Article 4.8 of the Convention referring to “actions”, but changing this to “further action”. It had not been included in the draft version of the CNT circulated at the informal consultations, but was added when Chairman Estrada decided to include stronger provisions in the final version of the CNT, in order to try to meet the concerns of the oil-exporting developing countries. The G-77 and China supported this language in their Alternative A in the RTUN, but Annex I Parties resorted to a precise mirroring of the similar provision in Article 4.8 of the Convention in their Alternative B. The final clause, based on Alternative A, was an agreed text in CRP.2.

Article 2.4: Coordination

126. As mentioned above, the CNT included no reference to “coordination”, referring only to “cooperation”. At AGBM 8, the EU put forward language re-introducing coordination of policies and measures. This was added as bracketed paragraph 2 of draft article 2 in the RTUN. This language included two elements. The first was an injunction (using “shall”) to Parties to coordinate the implementation of the policies and measures listed in the article and the development of methodologies to assess their effectiveness. The second was a mandate for the “MOP” to consider ways and means of facilitating such coordination, including through a process to develop recommendations to Parties in the form of guidelines, taking into account national circumstances and relevant work being done in other bodies.

127. This draft paragraph was carried over to CRP.2, but softened slightly by the inclusion of “as appropriate”. Nevertheless, it did not enjoy consensus and substantial changes were made before the final version was included in CRP.4. The first sentence of the CRP.2 text was deleted, thus no longer requiring Parties to coordinate their policies and measures in the absence of further action by the COP/MOP. Furthermore, the previous mandate to the COP/MOP to consider ways and means to facilitate coordination was replaced by a non-time-bound mandate to address this matter “if it [the COP/MOP] decides it would be beneficial ... taking into account different national circumstances and potential effects”. Lastly, the former reference in the RTUN and CRP.2 to a “process to develop recommendations to Parties” was abandoned.

Article 3: Quantified emission limitation and reduction commitments

128. Roundtables on QELROs were held at AGBM 3, chaired by Ms. Pascale Morand Francis (Switzerland), and at AGBM 4, chaired by Mr. Daniel Reifsnyder (United States) Vice-Chairman of the AGBM. Negotiations on QELROs were conducted by Chairman Estrada in plenary at AGBM 6, and then in the non-groups on QELROs at AGBM 7 and 8 (chaired by Mr. Meira Filho and, at AGBM 8, co-chaired by Ambassador Kjellén). The final negotiations on QELROs at COP 3 were conducted under Chairman Estrada himself.

129. In between AGBM 8 and COP 3, Chairman Estrada produced his own text on QELROs, reflecting what he thought might be a compromise position. This was based on a uniform (unspecified) target, with two alternatives concerning its timing: for a target year of 2010 or a target period of 2008-2012. The text also provided for future targets up to 2025, or the period 2023-2027, to be defined in annexes to the protocol. The proposal, however, was never officially circulated.

130. Unsurprisingly, this article was not agreed in its entirety until the final night of the CoW, although several elements were provisionally agreed earlier, as discussed below.

Article 3.1: Core commitment

- **Structure**

131. Article 3.1 brings together all the different elements of the emission commitments for Annex I Parties in a single “umbrella” paragraph. Its precise textual development was thus largely dependent on the resolution of individual key substantive issues, which are discussed in turn below; this first section looks simply at the paragraph’s structure.

132. The structure of this first “umbrella” paragraph is based on that included in the CNT. Deliberations at AGBM 8, however, resulted in three alternative umbrella paragraphs that were included in the RTUN. Alternative A reflected the EU position, Alternative B the JUSSCANNZ position (principally because it did not include a reference to “individually or jointly” (see below); otherwise, it was identical to Alternative A); and Alternative C reflected the G-77 and China position. Alternatives A and B were based on the approach of the CNT, while Alternative C stuck more literally to the language in the Berlin Mandate.

133. The three alternatives were retained in CRP.2. By CRP.4, agreement had been reached to use the approach first set out in the CNT; however, provisions relating to the collective target (see “collective target” below) and the individual targets were included in two separate paragraphs. When CRP.4 was discussed in the CoW plenary, Parties agreed with Chairman Estrada’s suggestion that these two paragraphs should be merged and mandated the secretariat to do this. The single, merged paragraph in CRP.6 remained unchanged, with the exception of the quantitative collective target.

- **Annex I Parties subject to emission commitments**

134. It was undisputed that, in line with the Berlin Mandate, the emission commitments in the protocol should apply to Annex I Parties under the Convention. However, some Parties proposed that Parties taking on commitments should be listed in one or more new annexes to the protocol. Australia (Annex A), the EU (Annex X), Hungary et al. (Annex XX) and New Zealand (Annex [*]) all proposed a new annex, while the Russian Federation and the US both proposed two new annexes (Annexes A and B). Canada's proposal would have used either Annex I or "Annex X". AOSIS, Costa Rica, the G-77 and China, Japan and Norway all stuck to Annex I.

135. Some of the proposals for new annexes also intended that current non-Annex I Parties could join these new protocol lists. The EU's list of those Parties covered by its "Annex X" encompassed Parties not included in Annex I at that time (Croatia, Czech Republic, Liechtenstein, Mexico, Monaco²³, Republic of Korea, Slovakia and Slovenia). Australia, New Zealand and the US all stated in their proposals that non-Annex I Parties could join their new annexes. Issues relating to non-Annex I Party accession to commitments under the protocol are discussed in more detail in the section on "voluntary commitments" below.

136. When preparing his CNT, Chairman Estrada used Annex I to the Convention to refer to Parties subject to emission commitments (but see also "voluntary commitments" below); he did not want new categories of Parties to be created by the protocol and was aware of the G-77 and China's concern over new annexes. Chairman Estrada also included a definition of "Party included in Annex I" in his article 1 on definitions (see above).

137. The approach of using Annex I was maintained through to the final text, and no further formal attempts were made to introduce new listings of Parties. For a more in-depth discussion of the list of Annex I Parties subject to emission commitments, see "Annex B" below.

- **Legally-binding emission commitments**

138. The phrasing of this sentence establishes that Annex I Parties have a legally-binding commitment not to exceed their emission commitments, expressed as "assigned amounts" (see "multi-year target" below), under the protocol, by the use of the word "shall". This contrasts with the Convention, where the commitment to return emissions to 1990 levels was only an "aim". The Berlin Mandate did not specify that the emission commitments to be agreed should be legally-binding.

139. The legal status of emission commitments under the protocol was discussed in the "Review of relevant conventions and other legal instruments"²⁴ prepared by the secretariat for AGBM 4 (July 1996), in response to a request from AGBM 2. The conclusions of AGBM 4 stated that "several Parties reaffirmed their support for the inclusion of legally-binding

²³ Monaco was omitted from the EU's "Annex X" proposed for inclusion in the NT. However, the EU subsequently submitted a revised "Annex X" that did include Monaco (and also kept the other non-Annex I Parties) (see FCCC/AGBM/1997/MISC.1/Add.3).

²⁴ See FCCC/AGBM/1996/6.

QELROs”. These Parties included AOSIS and the EU, whose protocol structures assumed legally-binding emission commitments by using the word “shall”. At COP 2, which took place in the same sessional period as AGBM 4, the US, in a speech by then Under-Secretary of State for Global Affairs Mr. Timothy Wirth, declared support for legally-binding emission commitments (together with emissions trading). The Geneva Ministerial Declaration, taken note of at that session, called for the outcome of the negotiations to encompass “quantified legally-binding objectives for emission limitations”. Australia disassociated itself from that part of the Declaration endorsing legally-binding emission commitments, on the grounds that it could not agree to such commitments “without [their] nature and context ... being clear”.²⁵

140. In the FC, explicit support for legally-binding emission commitments was stated in the proposals from France, Germany, Poland et al. and Switzerland, while the UK proposed “hard commitments to achieve soft targets”.

141. The NT revealed an increasing convergence of views around a legally-binding target. The text stated “All but one proposal” (widely-known to be Australia) “reflected the view that QELROs should be legally-binding”.

142. The CNT adopted a legally-binding approach for the individual emission commitments of Annex I Parties by using the word “shall”, and this was unchallenged through to the final text.

- **“Individually or jointly”**

143. This phrase accommodates the strongly held EU position that its 15 member States should be permitted to meet their emission commitments jointly, rather than individually. Specific issues relating to the so-called “EU bubble” are discussed under Article 4 below.

144. The term “individually or jointly” was included in the proposals from the Czech Republic, the EU, Hungary et al. and the Russian Federation, but not in any of the others, reflecting the general resistance of many other Parties, particularly within JUSSCANNZ, to the EU position. It was not included in the AOSIS proposal specifically to ensure that all Annex I Parties had equal targets.

145. Chairman Estrada included “individually or jointly” in his CNT. At AGBM 8, the JUSSCANNZ Parties proposed an alternative first paragraph (Alternative B) for inclusion in the RTUN, identical to Alternative A, except for the absence of the phrase “individually or jointly”. “Individually or jointly” was also absent from the G-77 and China Alternative C.

146. By CRP.4, “individually or jointly” was included in the agreed paragraph, following agreement in another group on procedures whereby the EU’s 15 member States could take on commitments jointly (see Article 4 below),

²⁵ See FCCC/CP/1996/15/Add.1 for the text of the Geneva Ministerial Declaration and FCCC/CP/1996/15 for Australia’s objection (and indeed further statements made in connection with the Declaration, both supportive and opposing).

Greenhouse gas coverage

147. Three broad positions regarding greenhouse gas coverage emerged in the negotiations. The first of these was for a target for carbon dioxide (CO₂) only, supported by AOSIS and Japan. AOSIS called for targets for additional gases to be developed subsequently, while Japan required Parties to “make as much effort as possible” not to increase emissions of non-CO₂ gases, and mandated “further studies” on those gases. CO₂ only targets also figured in the early proposals noted in the FC from Austria, Belgium, Denmark and Germany, but these were withdrawn once the common EU proposed target was announced at AGBM 6.

148. The second broad position was for a three-gas (CO₂, methane (CH₄) and nitrous oxide (N₂O)) target. This was adopted by the EU in its proposal, followed by the Czech Republic and Hungary et al. (the EU proposal provided for hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆) to be added no later than 2000). The G-77 and China proposed targets, announced at AGBM 8, covered the same three main gases. The Group also called for “efforts” to be made to “control and phase out other greenhouse gases, including HFCs, PFCs and SF₆”. Japan abandoned its CO₂-only target when it formally revealed its quantitative proposal at AGBM 8 to advocate a three-gas basket. New Zealand, which announced its target at COP 3 on 2 December, also fell in with the three-gas approach.

149. The third main position was for comprehensive coverage of all gases. This position was supported by Australia, Canada, Iceland, the Islamic Republic of Iran, Norway, the Russian Federation, Switzerland and the US. The G-77 and China, Peru and the Philippines all supported comprehensive coverage, prior to the agreement of a common G-77 and China proposed quantified target (although Peru’s target for 2005 included a specific 15per cent reduction target for CO₂).

150. A related issue was that of the coverage of different sources of emissions. The US proposal noted the possibility of excluding those sources (and also sinks) for which there was insufficient knowledge, while New Zealand proposed that particular sources and sinks should be listed in different categories depending on their data certainty.

151. Deliberations at AGBM 7 in the QELROs non-group clarified the three positions relating to coverage, and replaced narrative language in the NT with legal text in the INF. The three options were reflected through the brackets in draft “annex G” in the INF, listing gases to be covered by the protocol. A first set of brackets was placed around CH₄ and N₂O, and another around the other three gases.

152. It was also at AGBM 7 that the question of source categories was first addressed. The issue was raised owing to concerns by some Parties (e.g. the US) over differences in the accuracy and completeness of data for different emitting sectors of the same gas. The option of specifying those source categories covered by emission commitments was included in the INF document, both in the main body of the text and through a column in the draft “annex G”.

153. Following the October 1997 informal consultations on the Chairman’s text which indicated that such an approach might be acceptable, Chairman Estrada excluded the CO₂-only option from the CNT. He listed the full six gases in an annex (then annex B), but placed

brackets around HFCs, PFCs and SF₆, thus indicating the two remaining alternatives as being a three- or a six-gas target. Chairman Estrada also followed the approach of disaggregating by source and sink category, by listing such categories in the annex, and bracketing those categories subject to the most data uncertainty. Furthermore, he included two additional paragraphs in draft article 3 (draft paragraphs 15 and 16), including provisions whereby the “MOP” would review the list of greenhouse gases and source and sink categories, with a view to adding new ones. These paragraphs were intended to appear in the event that agreement were reached on a three-gas target, or one including only selected source and sink categories.

154. At AGBM 8, further debate took place on the question of source and sink categories as included in the CNT. There was no agreement on whether the column in the draft annex should be titled “sector” or “source and sink category”; consensus was eventually reached that both terms should be included in the title. Delegates also requested that all sectors/categories, as elaborated in the 1996 Intergovernmental Panel on Climate Change (IPCC) guidelines, be listed in the annex. This modification was included in the RTUN, which retained the two options of a three- or six-gas target.

155. At AGBM 8 part II, Chairman Estrada attempted to persuade delegates to negotiate on the “operating assumption” of a six-gas target. This was rejected, however, by both the EU and the G-77 and China.

156. At an informal consultation held just prior to AGBM 8, part II, Chairman Estrada undertook to prepare a comparison of the relative strength of proposed targets with different coverage. The secretariat presented the results of this analysis at a CoW plenary meeting on 2 December in a non-paper entitled “Analysis of QELROs in selected proposals”. This non-paper showed how the strength of different targets proposed by the US, the EU and the G-77 and China (the latter two were taken as being equivalent²⁶), and Japan (assuming both –5 per cent and –2.5 per cent²⁷), changed with the inclusion of all six gases, the land-use change and forestry sector and international bunkers.

157. Several proposals were presented during CoW meetings to try to break the deadlock between the three- or six-gas target. Norway proposed a five-gas target, with only HFCs treated differently (by virtue of their use as replacements for chlorofluorocarbons (CFCs) under the Montreal Protocol) while Hungary proposed a “three-gas now, three-gas later” option. Picking up on this latter proposal, and partly to provoke Parties into bridging their differences, Chairman Estrada cautioned that, if Parties could not agree on a six-gas target, the only possible alternative would be to develop a three-gas target, with a “Buenos Aires annex” to be adopted at COP 4 on HFCs, PFCs and SF₆. There should be a link between these two baskets, so that greater emission reductions in one basket could offset lesser reductions in the other. Chairman Estrada included this proposal as a bracketed option in CRP.2 (draft article 3.2 and 3.3). It met with little enthusiasm, as Parties were concerned that they would be adopting a legal

²⁶ Both groups proposed a 15 per cent reduction in CO₂, CH₄ and N₂O by 2010, although the G-77 and China proposed that the 15 per cent target should apply gas-by-gas, whereas the EU proposed a basket (see “level of individual targets” and “basket approach” below).

²⁷ Japan’s proposed target was differentiated (see “differentiated emission commitments” and “level of individual targets” below).

instrument without knowing the full extent of their eventual commitment under it. Nevertheless, Chairman Estrada retained this approach in CRP.4 as the only possible option in the absence of a consensus on any alternative.

158. At a CoW plenary meeting on 8 December, the US had proposed a six-gas target, which would include a 1995 baseline for HFCs, PFCs and SF₆, to take into account the increase in these emissions in many countries since 1990 (especially HFCs, because of their CFC replacement qualities). This proposal was intended primarily to accommodate Japanese concerns. Norway, however, stated that it could not accept a 1995 baseline, as it had been taking early action on these gases, which had led to a reduction in their emissions between 1990 and 1995. The option of selecting either a 1990 or a 1995 baseline was therefore proposed, again by the US. This option formed the basis for the final agreement: emission commitments would cover all six gases, but a baseline of either 1990 or 1995 could be used for HFCs, PFCs and SF₆. Chairman Estrada mentioned this solution as a possible compromise at a meeting of the CoW late on 9 December. A text to this effect was included in CRP.6 and adopted without further comment.

159. The full list of all six gases was restored to annex A, and the language used in the main body of draft article 3.1, referring to “the greenhouse gases listed in Annex A” also passed unchallenged. There was no change to the list of sector/source categories during COP 3, except for the deletion of the word “sink” from the column title, and the land-use change and forestry sector from the list, once agreement had been reached on the treatment of this sector in the protocol (see Article 3.3 and 3.4 below).

- **“Basket” approach**

160. Australia, the Czech Republic, the EU, Hungary et al., Iceland, New Zealand, Norway, the Russian Federation, Switzerland and the US all argued in their proposals for the so-called “basket” approach. This means that all gases covered by the target would be considered together for the achievement of the target according to their carbon dioxide (or carbon) equivalence based on their global warming potentials (GWPs), rather than the target applying to each gas individually (known as the “gas-by-gas” approach). Opponents to the basket approach included AOSIS and, initially, Japan, both of whom advocated CO₂-only targets (AOSIS proposed that gas-by-gas targets should be developed for other gases by the “MOP” to the protocol). Germany, in an early proposal, also called for single-gas targets (FC). The G-77 and China opposed the basket approach, partly because they were against the use of GWPs, pointing to inaccuracies in the use of this methodology. When the Group announced its proposed emission targets at AGBM 8, it adopted the gas-by-gas approach.

161. The proposals from New Zealand and Switzerland (FC) specifically mentioned “carbon dioxide equivalent emissions”, while that of the US and the Russian Federation called for “carbon equivalent emissions”. The INF document reflected both these options, in brackets, throughout the text.

162. Chairman Estrada used the basket approach in his CNT, together with carbon dioxide equivalence, which is the equivalence methodology generally used in the Convention process.

This approach was retained in Alternatives A and B of Article 3.1 (advocated by the EU and JUSSCANNZ, respectively) in the RTUN.

163. Chairman Estrada also used the specific term “as a basket” in draft article 3.1 of the CNT. At AGBM 8, however, Parties decided to delete the reference to “as a basket” in the draft article, arguing that the use of the word “aggregate” in the same paragraph already conveyed the desired idea. The phrase “aggregate anthropogenic carbon dioxide equivalent” was therefore subsequently employed to describe the basket approach, as reflected in the language used in the RTUN and in subsequent texts.

164. The G-77 and China withdrew their opposition to the basket approach at COP 3 on 3 December when they announced they were “looking positively” at this option and declared their acceptance of the use of GWPs (see Article 5 below). The specific language included in both Alternatives A and B of the RTUN on this matter therefore remained unchanged in the final text.

- **Multi-year target: Assigned amount and commitment period**

165. The terms “assigned amount” and “commitment period” reflect the approach taken in the protocol of defining emission commitments on a multi-year basis, rather than as single-year targets.

166. Early debates in the AGBM had centered on single-year targets, as the targets or target structures put forward prior to AGBM 5 had all assumed this approach (AOSIS, EU, Germany, UK and Zaire²⁸). However, multi-year targets were floated by the US as a means of promoting flexibility, and this option was mentioned in the reports of AGBM 3 and 4, as well as the SoP.

167. The US included a multi-year approach, so-called “budget” periods, in its legal text proposal submitted for inclusion in the FC. It should be noted that multi-year targets were important as a foundation for other elements advocated by the US, such as emissions trading and borrowing (see below). In addition, multi-year targets aimed to smooth out annual fluctuations in emissions due, for example, to variances in the weather or economic conditions. Japan’s legal text proposal for the FC also assumed a multi-year approach. The entry of multi-year targets into the mainstream of debates was indicated by the title of the relevant section in the FC, which was labelled “Level and timing/emission budgets”

168. In the NT, Iceland, New Zealand, Norway and the Russian Federation all joined the US in including a multi-year target in their proposals. The Czech Republic, the G-77 and China, Hungary et al., Peru, the Philippines and Switzerland, however, sided with AOSIS, the EU and Zaire in advocating a single-year target. Canada’s proposal included both options.

169. Following debates in the QELROs non-group at AGBM 7, it proved possible to consolidate proposals for single-year and multi-year targets (at least those relating to uniform commitments) into two alternative sets of bracketed text in the INF.

²⁸ The name of Zaire has now changed to the Democratic Republic of the Congo. The name Zaire will, however, be used throughout this note, as that country’s proposals are attributed to Zaire in the various negotiating texts.

170. In his CNT, Chairman Estrada put forward both options as bracketed alternatives ([by 2010/over the period 200[_] to [_]). At AGBM 8, the EU formally accepted emission “budgets”. However, the G-77 and China proposal, announced at that session, was based on single-year targets. Alternatives A and B (supported by the EU and JUSSCANNZ, respectively) to article 3.1 in the RTUN both adopted a “budget” approach, with Alternative C (G-77 and China) based on a single-year target structure.

171. At AGBM 8 part II, Chairman Estrada sought to persuade delegates to use five-year “budget” periods as an “operating assumption” for negotiations. However, this was opposed by the G-77 and China.

172. Chairman Estrada sought to resolve seemingly more technical issues, such as that related to single-year or multi-year targets, early on during COP 3. At a CoW plenary meeting on 2 December, he noted that the aim would be to reconcile the benefits of the “budget” approach (smoothing out annual fluctuations in emissions) with the need for transparency in the target (that is, the adoption of a multi-year target should not obfuscate clarity in the quantitative target to be achieved). Mr. Meira Filho intervened to suggest that one of the problems with the “budget” approach concerned terminology; the word “budget” had controversial economic connotations. It was also necessary to de-link the concept of multi-year targets from more contentious mechanisms such as emissions trading and joint implementation. Chairman Estrada invited him to prepare a paper on the “budget” approach, to show how environmental credibility, transparency, verifiability and quantifiability could be ensured. After this paper had been prepared and circulated to the CoW plenary, Chairman Estrada asked Mr. Meira Filho to continue to consult to find acceptable alternative wording for “budgets” and “budget period”.

173. A number of alternatives were considered and rejected before “commitment period” and “assigned amount” could be agreed upon. The alternatives included “emissions allocation”, “defined amount”, “compliance period” and the inclusion of an overall explanatory definition in draft article 1 on definitions. An informal “draft revised text on budgets”, introducing the term “commitment period” as a replacement for “budget period”, was considered by the CoW in the evening of 4 December. The term enjoyed broad acceptance. To accommodate G-77 and China concerns that the language used should be as close as possible to that in the Berlin Mandate, the phrase “quantified emission limitation and reduction” was added to “commitment period” in some parts of the text (see Article 3.7 below).

174. “Assigned amount” took longer to agree, partly because it was linguistically difficult to find a noun that would convey the same idea of an amount of emissions as the term “budget”. The G-77 and China sought to avoid any term that might imply a right to emit on the part of Annex I Parties, rather than a commitment to reduce emissions.

175. In an informal “draft revised text relating to multi-year targets”, the term proposed was “defined amount”. In CRP.2, Chairman Estrada’s approach assumed the use of multi-year targets. In particular, a blank column in draft Annex B was included as listing the “defined amount in commitment period” of Annex I Parties. The addition of this column was aimed at enhancing the transparency of a multi-year target approach. Chairman Estrada used the term “defined amount” throughout CRP.2 (with the exception of typographical errors), but it was

rejected by the G-77 and China, which put forward revisions to the text. These revisions included the word “assigned”, from which the eventual term “assigned amount”, a proposal by the US at a CoW plenary meeting on 8 December, was derived. This term was used in CRP.4 and remained unchallenged to be included in the final text.

- **Dates of commitment period**

176. The timing of emission commitments was intimately related to their level, together with the question of whether a single commitment should be defined, or two. AOSIS proposed the earliest target, 2005, which was also advocated by Hungary et al.. Australia and Switzerland proposed 2010. New Zealand called for a period “no earlier than 2005”, while Japan and the US advocated 2008-2012. The EU, the Czech Republic, Peru and the Philippines all proposed two sets of commitments, with the target years 2005 and 2010. Canada also advocated two targets, namely, 2010 and 2015. Brazil, the G-77 and China and Zaire all put forward three sets of commitments, for 2005, 2010 and 2020, following the precise letter of the Berlin Mandate. The timing of commitments proposed by Iceland and Norway was undefined.

177. The US in particular, along with Canada and Japan, laid emphasis from an early stage on the need for a “medium-term” target, whereas AOSIS and the EU stressed the importance of an early time-frame. In his CNT, Chairman Estrada put forward a proposed target for the single year 2010, or for the period 200[_] to 20[_], implying that the period would begin prior to 2010. Moreover, he included only one set of legally-binding targets, but introduced a provision calling for “demonstrable progress” to have been made in achieving commitments by 2005. The date of this milestone, 2005, pointed to Chairman Estrada’s view that no legally-binding target could be agreed for that date.

178. Following deliberations at AGBM 8, any reference to a specific target date or period was removed from the RTUN, although 200[_] to 20[_] was retained. The RTUN also introduced a second set of commitments for the period 20[_] to 20[_]. This was unchanged in CRP.2.

179. For CRP.4, Chairman Estrada proposed 2006-2010 as a compromise period, a middle-ground option between the dates stated in the Berlin Mandate and those put forward by Parties. He deleted the paragraph on “demonstrable progress” by 2005. Realizing that no earlier period would be agreed, Chairman Estrada also removed the option of defining a second set of commitments, as he considered this would take the scope of the protocol too far into the future. Some Parties, including the US and Canada, made it clear, however, that the period 2006-2010 was too early and would be unacceptable. Chairman Estrada therefore changed the dates to 2008-2012 in CRP.6. However, in order to strengthen that commitment, he re-introduced the paragraph concerning “demonstrable progress” by 2005 (see “interim milestone” below).

- **Baseline**

180. Proposals from most Parties were founded on a 1990 baseline (AOSIS, Australia, Czech Republic, EU, G-77 and China, Hungary et al., Japan, Peru, Philippines, Switzerland, US and Zaire). The Russian Federation stated that the baseline should be 1990 “or ... the level of any other year taken ... as a base year”, presumably a reference to the flexibility granted to

countries with economies in transition (EITs) under the Convention to request a baseline other than 1990. Canada, Iceland and Norway, however, all included the possibility of a different approach to the baseline in their proposals; Canada advocated a multi-year baseline, while Iceland and Norway's proposal covered the option of both a single-year and a multi-year baseline.

181. During debates in the QELROs non-group at AGBM 7, dates for a possible multi-year baseline were specified as 1988-92 (thus centered on 1990). This possible baseline was included as an option in the INF.

182. The option of a multi-year baseline (198[_] to 199[_]) was included as an alternative to 1990 in the CNT. This option, however, was removed at AGBM 8, and the RTUN assumed a single-year baseline of 1990 (with exceptions for EITs, see Article 3.5 and 3.6 below). One of the previous supporters of a multi-year baseline, Canada, adopted a 1990 baseline when it announced its proposed quantitative target in the first week of COP 3. Although Japan attempted to re-introduce the option of a 1995 baseline, 1990 was never seriously challenged, and was adopted in the final text.

183. It should be noted that the multi-year baseline option was rejected partly due to the incompleteness of emissions data prior to 1990, which is the baseline used under the Convention. Chairman Estrada was also reluctant to entertain suggestions to use a 1995 baseline, fearing this would open up a whole new area of debate on one of the few issues that was enjoying early and broad consensus.

- **Differentiated emission commitments**

184. The question of whether emission targets to be adopted should be uniformly applied or differentiated between Annex I Parties shaped debates over emission commitments from an early stage in the AGBM process. The reports of AGBM 2, 3 and 4 all refer to divergent views on this issue and, at AGBM 4, Parties considered a document prepared by the secretariat²⁹ (following a request by AGBM 2) outlining possible indicators to define criteria for differentiation.

185. Australia, Hungary et al., Iceland, Japan, Norway and Switzerland all submitted proposals, included in the NT, for differentiation. Brazil submitted a later proposal in May 1997³⁰. The criteria proposed, however, were quite different.

186. Other Parties, namely, AOSIS, the Czech Republic, the EU, the G-77 and China, New Zealand, Peru, the Philippines, the US and Zaire all initially supported uniform targets. Canada also proposed a uniform target at COP 3.

187. Australia advocated differentiation whereby the commitments of Parties would be defined according to: projected population growth; GDP per capita growth; emission intensity of GDP; emission intensity of exports; and fossil fuel intensity of exports. For almost all of these indicators, the higher the indicator, the weaker the target. The exception was emission intensity

²⁹ See FCCC/AGBM/1996/7.

³⁰ See FCCC/AGBM/1997/MISC.1/Add.3.

of GDP, where a lower emission intensity would mean a weaker target. Australia stated that this relationship would be decreased, and in some cases reversed, depending on the industry structure of the economy and the difficulty the Party has in switching to alternative fuel sources.

