

BRIEFING PAPER ON THE AOSIS PROTOCOL

This briefing has been prepared as a guide to the text of a Draft Protocol to the United Nations Framework Convention on Climate Change on Greenhouse Gas Emissions Reduction (Draft Protocol), submitted by the government of Trinidad and Tobago on behalf the Alliance of Small Island States (AOSIS) for consideration by the Parties to the Convention at the 11th session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, and for adoption at the first session of the Conference of the Parties.

General observations:

The primary aim of the Draft Protocol is to build upon the 1992 United Nations Framework Convention on Climate Change (Convention) by strengthening the specific commitments of developed country Parties to reduce their emissions of carbon dioxide (CO₂), by requiring developed country Parties to adopt specific targets and timetables for the control of emissions of other greenhouse gases, and by providing a mechanism for the coordination of specific measures designed to reduce greenhouse gas emissions.

The Draft Protocol does not impose any obligations on developing country Parties additional to those already contained in the Convention. It is designed to encourage developing country participation in the progressive development of climate change policy through the Draft Protocol's mechanism for coordination of measures, and by focusing on the need for accelerated transfers of relevant technologies to developing countries.

The Draft Protocol is intended to complement and not supplant the Convention. Much of its text is drawn from the Convention's consensus language or from the text of other widely accepted international agreements, or intergovernmental declarations. Parties to the Protocol would hope to rely upon the procedures, mechanisms, and institutional arrangements already established under the Convention. The Convention anticipates this relationship by authorising its Conference of Parties to keep under review any related legal instruments it may adapt.

Specific Provisions:

PREAMBLE

The preamble to an international agreement usually states the background and purposes of the agreement. The preamble provides context, and an indication of the parties intent, to guide the interpretation the text.

The Draft Protocol's Preamble restates a number of elements contained in the Convention, including its Objective, and clearly emphasises that the burden of achieving this Objective rests with the developed states, that have undertaken in Article 3 of the Convention to take the lead in combatting climate change.

Preambular Paragraph 4 highlights the intended focus of this Protocol by recognising the

need for developed country Parties to adopt specific targets and time frames for reducing emissions of greenhouse gases to achieve the Objective of the Convention

The final paragraph of the Preamble acknowledges the need for a long term perspective and a regime that is responsive to changing circumstances.

ARTICLE 1: DEFINITIONS

Article I clarifies that certain terms used in the Protocol are intended to have the same meaning as when used in the Convention, or as explicitly defined in Article 1 of the Convention

Article 1(1), (7) and (8) differentiate between "Parties to the Protocol and "Parties to the Convention. This distinction anticipates that, while all Parties to the Protocol must first be Parties to the Convention, not all the Parties to the Convention will necessarily become Parties to the Protocol. This may result in Parties to the Protocol having a different legal relationship to each other than they will have with Parties to the Convention that have chosen not to become Parties to the Protocol.

ARTICLES 2 - 3: COMMITMENTS

BASIC COMMITMENT (Article 2)

This basic commitment applies to all parties to the Protocol and restates, word for word, the core of the general commitment contained in the Convention's Article 4(1)(b), which requires, among other things, all parties to the Convention to implement programmes containing measures to mitigate climate change. Article 2 of the Protocol, therefore, is not intended to create any additional commitments for any category of Party. It is included to signal the close relationship of the Protocol to the Convention and the far more specific focus of the Protocol on developed country greenhouse gas emissions.

TARGETS FOR GREENHOUSE GAS REDUCTIONS (Article 3)

This specific commitment, which is the heart of Protocol, requires developed country Parties to the Protocol that are included in Annex I of the Convention to reduce their emissions of CO₂ by at least 20% of 1990 levels by 2005, and to establish timetables for controlling emissions of other greenhouse gases.

The CO₂ target and timetable that would be established by the Protocols ofion referred to loosely as the "Toronto Target" after the influential recommendations of the World Conference on the Changing Atmosphere held in Toronto, June 1988. The Toronto Statement declared that stabilising atmospheric concentrations of CO₂ is an imperative real and estimated that this would require reductions of more than 50% from 1988 emission levels. The Toronto Statement recommended a 20% reduction from 1988 levels by 2005 as an initial global goal".

In the lead up to the negotiations of the Convention a number of intergovernmental conferences supported the Toronto Target, including the Nordwijk Declaration on Atmospheric Pollution and Climate Change of 1989 and the Ministerial Declaration on Sustainable Development in the ECE, Bergen, Norway 1990. During this period, a number of developed countries made unilateral statements, or adopted domestic policies that reflected targets and timetables similar to or more ambitious than the Toronto Target.

