

AD HOC GROUP ON THE BERLIN MANDATE
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31 October 1997

ENGLISH ONLY

ELEMENTS RELATED TO INSTITUTIONS AND MECHANISMS

Proposal by the Chairman

Preamble

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 its Article 3,

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. "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
2. "Intergovernmental Panel on Climate Change" means the Intergovernmental Panel on Climate Change jointly established by the World Meteorological Organization and the United Nations Environment Programme in 1988.

3. "Montreal Protocol" means the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, as subsequently adjusted and amended.
4. "Parties present and voting" means Parties present and casting an affirmative or negative vote.
5. "Party" means, unless the text otherwise indicates, a Party to this Protocol.
6. "Party included in Annex I" means a Party included in Annex I to the Convention, and as may be subsequently amended by the Conference of the Parties to the Convention, or a Party which has made a notification under Article 4.2(g) of the Convention.
7. "Subsidiary bodies" means the subsidiary bodies established by Article 9 and Article 10 of the Convention.
8. *(Additional definitions, as necessary)*

Article 14¹

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the Meeting of the Parties to the 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 Meeting of the Parties. When the Conference of the Parties exercises its functions as the Meeting of the Parties to this Protocol, decisions under the Protocol shall be taken only by those of its members that are, at that time, Parties to this Protocol.
3. When the Conference of the Parties exercises its functions 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 substituted by an additional member to be elected by and from amongst the Parties to this Protocol.
4. 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) Periodically examine the obligations of the Parties and the institutional arrangements under the Protocol, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

1 There is an alternative proposal by the Group of 77 and China in document FCCC/AGBM/1997/MISC.1/Add.9.

- (b) 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 the Protocol;
- (c) Facilitate, at the request of two or more Parties, the co-ordination 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 the Protocol;
- (d) Promote and guide, in accordance with the objective of the Convention and the provisions of the Protocol, the development and periodic refinement of comparable methodologies, to be agreed on by the Meeting of the Parties, *inter alia*, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
- (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Protocol, the implementation of the Protocol by the Parties, the overall effects of the measures taken pursuant to the 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;
- (f) Consider and adopt regular reports on the implementation of the Protocol and ensure their publication;
- (g) Make recommendations on any matters necessary for the implementation of the Protocol;
- (h) Seek to mobilize additional funding in accordance with Article 13.2;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Protocol;
- (j) Elaborate the functions and terms of reference for the subsidiary bodies established under this Protocol;
- (k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
- (l) Seek and utilize, where appropriate, the services and co-operation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
- (m) Exercise such other functions as may be required for the implementation of this Protocol, and shall consider any assignment forwarded to it by the Conference of the Parties to the Convention.

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

6. Extraordinary sessions of the Meeting of the Parties shall be held at such other times as may be deemed necessary by the Meeting of the Parties, 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.

7. 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 Meeting of the Parties 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 Meeting of the Parties 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 adopted by the Meeting of the Parties.

8. Without prejudice to paragraphs 1 to 7 above, the Parties to this Protocol may meet at any time they deem necessary.

Article 15

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

2. The functions of the secretariat under Article 8.2 and arrangements made for its functioning under Article 8.3 of the Convention shall apply *mutatis mutandis* to this Protocol. The secretariat shall also exercise the functions assigned to it under this Protocol.

[3. To the extent that they are distinct, the costs of secretariat services for this Protocol shall be met by the Parties thereto.]

Article 16

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention shall serve as the Subsidiary Body for Scientific

and Technological Advice and the Subsidiary Body for Implementation of the Protocol. Their functioning with respect to the Convention shall apply *mutatis mutandis* to this Protocol.²

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 exercise their functions as the subsidiary bodies of this Protocol, decisions under the Protocol shall be taken only by those of its members that are, at that time, Parties to this Protocol.

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

Article 17

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 to the Convention.

Article 17 bis

The Meeting of the Parties 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 binding penalties for non-compliance under the procedures and mechanisms established under this Article shall be...³

Article 17 ter

The provisions of Article 14 of the Convention shall apply *mutatis mutandis* to this Protocol.

2 Proposal for 1 bis "Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Protocol shall be held in conjunction with the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention."

3 The Group of 77 and China stated that this matter is linked with the issue of a Clean Development Fund. Cross referencing may be introduced once the actual place for the text on a Clean Development Fund is proposed. The Group of 77 and China reserves the right to revert to this Article.

Article 18

1. Any Party may propose amendments to this Protocol.⁴
2. Amendments to this Protocol shall be adopted at an ordinary session of the Meeting of the Parties to the 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 session at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Protocol, to the Parties and signatories to the Convention and, for information, to the Depositary.
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.⁵ The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into 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
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 19⁶

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. Such annexes other than annexes XY 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.

4 Proposal to insert after Party "in the light of the review of the adequacy of Art 4.2 (a), (b) and (d) of the Convention."

5 There is an alternative proposal in document FCCC/AGBM/1997/INF.1 paragraphs 17.2 and 17.3.

6 To be revisited in the light of further discussions on Article 3.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Meeting of the Parties. 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 session 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 signatories to this Protocol, 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, other than XY, that has been proposed and adopted or amended in accordance with paragraphs 2, 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 or amendment of 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 an 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, other than XY, 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.

6 bis. Proposals for amendments to annexes XY to the Protocol shall be adopted and enter into force in accordance with the procedure laid down in Article 18.

Article 20⁷

1. Attachments 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 attachments thereto.

2. The adoption and entry into force of attachments, and amendments to attachments, shall be in accordance with Article 18, provided that a proposed amendment to the commitment of any Party as set out in an attachment may be adopted only with the specific consent of that Party.

7 To be revisited in the light of further discussions on Article 3.

Article 21

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 which 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 21 bis

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

Article 22⁸

1. This Protocol shall be open for signature and subject to ratification, acceptance, approval or accession 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, and shall be open for accession from the day after the date on which this Protocol 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 23

No reservations may be made to this Protocol.⁹

8 To be revisited in the light of further discussions on the proposed Article 3 bis.

9 There was a reservation to the Article by one Party.

Article 24

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession, provided that the total carbon dioxide emissions for 1990 of the Parties which have deposited their instrument of ratification, acceptance, approval or accession, as indicated in their most recent national communication submitted under Article 12 of the Convention, by that time represent no less than three Gigatonnes of carbon.¹⁰
2. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions for the entry into force have been fulfilled in accordance with paragraph 1 above, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
3. 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 this organization.

Article 25

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 26

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.

¹⁰ There was no agreement on this paragraph.