188. Iceland and Norway proposed that commitments should be related to: emission intensity, defined as emissions per unit of GDP; emissions per capita; GDP per capita; and share of renewable energy in energy supply. For each of the first three indicators, the relationship to targets would be direct, that is, higher emission intensity, emissions per capita or GDP per capita would result in a stronger target. However, a higher share of renewable energy to total energy supply would permit a weaker target. In an earlier proposal, included in the FC, Norway had submitted a formula for calculating the emission commitments of Parties. In a later proposal, Iceland omitted the emission intensity criteria and added an indicator related to the percentage of emissions resulting from industrial processing as a share of total emissions. It also proposed a formula for calculating the targets of each Party. Japan proposed that Parties should be allowed to choose between two targets, one based on per capita emissions, the other on total emissions.³¹ Switzerland supported differentiation on the basis of per capita emissions. Hungary et al.'s proposal involved a general commitment to stabilization, coupled with a provision whereby Parties would, in addition, submit a notification of their intended emission reduction (thus a form of "pledging"). Brazil's criteria for differentiation was not based on emissions, but on relative contribution to increases in atmospheric concentrations of greenhouse gases, which drive climate change.

189. An early proposal from France (see FC) had proposed differentiation based on per capita emissions, but this was withdrawn on the advent of the agreed common EU target. The Russian Federation called for differentiation between "Annex A" and "Annex B" Parties, with "Annex A" Parties subject to stabilization only by 2010, and also among "Annex B" Parties who would then assume "additional differentiated obligations". The Russian Federation did not specify which Parties would be included in "Annex A" or "Annex B", but it may be presumed that these were equivalent to Annex I and Annex II of the Convention.

190. At AGBM 5, Chairman Estrada undertook to "explore with interested delegations the concept of differentiation and criteria for differentiation as applicable to Annex I Parties with a view to analysing and applying a number of parameters and bringing the results to an informal roundtable ... at the sixth session". In line with this mandate, he convened informal consultations on differentiation, which took place on 2 March 1997, the Sunday before the start of AGBM 6. Invited Parties included the supporters of differentiation, plus the EU, the G-77 and China and the US. These consultations made it clear that differentiation was an important topic, and a roundtable was duly convened at AGBM 6. This was chaired by Mr. Kok Kee Chow (Malaysia) and provided an opportunity for supporters of differentiation to explain their proposals, and for others to ask questions.

191. At AGBM 6, the EU announced that it intended to share out its proposed quantitative emission target among its 15 member States according to an internal EU agreement. This agreement, dubbed the "EU bubble", would result in some member States taking on reduction targets of up to 30 per cent (e.g. Luxembourg) while others would be allowed to increase their

³¹ See FCCC/AGBM/1997/MISC.1/Add.6 for the proposals from both Iceland and Japan.

emissions by up to 40 per cent (e.g. Portugal). The EU maintained its opposition to differentiated targets across Annex I, however, by pointing to the great difficulties it had encountered in reaching agreement even among its 15 member States, themselves united within the European Union. It noted that it was not against differentiation *per se*, with its proposal calling for “more sophisticated methods to allocate reduction targets” “in the longer term”. Australia’s subsequent submission for the NT stated that the range of targets within its proposal for differentiation would be between -30 per cent and +40 per cent, an obvious riposte to the EU internal differentiation agreement.

192. Differentiation emerged once again as a major topic for discussion at AGBM 7 in the QELROs non-group, where attempts were made to consolidate the various proposals on QELROs in the NT into two alternatives: proposals for uniform targets and for differentiation. While the proponents of uniform targets could agree to the consolidation of their proposals into a single, bracketed text, the supporters of differentiation could not. The proposals for a differentiated target were simply aligned one after another as alternatives in the INF. At an AGBM Bureau meeting later during AGBM 7, Chairman Estrada expressed the view that the only form of differentiation that he could envisage would be to allow Parties to negotiate their own targets.

193. Chairman Estrada included options for both differentiation and uniform targets in his CNT. Paragraph 1 of draft article 3 could be taken as defining either a uniform target for each Annex I Party, or a collective “umbrella” target for Annex I Parties to achieve as a group. Bracketed paragraph 2 then introduced the concept of differentiation, stating that the commitments for each Party would be listed in an “Attachment 1”. The CNT did not specify how these differentiated commitments would be arrived at. In order to reassure the “differentiators” that their proposals had been taken fully into account, however, the CNT included a draft annex C which set out all the proposed criteria for differentiation put forward by Parties. The CNT established that this annex would be invoked for those Parties seeking to take on emission commitments after the protocol’s adoption (e.g. new Annex I entrants).

194. An early draft of the CNT had included the possibility that only a collective target would be adopted at COP 3, with individual, differentiated targets to be defined at a later date. This idea, however, was abandoned, as all Parties to the informal consultations on the Chairman’s text made it clear they wished to come away from COP 3 knowing what their commitments were, and could not ratify a protocol that did not state this with certainty.

195. At AGBM 8, Mr. Meira Filho, as Chairman of the QELROs non-group, invited the Swiss delegation to convene consultations among the “differentiators” (as the supporters of differentiation were known) to seek to develop a common text on differentiation. The common text that emerged was inserted as the chapeau and paragraph 2 to draft annex B in the RTUN. However, the list of possible criteria for differentiation in the annex remained unchanged, still setting out all the criteria previously included in the CNT, which should be “taken into account, as appropriate, in the case of each Party”. The RTUN included two clear alternatives for differentiated and uniform targets (Alternatives A and B to draft paragraph 2, respectively). Alternative A specified that the provisions of draft annex B would be used to define emission

targets for Annex I Parties, and that, for Parties included in Annex I on the date of adoption of the protocol, these would be established at that time.

196. Also at AGBM 8, the Swiss delegation proposed a draft decision inviting Annex I Parties to submit information to the secretariat on each of the criteria listed in draft annex B, to facilitate negotiations at COP 3. This proposal was adopted as a conclusion of the AGBM, and 14 submissions were subsequently received³².

197. At AGBM 8 part II, on the eve of COP 3, the Russian Federation put forward a new proposal for what it termed a “universal bubble”; that is, each Annex I Party would undertake the commitment it had proposed, and the total reduction achieved would become a collective target.

198. At the first plenary meeting of COP 3, the US announced that it was prepared to move on differentiation, so long as this was “carefully bounded”. In the first meeting of the CoW on 1 December, the EU also noted that it was not against differentiation *per se*, but that it required “equivalence of effort” in which the EU did not have to do more than other major players. The G-77 and China also indicated that they were “supportive” of differentiation at a plenary meeting of the CoW on 3 December.

199. Chairman Estrada charged Switzerland with continuing consultations on differentiation, to try to reach agreement on the criteria in the draft annex. The list of differentiation criteria (now in draft annex C) included in CRP.2, however, was unchanged from the version in the RTUN, despite Switzerland’s consultations.

200. The explicit mention of uniform commitments was deleted from CRP.4, as Chairman Estrada realized that no single target could be agreed for all Parties, and that support for this approach had waned. Equally, however, as Chairman Estrada had maintained would be the case, no objective agreed differentiation criteria or formula were in sight. Therefore, in CRP.4, he simply put forward differentiated targets against each Party name in what was now draft annex B, deleted draft annex C (which had included the proposed differentiation criteria), and referred to draft annex B in the main body of draft article 3. The means for differentiation thus became, *de facto* and implicitly, a form of pledging; each Annex I Party would adopt the target it could agree to. At a plenary meeting of the CoW in the evening of that same day, Chairman Estrada stated that the new text he would produce, CRP.4, would include differentiation. This statement was not challenged. No formal decision, however, was taken to adopt differentiated targets, or to decide these by pledging. The levels of the individual targets adopted are discussed below.

³² See FCCC/AGBM/1997/MISC.3 and Add.1-3.

- **Level of individual targets**

201. The level of emission commitments to be taken on by Annex I Parties made up the centrepiece of the protocol negotiations. However, very little negotiation, or even discussion, of this issue took place until the very last days of COP 3.

202. The targets officially proposed during the negotiation process are set out in table 2 below.

203. The first emission target to be proposed was by AOSIS, even before the launch of the Kyoto Protocol negotiations. Other early proposed quantitative targets, included in the FC, came from France, Germany, Switzerland, the UK and Zaire. A number of proposals from other EU countries were also noted in the submission from the EU for the FC. It was understood, however, that these targets from EU countries would be withdrawn once the EU came forward with a common target, agreed among its 15 member States.

204. The EU was able to announce its common proposed target of -15 per cent at AGBM 6, following agreement at its Environment Ministers Council. Peru also announced a target at AGBM 6, while a number of other countries (Czech Republic, Hungary et al., Philippines) came forward with targets in time for the production of the NT, that is, before April 1997. In addition, prior to AGBM 7 but too late for inclusion in the NT, Brazil submitted a further proposal for a quantitative target³³, and the EU Environment Ministers Council agreed on its intermediate target for 2005.

205. At AGBM 7, Chairman Estrada chided some “major countries” for not yet announcing their proposed targets, arguing that this was slowing down progress. The range of emission targets proposed by this time was included in the INF.

206. Japan informally revealed its proposed emission target at the informal consultations on the Chairman’s text in October 1997. Chairman Estrada did not include figures in the draft of his CNT circulated to the informal consultations, but put forward three possible targets in the final version, covering the main proposals now on the table (5 (Japan), 15 (EU) and 20 (AOSIS) per cent).

207. Japan formally announced its target at AGBM 8. Two other important announcements of proposed emission targets were made at this session, by the G-77 and China³⁴ and by the US (the latter proposal was not included in an official document as there was no request to do so).

208. The figures proposed by Chairman Estrada in the CNT ([5/15/20] per cent) were deleted during AGBM 8, and the RTUN was issued without numbers.

209. In the opening days of COP 3, Canada and New Zealand put forward their targets. As COP 3 proceeded, Chairman Estrada exerted ever greater pressure on Annex I Parties to start to

³³ See FCCC/AGBM/1997/MISC.1/Add.3.

³⁴ See FCCC/AGBM/1997/MISC.1/Add.6 for the proposals of both Japan and the G-77 and China.

negotiate and make progress on the level of emission targets. The G-77 and China stated that they were reluctant to consider “peripheral” issues such as emissions trading while there was no indication of what the final agreed target might be.

210. A list of Annex I Parties subject to emission commitments was first included in CRP.2, accompanied by blank columns intended to state their emissions in the base year/period, their emission commitment, and their “defined amount” in the commitment period (see also “Annex B” below). On 8 December, at a plenary meeting of the CoW, Chairman Estrada gave Parties a deadline of 15:00 the next day to provide him with target numbers, as he would be producing his own text. He stated: “It is not going to be an ambitious approach, but it will take into account what has been said. Differentiation will be included, with some exceptions and ensuring that big economies have comparable rates.” He repeated this deadline at the consultations with ministers convened by COP 3 President Ohki that evening, where some Ministers protested that the deadline was too early.

211. At the same time, information began to filter through on what Parties could or could not accept. The then US Vice-President Gore, for example, in his statement to the COP in the morning of 8 December, had instructed US negotiators to “show flexibility”. A draft list of numbers had, in fact, already been drawn up by Chairman Estrada and the secretariat. This was circulated informally, at Chairman Estrada’s request, at a lunchtime meeting with ministers convened by President Ohki on 8 December.

212. When Chairman Estrada had received no new official submissions on targets by the required deadline, he decided to draw up his own list of targets for inclusion in CRP.4. The numbers given to each Party were based on targets already pledged by Parties, information received on latest negotiating positions, and the goal of achieving the strongest possible environmental outcome. The EU was allocated the target of -8 per cent, roughly halfway between its -15 per cent proposed target, and the US proposal, stabilization at 1990 levels. Switzerland, Liechtenstein, Monaco and the EITs applying to join the EU (the “EU accession countries”) were given the same target as the EU. The remaining EITs, such as the Russian Federation and Ukraine, were assigned a weaker target, namely, -5 per cent. Responding to signals from that delegation on its preparedness to be flexible, a -5 per cent target was also given to the US, and Japan was assigned -4.5 per cent, just below that of the US. Canada was given -5 per cent, the same target as the US and stronger than its original proposal by two percentage points. Although Australia had never formally submitted a proposed target, it was understood that it was seeking an increase in emissions. It was therefore given an increase of +5 per cent, as was Norway. Iceland, too, was assigned a growth target, +10 per cent, as a result of its claim to special circumstances in view of the small size of its economy and low emissions baseline. New Zealand was given a 0 per cent target to take into account its particular situation regarding sinks,

Table 2: Level and timing of proposed targets

| Party | Target level (reductions from 1990) | Gas(es) covered | Target date | Date proposed |
|---|---|--|---|--------------------------------|
| AOSIS | 20 per cent | CO ₂ | 2005 | 20 Sept 1994 |
| Brazil | 30 per cent <i>(differentiated)</i> | CO ₂ , CH ₄ , N ₂ O | 2020 | 28 May 1997 |
| Canada | 3 per cent | All GHGs | 2010 (2008-2012) | 2 Dec 1997 ^{*1} |
| | additional 5 per cent | | 2015 (2013-2017) | |
| Czech Republic | 5 per cent | CO ₂ , CH ₄ , N ₂ O | 2005 | 27 Mar 1997 |
| | 15 per cent | | 2010 | |
| Democratic Republic of the Congo (Zaire) | 10 per cent | All GHGs | 2005 | 23 Oct 1996 |
| | 15 per cent | | 2010 | |
| | 20 per cent | | 2020 | |
| EU | at least 7.5 per cent | CO ₂ , CH ₄ , N ₂ O | 2005 | 19 June 1997 ^{*2} |
| | 15 per cent | | 2010 | 4 Mar 1997 ^{*3} |
| France | 7-10 per cent in average per capita emissions <i>(differentiated)</i> | All GHGs | 2010 | 6 Dec 1996 ^{**} |
| Germany | 10 per cent | CO ₂ | 2005 | 26 Mar 1996 ^{*4**} |
| | 15-20 per cent | | 2010 | |
| G-77 and China | at least 7.5 per cent | CO ₂ , CH ₄ , N ₂ O (gas-by-gas) | 2005 | 22 Oct 1997 |
| | 15 per cent | | 2010 | |
| | an additional 20 per cent | | 2020 | |
| Hungary et al. | Stabilization plus pledging of differentiated targets | CO ₂ , CH ₄ , N ₂ O | 2005 | 27 Mar 1997 |
| Japan | 5 per cent <i>(differentiated)</i> | CO ₂ , CH ₄ , N ₂ O | 2008-2012 | 6 Oct 1997 |
| New Zealand | 5 per cent | CO ₂ , CH ₄ , N ₂ O | 5 yr period, starting no earlier than 2005 | 2 Dec 1997 ^{*1} |
| Peru | 15 per cent | CO ₂ | 2005 | 7 Mar 1997 |
| | 15-20 per cent | All GHGs | 2010 | |
| Philippines | 20 per cent | All GHGs | 2005 | 25 Mar 1997 |
| | 20 per cent | | 2010 | |
| Russian Federation | Stabilization plus additional differentiated targets for "Annex B" Parties | All GHGs | 2010 | 26 Feb 1997 |
| Switzerland | 10 per cent <i>(differentiated)</i> | All GHGs | 2010 | 29 Nov 1996 |
| UK | 5-10 per cent | All GHGs | 2010 | 16 April 1996 ^{**} |
| USA | Return to 1990 | All GHGs | 2008 – 2012 | 23 Oct 1997 ^{*5} |

^{*1} Proposed in a statement at COP 3. ^{*2} Date at which agreed in EU Environment Ministers Council. ^{*3} Date at which announced in statement to the AGBM. Agreed in EU Environment Ministers Council the day before. ^{*4} Date at which formally submitted in a letter to the secretariat. Previously announced in statement to AGBM 3. ^{*5} Date at which announced in statement to the AGBM. Announced by then President Clinton the night before, when broadcast live on CNN. ^{**}Withdrawn with advent of the common proposed EU target.

and the fact that the outcome on this issue (which was now broadly known, see Article 3.3 and 3.4 below) did not fully meet its needs. The secretariat calculated that these numbers would lead to a collective target of around -5 per cent from 1990 levels, in line with the figure that Chairman Estrada had been seeking.

213. CRP.4, including this list of numbers, was circulated in the evening of Tuesday, 9 December in the CoW. This meeting was suspended less than two hours later, at which time Chairman Estrada received visits from a number of delegations, including their ministers, regarding the acceptability of the proposed targets.

214. Chairman Estrada issued CRP.6 leaving draft annex B, which would list the targets of Annex I Parties, blank (the column stated “*to be completed*”). At the start of the final plenary meeting, he stated that the annex would be discussed “at the end”. Near the end of the meeting, when almost all of the final text had been agreed except for the draft article on continuing to advance Article 4.1, pending points in draft article 3 on emission commitments, and the decision on adoption, he invited Annex I Parties to submit their revised, final, numbers to the podium. Representatives of Parties gradually approached the podium, and the submitted numbers were simply inserted by the secretariat into the blank draft annex B. They were circulated at the very end of the final meeting and adopted without debate, except for a comment by Iceland that its target was unattainable, and a request by Luxembourg for a footnote to be added regarding “bubble” provisions for the EU (see Article 4 below).

215. In the final outcome, the targets of all but nine Parties (out of 41) were unchanged from the first list of quantified targets drawn up by Chairman Estrada in CRP.4. Out of these nine Parties, Canada, Japan, Norway and the US accepted stronger targets than those proposed for them in CRP.4, while Australia, Hungary, Poland, the Russian Federation and Ukraine took on weaker ones.

- **Collective target**

216. This clause sets out the collective target of Annex I Parties, equivalent to their combined individual emission targets.

217. The proposals from Iceland, Norway and Switzerland all included the concept of a collective target, which would then be shared out among Annex I Parties. As noted above, the Russian Federation proposal, put forward at AGBM 8 part II, was also based on this approach, calling it the “universal bubble”.

218. The CNT included the option of defining a collective target, serving as an umbrella for individual, differentiated targets. This approach was removed, however, from the RTUN.

219. As negotiations proceeded at COP 3, Chairman Estrada decided to introduce a collective target in CRP.4, explicitly mentioning that this was based on the Russian Federation proposal. This approach was partly aimed at accommodating the position of the G-77 and China, which had long been opposed to the listing of emission commitments in an annex, owing to concern over the symbolic marginalization of these commitments if they were placed outside the main

body of the text. Chairman Estrada considered that a clear statement of the overall emissions reduction that was expected of Annex I Parties by the new agreement might help to address these concerns. There was also a related “public relations” dimension; at the close of COP 3, it would be necessary to explain to the media, and through it to the public worldwide, what had been agreed in Kyoto and its significance. A single figure would help to communicate an unambiguous “headline message” that all could understand.

220. Several Annex I Parties, however, voiced their objection to the use of the word “shall” in CRP.4 in the context of a collective commitment which could not be legally-binding. They also supported linking the non legally-binding collective commitment to the legally-binding individual commitments in the previous paragraph. A number of alternative phrases were exchanged in one of Chairman Estrada’s informal consultations. Chairman Estrada would not accept the option of “with the aim of”, as he considered this to resemble too closely the Convention’s Article 4.2 (a) and (b), which the protocol was supposed to strengthen. The secretariat was eventually charged with devising an acceptable formulation, which was found to be “with a view to”.

221. The first figure to appear in the collective target was a reduction of 5 per cent, in CRP.4. This was changed to a reduction of 6 per cent in CRP.6, in the hope that a stronger figure could be reached following indications by the US that it might take on a higher target than that listed for it in CRP.4 (-5 per cent). However, the eventual adoption of lower targets by the Russian Federation and Ukraine than those proposed for them in CRP.4 (0 per cent compared with -5 per cent in both cases) meant that this was not possible. Chairman Estrada amended the number to 5 per cent, once draft annex B was agreed at the close of the final CoW plenary meeting. Acting on a suggestion by the secretariat, the final text adopted by the COP, L.7/Add.1, was changed to read “at least” 5 per cent as the sum of Annex I Party emission commitments amounted to a 5.2 per cent reduction.

Article 3.2: Demonstrable progress

222. A paragraph requiring Annex I Parties to make “demonstrable progress” in meeting their commitments under the protocol by 2005 was first included in the CNT. Its purpose was to introduce a milestone, prior to the legally-binding commitment, to accommodate the views of those Parties seeking a short-term target, and/or two sets of commitments.

223. The version included in the draft CNT circulated to participants at the informal consultations stated “...to have achieved at least half of its emission commitment under this Article”. However, some delegates expressed concern at this quantification. The paragraph was therefore changed to “demonstrable progress in achieving its commitments under this Article” for the final CNT.

224. At AGBM 8, “under this Article” was modified to read “under this Protocol” in the RTUN. The paragraph was retained in CRP.2, but deleted from CRP.4. This was partly due to continuing concerns by many Parties at the imprecision of the provisions. Chairman Estrada reintroduced the paragraph in CRP.6, to act as a shorter-term milestone towards the now longer-term 2008-2012 commitments. The paragraph was retained through to the final text.

Article 3.3 and 3.4: Land-use, land-use change and forestry

225. Substantive discussions on sinks and the land-use change and forestry sector did not commence until late in the AGBM process.

226. The NT noted that there was “a range of views on the inclusion of removals by sinks...”. Some Parties advocated a “net” approach (Brazil, Iceland, Norway, Russian Federation, US), others included “...and removals by sinks” in their proposals (Australia, EU), while still others explicitly excluded sinks or did not mention these in their proposals with the effect that they were excluded (AOSIS, Czech Republic, Hungary et al., Japan, Switzerland). The quantified targets put forward by the G-77 and China, Peru and the Philippines referred only to emissions, although removals by sinks were mentioned in the chapeau introducing these targets. Canada’s proposal put forward at COP 3 covered both sources and sinks. The EU later defined its proposal further, suggesting that sinks should be excluded from the Kyoto target, with a view to including them later, following additional research. New Zealand was the only Party which made an early, more comprehensive proposal on the treatment of sinks, suggesting that sequestration of greenhouse gases from certain listed categories should be added to a Party’s emission “budget”.

227. In his draft CNT discussed at the informal consultations, Chairman Estrada included the word “net” in square brackets in relevant articles. During the informal consultations, New Zealand (which was not present at these consultations) faxed through a proposal for the treatment of sinks that was distributed to participants. This proposal was an elaboration on its previous submission included in the NT, that is, sinks would not be included in a Party’s baseline, but removals would be credited to a Party’s “budget” (the so-called “gross-net” approach). No changes were made to the final version of the CNT and Chairman Estrada maintained the approach of including net in square brackets throughout the text, in his words, to “remember the problem”.

228. At AGBM 8, Chairman Estrada convened an initial consultation on sinks with interested Parties. Consultations then continued throughout AGBM 8 under the chairmanship of Mr. Antonio La Viña (Philippines). The RTUN included “net” unbracketed throughout the text, but with the understanding that there were still “mental brackets” around the term.

229. Mr. La Viña was requested to continue consulting on sinks in the inter-sessional period between AGBM 8 and COP 3. Parties were invited to submit responses to a “questionnaire”, which had been circulated during the final consultation meeting on sinks at AGBM 8. Chairman Estrada noted that he would mention the unresolved question of the treatment of sinks in his report to COP 3.

230. Consultations continued by e-mail during the inter-sessional period, and over 85 pages of submissions were sent in by Parties in response to the questionnaire³⁵. The secretariat compiled the comments into a synthesis of responses³⁶, and a technical paper was also prepared including information on land-use change and forestry from national communications and in-depth reviews from Annex I Parties³⁷.

231. The consultation group on sinks met immediately prior to AGBM 8 part II. Here, Mr. La Viña put forward four different options for the treatment of sinks. It did not prove possible to agree on any of these, but Mr. La Viña reported to the AGBM plenary that all Parties had agreed that “sinks were important and should be included in commitments, subject to concerns about definitions, timing and scope”. It was clear that the different options proposed would have contrasting implications for individual Parties, depending on prevailing trends in land-use and forest cover on their territories.

232. Consultations on sinks under the chairmanship of Mr. La Viña continued almost round the clock at COP 3, with several draft texts being prepared and reviewed. Chairman Estrada urged the group to finish its work quickly, as it would be impossible to define the level of emission commitments without knowing how sinks would be treated. With the aim of accelerating progress, Chairman Estrada presented an alternative text on sinks to the CoW plenary on Saturday, 6 December. This text was based on ideas circulated during the informal consultations, but took a slightly different approach. The text elicited quite strong reactions from Parties in the CoW plenary; AOSIS stated that the group could accept it, but many of the JUSSCANNZ Parties could not. Chairman Estrada charged the informal consultation group to convene, find a way forwards, and report back to plenary before the close of the meeting that same evening.

233. After much debate, and triggered by Chairman Estrada’s alternative text, the informal consultation group decided to return to, and continue working on, a previous draft. A key question was which land-use change and forestry categories would be covered by the protocol for the first commitment period (afforestation, deforestation and reforestation were agreed, but consensus could not be reached on others, e.g. harvesting), and also under what conditions new categories could be included in the future. The resulting text was presented to the CoW plenary that evening, and provisionally agreed, although several Parties expressed reservations. That text, consisting of two paragraphs, was included in CRP.2 and CRP.4. When CRP.4 was discussed in plenary, the phrase “Such a decision shall apply in the second and subsequent commitment periods” was added with reference to future additions to the sink categories covered by the protocol, in order to clarify that any additional categories would only apply in subsequent commitment periods, so that the existing commitments of Parties would not be changed. In the final CoW plenary, Japan intervened to request a further amendment, to the effect that a decision on further categories could be applied in the first commitment period, providing that the activities concerned had taken place after 1990. Chairman Estrada at first refused to include this sentence. However, later on during the final meeting, he was informed that the Japanese

³⁵ See FCCC/AGBM/1997/MISC.4/Add.1-2.

³⁶ See FCCC/AGBM/1997/INF.2.

³⁷ See FCCC/TP/1997/5.

proposal was now being supported by the EU and the US. He therefore proposed the additional text put forward by Japan for adoption and, after some rephrasing, it was agreed (see also Article 3.7 below).

234. Both paragraphs were subject to editorial and technical changes as part of the post-Kyoto technical review.

Article 3.5 and 3.6: Parties with economies in transition

235. A number of Parties put forward proposals granting EITs flexibility in meeting their commitments under the protocol. In an early proposal, Germany (FC) stated that EITs should be allowed “a certain degree of flexibility” comparable to that under Article 4.6³⁸ of the Convention. The Russian Federation also called for “a certain degree of flexibility” and, in a previous submission (FC), had proposed a separate annex including commitments on policies and measures for EITs. Taking a similar approach, Zaire stated that EITs (and also developing countries) should not be subject to emission targets, but should implement national policies and measures addressing greenhouse gas emissions. Poland et al. (FC) noted that the base year for Annex I Parties should be 1990, unless the provisions of decision 9/CP.2 (see footnote 38) applied. The Russian Federation later further defined its position, stating that EITs should be permitted to maintain their average annual net emissions at 1990 levels until they reached the average GDP per capita level of other Annex I Parties. Hungary et al.’s proposal included the possibility for EITs to use a baseline other than 1990, in accordance with the flexibility granted by Article 4.6 of the Convention.

236. Debates on this issue at AGBM 7 resulted in two clear alternatives in the INF. The first, proposed by the US, stated that there should be no differentiation with respect to base year, target year or level for any Annex I Party. The second, supported by Poland and the EU, allowed those EITs that had been granted a different baseline to 1990 under decision 9/CP.2 to use that baseline under the protocol. A third paragraph included the above-mentioned Russian Federation proposal.

237. When preparing the CNT, Chairman Estrada sought to provide EITs with flexibility in their baselines, as provided for in the Convention. He was also mindful of the need to address the situation of those EITs that had not submitted a national communication under the Convention by that time (e.g. Ukraine) and therefore had not yet had a chance to request a different baseline.

238. At AGBM 8, informal consultations on this issue were conducted under Ambassador Kjellén, co-chair of the QELROs non-group. Some Annex II Parties, the US in particular, queried the need for seemingly complex text allowing for EITs not covered by decision 9/CP.2 to take on a different baseline to 1990. These Parties were also concerned not to provide too much flexibility to EITs, which could lead to uncertainty over the level of their

³⁸ Article 4.6 of the Convention grants EITs “a certain degree of flexibility” in the implementation of their commitments, including with regard to their emission baseline. Several EITs have requested to be allowed to use an emission baseline earlier than 1990, that is, before their economic collapse. Decision 9/CP.2 taken at COP 2 granted this flexibility to Bulgaria, Hungary, Poland and Romania.

targets. The text in the RTUN was thus slimmed down to simply state that any EIT that had chosen a different baseline under decision 9/CP.2 should use that baseline under the protocol. A second paragraph was also added, allowing an additional “certain degree of flexibility” to EITs in the implementation of their commitments other than those in Article 3. This was included at the request of EITs, notably Poland, in order to provide for some additional flexibility, for example, in the submission of national communications under the protocol.

239. The pre-Kyoto technical review noted that these two paragraphs in the RTUN had removed provisions in the CNT covering the situation of those EITs that had not yet submitted a national communication under the Convention. This issue was discussed in the first week of the CoW, and Chairman Estrada offered to prepare a text to close this gap in the provisions. The text he put forward repeated the text in the CNT, but added in a clarification that only EITs that had not yet submitted their first national communication under the Convention could seek a historical base year or period other than 1990 for the protocol. The two paragraphs on provisions for EITs became the first to be provisionally agreed by the CoW, at 20:57 on 3 December. The Russian Federation later attempted to re-open the paragraphs when they appeared in CRP.2, proposing that the words “other than those in Article 3” in the second paragraph be deleted, thus introducing additional flexibility in the meeting of emission commitments under article 3. Chairman Estrada did not allow the issue to be re-opened, and both paragraphs were adopted intact in the final text.

240. Both paragraphs were subject to editorial and technical changes as part of the post-Kyoto technical review.

Article 3.7: Calculation of assigned amounts

241. The first part of this paragraph sets out how the assigned amounts of Parties should be calculated. Its drafting was therefore largely determined by the outcome of negotiations on the relevant substantive issues, and the main challenge was to achieve accuracy and clarity in drafting.

242. New Zealand and the US both included, in their proposals, provisions on how emission “budgets” should be calculated. These were merged into a single common (though bracketed) text in the INF document.

243. Chairman Estrada included a paragraph on the calculation of assigned amounts in the CNT. This paragraph was subject to small drafting changes at AGBM 8. By CRP.2, the final structure of the first sentence of this paragraph had been agreed, with its completion pending resolution of substantive debates over emission commitments (e.g. dates of the commitment period). The only change made, for CRP.4, was to add “quantified emission limitation and reduction” before “commitment period”, in the first line, in accordance with G-77 and China requests that Berlin Mandate language be used to refer to the emission commitments of Parties (see “multi-year targets” above).

244. The second sentence of this paragraph, relating to the inclusion of emissions from land-use change in the calculation of the 1990 baseline, was proposed by Australia in the final meeting of the CoW. Australia had passed its proposed text to Chairman Estrada, indicating that

it enjoyed agreement. Prompted by a reminder from Australia from the plenary floor, Chairman Estrada read out the text, and it was adopted without objection. During the post-Kyoto technical review, queries were raised over the use of the term “land-use change” rather than the more common “land-use change and forestry”. This was, however, the text proposed and adopted.

245. The paragraph was subject to a minor change as part of the post-Kyoto technical review.

Article 3.8: Baselines for HFCs, PFCs and SF₆

246. Substantive debates concerning this paragraph are discussed under coverage (see above). The actual language inserted in CRP.6 concerning HFCs, PFCs and SF₆, and carried over to the final text, was based on that proposed by the US. Prior to the second week of COP 3, no Party had formally proposed that a 1995 baseline be allowed for HFCs, PFCs and SF₆.

Article 3.9: Commitments for subsequent periods

247. Few Parties put forward procedures for negotiating future rounds of commitments under the protocol. The Russian Federation proposed that commitments for the period after 2010 be negotiated commencing in 2007. New Zealand did not put forward a date, but stated that its proposed formula for the definition of “budgets” should be used for setting subsequent “budgets”.

248. In his CNT, Chairman Estrada included only one set of emission commitments and did not set a date for launching negotiations on new commitments. He did, however, propose, as New Zealand had, that the process set out for calculating emission “budgets” be applied to future periods.

249. This paragraph was retained in the RTUN, although some Parties expressed concern that it would restrict possibilities for the negotiation of future commitments, but was deleted from CRP.2, where provisions were included for a second commitment period. However, Chairman Estrada insisted that a footnote accompany the paragraph in that document setting out provisions for a second commitment period, noting that, if no second period were defined in the protocol, “a process will need to be established to negotiate commitments” beyond the first period.

250. When preparing CRP.4, Chairman Estrada decided to include a paragraph defining a date at which a new round of negotiations on commitments should start, namely, seven years before the end of the first commitment period. This provision sought to compensate for the deletion of the proposed second commitment period in the draft protocol, and also to provide a “hook” for efforts to continue to strengthen commitments under the climate change regime. The paragraph drew on the text that Chairman Estrada had prepared (but not circulated) on QELROs in the run-up to Kyoto, including the specification that new commitments would be “established” in an annex to the protocol. By specifically mentioning Annex I Parties, controversies over future commitments for non-Annex I Parties were avoided. The paragraph also helped to allay concerns on the part of some Parties over the lack of specificity of the article on review of commitments (see Article 9 below). During discussions on CRP.4, the EU proposed that the paragraph be modified to stipulate that subsequent commitment periods would be adopted by amending annex B, in accordance with the provisions of the article on amendments to annexes.

These changes were made to CRP.6. In the final meeting of the CoW, the EU proposed that the article specify further that it was the provisions of paragraph 7 of the article on amendments to annexes which would be invoked. This change was accepted.

251. The paragraph was subject to minor changes as part of the post-Kyoto technical review.

Article 3.10 and 3.11: Adjustment of assigned amounts pursuant to “joint implementation” and emissions trading

252. These paragraphs indicate how the assigned amounts of Annex I Parties may be modified by participating in “joint implementation” (JI) or emissions trading. Their inclusion in the protocol, and their drafting, therefore mirrored substantive debates over these issues.

253. Both New Zealand and the US included provisions in their proposals for adjusting “budgets” through participation in JI and emissions trading. Chairman Estrada also included such provisions in the CNT, as options to be taken up in the event that a multi-year target and the two mechanisms were adopted. The substance of these paragraphs was retained through to the final text, with drafting modifications made to reflect the outcome of negotiations on JI and emissions trading, in particular changes in terminology.

254. In the CNT, “emissions allowed” was used in the context of emissions trading, and “emission credits” in the context of JI. In the RTUN, the term “emissions allowed” was changed to “part of an emission budget”, as the former term might have implied a right to emit, a cause for concern of the G-77 and China. In CRP.2, that term was changed once again to “any part of a defined amount”, in line with deliberations over the terminology for multi-year targets (see “multi-year targets” above) at that time. Finally, in CRP.4, the terms that were eventually to be adopted were included: “part of an assigned amount” (in the case of emissions trading) and “emission reduction units” (in the case of JI).

255. During the final CoW meeting, Chairman Estrada proposed to amend the two paragraphs to reflect the unfinished nature of the agreed provisions on emissions trading, that is, the principles, modalities, rules and guidelines for emissions trading would be defined through future negotiations. One option he put forward was to state, at the end of the paragraphs, “...in accordance with the provisions of Article 6 (on JI) and any provisions arising from Article 17 (on emissions trading)”. The US expressed concern at this proposal, following which Chairman Estrada invited the head of the Argentinian delegation to consult with the US to find an acceptable solution. The resulting paragraph was substantively the same as that previously included in CRP.6, and was adopted into the final text.

256. As part of the post-Kyoto technical review, a request was made to specify “for the acquiring Party” and “for the transferring Party” in the last line of the first and second paragraphs, respectively. The changes were adopted in the interests of clarity.

Article 3.12: Adjustment of assigned amounts pursuant to the clean development mechanism

257. Calls were made for this paragraph to be added when provisions on the clean development mechanism (CDM) were inserted into the draft protocol in CRP.4 (see Article 12 below). The resulting paragraph, added to CRP.6, was based on the same structure as the above two paragraphs on JI and emissions trading. However, it referred only to the addition of certified emission reductions (CERs) to the assigned amounts of acquiring Parties, as the CDM would not involve subtracting emissions from the assigned amount of the transferring, non-Annex I Parties. The paragraph was adopted without challenge.

258. During the post-Kyoto technical review, the words “for that Party” were changed to “for the acquiring Party”, in line with the modifications to the two previous paragraphs relating to JI and emissions trading.

Article 3.13: “Banking”

259. Several Parties proposed that, if a Party achieved emission reductions greater than that required, it should be permitted to carry over that extra reduction to offset against its commitment in the next period, so-called “banking”. Proponents of this idea were New Zealand, the Russian Federation and the US. The Czech Republic proposed a form of pre-commitment period banking, whereby any emission reductions below 1990 levels achieved by 2000, that is, which could be interpreted as over-achievement relative to Convention provisions, would be credited against a Party’s commitment under the protocol.

260. At AGBM 7, the various options were organized into two alternatives for the INF. Alternative A included consolidated language proposed by New Zealand and the US, text proposed by the Russian Federation, and a new paragraph by the EU prohibiting pre-commitment period banking. Alternative B repeated the Czech Republic proposal for the banking of over-achievement prior to 2000.

261. Chairman Estrada included in his CNT bracketed provisions permitting banking, but not pre-commitment period banking. Modifications were made at AGBM 8 to the paragraph then included in the RTUN to specify that emissions over-achievement could be banked for subsequent periods (rather than just the second period), and that this should be done “on request” of the Party, not automatically.

262. Also at AGBM 8, Poland suggested reintroducing the proposal put forward by the Czech Republic to allow banking of any emission reductions below 1990 levels. This was not accepted.

263. The paragraph was adopted substantively unchanged from the version in the RTUN. However, it underwent technical drafting changes for CRP.2 and again for CRP.4, and also a minor modification as part of the post-Kyoto technical review.

Article 3.14: Adverse impacts on developing countries

264. The Berlin Mandate stated that the negotiation process should be guided, *inter alia*, by “the specific needs and concerns of developing country Parties referred to in Article 4.8³⁹; the specific needs and special situations of least developed countries referred to in Article 4.9; and the situation of Parties, particularly developing country Parties, referred to in Article 4.10⁴⁰”. This provided the basis for the possible impacts on developing countries of new commitments under the protocol to emerge as an important issue early on in the negotiations.

265. At AGBM 3, a number of non-Annex I Parties, including India, Kuwait, Nigeria, the Republic of Korea and Uganda, called for an assessment of the socio-economic impacts of policies and measures on developing countries. Costa Rica, on behalf of the G-77 and China, requested that a workshop be organized on the issue. The report on AGBM 3 states that “many delegations stressed the need for analysis of the socio-economic and environmental impacts of policies and measures on non-Annex I Parties ...”. At AGBM 4, a round table on “the possible impacts on developing country Parties of the new commitments to be negotiated for Annex I Parties” was held, chaired by Mr. Kilaparti Ramakrishna, a representative of the Woods Hole Research Institute (a non-governmental organization)⁴¹. Subsequent to this round table, and to discussions at the session, the AGBM concluded that there should be “follow-up”. At AGBM 5, Chairman Estrada held an open consultation on the issue. At this consultation, following an active debate, he invited Parties interested in the topic to submit proposals on how to accommodate their concerns in the protocol.

266. The Islamic Republic of Iran et al. (on behalf of Saudi Arabia, the United Arab Emirates and Venezuela), Kuwait and Nigeria submitted almost identical proposals for a framework to assess and compensate potential losses suffered by oil exporters due to climate change mitigation action. These were accompanied by provisions requiring comprehensive reporting by Annex I Parties on the measures taken to address climate change, and their possible effects on developing countries (see Article 7 below). The G-77 and China submission included a proposal for a “concrete compensation mechanism for damages arising from implementation of response measures on developing countries referred to in Article 4.8”. These proposals were all included in the FC. At AGBM 6, the Islamic Republic of Iran et al., Kuwait and Nigeria agreed to merge their three proposals into one for the NT. A further proposal was received from Uzbekistan, inviting the IPCC to recommend ways of mitigating negative impacts, including on EITs.

267. At AGBM 7, “adverse impacts” was dealt with as part of the non-group on QELROs. At this session, Saudi Arabia noted that a more general text leaving details of a compensation mechanism to be worked out after entry into force of the protocol might be acceptable. In response, Mr. Meira Filho, as Chairman of the QELROs non-group, convened consultations on this issue, chaired by Saudi Arabia. No substantive changes were agreed, however, and the INF

³⁹ See footnote 21.

⁴⁰ Article 4.10 of the Convention refers to Parties, especially developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of climate change response measures.

⁴¹ This was the first time in the Convention process that an NGO representative had chaired a “round table” or any similar event.

incorporated two alternatives made up of existing text: Alternative A, that of the G-77 and China, essentially a place-holder stating that an “appropriate compensation mechanism” would be developed later; and Alternative B, the consolidated Kuwait, Nigeria and the Islamic Republic of Iran et al. proposal, also incorporating Uzbekistan’s paragraph.

268. In his CNT, Chairman Estrada addressed this issue through provisions in the draft articles on policies and measures and reporting, where he proposed that Annex I Parties should provide information on the estimated impacts on developing countries, particularly those listed in Article 4.8, of the policies and measures implemented under the protocol. At AGBM 8, however, the G-77 and China brought forward a new proposal⁴², which now included a proposal for a “compensation fund” in legal text (accompanied by a “clean development fund” (see Article 12 below)). Specific mention was made of developing country Parties included in Article 4.8 of the Convention. This paragraph was inserted into draft article 3 of the RTUN, with a footnote clarifying that it had not been discussed at AGBM 8 owing to lack of time.

269. At COP 3, Chairman Estrada initially allocated the paragraph on the “compensation fund” (and also on the clean development fund) to the negotiating group on continuing to advance the implementation of Article 4.1. However, following urging by the G-77 and China that the proposed compensation and clean development funds were closely related to Annex I Party commitments, he took this issue back under the umbrella of the negotiations on QELROs. Chairman Estrada then invited Mr. Mohamad Reza Salamat (Islamic Republic of Iran) to consult on the paragraph. Mr. Salamat reported back to the CoW on 5 December that Annex I Parties had not been able to come up with their own alternative text and that one Party (the US) had proposed that there be no more discussions on the issue.

270. On 6 December, Mr. Salamat brought forward a proposed compromise package, based on text put forward by Uganda and Zimbabwe. That proposal provided for an alternative to the current paragraph, which was subsequently replaced in CRP.2. The paragraph was accompanied by a draft COP decision on the implementation of Article 4.8 of the Convention, which would require work on this issue to be launched at the eighth session of the SBI (in June 1998), and decisions on “further actions” to be taken at COP 4. When it was put forward, the US stated that there was “no potential for possible agreement on this entire issue” and other Annex I Parties, including Poland, requested its deletion. However, the paragraph and the draft decision formed the basis for the final compromise, with several key differences.

271. Firstly, the first sentence was changed to mirror that on the same issue agreed in the context of draft article 2 on policies and measures (using the wording “shall strive to implement”).

272. Secondly, references to “compensation” proved unacceptable to Annex I Parties, either in the paragraph or in the draft decision. “The establishment of measurements of compensation” was the only internally bracketed clause in the CRP.2 paragraph. Chairman Estrada removed this reference when he prepared CRP.4, although in introducing the text to plenary, he stated that compensation could be brought back in, if there was consensus on it.

⁴² See FCCC/AGBM/1997/MISC.1/Add.6.

273. Thirdly, the text presented by Mr. Salamat as his Chairman's proposal on 6 December referenced only Parties covered by Article 4.8, and not Article 4.9 (and therefore not least developed countries (LDCs)). When this text was included in CRP.2, some LDCs, including Bangladesh, called for Article 4.9 to be similarly referenced. Chairman Estrada requested that these Parties speak with Mr. Salamat, as the Chairman of the informal consultations, and come back with a "recommendation". When no recommendation was received, the text was included unchanged on this point in CRP.4 (that is, with no reference to LDCs under Article 4.9). When CRP.4 was circulated on 9 December, Bangladesh, Burkina Faso and Mauritania strongly opposed the omission of a reference to Article 4.9. Having been given the floor, Mr. Salamat guarded against re-opening the draft paragraph, while Kuwait and Nigeria called for more time to consider the issue. Chairman Estrada requested Mr. Salamat to consult. After further interventions from Mauritania and Nigeria, as well as from Tanzania who, speaking as the Chairman of the G-77 and China, attempted to calm the situation, Chairman Estrada suspended the meeting. Chairman Estrada included a reference to Article 4.9 in CRP.6, and the paragraph was adopted as it stood.

274. Draft decision 3/CP.3, included in document FCCC/CP/1997/CRP.3, saw several amendments before being adopted in the final plenary of the CoW, with the deliberations brokered by Zimbabwe, on behalf of Mr. Salamat. CRP.3 had been prepared before the inclusion of Article 4.9, so a reference to Parties covered by this Article was added. In addition, the words "actions related to" were placed before the word "funding" in the first operative paragraph, on a proposal from the US, and the bracketed sentence on "compensation" was deleted. Following a proposal by the Marshall Islands, the final operative paragraph was ended after "process", with the deletion of the reference to an annex to the protocol. Further proposed amendments put forward by the US and other Annex I Parties were not accepted. Chairman Estrada declared there was consensus on the draft decision and gavelled it through.

Article 4: Joint fulfilment of commitments

275. The question of how the EU would fulfil its commitments under the protocol, in view of its particular political constitution as a regional economic integration organization (REIO), emerged as a major issue in the negotiations.

276. In its proposed protocol structure, the EU did not include any special provisions on REIOs. Instead, it mirrored provisions on this issue in the Convention, that is, specifying that commitments could be fulfilled "individually or jointly" and referencing procedures for ratification by REIOs and declaration of their competence relative to that of their member States. As noted above, the Czech Republic, Hungary et al. and the Russian Federation also included "individually or jointly" in their proposals. AOSIS followed the EU's approach in proposing that the Convention's provisions on ratification be carried over to the protocol. Australia, however, proposed that alternative, more detailed provisions for REIOs be devised, including on their enlargement and on liability for the meeting of commitments.

277. At AGBM 6, the EU revealed its proposed target, together with the distribution of that target among its 15 member States. This prompted further thought on how to devise appropriate

procedures for the EU's participation in the protocol, and in particular over responsibility for compliance with legally binding targets.

278. For the NT, Australia submitted a detailed proposal, in legal language, on procedures for the participation of REIOs. These included a supervisory role for the "MOP", which would have to approve and review arrangements within an REIO.

279. The issue was subject to formal debate for the first time at AGBM 7. Australia and Japan, in particular, raised concerns over the lack of clarity in the definition of legal competence between the EU and its member States. The EU stated that it was undergoing internal deliberations on this matter, the results of which would be available by AGBM 8. Following this announcement, Chairman Estrada wrote to Minister Lahure of Luxembourg (which held the EU Presidency at that time) to request that the EU submit language on the definition of legal competence at an earlier date. Minister Lahure wrote back, however, that this would not be possible, as the Environment Ministers Council, scheduled for October, was the only forum in which such decisions were taken.

280. Chairman Estrada included "individually or jointly" in his CNT. He also added extra text to the draft article on ratification, acceptance, approval or accession, taking some of the main points from the Australian proposal, including on liability for the fulfilment of commitments and on review by the "MOP" of the allocation of responsibility notified by REIOs.

281. At AGBM 8, following the Environment Ministers Council, the EU was able to formally submit its proposed procedures for the treatment of REIOs⁴³. The EU's proposed language was included as an article 3 (bis) in the RTUN, and the alternative Australian proposal was flagged in a footnote. Objections were raised to the EU language by other Annex I Parties, notably Australia, Japan and the US, particularly on the grounds that it did not deal with the enlargement of REIOs, and that it allowed the distribution of targets to be changed within a commitment period by simple notification to the "COP". The text on REIOs previously included in the draft article on ratification, acceptance, approval or accession was removed.

282. At COP 3, on 4 December, Japan put forward a further proposal on the treatment of REIOs and Chairman Estrada invited Mr. Harald Dovland (Norway) to conduct consultations on this issue, now known as the "EU bubble". By the start of the second week, Mr. Dovland's consultations had resulted in a new text, contained in CRP.2. This included three paragraphs of agreed text, indicating that consensus had been reached on the principle of the "bubble", and two alternatives of bracketed text, one representing the EU position and the other that of the JUSSCANNZ Parties. The eventual compromise between the alternatives, a proposal by Chairman Estrada, first appeared in CRP.4. It included what were considered to be the key points that each group of Parties needed. These were a specification that the agreement would remain operative for the duration of the commitment period, also in the event of a change in composition of an REIO (a JUSSCANNZ request), and deletion of the requirement that the COP/MOP approve the arrangement (an EU request).

⁴³ See FCCC/AGBM/1997/MISC.1/Add.7.

283. The language on the need for the agreement to remain operative for the commitment period, even in the event of a change in the composition of the REIO, was modified to use the same language as that employed for methodologies and GWPs (see Article 5 below). Aside from this change, the text remained substantively intact through to the final text, with some editorial corrections, including as part of the post-Kyoto technical review. No further discussion took place on this issue, except for an intervention by Ambassador Slade (Samoa), Chairman of AOSIS, in the final CoW plenary, stating that AOSIS was accepting this article in the belief that only the EU would take advantage of it. The EU also requested that a footnote be added to annex B, stating that it would fulfil its commitments under article 3.1 in accordance with article 4. It was agreed, however, that such a reference would be included in the COP 3 report, not as a footnote to the protocol. The footnote that appeared in the final text was an error, and the eventual reference was included in the COP 3 report⁴⁴ as had been agreed, not the authentic text.

Article 5: Methodological issues

284. Proposals regarding methodological issues, including on national systems, methodologies for estimating emissions and removals, and GWPs, were scattered under various titles in submissions from Parties, and there was no specific section on methodological issues included in the FC or the NT.

285. The US put forward the most comprehensive proposal on methodological issues, suggesting that Parties establish “national systems” to estimate their emissions and removals. In a later addition to this submission, the US further proposed that the first “MOP” decide on “best available methods for the estimation of emissions and removals”, as well as “adjustments” where those best available methods are not used, and provisions for their periodic updating⁴⁵. Regarding GWPs, the EU and the US suggested that the protocol make use of those developed by the IPCC, while the Czech Republic, the EU and Hungary et al. specified that GWPs with a 100 year time horizon should be used. In its later proposal, the US called for GWPs to be used under the protocol to be decided upon by the first “MOP”, taking into account the IPCC’s GWPs with a 100 year time horizon. The G-77 and China were generally against the use of GWPs, citing scientific uncertainties.

286. Methodological issues were subject to considerable discussion at AGBM 7 in the QELROs non-group. At this session, some Parties expressed concern that methodologies might not be agreed until the first “MOP”, as proposed by the US, as this would mean that the true extent of emission commitments might not be known on adoption of the protocol. An alternative idea was therefore put forward to specify that the methodologies to be used would be “those decided upon by COP 3”. The outcome of AGBM 7 on methodological issues can be found in the INF in the sections on coverage (methodologies and GWPs) and on measurement, reporting and communication of information (national systems).

⁴⁴ See FCCC/CP/1997/7, para. 82.

⁴⁵ See FCCC/AGBM/1997/MISC.1/Add.4.

287. It was decided to bring the various provisions together in one article for the CNT, in order to highlight their importance and ensure that they would not be neglected.

Chairman Estrada included three paragraphs in a draft article on methodological issues: on national systems, methodologies and GWPs.

288. On national systems, Chairman Estrada adopted the approach included in the INF, itself based on the US proposal. Following reactions to the draft CNT at the October informal consultations, a time frame (by 200[]) for the establishment of a national system was added, and text previously included in the article on QELROs regarding the adoption of guidelines for national systems was moved to this paragraph. On methodologies and GWPs, the language used was again similar to that in the INF, taking the approach of deciding on methodologies and GWPs at COP 3, with provisions for their periodic updating.

289. At AGBM 8, Chairman Estrada wrote to Mr. Tibor Faragó (Hungary), Chairman of the SBSTA, to enlist that body's support in devising methodologies and GWPs which could be agreed by COP 3, in line with the provisions in the CNT. A draft decision was subsequently circulated to the SBSTA, reaffirming the existing methodologies for reporting emissions under the Convention and carrying these over to the protocol. The decision thus reaffirmed that Parties should use the Revised 1996 IPCC Guidelines for estimating and reporting their emissions, and that GWPs should be those provided by the IPCC in its Second Assessment Report. However, delegates to the SBSTA decided that reaching agreement on this issue at this stage would be premature (this was particularly the case as the G-77 and China did not favour the use of GWPs at the time).

290. The article itself was taken up in the QELROs non-group, where Mr. Meira Filho invited Dr. Mitra (India) to conduct informal consultations on GWPs. These did not, however, lead to any proposed textual amendments to the CNT. There were, however, some additions to the draft article on methodological issues at AGBM 8, which were included in the RTUN. A precise time frame for the establishment of a national system was included (one year prior to the start of the commitment period), and it was specified that methodologies and GWPs would be regularly reviewed and revised. A clarification was also added to the effect that changes to methodologies or to GWPs would only apply to subsequent commitment periods, and the word "accurate" was deleted in the context of the estimation of emissions. Furthermore, it was stipulated that any relevant decisions by the COP would be taken into consideration when revising methodologies or GWPs. The paragraph on GWPs remained bracketed, reflecting the opposition to their use by the G-77 and China.

291. Chairman Estrada mentioned the possible need for a COP decision on methodologies in his report to COP 3.

292. The draft article on methodological issues was first taken up in the CoW on 3 December, when Chairman Estrada presented three options to Parties. They could keep the text as it was and adopt a decision on methodologies and GWPs at COP 3; they could delete the reference to common methodologies and use national methodologies; or they could replace the text with a reference to a decision to be taken at the first "MOP". Most interventions favoured the first

option. By this time, the G-77 and China had indicated their willingness to accept the “basket” approach (see above), and therefore GWPs. Agreement was also reached at that meeting to remove brackets around the timing of national systems, but the US and the EU were invited to consult further on the last sentence of paragraphs 2 and 3, concerning revisions to methodologies and GWPs. The issue in question was how to reconcile the need for Parties to have certainty in the level of their emission commitments, with the desirability of using improved methodologies as these became available. In this context, a key question was whether any revisions to methodologies or GWPs should be applied to existing targets, or only to targets adopted after the revisions.

293. The US reported back on 4 December with agreed language, which now appears in the final text. This was included unbracketed in CRP.2. New Zealand, however, sought to add the word “adopted” after “commitment period”, to which the EU objected. New Zealand agreed to work with Parties to find acceptable language, and “adopted” eventually found its way into paragraphs 2 and 3 in CRP.4. The paragraph then remained unchanged, except for some minor modifications as part of the post-Kyoto technical review.

294. Regarding the COP decision on methodological issues, a draft of this was first circulated to the CoW on 3 December. It included four operative paragraphs: the preambular text and the first two operative paragraphs consisted of the decision that had been considered by SBSTA as part of deliberations at AGBM 8. The final two paragraphs consisted of additional provisions, one recalling the treatment of bunker fuels under the Convention and the other providing for emissions from “multilateral operations” to be excluded from national emission inventories, but reported separately (the same treatment as bunker fuels). The latter issue had been put on the table by a statement by the US delegation at the final meeting of AGBM 8, but had never been raised at any previous AGBM session. The decision was discussed in the CoW on 5 December, when China called for the addition of the qualification “taking into account the inherent and complicated uncertainties involved in estimation of GWPs”. Japan called for a further paragraph on the need to estimate actual, and not just potential, emissions of HFCs, PFCs and SF₆ which, after amendments put forward by the US and the EU (the latter proposing the addition of “where data are available”), was eventually included as a new paragraph. Switzerland also successfully proposed the addition of a sentence to the paragraph on bunker fuels urging the SBSTA to “further elaborate on the inclusion of these emissions into the overall greenhouse gas inventories by the Parties” (see also Article 2.2 above). A revised version of the decision, including agreed text which was communicated to the secretariat by Parties following consultations, was circulated to the CoW on 6 December and recommended for adoption by the COP. The decision underwent a small change as part of the post-Kyoto technical review.

Article 6: “Joint implementation”⁴⁶

295. Joint implementation (JI) had been an important topic of debate during negotiations on the Convention, and debates raised at that time resurfaced during the AGBM process. Proposals

⁴⁶ The term “joint implementation” was used generically in the negotiations to refer to the concept where a Party could claim credit for emission reductions achieved through projects implemented in the territory of another Party. However, the controversial nature of this concept for some Parties means that the term “joint implementation” itself does not appear in Article 6, hence the appearance of this title in quotation marks.

advocating JI were put forward by Australia, Costa Rica, the EU, New Zealand, Norway, the Russian Federation, Switzerland, the US and Uzbekistan. The Islamic Republic of Iran et al. stated that commitments should be fulfilled individually, and not through coordinated actions, including joint implementation.

296. All these Parties, with the exception of Norway and the EU, proposed that JI be permitted between Annex I and non-Annex I Parties. The EU proposal allowed JI between Annex I Parties only, with a view to taking a decision on JI with non-Annex I Parties after the conclusion of the pilot phase on activities implemented jointly (AIJ) under the Convention⁴⁷. Norway also specified that the part of its proposal for “cooperative efforts among interested Parties” relating to non-Annex I Parties would only apply if a conclusive decision on the AIJ pilot phase was taken at COP 3.

297. The various proposals for JI put forward differing criteria and procedures. The EU specified that JI should be “supplemental to domestic policies and measures”, while Switzerland proposed that a percentage share of commitments to be met by JI should be defined. (Switzerland had proposed 50 per cent in the FC, but replaced this with a blank in its submission for the NT.) On the same issue, Costa Rica proposed that Annex I Parties could meet up to 25 per cent of their domestic emission reduction obligations through JI. Australia, the EU and the US all proposed that “domestic entities” be permitted to participate in JI projects. Regarding sinks, Australia, Costa Rica, Norway and the Russian Federation all explicitly stated that these could form part of JI projects.

298. It is worth emphasizing that the G-77 and China repeatedly expressed opposition to JI, specifically JI between Annex I and non-Annex I Parties.

299. At AGBM 7, proposals on JI were consolidated into three options. Alternative A reproduced the Islamic Republic of Iran et al.’s submission opposing JI, Alternative B brought together all the language from JI proponents into a bracketed, common text, and another section, at Norway’s request, included that Party’s proposal under a separate title (“cooperative efforts by interested Parties”).

300. For the CNT, Chairman Estrada prepared, on his own initiative, a text on JI, which he had tested out at the informal consultations hosted by the Government of Japan in Tokyo in September 1997. This confined JI to Annex I Parties, but provided for the extension of the provisions to non-Annex I Parties, in the event that the COP took a decision in accordance with the pilot phase of AIJ to allow JI between Annex I and non-Annex I Parties. Chairman Estrada also sought to include the many criteria and procedures put forward by JI proponents.

301. Reactions at the informal consultations on the Chairman’s text led to some changes to the draft article, including a deletion of “specific investments” in favour of “concrete projects” in the first paragraph setting out the broad scope of JI, and the replacement of “surveillance” by “responsibility” in the paragraph concerning domestic entities. Concern was also expressed by

⁴⁷ According to decision 5/CP.1, which launched the pilot phase of activities implemented jointly, a conclusive decision on the pilot phase was due by “the end of the present decade”, that is, the end of the 1990s.

some representatives at the need for JI projects to be “supplemental” to domestic policies and measures as the “main means” of meeting commitments. This provision was, however, retained.

302. At AGBM 8, JI was taken up in the QELROs non-group under Ambassador Kjellén. The G-77 and China made their opposition to JI clear by declining to attend informal consultations on this issue, while the US, in response, also withdrew its participation from those consultations. The text in the RTUN that came out of AGBM 8 represented the outcome of discussions among Annex I Parties on JI, and included only a few changes from the draft article in the CNT. Two areas of particular dispute were revealed by the brackets: firstly, bracketed clauses permitting JI projects including removals by sinks were added; and, secondly, the reference to domestic policies and measures as the “main means” of meeting commitments was also bracketed. A footnote was added highlighting that the G-77 and China had requested the deletion of the article, and that the EU and US required “further consultation” on the issue. In their proposal submitted at AGBM 8, the G-77 and China reiterated their call for the deletion of the whole draft article, and stated their view that QELROs should be met “primarily through domestic action”. The draft article on JI was placed entirely in square brackets in the RTUN.

303. JI was hardly discussed in substance during official meetings of the CoW at COP 3; the outcome of the issue was tacitly acknowledged to be closely linked to negotiations on the proposed clean development fund (see Article 12 below). At a CoW plenary meeting on 3 December, Chairman Estrada noted that the EU and the US had indicated that they would need further consultation on JI, and asked if there was “any news”. No substantive discussion took place. On 5 December, Chairman Estrada remarked that JI (and also emissions trading) had not yet been discussed. At a subsequent meeting that same evening, he suggested that it was “not a good day to deal with JI or emissions trading”⁴⁸ (see also Article 17 below) and adjourned the meeting thereafter. On 6 December, he once more commented that “almost all articles have something new except perhaps the article on JI and trading which we haven’t yet discussed” and informed the CoW that he would be simply reproducing the RTUN text on JI in CRP.2. In the evening of 8 December, the US expressed concern that provisions on JI projects amongst Annex I Parties might be lost and suggested a paragraph which would move provisions on this idea to the article on emissions trading. The EU responded that it also supported JI amongst Annex I, but did not want to see such provisions merged with those on emissions trading.

304. A revised text on JI was provided to the secretariat as text agreed by Annex I Parties consulting on the issue. This was directly reproduced in CRP.4, with the exception of the use of the word “legal entities”, which Chairman Estrada preferred to “intermediaries”, wishing to avoid the commercial connotations of the latter term (see also Article 17 below). This text covered Annex I Parties only. It also included sinks and drew on language taken from different proposals, for example the need for “approval” of the Parties involved (EU); the requirement for reductions or removals to be “additional to any that would otherwise occur” (US); and the specification that participation should be “supplemental to domestic action” (the language in the EU proposal had been “supplemental to domestic policies and measures”). The final paragraph,

⁴⁸ Chairman Estrada was probably referring to the heated exchanges that had taken place earlier that day in the COP plenary in response to New Zealand’s proposal to launch negotiations on new commitments for non-Annex I Parties (see “Evolution” below).

concerning the identification of questions of implementation as part of the review process, was also closely based on a US proposal.

305. In presenting this text to the CoW, Chairman Estrada stated that it had shown “some evolution” since there was “no longer JI between Annex I and non-Annex I countries, because another mechanism (that is, the clean development mechanism) had been preferred for that”. He expressed the hope that this would “partly satisfy” the G-77 and China. This text formed the basis for the eventual agreement in the final protocol, with the deletion of the words “in a cost effective manner” in the first paragraph. The article was subject to an uncontroversial modification in the post-Kyoto technical review.

306. It is noteworthy that the term “joint implementation” does not appear anywhere in the final version of Article 6; to a large extent, this reflects the controversy that has surrounded the term. Projects under this Article are thus formally called “Article 6 projects”, although “joint implementation” is still widely used as a more understandable shorthand.

Article 7: Communication of information

307. The NT included submissions on reporting requirements from AOSIS, Australia, the EU, the G-77 and China, the Islamic Republic of Iran et al., Kuwait and Nigeria (consolidated), Japan, the Russian Federation, Switzerland and the US, plus one additional comment from the Islamic Republic of Iran. The main issues raised related to the approach and content of reporting under the protocol.

308. In terms of approach, the proposals reflected the widespread agreement that prevailed, amongst both Annex I and non-Annex I Parties, that no new regime should be set up. Reporting under the protocol should be integrated with that under the Convention’s Article 12 and subsequent COP decisions.

309. There was greater variation between submissions on the content of information to be reported, as proposals tended to be in line with the broader negotiating positions of Parties. Consistent with its focus on policies and measures, the EU proposed that a “detailed description of policies and measures adopted and implemented” to meet emission commitments should be included in the national communications of Parties, as should information on the results of reviews of national policies and practices under Article 4.2 (e) (ii) of the Convention⁴⁹. To accompany their proposal for provisions to address the adverse impacts of climate change mitigation measures on developing countries (see Article 3.14 above), the Islamic Republic of Iran et al. and Kuwait and Nigeria put forward a detailed text requiring Parties to provide comprehensive and annually updated information on the effects of their climate change mitigation policies on imports of fossil fuels and other goods. The US proposal called on Parties to submit, on an annual basis, a calculation of their remaining emissions “budget” and information on any emissions acquired or transferred through emissions trading or JI. AOSIS proposed that information should be provided on the estimated impacts, full costs and benefits of policies and measures taken to meet emission targets, as well as an indication of how those

⁴⁹ Article 4.2 (e) (ii) calls on each Annex I Party to “identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions ... than would otherwise occur”.

policies and measures formed part of a least cost mitigation strategy. The proposal from Australia included a requirement for Parties to put forward a “national action plan”, while Japan’s proposal required Parties to submit information on their “national plan” and voluntary goals. Norway called for the submission of information on JI projects. The proposals from the G-77 and China, Norway and Switzerland and the comment from the Islamic Republic of Iran all stated support for using existing channels for reporting under the Convention.

310. The similarity in approach to most of the proposals meant that Parties agreed to consolidate these into a single, bracketed text as part of deliberations in the non-group on QELROs at AGBM 7. The secretariat was mandated to consolidate the text, the results of which can be seen in the INF. The alternative proposal from the Islamic Republic of Iran et al., Kuwait and Nigeria relating to their compensation fund was attached as “possible additional text”.

311. In his CNT, Chairman Estrada attempted to synthesize and organize the various proposals on the table. In line with the general consensus, the text sought to forge a single reporting regime, proposing that additional information required for the protocol be included in emission inventories and national communications submitted under the Convention. In the draft article, Chairman Estrada put forward a list of possible items of additional information which might be needed, consistent with his proposals on other issues (e.g. policies and measures) in the rest of the CNT. He included bracketed provisions relating to emission “budgets” and acquisitions or subtractions pursuant to emissions trading or JI, as well as a reference to “national systems” (see Article 5 above) (following the US proposal). Chairman Estrada also called for the submission of information on policies and measures adopted under draft article 2, including steps taken to promote cooperation and performance indicators, and an estimate of their projected effects (in line with the AOSIS and EU proposals). A requirement to provide information on JI projects and emissions trading was also included (similar to the Norwegian position). In addition, Chairman Estrada’s proposal required Parties to put forward an assessment of the estimated impacts on other Parties, especially developing country Parties and in particular those listed in Article 4.8 of the Convention, of the policies and measures adopted by them. Furthermore, he specified a time-frame for the submission of information, as well as providing a mandate for the “MOP” to adopt and review further guidelines for national communications.

312. The structure of the CNT draft article survived negotiations in the QELROs non-group at AGBM 8, but the content was slimmed down considerably. The resulting text, included in the RTUN, was largely the product of bilateral consultations between the EU and the US. A reference to the purpose of the additional information, namely to “ensure” (in relation to inventory information) or to “demonstrate” (in relation to national communications) “compliance”, was added. Chairman Estrada’s list of possible additional information was deleted and the definition of the “necessary supplementary information” required under the protocol was referred to the first “MOP”. The two paragraphs relating to the time-frame for the submission of information and the adoption of guidelines remained substantively unchanged with two exceptions. The RTUN specified that information under the protocol should be submitted only after the adoption of guidelines, and an additional sentence concerning the definition of “modalities for the accounting of emission budgets”, which had previously appeared in draft article 3, was shifted to the final paragraph on guidelines.

313. The substance of the text, contained in the RTUN, did not change significantly during COP 3. As early as 6 December, Mr. Shibata, as Chairman of the institutions and mechanisms negotiating group to which this draft article was referred, was able to say there was consensus on reporting requirements under the protocol. The only real change between the RTUN and CRP.2 was the elaboration of separate provisions, albeit in the same third paragraph, on the timing of the submission of national inventories and national communications. Technical modifications suggested in the pre-Kyoto technical review and aimed at ensuring consistency with the existing reporting regime under the Convention were also made. In the first paragraph, the phrase “taking into account” (the relevant decisions of the COP) was changed to “submitted in accordance with”; in the third paragraph, a reference to any timetable for the submission of national communications decided by the COP was added; and in the fourth paragraph, the references to guidelines for the “submission” of information were changed to the “preparation” of information. The citation of articles for which compliance should be demonstrated in CRP.2 and CRP.4 was deleted by Chairman Estrada for CRP.6, as he considered them to be superfluous and a possible source of tension.

314. This article was subject to a minor change as part of the post-Kyoto technical review.

Article 8: Review of information

315. Parties were generally agreed that the review procedures under the Convention should also apply to the protocol and that no new regime should be set up. The main areas of debate concerned the mandate for the review teams and the scope for action by the secretariat. The question of the review of information was also closely linked during negotiations from AGBM 7 onwards to the issue of compliance provisions.

316. Four submissions on procedures for reviewing information were included in the NT, from AOSIS, Canada, Japan and the US. The US subsequently updated its proposal⁵⁰. In line with Convention procedures, both Japan and the US proposed that information submitted by Parties should be reviewed by a team of experts convened by the secretariat. The US specifically stated that such reviews would be in connection with those conducted under the Convention, whilst a footnote in the NT referred the reader to a proposal by the G-77 and China, which also called for the review mechanisms of the Convention to apply to the protocol. The detailed US proposal stated that the purpose of the review would be to “assess those Parties’ implementation of their obligations”. It called for the review teams to “review all aspects of a Party’s implementation” of the protocol, and to prepare a report “assessing a Party’s implementation of its obligations, identifying any areas of apparent non-compliance, as well as potential problems in achieving obligations”. The proposal went on to mandate the secretariat to “identify for further consideration any report indicating a question of implementation”. In its draft article on the functions of the secretariat, the US specified that a “question of implementation” would include “whether individual reports are consistent with reporting criteria”. (The US also put forward possible consequences of non-compliance, discussed below under Article 18.)

⁵⁰ See FCCC/AGBM/1997/MISC.1/Add.4.

317. In a briefer proposal, Japan proposed that the “MOP” be mandated to make recommendations to a Party if, after considering the report of the review team, it considered that Party to be “under difficulty” in achieving its emission target. The Party would have to review its policies and measures, and report back to the “MOP” within a year. The proposal from AOSIS simply stated that the “MOP” should review the information submitted by Parties and make any necessary recommendations. Canada proposed, though not in legal language, that parameters for an “international review of implementation” should be developed and included in an annex to the protocol. This would include in-depth reviews of national communication, as well as “remedies for lack of compliance”.

318. At AGBM 7, the more comprehensive Japanese and US proposals were consolidated into a single text, based on consultations between those Parties as part of the non-group on QELROs. This can be found in the section on QELROs in the INF. “Review of information and review of implementation and compliance” was also taken up in the non-group on institutions and mechanisms at AGBM 7, due partly to confusion over which group should be responsible for this issue. The report of the non-group on institutions and mechanisms simply reproduced the three textual proposals on review of information included in the NT, adding a fourth alternative, stating that the COP and the subsidiary bodies would receive national communications and ensure their in-depth review, and that the COP would make recommendations based on this review. However, a footnote to the consolidated text in the section on QELROs in the INF noted that this consolidated text could replace the simple repetition of these alternatives for the next round of negotiations. The report also noted that, in the future, questions of reporting and review would be considered as part of deliberations on institutions and mechanisms, in the context of a compliance package.

319. In the draft article in his CNT, Chairman Estrada proposed a process that would build on the Convention review procedures. He used language from decision 2/CP.1 (on the review of Annex I Party national communications) to specify the composition of expert review teams (language also included in the US proposal). Drawing heavily on the consolidated text in the INF, and in particular on US language, he included “assessing the implementation of a Party’s commitments and identifying any potential problems in the fulfilment of commitments” in the functions of the review teams, together with a mandate to the secretariat to “identify ... questions of implementation”. The structure of Chairman Estrada’s draft article, including the subject matter of each paragraph, survived to the final text.

320. Several substantive modifications were made to the draft article at AGBM 8 and included in the RTUN. Chairman Estrada’s reference to an assessment of “the likelihood that a Party will achieve its commitments under Article 3” was deleted and language from Convention procedures was reintroduced to specify that the review team assessment would be “a thorough and comprehensive technical” one. A reference to the identification of “factors influencing” the fulfilment of commitments was also inserted, as was a reference to guidelines of the COP in relation to the composition of expert review teams (which then remained unchanged through to the final text). Furthermore, the possibility for Parties themselves to raise “questions of implementation” was added. The link to debates on compliance was acknowledged by a footnote to the article.

321. At COP 3, the draft article was considered in the institutions and mechanisms negotiating group under the chairmanship of Mr. Shibata, who reported that Parties were agreed on its substance at the end of the first week of negotiations. The text in CRP.2 represents the final version in terms of substance. A reference to “the annual compilation and accounting of emission inventories and assigned amounts” was added in the context of the review of inventory information (preparation of an “annual compilation that contains inventory and budget information” had been part of an earlier US proposal on the functions of the secretariat). The mandate to the secretariat to “identify” questions of implementation was changed to “list” such questions, and the SBSTA was added as a source of assistance to the COP/MOP, as well as the SBI, in considering information. Two technical changes proposed in the pre-Kyoto technical review were also incorporated. The text was changed to specify that all Parties to the Convention (rather than just those to the protocol) would receive the reports of expert reviews, and a reference to “guidelines” adopted by the COP for expert reviews was changed to the more accurate “guidance”. Except for some additional modifications made for editorial and legal drafting purposes, including as part of the post-Kyoto technical review, the draft article then remained substantively unchanged through to the authentic text.

Article 9: Review of the Protocol

322. The Berlin Mandate specified that the negotiation process should “provide for a review mechanism”. In addition, the Geneva Ministerial Declaration, taken note of at COP 2, indicated that the outcome of negotiations should include “a mechanism to allow the regular review and strengthening of the commitments embodied in a protocol...”. The most controversial issue at stake concerning this review mechanism was its scope - should it cover the commitments of all Parties, or just those of Annex I Parties? Other questions concerned the timing of reviews and the extent to which reviews under the protocol should be integrated with existing review mechanisms under the Convention (e.g. Article 4.2 (d), which prompted the review of Article 4.2 (a) and (b) that led to the launch of the protocol negotiations).

323. Eight proposals on “review of commitments” were included in the NT. Regarding the scope of the review, the proposals from Canada, the EU, Japan, Switzerland and the US supported a review mechanism that would apply to the commitments of all Parties. AOSIS, however, specified that the commitments of Annex I Parties only should be reviewed, while Australia’s proposal for a review process similarly only applied to Parties with emission targets. The G-77 and China proposal called for reviews of the protocol to be undertaken through the provisions of Article 4.2 (d) of the Convention (that is, with the implicit intent that they should apply only to Annex I Parties). Canada was the only other Party addressing the relationship between reviews under the Convention and the protocol, proposing that protocol reviews should be “conducted in conjunction with any pertinent review under the Convention or any related Protocol”. The proposals from AOSIS and the EU were the only two putting forward a specific time-frame for the first review: no later than five years after entry into force for AOSIS, and no later than 31 December 2002 for the EU, a date which was intended to coincide with the first “COP” after entry into force of the protocol. All proposals made reference, either directly or indirectly, to the need for reviews to be based on the latest scientific knowledge, while AOSIS

urged that the “precautionary principle” be taken into account. The EU and Japan also advocated separate, more flexible procedures for updating annexes to the protocol.

324. In a later proposal, submitted at AGBM 8⁵¹, the G-77 and China stated that they did not support the inclusion of provisions on review of commitments in the protocol, as the existing provisions in the Convention were sufficient.

325. In order to manage the potential controversy surrounding this issue, Chairman Estrada placed the section on “review of commitments” in the FC and the NT immediately after the sections on Annex I Party commitments and prior to those sections dealing with general commitments for all Parties, so as not to imply that non-Annex I Party commitments would also be subject to review. Furthermore, he did not open up the relevant section of the FC for discussion at AGBM 6, and adopted a similar approach at AGBM 7, by not allocating the section in the NT on review of commitments to a non-group. However, in recognition of the general view that a review mechanism should be present in the protocol, the eight proposals included in the NT were reproduced in the INF in an annex to the report of the non-group on QELROs.

326. In his CNT, Chairman Estrada specified that only Annex I Parties and Parties taking on voluntary commitments should be subject to a review of their commitments. He also made specific reference to the “adequacy” of these commitments (as had Canada, the EU and Switzerland in their proposals). He used Convention language included in Article 4.2 (d) (also proposed by Canada and the EU) to note that the review should be conducted “in the light of best available scientific information ... as well as relevant technical, social and economic information”. Chairman Estrada also referred to “achieving the objective of the Convention” (as Canada had in its proposal). In addition, he followed the Canadian proposal in linking the protocol review process with “pertinent reviews under the Convention”, but did not specify a time-frame for the first review.

327. At AGBM 8, the draft article on review of commitments was allocated to the QELROs non-group chaired by Ambassador Kjellén. The resulting text was included in the RTUN. It included only two sets of brackets, one reflecting disagreement over whether the commitments of only Annex I Parties or of all Parties should be reviewed, the other leaving blank the timing of the first review. The relationship between the Convention and the protocol was clarified, with a specification that the protocol review should be coordinated with “in particular those (reviews) required by Articles 4.2 (d) and 7.2 (a) of the Convention” (in line with the G-77 and China position). “With a view to achieving the objective of the Convention” was deleted as a basis for the reviews. These clauses, together with the one stipulating that, based on the reviews, the “MOP” would take appropriate action, remained substantively unchanged through to the final text. A change was also made concerning the timing of reviews, to state that further reviews would take place in a “regular and timely manner”.

328. Chairman Estrada himself took responsibility for the draft article on review of commitments in the CoW. After a preliminary exchange of views on 3 December, he invited Mr. Tibor Faragó (Hungary) to conduct consultations on the issue. Mr. Faragó returned with a text later that same day. Tanzania and the US both supported a brief statement to the effect that

⁵¹ See FCCC/AGBM/1997/MISC.1/Add.8.

the “MOP” would “review this Protocol”, without specifying the scope of the review or whose commitments would fall under it (this language had been included in the original US proposal). The reference to “adequacy” was also deleted. AOSIS, the EU and Switzerland were unhappy with the vagueness of the language and protested at the deletion of “adequacy of commitments”. Ambassador Slade of Samoa, Chairman of AOSIS, stated that Tanzania had not been speaking for the G-77 and China on this issue. The EU also argued against the proposed solution for the first review to take place at “MOP” 2, advocating an earlier review at “MOP” 1. Chairman Estrada, however, stated that the matter “was closed”, although there would be an opportunity to return to it if necessary. At a CoW plenary meeting in the evening of 4 December, Chairman Estrada declared the article “finalized”; this potentially controversial article thus became one of the first substantive articles to be provisionally agreed, and was included in CRP.2.

Article 10: Continuing to advance the implementation of existing commitments

329. The Berlin Mandate specified that the negotiation process should “not introduce any new commitments for Parties not included in Annex I, but reaffirm existing commitments in Article 4.1 and continue to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4.3, 4.5 and 4.7⁵²”. The key issue regarding this aspect of the negotiations was how to “advance” the commitments in Article 4.1 in a meaningful way without introducing new commitments for non-Annex I Parties.

330. In the early stages of deliberations, this issue was linked to the development of guidelines for national communications from non-Annex I Parties. At its second session, the AGBM considered a position paper from the G-77 and China calling for a workshop/forum to be organized on these guidelines. This workshop/forum was held in conjunction with SBSTA 2, immediately prior to AGBM 3. A second workshop on the preparation of guidelines for non-Annex I Party communications was held during the COP 2 sessional period. Discussions in AGBM 4 (held during this period) on “advancing Article 4.1” were deferred, pending the outcome of discussions on the guidelines. These guidelines were eventually adopted by COP 2 at this session, but not before the close of AGBM 4.

331. The SoP prepared for AGBM 5 listed the different elements of proposals (from AOSIS, Germany, the UK and the US) put forward on “advancing Article 4.1”. These elaborated on issues already covered in Article 4.1, including national inventories, climate change response strategies, technology development and transfer, adaptation, climate change considerations to be taken into account in government policy areas, research and development/exchange of information, education, training and public awareness, communication of information, and financial assistance.

332. Further proposals on this issue were put forward for the FC by the EU, France, the G-77 and China, Japan, the Russian Federation (specifically on technology transfer), Switzerland and Uzbekistan. At AGBM 6, the FC proposals were considered by the non-group on continuing to advance the implementation of Article 4.1, chaired by Mr. King. During deliberations in the non-group, the proposals from France, Germany and the UK were

⁵² Paragraphs 3, 5 and 7 of Article 4 of the Convention refer to the commitments of Annex II Parties relating to financial assistance and transfer of technology.

withdrawn, as these countries allied themselves with the common EU position. The submissions in non-textual language from the Russian Federation, Switzerland and Uzbekistan were also deleted. Furthermore, the sub-heading in the FC covering proposals specifically on technology transfer was removed.

333. New proposals for the NT were forthcoming from Armenia, the Islamic Republic of Iran et al. and Norway. The EU, G-77 and China and US proposals, however, were the most comprehensive and detailed. The G-77 and China proposal followed closely the structure, and often language, of Article 4.1 of the Convention, with a focus on the need for financial and technology assistance for non-Annex I Parties. The EU also referenced the subparagraphs to Article 4.1 in its proposal, putting forward more specific actions that Parties could take on each of the areas covered by the subparagraphs. These included: use of full IPCC compatible methodologies; a list of possible policies and measures to be incorporated into national programmes; strengthened in-depth reviews for Annex I Party national communications and introduction of in-depth reviews for non-Annex I Parties; and the development of indicators relevant to climate change in the context of sustainable development. The US also proposed specific actions, focusing in particular on national communications. It called for non-Annex I Parties (Parties not included in “Annex A” or “Annex B” according to the US proposal) to identify and implement “no regrets” measures, and quantify and report the effects of these measures. The US proposal also required non-Annex I Parties to submit an annual greenhouse gas inventory (a requirement currently applying only to Annex I Parties), and provided for the establishment of a process to review national communications from these Parties.

334. In the inter-sessional period prior to AGBM 7, Chairman Estrada convened an informal consultation specifically on continuing to advance the implementation of Article 4.1, in Geneva. At this consultation, members of the G-77 made the point that their acceptance of provisions “advancing the implementation of existing commitments” would need to be coupled with similar advances in the implementation of financial commitments by the Annex II Parties.

335. At AGBM 7, the issue was dealt with once again in the non-group chaired by Mr. King. Deliberations resulted in a considerably slimmed down, bracketed text for inclusion in the INF, with proposals organized under sub-headings related to the issues covered by the 10 subparagraphs in Article 4.1. Some of these (climate change considerations in relevant policies and actions, and information related to implementation) included two or three alternatives, reflecting the G-77 and China position on the one hand, and the EU and/or US positions (which were often similar) on the other. A proposal by the G-77 and China to set up a new fund under the protocol to assist with continuing to advance the implementation of Article 4.1 was included as an alternative under the chapeau.

336. For the CNT, Chairman Estrada drafted his own text on “advancing Article 4.1”. This again followed the structure of Article 4.1 of the Convention. Its approach was based to a large extent on the G-77 and China proposal, and in particular did not cover strengthened commitments on reporting (e.g. submission of annual inventories or in-depth reviews for non-Annex I Parties). However, it omitted the proposal for a new fund, called for Parties to move towards using IPCC compatible methodologies, and identified, as examples, certain areas of policies and measures to be included in national programmes (these were based on the areas

of policies and measures specified in more detail for Annex I Parties in draft article 2). Following reactions at the informal consultations on the draft Chairman's text, Chairman Estrada made a series of changes to the text. These included referencing Article 4.3 and 4.5 of the Convention (on financial assistance and technology transfer) in the chapeau, following Convention language more closely regarding technology transfer, and including a reference to intergovernmental organizations and multilateral development banks in the context of climate change considerations.

337. Also in the CNT, Chairman Estrada placed this article immediately prior to that on the financial mechanism. This sought to reflect the view that the two articles were linked; "advancing" commitments for developing countries would require "advancing" financial support. Chairman Estrada stressed this point at the informal consultations on the Chairman's text and subsequently.

338. At AGBM 8, deliberations continued in the non-group on "advancing Article 4.1", with Ambassador Ashe taking over the chairmanship when Mr. King was obliged to leave the session early to attend to business in his own country. Chairman Estrada's CNT text was consolidated, but with additional proposals reinserted leading to the appearance of several brackets and Alternatives A and B (reflecting the Annex I and non-Annex I positions, respectively) on two issues, namely, national programmes and technology transfer. The draft article now included 9 subparagraphs. Preliminary agreement was reached on the chapeau to the draft article by inserting the language of the chapeau to Article 4.1 of the Convention and a more complete reference to the relevant part of the Berlin Mandate. The chapeau remained substantively unchanged through to the final text.

339. At COP 3, Chairman Estrada invited Ambassador Kjellén to conduct negotiations on this issue. Chairman Estrada also appointed Ambassador Ashe as co-chair of this negotiating group, but he focused on issues relating to the financial mechanism (see Article 11 below). CRP.2 indicates that, in addition to the chapeau, agreement had been reached at the end of the first week on subparagraph (a) (inventory issues), by drawing on language from decision 10/CP.2 on guidelines for the preparation of initial national communications from non-Annex I Parties. Subparagraphs (f) (research and systematic observation) and (g) (education, training and public awareness) were also agreed, although the latter still had one outstanding set of internal brackets. All of these subparagraphs were largely unchanged from the RTUN in terms of substance. An additional subparagraph (i) was added to CRP.2, noting the need to take Article 4.8 of the Convention⁵³ into consideration in implementing the article (this clause was shifted from a different position in the RTUN). This subparagraph was to remain substantively unchanged through to the final text, with the exception of modifications recommended by the legal drafting group. The two alternative subparagraphs (c) concerning technology transfer were also consolidated into one. The agreed text drew on Article 4.5 of the Convention ("take all practicable steps..."), and language from the CNT ("including the formulation of policies and programmes ... environmentally sound technologies"), with references to "patent-protected" technologies and financial and fiscal incentives that had appeared in the CNT deleted, and language concerning "the creation of an enabling environment for the private sector" added.

⁵³ See footnote 21.

340. By CRP.4, the only outstanding issue was subparagraph (b) (national/regional programmes), which had two alternative texts, Alternative A, supported by Annex I Parties, and Alternative B, reflecting the non-Annex I Party position. Subparagraphs (d) (climate change considerations) and (e) (indicators of sustainable development) of CRP.2 had been deleted, and the set of outstanding internal brackets in the old subparagraph (g) (on education, training and public awareness) had been removed (by replacing “national institutions” with “national capacity building” and making reference to “in particular human and institutional capacities”). Consensus had also been reached on subparagraph (c) (technology transfer) by inserting the words “cooperate in” at the start of the subparagraph and deleting the reference to “the removal of barriers”. Former subparagraph (h) (national communications) had also been agreed, in the form of a simple statement that programmes and activities pursuant to this article would be reported upon, in accordance with relevant decisions of the COP.

341. Subparagraph (b) (on national/regional programmes) was the only part of CRP.6 that included two alternatives, the same ones as in CRP.4, and therefore the only part of the draft protocol that was presented with alternatives to the final CoW plenary meeting. Before Chairman Estrada reached this draft article in the final CoW plenary, Ambassador Kjellén passed him a note informing him that agreement had not yet been reached on subparagraph (b), and requesting to be allowed to consult for one more hour, as he intended to present a new compromise text. This compromise text retained the chapeau of Alternative A (supported by Annex I Parties), and listed very broad areas which national or regional programmes “would” (as opposed to “shall”) cover. The text then also took up a more streamlined version of the Alternative B (supported by non-Annex I Parties) regarding the submission of information on national or regional programmes. When he took up this draft article, Chairman Estrada gavelled through the agreed parts of the text and, as Ambassador Kjellén had requested, gave him some time to circulate his new text on subparagraph (b) in a smaller group. Chairman Estrada later returned to the outstanding subparagraph (b) at the end of the meeting, once Ambassador Kjellén had passed him another note informing him that he had not been able to reach consensus. When Chairman Estrada took up the draft, Tanzania, on behalf of the G-77 and China, again requested the deletion of Alternative A to subparagraph (b) and stated that the Group did not agree with Ambassador Kjellén’s text. He also proposed that the whole subparagraph (b) should be deleted. Ambassador Kjellén’s text, however, was supported by the Annex I Parties who intervened: Canada, the Netherlands, Switzerland, the UK and the US. These also stated that, if the whole subparagraph (b) was deleted, then the article on the financial mechanism would also need to be removed, as the provisions of this article would be devoid of substance. Chairman Estrada asked the Tanzanian Chairman of the G-77 and China, Mr. Mark Mwandosya, what he should do, to which Mr. Mwandosya replied “we expect you to use your gavel”. Chairman Estrada did just that, and used his gavel to adopt Ambassador Kjellén’s text for subparagraph (b).

342. This article was subject to several editorial and technical changes as part of the post-Kyoto technical review.

Article 11: Financial mechanism

343. Only three proposals were received on the financial mechanism and included in the NT, from AOSIS, the EU and the Russian Federation, all of which called for the financial mechanism of the Convention to also apply to the protocol. The AOSIS and EU proposals had been included in the FC, and consolidated into a single text in the non-group on institutions and mechanisms at AGBM 6.

344. The proposals were consolidated further at AGBM 7, again in the non-group on institutions and mechanisms, as revealed in the INF. A further clause was added, in brackets, specifying that, for matters relating solely to the protocol, the financial mechanism would function under the authority and guidance of the “COP” to the protocol.

345. In his CNT, as noted above, Chairman Estrada sought to make the point that advancing the implementation of existing commitments under Article 4.1 was related to provisions on financial resources. He therefore moved the draft article on the financial mechanism to follow that on “advancing Article 4.1”. Chairman Estrada’s draft stated that the financial mechanism of the Convention would serve the protocol and went on to elaborate in more detail than any of the proposals from Parties. His proposal required additional funding for the implementation of the article on “advancing Article 4.1” to be provided in a “predictable and identifiable manner” (language taken from Article 11 of the Convention). He drew on the INF to add a paragraph whereby the “MOP” would be responsible for providing guidance on matters related to the protocol. Lastly, he repeated Convention language (again in its Article 11) concerning other sources of funding.

346. Deliberations at AGBM 8 resulted in a more complex text in the RTUN. Two paragraphs were to remain intact, however, through to the final text. The first was the chapeau to the draft article, listing the Articles of the Convention concerning the provision of financial and technological resources to be taken into account in the implementation of the article on “advancing Article 4.1” in the protocol. The second was the paragraph repeating CNT (and indeed Convention) provisions on other sources of funding. The remaining elements of the draft article introduced an issue not covered by the CNT, that is, different categories of activities eligible for different types of funding (“agreed full costs” or “agreed full incremental costs”). The question arose as to which activities under the draft article on “advancing Article 4.1” would be eligible for which type of funding. Another area of debate now in the draft concerned the possibility that funding would be channelled through another mechanism than that of the Convention (as illustrated by the bracketing of the clause “through the mechanism defined by the Convention”), in line with the G-77 and China’s calls for a new fund.

347. At COP 3, the draft article was referred to the negotiating group on “advancing Article 4.1”, and specifically to co-chair Ambassador Ashe. At the CoW plenary meeting on 6 December, Ambassador Ashe presented a revised text on his own responsibility, which was included in CRP.2. In addition to the previously agreed two paragraphs, the chapeau to paragraph 2 (specifying that the financial mechanism to the Convention would apply) and the third paragraph (on guidance to the financial mechanism) were to remain unchanged in the final

text. The main outstanding point concerned which activities would be eligible for “agreed full costs” and which for “agreed full incremental costs”. On 9 December, Ambassador Ashe presented a new text on this issue to Chairman Estrada which he said enjoyed consensus. This was included in CRP.4, and the final version was therefore agreed in substance by that time. There was no substantive discussion of the draft article in the final plenary, although the US opposed agreeing to the article before that on “advancing Article 4.1”.

348. This article was subject to minor changes as part of the post-Kyoto technical review.

Article 12: Clean development mechanism

349. The acknowledged basis for the CDM, the proposal from Brazil for a “clean development fund” (imposing financial penalties on Annex I Parties falling into non-compliance and recycling them to non-Annex I Parties for the purpose of addressing climate change) was submitted at the end of May 1997, too late to appear in the NT⁵⁴. Many Parties, however, would claim that proposals relating to JI were also important ingredients for the elaboration of this article (see Article 6 above). It is understood that the potential for converting the “clean development fund” into the “clean development mechanism” emerged from informal meetings between delegates that took place at the informal consultations convened by the Government of Japan in Tokyo in September 1997.

350. The Brazilian proposal for a clean development fund was taken up by the QELROs non-group at AGBM 7, and included as an alternative proposal under the heading “under-achievement/borrowing” in the INF (as it essentially included provisions for dealing with non-compliance). It was not covered in the CNT. The G-77 and China proposal on QELROs⁵⁵, however, announced at AGBM 8, advocated the establishment of a clean development fund, based on similar principles to that in the Brazilian proposal. The Group’s proposed provisions relating to the clean development fund (and also to the compensation fund) were included in the RTUN in the draft article on QELROs, with a footnote clarifying that these had not been discussed at AGBM 8.

351. At COP 3, the clean development fund and the compensation fund were originally allocated to the negotiating group on “advancing Article 4.1”. Following a request from the G-77 and China, arguing that the clean development and compensation funds were closely related to the emission commitments of Annex I Parties, this decision was reversed, and they were taken up under the rubric of QELROs.

352. At a CoW plenary meeting on 2 December, Chairman Estrada invited the Brazilian delegation to convene an informal group on the clean development fund and report back to the CoW. This informal group was conducted behind closed doors, without the participation of the secretariat; it is understood to have been co-chaired by Mr. Meira Filho and Ambassador Ashe.

⁵⁴ See FCCC/AGBM/1997/MISC.1/Add.3. It should be noted that the proposal from Brazil included other elements, notably a methodology for allocating emission targets based on the contribution of each country to temperature rise. The Brazilian delegation asked for the whole proposal to be forwarded to COP 3, which Chairman Estrada did through his report to the COP. COP 3 subsequently referred the scientific and methodological aspects of the Brazilian proposal to the SBSTA for advice (see FCCC/CP/1997/7, section III).

⁵⁵ See FCCC/AGBM/1997/MISC.1/Add.6.

On 4 December, Mr. Meira Filho reported that consultations were on-going and progress was being made.

353. The first time any text on the CDM officially appeared was in CRP.4, on 9 December. Even before he received that text from the informal group, Chairman Estrada had taken a decision to move the paragraph on the clean development fund to its final position after the article on the financial mechanism. Mr. Meira Filho eventually submitted two texts to Chairman Estrada, one bracketed, and the other his proposal as Chairman of the informal group. Chairman Estrada selected Mr. Meira Filho's version for inclusion in CRP.4. This text differed from both the original Brazilian proposal and the G-77 and China text on the clean development fund in the RTUN and, with a few exceptions, the language within the proposed text had not appeared previously in the negotiations. The exceptions included the criteria for the certification of emission reductions (voluntary participation; real, measurable and long-term benefits; and additionality), which were similar to proposals put forward in the context of JI and were also derived from criteria for the AIJ pilot phase. Provisions relating to "auditing and verification" and the participation of "private and/or public entities" also found resonance in earlier proposals on JI. The term "mechanism" was preferred given the difficulties of Annex I Parties with the word "fund" and the precedent of the financial mechanism.

354. As part of the deletion of all footnotes in CRP.4, a footnote to the text that was acting as a place-holder for possible further discussion on the inclusion of sinks was removed. This footnote had read "'Mitigation of climate change' will include 'through removals by sinks' in accordance with the decision of the Parties regarding the treatment of sinks elsewhere in the Protocol". The issue of sinks in the CDM was not raised again and, for the most part, the article changed little.

355. The term "user fees" was changed to "share of the proceeds" in CRP.6, when certain Annex I delegations stated that the former term would be unacceptable. A number of further amendments were made in the final CoW plenary, including changing the phrase "executive board of the Parties" to "executive board of the clean development mechanism". Saudi Arabia called for a reference to Parties included in Article 4.8 of the Convention to be added to the provisions directing a share of the proceeds of the CDM to vulnerable developing country Parties to assist in meeting the costs of adaptation. This was not accepted. The most heated debate was over draft article 12.10 (providing for an early start to the CDM, from 2000). This was objected to by several Parties, including France and Saudi Arabia, but supported by several others, including Japan and the US. When Chairman Estrada ruled that the paragraph would remain, France proposed that the word "not" be inserted after "can", thus negating the sentence. The UK, speaking on behalf of the EU, then called again for the deletion of draft article 12.10, supported by individual EU member States, including Denmark, Germany and the Netherlands. A solution was found when Chairman Estrada proposed to include a paragraph in the decision adopting the protocol stating that the implications of article 12.10 would be analysed at COP 4. A number of Parties requested confirmation that it would only be this paragraph that would be subject to analysis, and then only its "implications", rather than the substance of the issue or the whole article, so that there could be no question over the adoption of the CDM in the protocol. Chairman Estrada confirmed this point. France specified that the delay in putting forward this

common EU view had been due to “organizational issues”. Chairman Estrada, however, reiterated that the decision had already been adopted and would not be re-opened.

356. The paragraph on the analysis of the implications of paragraph 10 was mistakenly included in the text of the protocol adopted by COP 3 in L.7/Add.1, rather than in the decision on its adoption. This error was corrected in the authentic text as part of the post-Kyoto technical review. A further technical correction was also made as part of the review.

Article 13: Conference of the Parties serving as the meeting of the Parties to the Protocol

357. Early discussions in the AGBM concerning the institutions of a possible new protocol veered towards using the existing COP rather than setting up a new “Meeting of the Parties” (MOP) (in the event that an amendment had been adopted, the issue would not have arisen). The report on AGBM 3 referred to the need to “avoid proliferation” of institutions, while the AGBM 4 report noted that the AGBM expressed interest in exploring the possibility of “a single Conference of the Parties”.

358. The FC included five proposals on this issue. The EU and Switzerland proposed retaining the existing COP. The EU stated that this should be done through a cross-reference to the Convention and specified that only Parties to the protocol could take decisions on protocol matters, or serve on the Bureau when protocol matters were being dealt with. In contrast, AOSIS and Australia advocated the establishment of a new MOP. AOSIS set out its functions, many of them carried over from those of the COP. The US provided what appeared to be a possible “middle way”, proposing that the Parties should “hold meetings (with a lower case “m”) at regular intervals” and in conjunction with meetings of the COP. These meetings, however, would still be subject to separate rules of procedure. The submissions were consolidated into three proposals (based on that of AOSIS, the EU and the US, respectively) for the NT.

359. Deliberations at AGBM 7 resulted in two alternative proposals included in the INF, that of the EU (retaining the COP) as Alternative A, and that of AOSIS (establishing a new MOP) as Alternative B. The EU proposal included a further, bracketed, proposal from Switzerland, specifying a two-thirds double majority (of Annex I and non-Annex I Parties) voting rule to be used in decision-making on protocol matters in the event of the exhaustion of all efforts to reach agreement by consensus.

360. In his CNT, Chairman Estrada included both options: establishing a new MOP (Alternative A) or using the existing COP (Alternative B). However, the remainder of the CNT assumed the establishment of a new MOP. In Alternative A, Chairman Estrada did not include a detailed list of the functions of the new MOP. However, he did state that the MOP should adopt rules of procedure for itself by a two-thirds majority, reflecting his concern over the pending issue of the Convention rules of procedure, and also in line with the Swiss proposal. Furthermore, he proposed that the MOP should adopt financial rules for itself, including a provision proposed by AOSIS and Australia that additional funds for the protocol should be provided by Parties thereto. On the recommendation of the secretariat that such a separation of costs would be impractical, this clause was bracketed. Chairman Estrada also specified that Parties to the Convention that were not Parties to the protocol could participate in proceedings of

the MOP, but without the right to vote. The three final paragraphs to this alternative, on the timing of sessions, extraordinary sessions and admission of observers, were drawn from Convention language. They were to remain unchanged in substance through to the final text.

361. In his Alternative B, on retaining the same COP for the protocol, Chairman Estrada used EU language on the need for decisions, both in the COP and the Bureau, to be taken only by Parties to the protocol. He noted that this was “in accordance with Article 17.5” of the Convention, in implicit response to proposals which would have allowed Parties to the Convention that were not Parties to the protocol to participate in decision-making on the adoption of amendments and annexes, and amendments to annexes, to the protocol (see “decision-making” below). Chairman Estrada also included provisions, which had first appeared in the INF, whereby Parties would decide on modalities for the conduct of business on matters relating to the protocol at the first session after entry into force. Finally, he stated that the Parties to the protocol could also meet as they deemed necessary (this clause was included with the intention of it being invoked if opposition by non-Parties to the protocol were to obstruct progress among Parties).

362. It is a combination of Chairman Estrada’s Alternatives A and B that was to generate consensus on the final text.

363. Consideration of the CNT in the non-group on institutions and mechanisms at AGBM 8 resulted in a single text for the RTUN. Large parts of this draft article in the RTUN were to remain unchanged through to the final text. In particular, the first paragraph, stating that the COP would serve as the MOP to the protocol, remained intact. However, throughout the rest of the text, the term “MOP” was still being used, and meeting of the Parties appeared with an upper case “M”. The two paragraphs from Alternative B in the CNT on decision-making on protocol issues appeared next in the RTUN draft article, preceded by a sentence from Alternative A in the CNT stating that Parties to the Convention not parties to the protocol could participate in proceedings as observers. These paragraphs were also carried over without substantive change to the final text, as was the chapeau introducing the functions of the MOP. Contrary to Chairman Estrada’s approach in the CNT, a list of the functions of the MOP was added to the RTUN (as had been proposed by AOSIS). This list was largely derived from a *mutatis mutandis* application of functions set out for the COP in the Convention. Also at AGBM 8, the G-77 and China put forward a proposal on this issue, referenced in a footnote to the RTUN.⁵⁶ This proposal followed the same approach as the text in the RTUN, but omitted the provision whereby the MOP would “periodically examine the obligations of the Parties”. It also specified that the MOP should keep under regular review the implementation of the protocol and the adequacy of its commitments, in light of reviews under Articles 4.2 (d) and 7.2 of the Convention. The G-77 and China proposal also did not provide for the MOP to define its own rules of procedure, nor for it to be given a mandate to set up new subsidiary bodies.

364. Concerns over the ambiguous legal status of the “Conference of the Parties serving as the Meeting of the Parties to the Protocol” were highlighted in the pre-Kyoto technical review.

⁵⁶ See FCCC/AGBM/1997/MISC.1/Add.9.

365. At COP 3, the main remaining areas of debate concerned the body's functions and mandate, and its rules of procedure. Agreement on this article, although difficult to reach, came relatively early. On 5 December, Mr. Shibata reported to the CoW that there was consensus to have the "Conference of the Parties serving as the meeting of the Parties to this Protocol" (this time, with a lower case "m" for "meeting"), with agreement on a "functionally integrated, legally distinct body".

366. The most important changes to the text were made between the RTUN and CRP.2. On 6 December, Mr. Shibata presented revised draft text to the CoW on all the elements allocated to his negotiating group. The outstanding elements relating to the functions of the COP/MOP were largely agreed, and most of the language in Mr. Shibata's text (later included in CRP.2) was to remain intact. The text had deleted RTUN provisions whereby the COP/MOP would elaborate the functions and terms of reference of any new subsidiary bodies (in line with the G-77 and China proposal), together with the provision that "Parties to the Protocol may meet at any time they deem necessary". The subparagraph on the periodic examination of the obligations of Parties was now more detailed, including a reference to Articles 4.2 (d) and 7.2 (a) of the Convention (in line with the G-77 and China position and related language in the agreed article on the review of the protocol (see Article 9 above)). A footnote, however, stated the G-77 and China's support for a specific reference to the function of the COP/MOP to periodically examine the obligations of Parties "under Article 3", that is, the emission commitments of Annex I Parties. (This concern was eventually resolved through agreement on Article 3.9 (see above), which set a date for launching negotiations on a new round of commitments for Annex I Parties.) A reference to the need to take fully into account the relevant decisions of the COP was also added to the subparagraph dealing with the development and periodic refinement of comparable methodologies, as had been advocated by the G-77 and China in their proposal.

367. The only outstanding point concerned the rules of procedure, with lack of agreement reflected in two alternative paragraphs, A and B, in this draft text. Alternative A (supported by the G-77 and China) provided for the existing rules of procedure and financial rules to be applied *mutatis mutandis*, whereas Alternative B (supported by the US and Japan) would have allowed the COP/MOP to define its own procedures. Norway attempted to put forward a compromise text, but Chairman Estrada declared there was consensus to adopt Alternative A and gavelled it through. This option was then included in CRP.2. The Executive Secretary requested the floor to plead for a pragmatic approach to the application of financial procedures between Convention and protocol activities. The only change then made was to shift the provisions on the rules of procedure and financial procedures to a separate paragraph (rather than a subparagraph). The phrase "Conference of the Parties serving as the meeting of the Parties to this Protocol" was included throughout the body of the draft protocol in CRP.2.

368. In the context of the legal drafting group, Mr. Széll, Chairman of that group, explored the possibility of including a definition of "Conference of the Parties serving as the meeting of the Parties to this Protocol" in Article 1, to avoid repeating the long phrase in all parts of the protocol. Chairman Estrada, however, preferred not to upset the consensus and to retain this phrase.

369. This article was subject to several minor changes as part of the post-Kyoto technical review.

Article 14: Secretariat

370. There was early consensus that the protocol should use the same secretariat as the Convention, as recorded in the reports on AGBM 3 and 4, and the SoP prepared for AGBM 5. Five proposals to this effect in the FC (from AOSIS, Australia, the EU, Switzerland and the US) were consolidated into one at AGBM 6 in the non-group on institutions and mechanisms for the NT. Three additional proposals were included in the NT. The first, from the EU, set out the functions of the secretariat. The second, from Australia, specified that costs relating to the protocol should be met only by Parties thereto, and the third, from the G-77 and China, concurred that the same secretariat should serve the protocol, and that existing arrangements for its functioning should apply.

371. These proposals were consolidated into a single text with three paragraphs in the non-group on institutions and mechanisms at AGBM 7. This text, included in the INF, was largely reproduced in Chairman Estrada's CNT. The first paragraph, in line with all proposals, stated that the Convention secretariat would serve the protocol, and was to remain unchanged through to the final text. The second paragraph, based on EU language, noted that arrangements for the secretariat's functioning under the Convention would apply to the protocol, and that the secretariat would also exercise functions assigned to it by the protocol. The last paragraph reproduced the Australian proposal on the costs of secretariat services, but with the qualification "to the extent that these are distinct". The brackets around this latter paragraph were included at the recommendation of the secretariat, in view of the difficulty of separating out costs relating to the protocol and the Convention.

372. A later proposal submitted by the US⁵⁷ for its draft article on the secretariat put forward new and more extensive functions to be performed by the secretariat, including the preparation of an annual compilation and synthesis report, and the maintenance and administration of records relating to the accounting of "emission budgets". This proposal, however, was merged into draft provisions on the review of information and implementation and compliance at AGBM 8, and did not find its way into the article on the secretariat.

373. Deliberations in the non-group on institutions and mechanisms at AGBM 8 modified the text to refer to the functions of the secretariat set out in Article 8.2 of the Convention, as well as arrangements for the secretariat's functioning in Article 8.3. The substance of that paragraph as it appeared in the RTUN was carried over, with only editorial and legal modifications, to the final text.

⁵⁷ See FCCC/AGBM/1997/MISC.1/Add.4.

374. By CRP.2, agreement had been reached to delete the bracketed paragraph on costs, and by CRP.4 the language of the draft article had been finalized, taking into account advice from the legal drafting group.

Article 15: Subsidiary bodies

375. There was early agreement that the subsidiary bodies to the Convention should serve the protocol, as reflected in the conclusions of AGBM 3 and 4. In the FC, AOSIS, Australia, the EU, the Islamic Republic of Iran, Switzerland and the US all put forward proposals to this effect. These were consolidated into a single option in the non-group on institutions and mechanisms at AGBM 6, based on the (almost identical) EU and US proposals. This text was included in the NT. It stated that the subsidiary bodies would serve the protocol and, using the same language as that proposed by the EU for the “COP”, specified that decision-making in both the subsidiary bodies and their Bureaux would be the preserve of Parties to the protocol. The text remained largely unchanged, subsequent to AGBM 7, in the INF, with the exception of the deletion of a clause proposed by AOSIS requiring prior approval for the proposed arrangements by the COP. A bracketed clause applying the functioning of the subsidiary bodies under the Convention to the protocol *mutatis mutandis* was also added.

376. In his CNT, Chairman Estrada reproduced the text in the INF almost exactly, but deleting the above-mentioned bracketed clause on the functioning of the subsidiary bodies. Two changes were made to the text, pursuant to discussions in the non-group on institutions and mechanisms at AGBM 8, and included in the RTUN. The first was the re-introduction of the clause relating to the functioning of the subsidiary bodies. The second was the addition of the same sentence as that in the draft article on COP/MOP stating that non-Parties to the protocol could participate as observers. The text also included a footnote putting forward a proposal whereby sessions of the SBSTA and the SBI under the protocol would be held in conjunction with those under the Convention. This text was included in the body of the draft article in CRP.2. By CRP.2, the text appeared in its substantively final version. Legal and editorial refinements were included in CRP.4, and the article was subject to minor changes as part of the post-Kyoto technical review.

Article 16: Multilateral consultative process

377. Four proposals relating to a multilateral consultative process (MCP) were included in the NT. The proposals from Australia and the G-77 and China called for consideration of the application of the Convention MCP to the protocol, if and when it was established⁵⁸, and after entry into force of the protocol. The EU stated that a (new) MCP should be set up after entry into force, including an implementation committee. The US simply called for Parties to the protocol to consider, at their first “meeting”, the establishment of an MCP to promote the effective implementation of the protocol. These proposals were consolidated into a single, bracketed text in the INF. This no longer mentioned an implementation committee, but did provide for the possibility of setting up a new MCP.

⁵⁸ At the time of the protocol negotiations, a negotiation process was also ongoing to elaborate a multilateral consultative process under Article 13 of the Convention, in the so-called “Ad Hoc Group on Article 13”. Agreement has not yet been reached on such an MCP for the Convention.

378. In his CNT, Chairman Estrada proposed provisions calling on the “MOP” to consider, as soon as practicable, the application to the protocol of the MCP referred to in Article 13 of the Convention, in the light of any relevant decisions by the COP.

379. Chairman Estrada’s text was unchanged in the RTUN, except for the introduction of a clause stating that the “MOP” could “modify, as appropriate” the MCP when considering its application to the protocol. The text remained intact throughout COP 3, with the addition, in CRP.2, of a further clause specifying that the operation of the MCP would be without prejudice to the procedures and mechanisms established in the article on compliance (see Article 18 below). This link to provisions on compliance had been proposed in the pre-Kyoto technical review.

Article 17: Emissions trading

380. Although little discussion took place on the issue, references to emissions trading feature in documents prepared relatively early on in the AGBM process. References to “tradable emission permits” appeared in the context of policies and measures at AGBM 3, with a secretariat document on policies and measures⁵⁹ noting that “while it might be possible for some preliminary conclusions on such an approach to be reached by COP 3, it would appear unlikely that a fully developed system could be agreed by that deadline”.

381. At COP 2, the issue of emissions trading gained greater importance when Mr. Timothy Wirth, then US Under-Secretary of State for Global Affairs, formally announced that the US would advocate such a system in the context of legally binding targets. The report on AGBM 4, held during the COP 2 sessional period, mentioned emissions trading as a means of promoting flexibility, as did the SoP prepared for AGBM 5.

382. The FC included five proposals supporting emissions trading, from Australia, France, New Zealand et al.,⁶⁰ Norway and the US (the only one in legal text). A more detailed proposal in legal text was subsequently received from New Zealand, and this, together with the US proposal, was included in the NT. Both the Islamic Republic of Iran et al. and Kenya made submissions against the adoption of emissions trading in the protocol, with Kenya specifying that emissions trading should not be adopted until it had been considered by the SBSTA and its environmental benefits demonstrated.

383. The proposals from New Zealand and the US were similar. Both were simple, advocating provisions relating to reporting and verification and participation of “domestic entities”. The US added that a “meeting of the Parties” could elaborate further guidelines.

384. Prior to AGBM 7, a more detailed proposal on emissions trading was put forward by the US,⁶¹ stipulating cases where trading would be restricted (for example if a Party was over its emissions “budget” it could no longer sell).

⁵⁹ See FCCC/AGBM/1996/2.

⁶⁰ New Zealand, in association with Canada and the US.

⁶¹ See FCCC/AGBM/1997/MISC.1/Add.4.

385. At AGBM 7, emissions trading was taken up in the non-group on QELROs. It was at this session that the problem that became dubbed “hot air” was first raised. The EU expressed concern that the buying up of past emission reductions, notably in EITs, could mean that commitments were fulfilled without further emission reductions being achieved. The EU stated that it would not accept emissions trading if this were accompanied by a weak target and also introduced new text setting out criteria for emissions trading. Consultations conducted among Annex I Parties resulted in a common, bracketed text, which can be found in the INF. This text included three alternatives. Alternative A represented the Islamic Republic of Iran et al. position, rejecting the use of emissions trading. Alternative B stated that “equitable initial allocations” of QELROs should first be decided. Alternative C consolidated the New Zealand and US proposals, plus additional points put forward by the EU on “rules and criteria” for emissions trading. These included a specification, similar to that proposed by the EU for the draft provisions on “banking”, that emission levels achieved before the start of a trading system could not be used as a basis for trading (a placeholder for dealing with the “hot air” problem). The EU also reproduced elements of its proposal on JI to state that emissions trading should be “supplemental to domestic action ... which should provide the main means of meeting/achieving QELROs”.

386. Chairman Estrada included emissions trading in his CNT. His initial draft in the version of the CNT circulated to participants at the informal consultations in October 1997 included three paragraphs. The first stated that Parties could transfer or acquire “emissions allowed” to meet their commitments (using similar language to the New Zealand and US proposals), the second stated that the “MOP” would define modalities, rules and guidelines for emissions trading, and the third specified that Parties could participate in emissions trading once the rules and guidelines had been agreed. Subsequent to the consultations, Chairman Estrada included an additional paragraph on criteria for emissions trading. In this paragraph, he addressed EU concerns by introducing language from the INF prohibiting the use of emission levels achieved prior to the establishment of the trading system, and specifying that emissions trading should be “supplemental” to domestic policies and measures. He also included an element originally put forward by the US whereby a Party exceeding its emission “budget” could not transfer “emissions allowed”, and a paragraph, again originally proposed by the US, concerning emissions trading in the event that a “question of implementation” were identified.

387. At AGBM 8, consultations again took place largely among Annex I Parties. The resulting text (in the RTUN) added a requirement that Parties participating in trading should have in place a national mechanism for the certification and verification of emission trades, and should also be in compliance with provisions on methodologies and reporting (as proposed by the US). A provision requiring compliance with commitments on policies and measures and QELROs (advocated by the EU) was bracketed. A paragraph on “intermediaries” (that is, domestic entities) was introduced, and the reference to domestic policies and measures as the “main means” of meeting emission commitments was bracketed, as was the paragraph concerning the use of emission levels prior to the start of the trading system. Finally, the paragraph stating that trading could begin after the adoption of guidelines was deleted. Also at AGBM 8, the G-77 and China put forward a submission⁶² emphasizing their opposition to

⁶² See FCCC/AGBM/1997/MISC.1/Add.8.

emissions trading, on the grounds, among other concerns, of its complexity, that it implied the creation of “emission rights” and was outside the scope of the Berlin Mandate, and that it would transform emission reduction obligations into commercial transactions. In this proposal, the Group also stated that QELROs should be met “primarily through domestic action”. A footnote to the RTUN notes that the G-77 and China requested the deletion of the article. The whole article was placed in square brackets.

388. Emissions trading was taken up as part of discussions on QELROs at COP 3, but was not allocated to any official negotiating group. The G-77 and China had stated that matters relating to QELROs, the “core elements of the Berlin Mandate”, should be dealt with first, before “peripheral” issues such as emissions trading. When Chairman Estrada first reached the draft article on emissions trading in a CoW plenary meeting on 3 December, he stated that he was not aware of any consultations being conducted on this article, and drew attention to the footnote informing that the G-77 and China had requested its deletion. There was no debate. At a subsequent plenary meeting, on 5 December, Chairman Estrada remarked that emissions trading (and also JI) had not yet been discussed. At another plenary meeting later that same day, he suggested that it was “not a good day to deal with JI or emissions trading” and thereupon adjourned the meeting⁶³ (see also Article 6 above).

389. At a CoW plenary meeting on 6 December, Chairman Estrada once more commented that “almost all articles have something new except perhaps the articles on JI and trading which we haven’t yet discussed”. At this same meeting, Canada introduced a bracketed text, which it said represented the positions of the EU and the JUSSCANNZ Parties. The delegate noted that the G-77 and China had agreed to its circulation, although the footnote whereby they requested the deletion of the whole article was still there. Both India and China confirmed their opposition to this new draft article. Chairman Estrada did not agree to the inclusion of this new text in CRP.2, on the grounds that it had not been fully discussed in the CoW. He had, in fact, stated in plenary that its presentation had been “for information only”. The text included in CRP.2 was therefore the same as in the RTUN, with the exception of *mutatis mutandis* changes to take account of developments in other groups (for example, use of the term “defined amount” rather than “emission budgets”). Canada requested that the EU/JUSSCANNZ text be circulated once again at a CoW plenary meeting on 8 December. At that meeting, Canada noted that the text was supported by almost all the Annex I Parties.

390. Chairman Estrada proposed a modified text for CRP.4, based on that in the RTUN and CRP.2. He retained a reference to “supplemental” but removed “main means”, deleted the paragraph on emission levels achieved before the start of a trading system and replaced the term “intermediaries” with “legal entities”. “Legal entity” was found to be the most accurate translation of the Spanish “persona jurídica”, which was Chairman Estrada’s preferred term. On reviewing this text, the Annex I Parties once again embarked on their own intensive work to try to reach agreement and the issue was also taken up during informal consultations undertaken by Chairman Estrada. Parties began to look for a simpler text, which would defer consideration of details to future negotiations. When emissions trading could start became the main area of contention- should the launch of trading be dependent on further decisions by the COP or the COP/MOP, or not? An informal draft circulated at Chairman Estrada’s consultations proposed

⁶³ See footnote 47.

that “modalities, rules and guidelines” should be adopted as an annex to the protocol by COP 4, or by the COP as soon as possible thereafter. Chairman Estrada also proposed the adoption of a separate COP decision on emissions trading, an option which enjoyed some support.

391. The production of the final draft text, CRP.6, was delayed until just before midnight, as Chairman Estrada waited for an agreed text which was reported to be emerging from EU/JUSSCANNZ consultations brokered by Canada. A text finally emerged, and was placed as paragraph 10 in draft article 3 of CRP.6. It was thought that including the paragraph in the draft article on emission commitments rather than in a separate article would emphasize the overriding importance of QELROs and link emissions trading firmly to emission commitments. The intention was for the text to be accompanied by a paragraph in the COP decision on adoption of the protocol calling for further “prompt start” work after Kyoto.

392. When the CoW came to the provisions on emissions trading, at around 3.30 a.m., some 50 interventions were made, including by many non-Annex I Parties, expressing opposition to the text as it stood and calling for further study of the issue. Chairman Estrada commented that he was “really concerned” that this issue “could blow up the whole protocol”. He urged Parties to “please consider seriously what we will decide”. He noted that it had always been understood that there would be further study of trading issues, and that there should be a link between future COP work on emissions trading and the protocol provisions. He added that some countries had been against the adoption of the Convention and the Berlin Mandate and, it seemed, the protocol, and that maybe some countries felt they would be better off without an agreement. It was, he argued, “not just a question of this paragraph but of the whole protocol”.

393. Following this lengthy exchange Chairman Estrada, on a suggestion from the Executive Secretary, suspended the meeting. During the break, he devised an alternative proposal, which again came initially from the Executive Secretary, to move the paragraph away from its now provocative position in the QELROs article into a separate article, which would resemble Article 21, on interim arrangements of the Convention. The protocol would provide for emissions trading in principle, but give a clear indication that further work would be required on it by the COP to the Convention. A sentence would be added to the decision on adoption, providing for such work to begin at COP 4. Furthermore, the provisions would state that the COP would also define the “relevant principles, modalities rules and guidelines”. The specification that the COP would carry out this work was important. On the one hand, it was thought to address the concern of the US and others that swift progress should be made on emissions trading by ensuring that work would not have to wait until the protocol entered into force. On the other hand, it was also thought to reassure the G-77 and China that work on emissions trading would be supervised by the supreme decision-making body of the Convention to which all Parties belonged, rather than the COP/MOP, which would initially inevitably include only a sub-set of Parties. The rest of the paragraph remained intact, except for a change whereby the reference to “any Party included in Annex I” would be changed to “any Party included in Annex B”. (This is the only instance in the protocol where reference is made to “Party included in Annex B” rather than “Annex I”.) This had originally been proposed by Mexico during the exchange in the CoW, and supported by the US, New Zealand and Norway.

394. The text encapsulating Chairman Estrada's proposal, which was typed up by the secretariat and given to Chairman Estrada to propose to the CoW, had placed the enabling sentence allowing emissions trading to take place, in the paragraph before that requiring the COP to define principles, modalities, rules and guidelines, in particular for verification, reporting and accountability, for emissions trading. However, Chairman Estrada read out these sentences to the CoW in the reverse order, and they remained in that order in the adopted text, thus placing greater emphasis on the need to carry out further work on emissions trading. The new article was gavelled through (see also Article 3.10 and 3.11 above).

395. This article was subject to a minor change as part of the post-Kyoto technical review.

Article 18: Compliance

396. The question of how to address cases of non-compliance with provisions of the protocol gradually emerged as an issue as the AGBM moved towards acceptance of legally binding QELROs. The need for provisions on compliance was mentioned in the report on the QELROs round table organized at AGBM 4, while the SoP prepared for AGBM 5 noted that "it has been suggested that the AGBM needs to consider what processes or mechanisms may be required to ensure compliance with the legal commitments in the instrument".

397. Issues relating to compliance were included in the NT in proposals from AOSIS, Canada (in non-legal form), Japan and the US under the heading "review of information and review of implementation and compliance". Japan and the US advocated (through legal text) a strengthened review process for Annex I Party communications, coupled with a mandate for the "MOP/meeting of the Parties" to make recommendations in the case of Parties having difficulties in meeting commitments. The US proposal included non-legal text stating possible consequences for non-compliance, including withdrawal of the right to participate in JI or emissions trading, and loss of voting rights. AOSIS, in a shorter proposal, stated that the "MOP" would review information submitted to it, and make recommendations based on these. A footnote to this section drew attention to a submission from the G-77 and China stating that existing mechanisms in the Convention should apply to the protocol. In a separate proposal included under the heading "multilateral consultative process", the EU proposed establishing an "implementation committee" (see Article 16 above).

398. Prior to AGBM 7, the US submitted a further proposal⁶⁴, which included text, in the section dealing with the functions of the "meeting of the Parties", whereby the "meeting of the Parties" would "implement an appropriate regime for non-compliance" and "may" also establish an "implementation committee".

399. Following deliberations at AGBM 7 in the QELROs non-group, the proposals from AOSIS, Japan and the US were consolidated in the INF, including the text in the US proposal that had appeared in its proposed article on the "meeting of the Parties". It should be noted that, at this stage, there was no separate draft article on compliance; the issue was considered together with the review of information (see also Article 8 above). The consolidated text was thus

⁶⁴ See FCCC/AGBM/1997/MISC.1/Add.4.

included under the heading “review of information and implementation and compliance” in the section on QELROs in the INF. As noted above in the discussion on Article 8 (review of information), the issue of “review of information and implementation and compliance” was also taken up in the non-group on institutions and mechanisms, partly due to confusion over the allocation of responsibility for the issue. However, a footnote to the section on QELROs in the INF notes that the consolidated text in that section could replace the text on this issue in the section on institutions and mechanisms, which simply listed four alternatives (three of which had already appeared in the NT). A footnote was also added to the text, stating that the section would now be considered with “other elements related to compliance” as part of discussions on institutions and mechanisms.

400. When preparing the draft version of the CNT to be circulated to the October 1997 informal consultations, Chairman Estrada had included provisions on compliance in a paragraph in the draft article on review of information, stating that the “MOP” would “consider and approve appropriate procedures and mechanisms” on this issue “as soon as practicable”. At the informal consultations, there was general agreement that compliance should be addressed in a separate article. However, some delegates argued that “as soon as practicable” was too vague, and that such procedures and mechanisms should be adopted at the first “MOP”. The paragraph was shifted to a separate draft article in the final version of the CNT, and “as soon as practicable” was changed to “at its first session”.

401. At AGBM 8, this draft article was taken up in the non-group on institutions and mechanisms chaired by Mr. Shibata. In the resulting text, which was included in the RTUN, the language in the CNT remained almost the same, with the deletion of the word “consider” (in the context of the approval of compliance procedures) and the addition of the qualifier “effective” as well as “appropriate” to describe those procedures. US language on an “indicative list of consequences” was directly reproduced in the draft article, but with the addition of a further reference to the “cause” of non-compliance. A reference to “binding penalties” was also introduced, with a specification that the clause was “*to be completed*”. The draft article changed position, now appearing between the draft articles on the MCP and dispute settlement, rather than after the draft article on review of information as it had in the CNT. A footnote to the article stated that the G-77 and China linked the conclusion of this article to negotiations on the clean development fund. The new proposal submitted by the G-77 and China for AGBM 8⁶⁵ also stated their preference for a periodic evaluation, at five yearly intervals starting in the period 2001-2005, of the compliance of each Annex I Party with its QELROs.

402. At COP 3, this article was addressed in the negotiating group on institutions and mechanisms chaired by Mr. Shibata. The article was to change little between the RTUN and the final text, but not before considerable debate. Mr. Shibata’s report on progress made in the negotiating group presented to the CoW on 6 December included two alternatives, both of them based on the RTUN text. Alternative A, however, reflecting the G-77 and China position, also provided for explicit compatibility with the provisions on the MCP, for compliance procedures and mechanisms to apply only to Annex I Parties and for “any binding penalties” under the article to be made available to the proposed “clean development fund”. Alternative B consisted

⁶⁵ See FCCC/AGBM/1997/MISC.1/Add.9.

of the RTUN text, with the completion of the clause on binding penalties stating that these would be adopted by means of an amendment to the protocol. At the same meeting, the US sought to put forward new text, transforming “borrowing” of emissions from a future commitment period as a means of staying in compliance into the subtraction of tonnes of emissions from a Party’s assigned amount for the next commitment period as a consequence of being out of compliance (see “Borrowing” below). Chairman Estrada requested Mr. Shibata to continue consulting on the issue, and the two alternatives were included in CRP.2.

403. When preparing CRP.4, Chairman Estrada opted to include Alternative B in the document, given that the proposed “clean development fund” had now metamorphosed into the CDM, and moved away from its previous character as a non-compliance fund (see Article 12 above). This version remained unchanged to the final text. However, with the insertion of a new article on emissions trading during the final CoW plenary, the article on compliance no longer appeared between those on the MCP and dispute settlement.

404. When the decision on adoption was circulated to the CoW, the EU called for an item on “prompt start” work on compliance to be added. This proposal was supported by Norway and the US, although with some amendments. Chairman Estrada requested those delegations to consult and propose some text, and called for the adoption of the decision as it stood. Norway later reopened the issue in the final COP plenary, again calling for an item on compliance to be added to the decision. Chairman Estrada recommended to President Ohki that he propose the adoption of the decision without this addition, which he did.

Article 19: Dispute settlement

405. Almost all the proposals included in the FC (from AOSIS, Australia, the EU, Switzerland and the US) called for the provisions of Article 14 of the Convention on dispute settlement to be carried over to the protocol. The US suggested, in addition, that mandatory binding dispute settlement, with specific consequences, should be developed. The Islamic Republic of Iran et al. and Kuwait put forward alternative provisions on dispute settlement in the context of their proposals on claims for compensation for adverse impacts of climate change mitigation policies undertaken by Annex I Parties (see Article 3.14 above).

406. Following AGBM 6, where this draft article was taken up by the non-group on institutions and mechanisms, the submissions from Parties were consolidated into three proposals: a text by the non-group Chairman, Mr. Shibata, applying the provisions of Article 14 of the Convention; the alternative proposal by the Islamic Republic of Iran et al. and Kuwait; and the US submission (in non-legal text). These three alternatives were transferred without substantive change to the INF after AGBM 7.

407. Chairman Estrada did not include an article on dispute settlement in his CNT, on the grounds that the Convention stated that its Article 14 would apply to any related legal instrument. However, provisions on dispute settlement were reintroduced at AGBM 8, with a simple statement in the RTUN to the effect that “the provisions of Article 14 shall apply *mutatis mutandis* to this protocol”. This sentence remained unchanged through to the final text, with only the addition of a legal precision “...on settlement of disputes...” in CRP.4.

Article 20: Amendments

408. In their proposals included in the FC, Australia, the EU, the Russian Federation and Switzerland all advocated that the Convention provisions relating to amendments should be applied to the protocol. The EU proposed repeating Convention provisions, while the others suggested a simple cross-reference. AOSIS put forward the same structure and procedures as Convention provisions on amendments, but using the voting majority and entry into force threshold of two-thirds (rather than three-fourths under the Convention). Kuwait, Nigeria and the Islamic Republic of Iran et al. put forward an alternative text, whereby decisions on amending the protocol could be taken also by Parties to the Convention who were not Parties to the protocol, and by consensus only. At AGBM 6, as part of deliberations in the non-group on institutions and mechanisms, the proposals by the Russian Federation and Switzerland were consolidated into one proposal for the NT, and the AOSIS and EU submissions into another (with differing voting majorities and entry into force thresholds in brackets). The Kuwait, Nigeria and the Islamic Republic of Iran et al. position was included in the NT as a third proposal.

409. Two alternatives emerged from AGBM 7 and were included in the INF. Alternative A was based on the Convention structure, and included the two voting majorities and entry into force thresholds proposed by AOSIS and the EU. A third voting majority was also added, a proposal from Switzerland for a double two-thirds majority of Annex I and non-Annex I Parties. Alternative B reflected the Kuwait, Nigeria and the Islamic Republic of Iran et al. proposal.

410. For his CNT, Chairman Estrada opted for the application of Convention provisions, including its three-fourths voting majority and entry into force threshold. However, he included a definition of “Parties present and voting” in draft article 1 on definitions, rather than in the body of the article on amendments, as in the Convention. The text remained intact following AGBM 8, but with the addition of footnotes in the RTUN. The first referred to possible amendments as a result of a review of the adequacy of the Convention (reflecting a G-77 and China position), the second highlighted the alternative proposals by AOSIS and Switzerland for voting majorities and entry-into-force thresholds.

411. The RTUN text remained substantively intact throughout COP 3, and the footnotes were deleted in CRP.2. Some adjustments were made by the legal drafting group, however. These included the substitution of “session” for “meeting” in the context of the 6 months deadline for the circulation of proposed amendments. This brought the text into line with the Convention.

Article 21: Adoption and amendment of annexes

412. AOSIS, the EU, the G-77 and China, and Kuwait, Nigeria and the Islamic Republic of Iran et al. all put forward text on the adoption and amendment of annexes. These appear in the NT. The proposal from AOSIS was based on the same structure as that of the Convention, that is, cross-referencing procedures for adoption of amendments, but using two-thirds (rather than three-fourths) as a last resort voting majority, in line with its proposal on amendments to the protocol itself (see Article 20 above). AOSIS also did not include the Convention clause which

states that annexes should be restricted to material “of a descriptive nature”. The EU proposed retaining the Convention three-fourths voting majority, but adopted a different structure, that is, repeating procedures for adoption and amendment of annexes and not cross-referencing amendment procedures. Both AOSIS and the EU followed the Convention in proposing that new annexes or amendments to annexes should enter into force automatically six months after their adoption (except for Parties indicating, in writing, their non-acceptance), without a requirement for ratification. Kuwait, Nigeria and the Islamic Republic of Iran et al. applied the full procedures they had proposed for the adoption of amendments to the protocol to the adoption and amendment of annexes, that is, also requiring ratification by three-fourths of Parties before entry into force. The G-77 and China specified that the procedures of Article 4.2 (f) and 4.2 (g)⁶⁶ of the Convention should be used for the elaboration of any annexes dealing with listings of Parties. In a submission (in non-legal text) in the FC, the US noted that the content of annexes may not be restricted simply to material of a descriptive nature, and that appropriate adoption and amendment procedures would therefore be necessary.

413. It is also noteworthy that the EU and Japan proposed, in the context of the review of commitments, that annexes be revised in a more flexible manner than the body of the protocol itself (see Article 9 above).

414. Following AGBM 7, the proposals were consolidated into three alternatives in the INF. Alternative A was based on the Convention structure, with brackets placed around the character of annexes, reflecting the differing AOSIS view on this subject. The two proposed voting majorities were inserted in brackets, as was the Swiss proposal for a double two-thirds voting majority (also proposed for amending the protocol, see above). Furthermore, in line with rising concern among Annex I Parties over the substantive matters to be covered in annexes, special bracketed provisions were included which would apply to the amendment of specific, sensitive annexes. A footnote stating that this article would only be included in the protocol “if required” reflected the G-77 and China reservations over the introduction of new annexes. Alternative B in the INF repeated the G-77 and China submission regarding listing of Parties, and Alternative C reproduced the Kuwait, Nigeria and the Islamic Republic of Iran et al. proposal.

415. In his CNT, Chairman Estrada carried over the provisions of the Convention on this issue. He did not include special provisions for his proposed substantive annexes, but noted, at the informal consultations on the Chairman’s text, that such provisions might be necessary. As with the article on amendments, he did not include a paragraph on “Parties present and voting”, instead covering this question through a definition in draft article 1.

416. The structure of Chairman Estrada’s draft article was retained in the RTUN, and through to the final text. However, at AGBM 8, special provisions were added to the RTUN for amending draft annexes “A” and “B” (at that time, specifying gases covered by the protocol and criteria for differentiation, respectively). A new paragraph exempted these annexes from standard procedures regarding the adoption and entry into force of amendments to annexes, and instead applied the procedures for amending the protocol, that is, requiring ratification by

⁶⁶ Article 4.2 (f) relates to the review of Annexes I and II of the Convention while Article 4.2 (g) allows any non-Annex I Party to notify the Depositary that it intends to be bound by the commitments of Annex I Parties in Article 4.2 (a) and (b) of the Convention.

three-fourths of Parties for entry into force. A further footnote to the article stated that it might need to be “revisited” in the light of discussions on the draft article on QELROs.

417. The main change to this article from the RTUN at COP 3 was in the context of the development of an annex listing Parties and their emission commitments. CRP.2 thus included a specification that any amendment to the annex listing the emission commitments of Parties should be adopted only with the written consent of the Party concerned. It also stated, borrowing Convention language, that annexes “adopted after entry into force” should be restricted to “lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character”. The version included in CRP.2 did not change in substance from the final text. However, the reference to the annex listing differentiation criteria was deleted when the annex itself was removed, and the legal drafting group replaced “session” with “meeting” in the context of the 6 months deadline for the circulation of proposed amendments. Some further minor editorial and legal changes were made for CRP.4, and the post-Kyoto technical review also resulted in several technical modifications.

Article 22: Right to vote

418. Three proposals on the right to vote were included in the NT, all of which basically advocated the retention of Convention provisions. Proposal 1, a Chairman’s text emanating from the institutions and mechanisms non-group at AGBM 6, proposed a simple cross-reference applying Article 18 of the Convention on the right to vote to the protocol, as advocated by Switzerland and the Russian Federation. Proposal 2, reproducing similar proposals from AOSIS and the EU, repeated Article 18 of the Convention on this issue. Finally, Proposal 3 reflected a suggestion from Australia that voting entitlements could be restricted on certain issues, including the adjustment of quantified commitments.

419. AGBM 7 led to a further consolidation of proposals, with only two alternatives included in the INF. These were substantively the same, but with Alternative A cross-referencing Convention provisions and Alternative B repeating them. In his CNT, Chairman Estrada opted to repeat the Convention provisions, and his text was adopted unchanged in the final text. A minor technical change was included as part of the post-Kyoto technical review.

Article 23: Depositary

420. The NT included only one proposal relating to the depositary. This was a consolidation of proposals from AOSIS, the EU, the Russian Federation and Switzerland put forward by Mr. Shibata as a chairman’s text in the non-group on institutions and mechanisms at AGBM 6. The proposal called for Article 19 of the Convention on the depositary to apply to the protocol.

421. This text was repeated in the INF, although with the specification “*mutatis mutandis*” added in brackets.

422. Chairman Estrada did not consider an article on the depositary to be necessary in the CNT, as the Convention specifies that the Secretary-General of the United Nations shall be the depositary of protocols adopted in accordance with Article 17 of the Convention. However, an

article on the depositary was reintroduced in the RTUN at AGBM 8, with the simple statement that “The Secretary-General of the United Nations shall be the Depositary of this Protocol”. This paragraph was adopted unchanged in the final text.

Article 24: Signature and ratification, acceptance, approval or accession

423. Separate proposals were put forward by Parties on both signature and ratification, acceptance, approval or accession (hereafter referred to as “ratification” for the sake of readability), in line with the Convention which includes separate articles on both these issues.

424. Regarding signature, the proposals from AOSIS, the EU, Switzerland and the US that appeared in the FC were consolidated into a single text at AGBM 6 for inclusion in the NT. This text specified that the protocol would be open for signature by Parties to the Convention, and that this would be done first at Kyoto during COP 3, and thereafter at United Nations Headquarters in New York.

425. Concerning ratification, the Russian Federation and Switzerland proposed a simple cross-reference to Convention procedures in the FC. This position was put forward as a consolidated chairman’s text by Mr. Shibata in the non-group on institutions and mechanisms at AGBM 6, and included as Proposal 1 in the NT. AOSIS and the EU also proposed applying Convention procedures in the FC. Their submissions were consolidated into Proposal 2 for the NT. Proposal 3, from Australia, made reference to that Party’s proposal in another part of the NT regarding the treatment of regional economic integration organizations (REIOs).

426. Deliberations at AGBM 7 resulted in an increased number of alternatives for provisions on signature. Alternatives A and C in the INF specified that only Parties to the Convention could sign, and included provisions for signing in Kyoto and at the United Nations Headquarters. Alternative C specified dates and also included a period when the protocol would be open for signature at the Ministry of Foreign Affairs in Tokyo. Alternative B provided for “states” (not just Parties to the Convention) to sign the protocol, and only included the United Nations Headquarters as a venue (without dates).

427. Concerning ratification, the INF included two options, the first repeating Convention provisions, the second covering the Australian proposal regarding REIOs.

428. Chairman Estrada merged the two draft articles into one in the CNT. He did not include the option for the protocol to be signed in Kyoto, as he surmised that time would not permit. Regarding signature, the period for the signature of the protocol (16 March 1998 – 15 March 1999) was chosen because it allowed time for the preparation of the authentic text in all languages, but was sufficiently close to COP 3 to avoid the waning of attention. It had been hoped that the protocol could be opened for signature on the anniversary of the entry into force of the Convention (21 March), but this was not possible, as that date in 1998 was a Saturday.

429. Regarding ratification, Chairman Estrada used this draft article as a vehicle for proposed provisions on REIOs in his CNT (see Article 4 above).

430. The RTUN saw changes to this draft article pursuant to discussions at AGBM 8. A clause from the Convention stating that ratification instruments should be deposited with the depositary, which Chairman Estrada omitted from the CNT, was reintroduced. Furthermore, following the insertion of a separate article on broader provisions for REIOs, the standard paragraphs from the Convention on ratification by REIOs were reintroduced into this draft article. A footnote, however, was added as a placeholder for further discussions, pending the outcome of negotiations on provisions for REIOs elsewhere in the protocol. This text became the final version, with only a few adjustments in CRP.4 inspired by the legal drafting group.

Article 25: Entry into force

431. Seven proposals on provisions for entry into force of the protocol were put forward in the FC, from AOSIS, the EU, the Islamic Republic of Iran, Japan, the Russian Federation, Switzerland and the US. These were consolidated at AGBM 6 for inclusion in the NT, where the issue was taken up by the non-group on institutions and mechanisms. A further proposal for the NT was also submitted by Norway. The Russian Federation proposal, to apply the entry into force provisions of the Convention to the protocol, was taken up as a chairman's text by Mr. Shibata and reproduced as Proposal 1 in the NT. AOSIS, the EU and Switzerland (Proposal 2) all called for the Convention approach to be used in the protocol, but with a different threshold for entry into force: AOSIS proposed 30 Parties, Switzerland 20 and the EU was undecided. The US, Japan and Norway advocated an alternative approach, whereby entry into force would require ratification by a certain number of Annex I Parties (Japan), or Parties accounting for a specific percentage of global emissions (US) or [75 per cent] of Annex I emissions (Norway). Norway's proposal incorporated a "double trigger" approach, whereby entry into force would also need ratification by 50 Parties to the Convention. The Islamic Republic of Iran et al.'s proposal adopted yet another approach, calling for ratification by all Annex I Parties, and the implementation of all their commitments under the Convention before entry into force.

432. These options were consolidated into three alternatives for the INF at AGBM 7. Alternative A was that put forward by AOSIS, the EU and Switzerland for a simple procedure, requiring ratification by a defined number of Parties. Alternative B represented the Japan, Norway and US proposals. This alternative moved towards the Norwegian "double trigger" approach, requiring ratification by [50] Parties, or by Parties accounting for a proportion of emissions. The text incorporated a new proposal from Japan,⁶⁷ which also advocated a double trigger. The internal brackets within this Alternative B revealed the main areas of contention: firstly, whether the emissions of all Parties (US) or just Annex I Parties (Norway) should be counted (Japan was undecided); secondly, whether the trigger should cover all emissions (Norway, US) or just CO₂ (Japan), and what the trigger level should be (three-fourths of emissions was the option included in the alternative, as proposed by Japan and Norway). Alternative C reproduced the proposal from the Islamic Republic of Iran et al..

⁶⁷ See FCCC/AGBM/1997/MISC.1/Add.5.

433. For his CNT, Chairman Estrada opted for a double trigger option, requiring ratification by 50 Parties, including Parties whose 1990 emissions, as reported in their most recent national communications, accounted for three gigatonnes of carbon (that is, just under half global carbon emissions). In the draft version circulated to participants at the informal consultations in October 1997, the trigger had been “no less than 50 per cent of total ... emissions”. This, however, was considered to be too imprecise. In presenting the draft article to the consultations, Chairman Estrada had made it clear that defining an emissions threshold would be methodologically difficult, in view of problems with inaccurate and unavailable data.

434. The draft article in the CNT also included two further paragraphs, reproducing the provisions of the Convention on instruments of ratification deposited by REIOs (these two paragraphs had appeared in the original proposals by AOSIS and the EU, as well as in Alternative A in the INF). These two paragraphs were carried over unchanged to the final text.

435. The draft article was taken up in the non-group on institutions and mechanisms at AGBM 8, and was reproduced unchanged in the RTUN, except for a footnote clarifying that “no agreement” had been reached on the proposed entry-into-force provisions. Broad consensus, however, prevailed that a double trigger approach would be adopted, even if its nature was disputed. The pre-Kyoto technical review noted the difficulties that would arise if a trigger to entry into force were defined based on the emissions of all Parties, owing to the absence of officially communicated data from non-Annex I Parties. The technical review suggested that one way around this would be to admit other sources of “authoritative” data.

436. The negotiating group on institutions and mechanisms was responsible for this article at COP 3. Mr. Shibata, Chairman of that negotiating group, invited Mr. Patrick Széll (UK) (also Chairman of the legal drafting group) to consult on this article on his behalf. Mr. Shibata’s report to the CoW on 6 December included two alternatives. Both required, as a first trigger, ratification by a certain unspecified number of Parties, but differed over the nature of the second trigger. Alternative B sought ratification by a simple percentage of Annex I Parties. Alternative A’s second trigger, however, required ratification by Annex I Parties accounting for a certain unspecified percentage of total Annex I Party CO₂ emissions in 1990, as communicated in their first national communications on or before the date of adoption of the protocol. This alternative was accompanied by a paragraph specifying the definition of “total CO₂ emissions in 1990”. The use of figures provided in national communications (as Chairman Estrada had proposed in the CNT) was aimed at ensuring that there would be no challenges to the authority of the numbers.

437. Mr. Shibata emphasised that, regarding Alternative A, the negotiating group felt there should be “clarity” with the numbers. A suggestion to this end was to include a table in the COP 3 report, listing total CO₂ emissions for the purposes of entry into force. Mr. Shibata indicated that the unspecified numbers in Alternative A could be filled in by a first trigger of “50” ratifications and a second trigger of “60 per cent” of emissions. Chairman Estrada provoked discussion when he suggested these should indeed be inserted in the text to “clarify ideas” when the alternatives were reproduced in CRP.2. Japan and Canada called for a 75 per cent threshold of emissions and the G-77 and China for a figure no higher than 50 per cent. Chairman Estrada therefore included 50, 60 and 75 per cent in square brackets in

Alternative A for CRP.2, but insisted on a footnote to inform ministers that the 75 per cent option would give one Party (the US, although the name of the Party concerned was not explicitly stated in the footnote) a veto over entry into force. Chairman Estrada also suggested that the paragraph defining total CO₂ emissions in 1990 could be included in the draft article on definitions. Mr. Széll replied, however, that, as the term was used only once in the text, this would not be necessary. This paragraph was to remain unchanged through to the final text.

438. By CRP.4, the final approach had been agreed, that is, the double trigger including a percentage of Annex I Party CO₂ emissions in 1990, with debate only over the numbers. Chairman Estrada requested that 60 and 60 be used in CRP.4, as these represented the mid-way points between the various proposals and would not give the veto to any one Party. In CRP.6, however, Chairman Estrada came down even further to 55 and 55, the first figure closer to the Convention approach, the second reducing the veto power of any one or two countries⁶⁸ and both closer to the G-77 and China position. In the final plenary, a number of alternative figures were put forward. Canada and Japan, for example, sought to increase the emissions threshold to 65 per cent and 60 per cent, respectively. The Marshall Islands called for 55 per cent to be maintained. Chairman Estrada ruled there was no consensus to change his figures, and therefore stuck to 55 and 55. He also informed the CoW that a table would be included in the COP 3 report to “give certainty” to the numbers. The Parties taken into consideration for the purposes of entry into force, and therefore included in the table, were only those who had submitted their first national communications by the date of adoption of the protocol. The emissions of Croatia, Lithuania, Slovenia and Ukraine will therefore not be considered for the second trigger of entry into force; owing to its high total emissions, Ukraine's absence is significant. The table can be found as the annex to the COP 3 report⁶⁹ and in the official printed Protocol text.

439. A minor technical change was included as part of the post-Kyoto technical review.

Article 26: Reservations

440. In their proposals included in the FC, AOSIS, the EU, the Russian Federation and Switzerland all proposed that reservations to the protocol be disallowed. AOSIS and the EU proposed to repeat Convention provisions to this effect, while the Russian Federation and Switzerland advocated a simple cross-reference to the Convention.

441. The non-group on institutions and mechanisms at AGBM 6 consolidated these proposals into a single text for the NT, stating “no reservations may be made to this protocol”, the same text as the Convention. This language remained intact through to the final text. A footnote was included in the RTUN to indicate that one Party (the US, although this was not mentioned) was not in agreement with the article. This was removed, however, in CRP.2.

⁶⁸ Although non-ratification by any two of the three highest Annex I emitters, the US, the EU and the Russian Federation, could still, together, prevent entry into force.

⁶⁹ See FCCC/CP/1997/7/Add.1, annex, also FCCC/CP/1997/7, para. 81.

Article 27: Withdrawal

442. In the FC, AOSIS, the EU, the Russian Federation and Switzerland all proposed that the Convention provisions on withdrawal should apply to the protocol. AOSIS and the EU proposed repeating Convention provisions to this effect, while the Russian Federation and Switzerland advocated a simple cross-reference to the Convention. These options were consolidated into two proposals for the NT, following discussions in the non-group on institutions and mechanisms at AGBM 6. Kuwait, Nigeria and the Islamic Republic of Iran et al. proposed an alternative text, in the context of their proposal on compensation for adverse impacts of mitigation measures.

443. These proposals were further consolidated, at AGBM 7, into two alternatives for the INF. Alternative A included the option to cross-reference Convention provisions. Alternative B merged the AOSIS and EU proposals, with the addition, in brackets, of the text proposed by Kuwait, Nigeria and the Islamic Republic of Iran et al. Both alternatives specified that a Party having withdrawn from the Convention would be considered as having also withdrawn from the protocol (but not the converse).

444. Chairman Estrada chose to repeat Convention provisions on withdrawal in his CNT, with the above-mentioned specification regarding withdrawal from the Convention. This draft article then remained intact through to the final text.

Article 28: Authentic texts

445. AOSIS, the EU, the Russian Federation and Switzerland all made proposals on this issue in the FC, with AOSIS and the EU advocating the repetition of Convention provisions and the Russian Federation and Switzerland calling for a simple cross-reference to the Convention. The non-group on institutions and mechanisms at AGBM 6 consolidated these proposals into a single text for the NT, repeating Convention provisions. This text then remained unchanged.

446. Two additional paragraphs were added to the draft article at COP 3, setting forth a preamble to the signatures that would be affixed to the protocol (“In witness whereof...” and “Done at Kyoto...”). These paragraphs were prepared by the legal drafting group, and included in CRP.4. However, when it became clear that the protocol would not be signed in Kyoto, the paragraph “In witness whereof...” was removed for CRP.6. It was reinstated in the authentic text as a result of the post-Kyoto technical review, but with a change in the wording and placement to be consistent with the fact that the protocol would be signed at a different time to that of its adoption.

447. The date at which the protocol was “Done at Kyoto” was specified as the tenth day of December in the text adopted by COP 3 (L.7/Add.1). It was not until the authentic text was being prepared that legal advice was sought from the United Nations Office of Legal Affairs (OLA) over the official date on which the protocol had been completed, given that this was one day after COP 3 was scheduled to end. The OLA was of the view that, by continuing to negotiate, Parties had *de facto* agreed to extend the conference, so the date of adoption could

properly be given as “this eleventh day of December”. These changes were made as part of the post-Kyoto technical review.

Annex A: Greenhouse gases and sectors/source categories

448. New Zealand and the US both proposed that greenhouse gases covered by the protocol should be listed in an annex.

449. The option of listing gases and sectors in an annex, and simply referring to that annex in the main body of the text, took on greater prominence at AGBM 7 when the secretariat used this approach as a drafting tool to reflect concisely the various proposals on coverage in the INF. The use of an annex to list gases and sectors covered by the protocol was retained in the CNT and remained through to the final text (see “Coverage” above).

Annex B: Quantified emission limitation and reduction commitments by Party

450. Australia and Norway both proposed that the individual emission commitments of Parties should be listed in an annex to the protocol. When preparing the CNT, Chairman Estrada decided to adopt this approach of listing commitments, considering that such a list would be necessary in the event that differentiated commitments were adopted. He also viewed such a list as useful in increasing transparency by clearly stating the commitments of Annex I Parties.

451. Chairman Estrada was of the opinion, however, that procedures to amend this list would need to be flexible, so that the commitments of potential new entrants (for example, new Annex I Parties or non-Annex I Parties taking on voluntary commitments) could easily be added. For this reason, he decided that the list should not be included in an annex, as this would be subject to the usual, relatively inflexible, amendment procedures. Instead, in his CNT, he put forward the idea of an “attachment”, which could be amended automatically to add new entrants. The attachment was accompanied by a draft article, which set out the conditions under which the attachment could be automatically modified, namely, the two examples cited above. The article also stated that additional attachments could be adopted, with the approval of all Parties concerned, thus establishing a structure for the development of future rounds of commitments. Three columns were outlined in the proposed attachment: one listing Parties, a second listing their commitments, the third, their base year or period (where relevant). The concept of an “attachment” was not included in the draft version of the CNT circulated at the informal consultations in October 1997; the (blank) list for Parties and their commitments was simply included in an annex. Chairman Estrada did, however, suggest to participants at the informal consultations that the list might need to appear in a different format.

452. A number of concerns were expressed over the proposed “attachment” at AGBM 8. Parties queried its legal status, and feared that substantive commitments might be modified without their explicit consent. Attachment 1 and its blank columns were retained in the RTUN, but the accompanying article was modified so that the procedure for amending or adopting attachments would be the same as that for annexes. The pre-Kyoto technical review of the RTUN noted that adopting the same amendment procedures for attachments as for annexes rendered the attachment concept redundant.

453. In his report to the CoW on 6 December, Mr. Shibata, Chairman of the negotiating group on institutions and mechanisms, recommended the deletion of the attachment, and its replacement by an annex. This was done in CRP.2, and the future list of Parties and their emission commitments became draft annex B.

454. A further column was added in CRP.2, entitled “defined amount in commitment period”, as part of attempts to make the multi-year target approach seem more transparent. The column on base year or period was also changed to read “emissions in base year/period”. Both these columns were discarded for CRP.4, however, as it became clear that calculating the figures would take too long, especially as the emission commitments of Parties would only be agreed at the last minute, and might generate lengthy debate. The final title, “quantified emission limitation and reduction commitment” appeared in CRP.4 (along with the qualification “assigned amounts”, which was later deleted from CRP.6 as the column would not, in fact, list assigned amounts). This title was chosen partly to accommodate the concern of the G-77 and China that the Berlin Mandate term “QELRO” should denote the commitments of Annex I Parties (see “multi-year target” above). The word “objective”, however, was replaced by “commitment” in order to lend greater weight to the legally binding nature of the targets. The sub-heading, which simply read “per cent” in CRP.4, was changed to the more specific “percentage change from 1990” in CRP.6. The final text in L.7/Add.1 appeared as “percentage change from base year or period”, as not all Parties would use a 1990 base year, nor would all gases be subject to this base. The word “period” was needed because of the flexibility afforded to EITs to choose a different baseline (at the time of adoption of the protocol, Hungary was using a base period, rather than a base year). However, Mr. Széll, Chairman of the legal drafting group, drew the attention of the secretariat to the fact that this title was mathematically incorrect, and the text was modified through the post-Kyoto technical review to read “percentage of base year or period”.

455. A list of Parties was included for the first time in CRP.2. This list was the same as Annex I to the Convention (although Ireland and Italy were unfortunately omitted due to a typing error), but without Belarus or Turkey, who were not yet Parties to the Convention. An asterisk was added to designate Parties with economies in transition, as in the Convention. Croatia, the Czech Republic, Liechtenstein, Monaco, Slovakia and Slovenia, all of which joined Annex I at COP 3 (see decision 4/CP.3⁷⁰), were included in the revised list of Parties in CRP.4. Monaco had already made a declaration, taken note of at COP 2, that it intended to be bound by the commitments of Annex I Parties under Article 4.2 (a) and (b) of the Convention. The Czech Republic and Slovakia had also done so, while in addition requesting that their names replace that of “Czechoslovakia” in the original Convention Annex I, given the dissolution of that former State.⁷¹ Slovenia similarly announced at COP 3 that it had declared to the Depositary its intention to be bound by Article 4.2 (a) and (b), while Croatia also indicated its wish to join Annex I.

456. The list in CRP.4 remained intact through to the final text.

⁷⁰ See FCCC/CP/1997/7/Add.1.

⁷¹ See FCCC/CP/1996/15, para. 10.

Decision 1/CP.3: Adoption of the Kyoto Protocol

457. Consideration of the possible form and content of the decision on adoption of the protocol began in the run-up to AGBM 8. Discussions on a “prompt start” process following the adoption of the protocol were initiated at an earlier date, however. For example, the Executive Secretary addressed the informal consultations on Article 4.2(a) and (b) that took place in the inter-sessional period between AGBM 6 and 7 to discuss possible budgetary implications of such a process, in the context of negotiations on the programme budget. Agreement on the programme budget to be adopted at COP 3, which was reached in the SBI during the AGBM 8 sessional period, laid the foundations for a prompt start process on protocol work by including a contingency to fund such a process.

458. The CNT included a number of tasks which might be mandated to the first “MOP”, and which would therefore require a “prompt start” process. At AGBM 8, Chairman Estrada noted that he would mention the work needed as part of this prompt start process in his report to COP 3. In that report, he noted that the RTUN specified “a number of issues for consideration at the first “MOP” after the entry into force of the new instrument”. He proposed that the chairmen of the subsidiary bodies “make a joint proposal regarding the allocation of preparatory work to their respective bodies at their eighth sessions [that is, in June 1998] in the context of the future evolution of the Convention”.

459. The first draft of the decision on adoption was circulated to the CoW on 4 December. At that time, it was a simple procedural decision, whose final paragraph invited the subsidiary body chairmen to make a joint proposal to the subsidiary bodies for the preparatory work needed to enable the first “MOP” to fulfil the tasks assigned to it by the protocol. It later became clear, however, that it would be useful to specify those areas of the protocol where there was a particular need for more work before entry into force, such as land-use change and forestry, JI and emissions trading (in the latter case, the protocol eventually stipulated that action should be taken by the *COP to the Convention*). The decision on adoption therefore became an important vehicle for reaching agreement on the protocol by continuing work on the more difficult issues which could not be resolved at COP 3. This was particularly the case with the CDM, where Chairman Estrada undertook to include a paragraph in the decision on adoption requiring the analysis of the implications of paragraph 10 of that article, which had been the subject of much debate in the final CoW plenary (see Article 12 above). Furthermore, subparagraph 5 (d) of that decision allowed the specific concerns of Iceland to be subject to further analysis, enabling that country to agree to the adoption of the protocol.

460. The draft decision on adoption was circulated near the end of the final CoW plenary, whilst Parties were awaiting the preparation of the final version of annex B. Chairman Estrada noted that the decision would be amended to include the new paragraph on the CDM. The EU proposed the addition of a paragraph for the further study of compliance (see Article 18 above) and India requested the addition of a reference to “emission allowances” in the paragraph on emissions trading. Chairman Estrada however, gavelled through the decision without any changes. Norway repeated the request for the addition of a paragraph on compliance in the final COP plenary, but this was not accepted.

461. Decision 2/CP.3 (methodological issues related to the Kyoto Protocol) and decision 3/CP.3 (implementation of Article 4.8 and 4.9 of the Convention) were also adopted together with the protocol. These are discussed above in the sections on Article 5 (methodological issues) and Article 3.14 (adverse impacts on developing countries), respectively.

VI. DELETED DRAFT ARTICLES

462. A number of articles were proposed by Parties and included in the NT that did not find their way into the final text. These are discussed below.

Objective and principles

463. Chairman Estrada expressed the view from an early stage that the protocol should use as its basis the objective and principles of the Convention, and not devise its own. Article 3 of the Convention noted that its principles were aimed at achieving the objective of the Convention which, as specified by Article 2, was also that of “any related legal instruments” (such as a protocol) “that the Conference of the Parties may adopt”. From a practical point of view, Chairman Estrada feared that discussions on the objective and principles could take up valuable negotiating time and stall the process.

464. Seven proposals on an objective for the protocol were included in the NT, from AOSIS, Australia, the EU, the G-77 and China, the Islamic Republic of Iran et al., Japan and the Russian Federation. All of these, except for the proposal from AOSIS, included a specific reference that the objective of the Convention would apply to the protocol. The EU proposed specifying this objective further, by calling for global average temperature change not to exceed 2 degrees Celsius above pre-industrial levels, and concentrations of CO₂ to be maintained at levels below 550 ppmv. AOSIS proposed the same maximum temperature increase, and a rise in sea level not to exceed 20 cm above 1990 levels.

465. It is worth noting that an additional heading “guiding objectives” was included in the section on QELROs in the FC. This section included proposals by France, Japan and the US (the only one in legal text) regarding long-term greenhouse gas atmospheric concentration targets. Moreover, the proposal from France, along with a separate proposal from France and Spain, advocated the gradual narrowing of the range of emissions per capita and per unit of GDP. Japan, in turn, called for CO₂ efficiency targets, which could be measured in terms of emissions per unit of GDP, while the Islamic Republic of Iran called for QELROs not to affect international trade or the incomes of developing countries, especially fossil fuel exporting countries. This section on guiding objectives was not reproduced in the NT, as the sentiments expressed were thought to be reflected in other parts of the proposals from these Parties (the US proposal, however, the only one in legal text, was included in the section on “atmospheric concentration”, see below).

466. Regarding principles, six proposals were included in the NT, from AOSIS, the EU, the G-77 and China, the Islamic Republic of Iran et al., Norway and the Russian Federation. The EU, the G-77 and China and the Russian Federation all called for the principles in Article 3 of

the Convention to apply to the protocol. The proposals from AOSIS, the Islamic Republic of Iran et al. and Norway reiterated selected provisions from the Convention.

467. The proposals on the objective and principles were not allocated to any non-group at either AGBM 6 or AGBM 7 and were excluded from the INF emanating from AGBM 7 (although see section below on atmospheric concentration with respect to the proposals on the objective). Ambassador Estrada did not include draft articles on either of these issues in his CNT, instead making specific reference to the objective of the Convention and its Article 3 (that is, principles) in his proposed preamble. Although the EU protested at the absence of an article on “objective” at AGBM 8, as did certain G-77 countries regarding “principles”, these articles were not reintroduced.

Atmospheric concentration

468. Two proposals were included in the NT (but not the FC) under the heading of “atmospheric concentration”, from AOSIS and the US. AOSIS repeated its proposed limits regarding temperature and sea level rise stated in its draft article on the objective (see “objective and principles” above), while the US called for Parties to “cooperate in the establishment of a long-term goal with respect to atmospheric concentrations of greenhouse gases”. This latter text had been included under “guiding objectives” in the section on QELROs in the FC (see above).

469. Chairman Estrada chose not to allocate these proposals to the non-group on QELROs at AGBM 7. This was due to his concerns over the difficulties in reaching agreement on these issues, and in particular his view that the objective of the Convention should be applicable to the protocol. However, AOSIS and the EU both insisted that the proposals should be discussed in some way, especially as there was also to be no consideration of related proposals on the objective. Interested Parties were therefore invited to consult among themselves and come back with a common text. These consultations resulted in two alternatives, A and B, reproduced in an annex to the report of the non-group on QELROs in the INF. Alternative A consolidated the AOSIS proposals on the objective and atmospheric concentrations with the EU proposal on the objective. Alternative B included the US proposal regarding a long-term goal, coupled with its proposal on review of commitments (also included under the heading “review of commitments” in the INF).

470. Chairman Estrada did not include the option of a concentration target, or any other environmental target or long-term goal, in his CNT and the issue was not officially raised again.

“Borrowing”

471. As part of its proposal on QELROs included in the NT, the US put forward the idea that a certain percentage of emissions could be “borrowed” from subsequent “budget” periods for use in the current period, albeit at an “interest rate”.

472. The US subsequently put forward an additional proposal⁷² to cover instances when Parties failed to meet their commitments without prior borrowing arrangements. This proposal would

⁷² See FCCC/AGBM/1997/MISC.1/Add.4.

require the Parties concerned to reduce their emissions by a greater percentage in the second period. The G-77 and China, Peru, the Philippines and Zaire proposed that a Party failing to meet its commitment under the Convention to return its emissions to 1990 levels by 2000 would be subject to higher commitments under the protocol.

473. Following discussions at AGBM 7, these proposals, from the US on the one hand and from the group of developing countries on the other, were included in the INF under the heading “under-achievement/borrowing”. The new proposal by Brazil for a clean development fund, whereby Annex I Parties exceeding their emission commitments would be subject to a financial penalty, was added as a third alternative. The concept of borrowing was therefore cast as a compliance issue.

474. In his CNT, Chairman Estrada included a paragraph on borrowing, based on the compliance-related approach, but still in the draft article on QELROs, as had been proposed by Parties so far. At the informal consultations in October 1997, however, it was suggested that the paragraph could be recast in terms of a non-compliance consequence (that is, subtraction of tonnes of emissions from a Party’s assigned amount for the next commitment period) and moved to the compliance section.

475. The paragraph was retained in the same position in the RTUN after discussions at AGBM 8 and was taken up by the CoW on 4 December. Support for it was expressed by Canada, Japan and the US, but opposition by all other intervening Parties including mostly developing countries. When Canada suggested the provisions should be brought up under compliance, Chairman Estrada remarked that this had been suggested some time before, but no legal text had been forthcoming. Chairman Estrada declared the paragraph deleted “for the time being”. The issue was not brought up again in the context of draft article 3 on QELROs, although it did re-emerge in discussions on compliance (see Article 18 above).

Voluntary commitments for non-Annex I Parties

476. Proposals on voluntary commitments for non-Annex I Parties, all of which appear in the NT, were put forward by AOSIS, Armenia, the EU, the G-77 and China, Japan, Kenya, Poland, Switzerland and the US. The proposals from AOSIS, the EU, Poland and the US were all based on the principle that a Party not included in Annex I (or, in the case of the EU “Annex X” and in the case of the US “Annex A” or “Annex B”) could declare to the Depositary that it wished to take on commitments under the protocol. AOSIS and Poland specifically referred to this taking place in the context of a non-Annex I Party declaring its intent to take on commitments under Article 4.2(a) and (b) of the Convention. The EU specified that a Party could be bound by “some or all” of the commitments on policies and measures “and/or” commitments on emission limitation and reduction. Switzerland adopted an alternative approach, proposing the use of “implementing agreements”, akin to those of the IEA, for non-Annex I Parties to implement policies and measures (as it had similarly proposed for Annex I Parties, see Article 2 above) or QELROs. Canada, in its proposal on policies and measures, also suggested that non-Annex I Parties could choose to undertake certain policies and measures. Japan called on non-Annex I Parties to voluntarily submit the same information as that required of Annex I Parties (including the declaration of a quantified objective and national plan). Japan, and also Armenia, proposed

that non-Annex I Parties putting forward proposals for projects related to climate change mitigation should be eligible for priority financial assistance. The G-77 and China reiterated that no new commitments should be introduced for non-Annex I Parties, while Kenya also emphasized that non-Annex I Parties should not be obliged to enter into new commitments.

477. It is important to recognize that the issue of voluntary commitments for non-Annex I Parties became caught up in debates over proposals for lists of Parties that could include countries not currently included in Annex I, and over so-called “evolution” (see below).

478. The issue of voluntary commitments was allocated to the non-group on QELROs at AGBM 7. However, consideration of the issue was delayed, pending consultations under way among a group of Latin American Parties, led by Argentina, over a possible new proposal. The outcome of these consultations never emerged, however. The issue was therefore not formally discussed, and no text was included in the INF.

479. Chairman Estrada sent his own text on voluntary commitments to the secretariat for inclusion in the CNT, before receiving any suggested text from the secretariat. The text differed considerably from any put forward by Parties in setting out a detailed process through which non-Annex I Parties could take on commitments under the protocol. The draft article was cross-referenced throughout the CNT, and separate provisions were included in the draft article on QELROs for Parties taking on voluntary commitments, for example, allowing their quantified targets to be based on a different timing and level.

480. Chairman Estrada was of the view that Article 4.2(g)⁷³ of the Convention was inflexible and could not meet the needs of most non-Annex I Parties as it would require those wanting to take on Annex I commitments to use 1990 as a baseline and to return emissions to the levels of that year by 2000. New, more flexible, provisions on voluntary accession were therefore needed in the new instrument. However, in Chairman Estrada’s opinion, these should not take the form of a new listing of Parties (as proposed by the EU and the US, for example), as this would simply repeat the inflexible approach of the Convention and would be unacceptable to the G-77 and China. Chairman Estrada therefore used the term “Parties acting under Article 10” (the number of that draft article in the CNT) to refer to Parties taking on voluntary commitments, rather than establishing “new categories” of Parties. “Parties acting under Article 10” was cross-referenced throughout the text.

481. Chairman Estrada had “road tested” this text at informal consultations convened in Tokyo by the Government of Japan in September 1997 before including it in the draft Chairman’s text presented to participants at the informal consultations in October. He had already adjusted his draft to take into account suggestions made at the Tokyo meeting (e.g. adding a requirement to submit a projection of future emissions). Several further modifications were made pursuant to comments at the October consultations. A draft clause requiring non-Annex I Parties to declare the policies and measures they intended to implement to carry out their commitments was deleted, when it was pointed out that Annex I Parties themselves were not subject to such a requirement. However, a paragraph was added to the

⁷³ See footnote 11.

effect that non-Annex I Parties taking on voluntary commitments should also fulfil Annex I Party obligations regarding the submission of inventories and national communications.

482. At AGBM 8, the draft article on voluntary commitments was allocated to the QELROs non-group chaired by Ambassador Kjellén. Ambassador Kjellén in turn invited Mr. Jostein Leiro (Norway) to conduct informal consultations on the draft article. The G-77 and China expressed opposition to the article. The EU stated its view that this draft article could provide a vehicle for new OECD members (e.g. Mexico and the Republic of Korea) and also possibly Turkey, which had requested that its name be deleted from Annex I, to take on commitments under the protocol. Mexico and the Republic of Korea objected to the singling out of potential candidates, but Argentina expressed support for the provisions. Many amendments to Chairman Estrada's text were put forward by Annex I Parties, including Australia, the EU and the US, mostly calling for greater clarity in the provisions, particularly over the process for accepting proposed emission targets and whether or not the commitments would be legally binding. Mr. Leiro preferred not to submit a revised text back to the non-group, due to the sensitivity of the matter. He simply reported that a useful exchange of views had taken place. The CNT text was therefore reproduced without change in the RTUN, but placed completely in square brackets and with the addition of a footnote stating that the G-77 and China had requested the deletion of the article.

483. In the run-up to COP 3, Chairman Estrada requested the secretariat to prepare a document outlining actions taken by non-Annex I Parties relating to climate change mitigation, even in the absence of binding commitments to do so. This was issued as FCCC/AGBM/1997/CRP.5 at AGBM 8, part II.

484. The first time the draft article on voluntary commitments was taken up at COP 3, at a plenary meeting of the CoW held on 3 December, the EU put forward a series of proposed amendments, including a requirement to submit a detailed description of policies and measures to be implemented and specific voting rules for the acceptance of a notification under the article. Chairman Estrada responded that the proposed amendments were the best way to "kill" the article. The G-77 and China reiterated their opposition to the draft article, whilst Mexico and the Republic Korea stated that membership of other organizations (by which they presumably meant the OECD) could not be linked to obligations under the UNFCCC process. Chairman Estrada recalled that the draft article was derived from an AOSIS proposal, which was originally supported by G-77 and China. The Chairman of AOSIS, Ambassador Slade of Samoa, responded that the Alliance had put forward its proposal before the "graduation" discussion (a reference to proposals on "evolution", see below) was initiated, and that its proposal had been used in ways the group had not intended. Chairman Estrada invited Mexico to consult to see if something could be done "before deleting the article, as was proposed by a number of delegations".

485. At a CoW plenary meeting on 5 December, the Mexican delegate reported that there was "no indication" that delegations were interested in beginning informal contacts on the issue. At another meeting later that same day, the Mexican delegate reported that he had held "informal informals" but that he did not think it would be possible to negotiate on this issue on the basis of the existing text, or any other text. He added that the debate that morning on "evolution" in the

COP plenary had clearly indicated the status of this issue (see “evolution” below). Voluntary commitments figured prominently in the ministerial consultations convened by President Ohki in the evening of 8 December. An alternative option, considered informally, was to introduce provisions in the article on emissions trading which would allow non-Annex I Parties to participate in emissions trading, providing they took on a quantified target. This, however, was not pursued.

486. The text was transferred to CRP.2 unchanged. For CRP.4, the paragraph requiring Parties taking on voluntary commitments to adhere to Convention reporting commitments for Annex I Parties was deleted at the initiative of Chairman Estrada and the secretariat. It was realized that such a clause would require non-Annex I Parties to submit information on their emission inventories from the year 1990, which would be impossible for most of these Parties, as they were not compiling inventories at that time. Aside from this and adjustments made to reflect developments in other parts of the text, the draft article remained unchanged in CRP.6.

487. In the final plenary of the CoW, some 27 interventions were made on this draft article, including 14 broadly against and 13 broadly in favour, with Ambassador Slade of Samoa, expressing support for the article, stating that he spoke on behalf of 36 countries (that is, AOSIS). A number of Parties put forward proposed changes to the text, including Argentina, the Republic of Korea, the US, and also Mexico. Chairman Estrada, however, stated that it was “too late” to make amendments. He declared there was no consensus on the draft article, and that it would be deleted.

488. Later in the morning, at around 8:15 a.m., shortly after the adoption of the article on “advancing Article 4.1”, Argentina revived the issue, calling for voluntary commitments to be “discussed at another opportunity”. Chairman Estrada informed the delegate that she would need to request its formal inclusion on the agenda of a COP, and that this should be done in the proper forum, namely, the COP plenary, not the CoW. Argentina was supported by the US, but China and Saudi Arabia raised objections. The exchange ended with the Argentinian delegate stating that, for her delegation, “the matter was not closed”, and it would “be taken up on the first opportunity”. The issue was not raised again at COP 3.

Education, training and public awareness

489. Two proposals were included in the NT under the title education, training and public awareness, from Kenya and the Russian Federation. The Russian Federation called for the provisions of Article 6 of the Convention on this issue to apply to the protocol, while Kenya made reference to qualitative greenhouse gas emission obligations. This article was not allocated to a non-group at AGBM 7, and not included in the INF or later in the CNT. The issue of education, training and public awareness was, however, taken up under relevant provisions in the article on “advancing Article 4.1”.

“Evolution”

490. The issue of the possible launch of negotiations on the extension of commitments to non-Annex I Parties after COP 3, was raised, in particular by the US, in position papers

submitted in 1996⁷⁴. This issue was thrown into focus following a US proposal that was included in its own section in the FC. This stated in legal text, under the heading “evolution”, that “the Parties shall adopt, by [2005], binding provisions so that all Parties have quantitative greenhouse gas emissions obligations and so that there is a mechanism for automatic application of progressive greenhouse gas emissions obligations to Parties, based upon agreed criteria”.

491. Chairman Estrada did not entertain discussion of “evolution” at AGBM 6, aware of its highly controversial nature. Canada, the G-77 and China, New Zealand and the Russian Federation put forward further proposals on “evolution” for inclusion in the NT. Canada and New Zealand both proposed provisions for the launch of negotiations on emission commitments for non-Annex I Parties. New Zealand stated that, beyond the commitments made under the protocol, new commitments to be adopted by Annex I Parties would be contingent on action by non-Annex I Parties. The G-77 and China argued that any further development of commitments should be in accordance with Article 4.2(d) of the Convention. In a later proposal, submitted at AGBM 8⁷⁵, Japan proposed that a “new process, for example in the form of a new mandate” should be agreed at COP 3, to further discuss the modalities of commitments of non-Annex I Parties.

492. “Evolution” was not taken up at AGBM 7, a deliberate decision by Chairman Estrada, and was not covered in the CNT. At AGBM 8, Chairman Estrada announced his intention to draw the attention of the COP to “evolution” in his report to COP 3 (along with other issues, such as preparatory work needed for the first “MOP”).

493. In his report to COP 3, Chairman Estrada mentioned that the future development of the commitments of all Parties, referred to by some as “evolution”, had been raised in the course of the work of the AGBM, and that specific proposals had been put forward in this regard. He announced that, in his judgement, the issue was outside the mandate entrusted to the AGBM, but was appropriate for consideration by the COP. He therefore invited the COP to take up the issue, taking into account the specific proposals put forward by Parties and included in the NT.

494. In the COP plenary on Friday, 5 December, New Zealand put forward a proposal on “next steps”, whereby a review process would be launched in 1998, to be concluded in 2002, to set legally binding commitments for all Parties (except least developed countries) for the period beyond [2014] and to decide on matters relevant to their implementation, including financial and technical aspects. The proposal provoked 46 interventions, most of them expressing strong opposition on the part of non-Annex I Parties. President Ohki stated that, in view of the wide divergence of views expressed, he would consult further with the Bureau on how to deal with the matter. However, the issue was not formally revisited, either in the COP plenary or in the CoW.

Coordination mechanism

495. AOSIS put forward a proposal for a mechanism “to facilitate Annex I Parties’ coordination of measures developed to achieve the objective of the Convention”, included in both the FC and the NT. Although the proposal appeared in the section on institutions and

⁷⁴ See FCCC/AGBM/1996/MISC.2/Add.2 and 4.

⁷⁵ See FCCC/AGBM/1997/MISC.1/Add.6.

mechanisms in the INF, its substance was taken up as part of deliberations on policies and measures (see Article 2 above) and it was not included as a separate article in the CNT.

Decision-making

496. A draft article on this issue was included in both the FC and the NT. In addition to the specific proposals from AOSIS and Switzerland (that decisions on protocol matters should be taken only by Parties thereto), extracts were reproduced from the proposals on the “COP”, the subsidiary bodies, and procedures for adopting amendments, annexes and amendments to annexes from the EU, the EU and US, and Kuwait and Nigeria, respectively. This was aimed at highlighting the implications of the Kuwait and Nigeria proposal, which would have given Parties to the Convention not yet Parties to the protocol decision-making power over the adoption of amendments, annexes and amendments to annexes of the Protocol.

497. The extracts were dropped for the NT, although a footnote was added directing the reader to relevant proposals on the “COP”/“MOP”. Two further proposals specifically on decision-making were added. Proposal 2, from the G-77 and China, concurred with AOSIS and Switzerland that decisions under the protocol should be taken only by Parties thereto. Switzerland expanded on its proposal, by putting forward a two-thirds majority vote for decision-making under the protocol, of both Annex I and non-Annex I Parties. The draft article, however, was not included in the INF document at the close of AGBM 7, and no separate provisions on decision-making were included in the CNT. However, the proposals were reflected, either implicitly or explicitly, elsewhere in the CNT. The draft article on retaining the same COP to the Convention, for example, included a paragraph stating that decisions under the protocol should be taken only by Parties thereto, while the draft articles on amendments, and on annexes and amendments to annexes, were based on the principle that only Parties to the protocol could propose and adopt these.

Relationship to the Convention

498. Three proposals were put forward on this issue and included in the NT, from AOSIS, the G-77 and China and the Russian Federation. All three proposals made the point that the protocol should be an integral part of the Convention. AOSIS went further, calling for the avoidance of duplication and overlap in terms of the functions of the Convention COP and the proposed “MOP”, while noting that the COP to the Convention should keep the protocol under regular review.

499. These three proposals were reproduced as alternatives in the INF. No article on this subject was included in the CNT. Issues regarding the linkage between the Convention and the protocol, however, were taken into account in the remainder of the text, for example, in cross-references to Convention provisions, in the preamble recalling Convention provisions, and by the use of existing Convention institutions.

Relationship to other agreements

500. Two proposals were put forward on this issue and included in the NT, from AOSIS and Australia. AOSIS argued that the protocol should not affect the rights of any Party under the general rules and principles of international law concerning responsibility and liability for the adverse effects of climate change. Australia proposed that the protocol should not derogate from rights and obligations under existing international agreements, in particular the World Trade Organization (WTO).

501. The proposal from Australia (but not from AOSIS) was reproduced in the INF following AGBM 7, but with the whole draft article in square brackets. It was not, however, taken up in the CNT. Although Australia called for provisions on this issue to be addressed later on in the negotiations, its proposed text was not reintroduced. Many AOSIS members have since used that phrase in their statements at the time of signature or ratification of the Protocol.

Provisional application

502. Australia proposed, in text included in the FC, the NT and the INF (where the whole draft article was placed in square brackets), that a Party might notify the Depositary of its intention to provisionally apply the protocol prior to entry into force. This provision was not, however, included in the CNT and the issue was not subsequently raised.

Other annexes

503. Canada, Uzbekistan and Zaire all proposed the development of substantive annexes to the protocol on different issues. These proposals were included in the NT, but were not allocated to any non-group at AGBM 6 or 7. The proposals were never discussed.

Annex I

A chronology of the negotiation of the Kyoto Protocol

| Date | Event |
|-------------------------|---|
| 1995 | |
| 28 March - 7 April | First session of the Conference of the Parties (COP 1) (Berlin) |
| 7 April | Decision 1/CP.1, the "Berlin Mandate", was adopted by COP 1. Ad Hoc Group on the Berlin Mandate (AGBM) was established, under the Chairmanship of Ambassador Raúl Estrada Oyuela (Argentina). |
| 21-25 August | AGBM 1 (Geneva) |
| 30 October - 3 November | AGBM 2 (Geneva) |
| 1996 | |
| 5-8 March | AGBM 3 (Geneva) Informal workshops were held on QELROs and policies and measures |
| 8-19 July 11-16 July | Second session of the Conference of the Parties (COP 2) (Geneva) AGBM 4 (Geneva) Round tables were held on QELROs, policies and measures and possible impacts on developing countries of new commitments for Annex I Parties. Chairman Estrada received a mandate to prepare a "synthesis of proposals" |
| 18 July | COP 2 took note of the Geneva Ministerial Declaration |
| 9-12 December | AGBM 5 (Geneva) The synthesis of proposals (FCCC/AGBM/1996/10; dated 19 November 1996) was considered Informal consultations were held on possible impacts on developing countries of new commitments for Annex I Parties Chairman Estrada received a mandate to prepare a "framework compilation" |
| 1997 | |
| 3-7 March | AGBM 6 (Bonn) The framework compilation (FCCC/AGBM/1997/2 and Add.1; dated 3 and 26 February) was consolidated Informal consultations and a round table were held on differentiation Non-groups were convened on continuing to advance the implementation of Article 4.1 and on institutions and mechanisms Chairman Estrada received a mandate to complete the negotiating text for a protocol or another legal instrument |
| 23-24 April | Informal consultations were convened by the Government of Japan (Tokyo) |
| 1 June | Deadline for the communication of the text of any proposed amendment or protocol to the Parties by the secretariat, in accordance with Convention Articles 15 and 17. The negotiating text (FCCC/AGBM/1997/3/Add.1; dated 22 April 1997) was duly communicated to meet this deadline. |
| 16-17 June | AGBM informal consultation on strengthening the commitments in Article 4.2(a) and (b) (Bonn) |
| 12-13 July | AGBM informal consultation on continuing to advance the implementation of existing commitments in Article 4.1 (Geneva) |

| | |
|--------------------|---|
| 31 July - 7 August | <p>AGBM 7 (Bonn)</p> <p>The negotiating text was debated and consolidated</p> <p>Non-groups were convened on QELROs, policies and measures, continuing to advance the implementation of Article 4.1, and institutions and mechanisms</p> <p>The outcome of the work of AGBM 7 was included in reports by the non-group Chairmen (FCCC/AGBM/1997/INF.1; dated 22 September 1997)</p> <p>Chairman Estrada received a mandate to prepare a Chairman's text</p> |
| 9-10 September | <p>Informal consultations were convened by the Government of Japan (Tokyo)</p> |
| 8-9 October | <p>AGBM informal consultations on the draft consolidated negotiating text by the Chairman (Bonn)</p> |
| 22-31 October | <p>AGBM 8, Part I (Bonn)</p> <p>The consolidated negotiating text by the Chairman (FCCC/AGBM/1997/7; dated 13 October 1997) was used as the basis for negotiation</p> <p>Non-groups were again convened on QELROs (I and II), policies and measures, continuing to advance the implementation of Article 4.1, and institutions and mechanisms</p> <p>The outcome of AGBM 8, Part I, was included in the revised text under negotiation</p> |
| 8 and 9 November | <p>Informal consultations were convened by the Government of Japan (Tokyo)</p> |
| 30 November | <p>AGBM 8, Part II (Kyoto)</p> |
| 1-11 December | <p>Third session of the Conference of the Parties (COP 3) (Kyoto)</p> <p>COP 3 convened a Committee of the Whole under Chairman Estrada to complete negotiations on the protocol or other legal instrument</p> <p>Negotiations were based initially on the revised text under negotiation (FCCC/CP/1997/2; 12 November 1997).</p> <p>Negotiating groups were convened on policies and measures, continuing to advance the implementation of Article 4.1, and institutions and mechanisms. Chairman Estrada took on QELROs himself.</p> <p>A legal drafting group was convened, along with several sub-groups to the negotiating groups.</p> |
| 7 December | <p>Document FCCC/CP/1997/CRP.2 was issued showing the status of negotiations at the start of the high-level segment</p> |
| 9 December | <p>Document FCCC/CP/1997/CRP.4 was issued, including proposed targets for Annex I Parties</p> |
| 10 December | <p>Document FCCC/CP/1997/CRP.6 was issued for consideration at the final CoW plenary meeting</p> |
| 10:15, 11 December | <p>The CoW unanimously recommended the Kyoto Protocol to the United Nations Framework Convention on Climate Change for adoption by the COP</p> |
| 13:15, 11 December | <p>COP 3 adopted the Kyoto Protocol to the United Nations Framework Convention on Climate Change by consensus (FCCC/CP/1997/L.7/Add.1). COP 3 also adopted accompanying decisions 1/CP.3 (adoption of the protocol), 2/CP.3 (methodological issues) and 3/CP.3 (implementation of Article 4.8 and 4.9 of the Convention)</p> |
| 1998 | |
| 16 March 1998 | <p>Kyoto Protocol was opened for signature at United Nations Headquarters in New York. The authentic text is contained in FCCC/CP/1997/7/Add.1</p> |

Annex II

Development over time of the draft protocol text

This marked-up text of the Kyoto Protocol indicates the point in time at which each provision of the Kyoto Protocol first appeared in its final form as the only textual alternative in the draft, and then remained substantively unchanged, with the exception of minor drafting or technical amendments, or *mutatis mutandis* changes to reflect the outcome of negotiations on other issues. This does not imply that any provision was “agreed” at that time; as with all negotiations, nothing was agreed until everything was agreed. The aim of this marked-up text is simply to provide an overview of the progression of the text over time.

- **Text in bold** indicates text appearing in its final form in the CNT (13 October 1997).
- *Text in italics* indicates text appearing in its final form in the RTUN (12 November 1997).
- Text in dash underline indicates text appearing in its final form in CRP.2 (7 December 1997).
- Text underlined indicates text appearing in its final form in CRP.4 (9 December 1997).
- Text double underlined indicates text appearing in its final form in CRP.6 (10 December 1997).
- Plain text indicates text that was inserted in the final CoW plenary, and only appeared in its final form in the authentic text.

KYOTO PROTOCOL TO THE UNITED NATIONS
FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Parties to this Protocol,

**Being Parties to the United Nations Framework Convention on Climate Change,
hereinafter referred to as "the Convention",**

In pursuit of the ultimate objective of the Convention as stated in its Article 2,

Recalling the provisions of the Convention,

Being guided by Article 3 of the Convention,

Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. “Conference of the Parties” means the Conference of the Parties to the Convention.
2. **“Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.**
3. **“Intergovernmental Panel on Climate Change” means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.**
4. **“Montreal Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.**
5. **“Parties present and voting” means Parties present and casting an affirmative or negative vote.**
6. **“Party” means, unless the context otherwise indicates, a Party to this Protocol.**
7. **“Party included in Annex I” means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.**

Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2(e)(i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1(a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation

and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.⁷⁶

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.

5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

⁷⁶ Note: This exact text was included in the RTUN and CRP.2, but not in CRP.4.

6. *Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.*

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

VII.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the

Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.

VIII.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the

methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. *Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.*

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

Article 6

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:

(a) Any such project has the approval of the Parties involved;

(b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;

(c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and

(d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.

3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.

4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties

to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

Article 8

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

*3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. **The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.***

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:

(a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and

(b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

Article 9

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by Article 4, paragraph 2(d), and Article 7, paragraph 2(a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

Article 10

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change⁷⁷:

(i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation

⁷⁷ Note: Although the text of this subparagraph only became the single textual alternative after the final CoW plenary, it was included in its entirety in the RTUN as Alternative A (with Alternative B putting forward a different text). Moreover, with the exception of the last sentence, it also appeared in its entirety in the RTUN.

technologies and methods for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

(a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply mutatis mutandis to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

Article 12

1. A clean development mechanism is hereby defined.

2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.

3. Under the clean development mechanism:

(a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and

(b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.

5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

(a) Voluntary participation approved by each Party involved;

(b) Real, measurable, and long-term benefits related to the mitigation of climate change;
and

(c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

IX.

Article 13

1. *The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.*

2. *Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.*

3. *When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.*

4. *The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:*

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2(d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) *Make recommendations on any matters necessary for the implementation of this Protocol;*

(g) *Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;*

(h) *Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;*

(i) *Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and*

(j) *Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.*

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied mutatis mutandis under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 14

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply mutatis mutandis to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

Article 15

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. *The provisions relating to the functioning of these two bodies under the Convention shall apply mutatis mutandis to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.*

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

Article 16

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

Article 17

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3.⁷⁸ Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

Article 18⁷⁹

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

Article 19

The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Protocol.

Article 20

- 1. Any Party may propose amendments to this Protocol.**
- 2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depository.**
- 3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depository, who shall circulate it to all Parties for their acceptance.**
- 4. Instruments of acceptance in respect of an amendment shall be deposited with the Depository. An amendment adopted in accordance with paragraph 3 above shall enter into**

⁷⁸ Note: Although parts of the text in the first two lines of this Article were previously included in CRP.6 (as indicated), the order of the first two sentences was inverted in that CRP.

⁷⁹ Note: Although this text only appeared as the only textual alternative in CRP.4, it was included in its entirety in CRP.2 as Alternative B (with Alternative A putting forward a different text). Moreover, with the exception of the last sentence, it also appeared in its entirety in the RTUN.

force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 21

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least *six* months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex *other than Annex A or B*, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Article 22

- 1. Each Party shall have one vote, except as provided for in paragraph 2 below.**
- 2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.**

Article 23

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 24

- 1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. *Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.***
- 2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.**
- 3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.*

Article 25⁸⁰

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.

2. For the purposes of this Article, “the total carbon dioxide emissions for 1990 of the Parties included in Annex I” means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto *after the conditions set out in paragraph 1 above for entry into force have been fulfilled*, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 26

No reservations may be made to this Protocol.

Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

Article 28

⁸⁰ Note: Although the first two paragraphs of this article only appeared as the single textual alternative in CRP.4, there were included in their entirety (with the exception of the numbers) as Alternative A in CRP.2 (with Alternative B putting forward a different text).

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

Annex A

Greenhouse gases

Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride (SF₆)

Sectors/source categories

Energy

Fuel combustion

Energy industries

Manufacturing industries and construction

Transport

Other sectors

Other

Fugitive emissions from fuels

Solid fuels

Oil and natural gas

Other

Industrial processes

Mineral products

Chemical industry

Metal production

Other production

Production of halocarbons and sulphur hexafluoride

Consumption of halocarbons and sulphur hexafluoride

Other

Solvent and other product use

Agriculture

Enteric fermentation

Manure management

Rice cultivation

Agricultural soils

Prescribed burning of savannas

Field burning of agricultural residues

Other

Waste

Solid waste disposal on land

Wastewater handling

Waste incineration

Other

Annex B

| <u>Party</u> | <u>Quantified emission limitation or reduction commitment</u> (percentage of base year or period) |
|---|--|
| <u>Australia</u> | 108 |
| <u>Austria</u> | 92 |
| <u>Belgium</u> | 92 |
| <u>Bulgaria*</u> | 92 |
| <u>Canada</u> | 94 |
| <u>Croatia*</u> | 95 |
| <u>Czech Republic*</u> | 92 |
| <u>Denmark</u> | 92 |
| <u>Estonia*</u> | 92 |
| <u>European Community</u> | 92 |
| <u>Finland</u> | 92 |
| <u>France</u> | 92 |
| <u>Germany</u> | 92 |
| <u>Greece</u> | 92 |
| <u>Hungary*</u> | 94 |
| <u>Iceland</u> | 110 |
| <u>Ireland</u> | 92 |
| <u>Italy</u> | 92 |
| <u>Japan</u> | 94 |
| <u>Latvia*</u> | 92 |
| <u>Liechtenstein</u> | 92 |
| <u>Lithuania*</u> | 92 |
| <u>Luxembourg</u> | 92 |
| <u>Monaco</u> | 92 |
| <u>Netherlands</u> | 92 |
| <u>New Zealand</u> | 100 |
| <u>Norway</u> | 101 |
| <u>Poland*</u> | 94 |
| <u>Portugal</u> | 92 |
| <u>Romania*</u> | 92 |
| <u>Russian Federation*</u> | 100 |
| <u>Slovakia*</u> | 92 |
| <u>Slovenia*</u> | 92 |
| <u>Spain</u> | 92 |
| <u>Sweden</u> | 92 |
| <u>Switzerland</u> | 92 |
| <u>Ukraine*</u> | 100 |
| <u>United Kingdom of Great Britain and Northern Ireland</u> | 92 |
| <u>United States of America</u> | 93 |

* Countries that are undergoing the process of transition to a market economy.

Annex III

Proposals from Parties

| | | |
|---|---|--|
| AOSIS (Trinidad and Tobago) | 20 Sept. 1994 1 April 1997 | 1996/MISC.2 1997/MISC.1/Add.2 |
| Armenia | 28 March 1997 | 1997/MISC.1/Add.2 |
| Australia | 28 Oct. 1996 19 Feb 1997 27 March 1997 | 1996/MISC.2/Add.2 1997/MISC.1 1997/MISC.1/Add.2 |
| Brazil | 28 May 1997 | 1997/MISC.1/Add.3 |
| Canada | 1 April 1997 | 1997/MISC.1/Add.2 |
| Costa Rica | 19 March 1997 | 1997/MISC.1/Add.2 |
| Czech Republic | 27 March 1997 | 1997/MISC.1/Add.2 |
| EU Spain Ireland Netherlands Netherlands Netherlands Luxembourg | 30 Oct. 1995 15 Oct. 1996 19 Feb. 1997 1 April 1997 21 April 1997 25 Oct. 1997 | 1996/MISC.2 1996/MISC.2/Add.2 1997/MISC.1 1997/MISC.1/Add.2 1997/MISC.1/Add.3 1997/MISC.1/Add.7 |
| France | 6 Dec. 1996 | 1997/MISC.1 |
| Gambia | 11 Oct. 1996 | 1996/MISC.2/Add.2 |
| Georgia | 28 March 1997 25 July 1997 6 Oct. 1997 | 1997/MISC.1/Add.2 1997/MISC.1/Add.5 1997/MISC.1/Add.6 |
| Germany | 22 Sept. 1994 26 March 1996 | 1996/MISC.2 1996/MISC.2 |
| Group of 77 and China Costa Rica Costa Rica United Republic of Tanzania United Republic of Tanzania United Republic of Tanzania United Republic of Tanzania | 11 Dec. 1996 19 Feb. 1997 19 March 1997 22 Oct. 1997 29 Oct. 1997 30 Oct. 1997 | 1997/MISC.1 1997/MISC.1 1997/MISC.1/Add.2 1997/MISC.1/Add.6 1997/MISC.1/Add.8 1997/MISC.1/Add.9 |
| Hungary (on behalf of Bulgaria, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia) | 27 March 1997 | 1997/MISC.1/Add.2 |
| Iceland | 15 Jan. 1997 9 Oct. 1997 | 1997/MISC.1 1997/MISC.1/Add.6 |
| Iceland and Norway | 5 March 1997 | 1997/MISC.1/Add.2 |
| The Islamic Republic of Iran (on behalf of Saudi Arabia, United Arab Emirates Venezuela) ⁸¹ | 19 Feb. 1997 26 Feb. 1997 | 1997/MISC.1 1997/MISC.1/Add.1 |

⁸¹ This submission was wrongly attributed to Venezuela, on behalf of the other Parties, in FCCC/AGBM/1997/MISC.1/Add.1.

| | | |
|--|---|--|
| Japan | 27 June 1996 9 Dec. 1996 4 March 1997 30 May 1997 29 July 1997 6 Oct. 1997 31 Oct. 1997 | 1996/MISC.2/Add.1 1996/MISC.2/Add.4 1997/MISC.1/Add.2 1997/MISC.1/Add.4 1997/MISC.1/Add.5 1997/MISC.1/Add.6 1997/MISC.1/Add.10 |
| Kenya | 26 March 1997 16 July 1997 | 1997/MISC.1/Add.2 1997/MISC.1/Add.5 |
| Kuwait | 19 Feb. 1997 | 1997/MISC.1 |
| New Zealand (In association with Canada and the US) | 4 Dec. 1996 26 Feb. 1997 1 April 1997 9 Oct. 1997 15 Jan. 1997 | 1996/MISC.2/Add.4 1997/MISC.1/Add.1 1997/MISC.1/Add.2 1997/MISC.1/Add.6 1997/MISC.1 |
| Nigeria | 19 Feb. 1997 | 1997/MISC.1 |
| Norway | 16 Oct. 1996 19 March 1997 | 1996/MISC.2/Add.2 1997/MISC.1/Add.2 |
| Peru | 7 March 1997 | 1997/MISC.1/Add.2 |
| Philippines | 25 March 1997 | 1997/MISC.1/Add.2 |
| Poland (on behalf of Bulgaria, Estonia, Latvia, Slovenia) (on behalf of Bulgaria, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia) | 19 Feb. 1997 27 March 1997 | 1997/MISC.1 1997/MISC.1/Add.2 |
| Republic of Korea | 26 Feb. 1997 | 1997/MISC.1/Add.1 |
| Russian Federation | 15 Jan. 1996 5 Dec. 1996 26 Feb. 1997 26 March 1997 | 1996/MISC.2 1996/MISC.2/Add.4 1997/MISC.1/Add.1 1997/MISC.1/Add.2 |
| Saudi Arabia | 10 April 1996 26 Feb. 1997 | 1996/MISC.2 1997/MISC.1/Add.1 |
| Slovakia (on behalf of Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovenia) | 27 March 1997 | 1997/MISC.1/Add.2 |
| Switzerland | 29 Nov. 1996 19 Feb. 1997 25 March 1997 | 1996/MISC.2/Add.3 1997/MISC.1 1997/MISC.1/Add.2 |
| UK | 16 April 1996 15 Oct. 1996 29 May 1997 | 1996/MISC.2 1996/MISC.2/Add.2 1997/MISC.1/Add.3 |
| US | 21 Oct. 1996 9 Dec. 1996 17 Jan. 1997 2 June 1997 | 1996/MISC.2/Add.2 1996/MISC.2/Add.4 1997/MISC.1 1997/MISC.1/Add.4 |
| Uzbekistan (on behalf of Armenia, Azerbaijan, Georgia, Moldova, Turkmenistan) | 19 Feb. 1997 28 March 1997 | 1997/MISC.1 1997/MISC.1/Add.2 |
| Zaire, now Democratic Republic of the Congo) | 23 Oct. 1996 | 1996/MISC.2/Add.2 |