Most recently, within the European Union, the European Parliament and the European Council have endorsed the development of specific greenhouse gas reduction targets. In September 1994, a European Parliament resolution called upon the EU and Member States to support the Toronto Target. In December 1994, the European Council has asked the Commission to present proposals for progressive reductions for CO₂ and other greenhouse Gases for target years 2005 and 2010.

Rather than adopting the comprehensive" or "basket of games approach to emissions limitation, where all sources of greenhouse gases and sinks are considered collectively, the Draft Protocol proposes to deal with each greenhouse gas separately. Because of the scientific and political uncertainty currently surrounding appropriate targets for other greenhouse gases, Article 3(1)(b) does not introduce immediate emissions reductions targets, but requires that Annex I parties, at the first Meeting of the Parties to the Protocol, adopt specific targets and timetables to limit or reduce other greenhouse gases.

The list of gases provided in Article 3(1)(b) is not intended to exclude or prioritise any particular greenhouse gases, except to exclude those controlled by the Montreal Protocol.

REVIEW AND REVISION OF TARGETS (Article 3(2))

Article 3(2) authorizes the Meeting of the Parties (as established by Article 8) to review and revise both the CO₂ targets and timetables, established in Article 3(1)(a), and the controls for other greenhouse gases that are to be adopted under Article 3(1)(b). This empowers the Meeting of the Parties to analyze the adequacy of the existing measures and to adopt further emissions reductions if required by science and agreed to by the Parties.

Any revision of the Protocol's commitments is to be done in accordance with the precautionary principle and the best available scientific information and assessment of climate change'. This is intended to ensure that while the future development of the protocol should be science driven, and that lack of full scientific certainty should not be used as a reason for postponing measures designed to prevent climate change. The precautionary principle has become a standard feature of recent environmental treaties and declarations, including the Convention itself, and notably in the Ozone and Acid Rain regimes.

I PARTIES TO THE SPECIFIC ACCESSION OF NON-ANNEX COMMITMENTS (Article 3(3))

As mentioned above, the commitments in Article 3 are binding only on the developed country Parties that are listed in Annex I of the Convention, and do not apply to developing states. However, in the same manner as Article 4(2)) of the Convention allows developing states or other non-Annex I countries to consent to be bound by the commitments that apply only to Annex I parties, 30 Article 3(3) of the Protocol creates the identical mechanism in relation to the specific obligations in Articles 3, 4 and 5 of the Protocol. Such a provision has already proved its usefulness under the Convention, as the government of Monaco has used it to accept the commitments of Annex I countries. The governments of Slovakia and the Czech Republic have recently announce that they intend to make similar commitments. Developing and other non-Annex I Parties to the Protocol could only be bound by these commitments if they voluntarily chose to be bound.

ARTICLE 4: COORDINATION MECHANISM

The Protocol's Coordination Mechanism is intended to create a subsidiary body that will provide advice to the Meeting of the Parties and offer a forum for the negotiation of specific economic, administrative and other instruments that may assist Parties in meeting the Protocol's Objective.

Parties, policy analysis and climate activists have long recognised that regulation of the economically integral activities that emit greenhouse gases will require a coordinated approach. Indeed, Article 4(2)(e) of the Convention, requires that Annex I Parties "coordinate as appropriate with other such parties, relevant economic and administrative instruments developed to achieve the objective of the Convention."

Because the measures undertaken by Annex I Parties to the Protocol, especially those that may have an impact on trade, will affect the interests of developing countries, the Coordination Mechanism is open to the participation of all parties. It is expected that the Mechanism's activities will be closely coordinated with the work of the Convention's COP under Article 7(2)(c) of the Convention and the Convention's Subsidiary Bodies on Scientific and Technical Advice and on Implementation

ARTICLE 5: REPORTING REQUIREMENTS

The Annex I Parties to the Protocol are required to submit a detailed description of the policies, programmes and measures taken to implement their commitments under Articles 2, 4, and provide an estimate of the resulting effects on emissions and removals by their sources and sinks.

Although this language is virtually identical to that contained in Articles 4 and 12 of the Convention, the reporting under the Protocol will have to reflect the strengthened emissions reductions commitments it requires. The more concrete nature of the obligations under the Protocol will require more detailed and precise reports from the Annex I parties.

Part of this detail is a new reporting requirement introduced by Article 5(2) which requires that Annex I Parties provide a cost/benefit analysis of the measures that they have undertaken. This is intended to assist the Parties in assessing the economic burdens and benefits realised by Parties as they implement the Protocol.

The Protocol imposes no additional reporting requirements upon developing country Parties.

ARTICLE 6: INSTITUTIONAL ARRANGEMENTS

Article 6 reflects the desire to ensure that the Protocol makes use of the institutions established under the Convention without unfairly imposing costs on those countries that may be Parties to the Convention, but that are not Parties to the Protocol

ARTICLE 7: TRANSFER OF TECHNOLOGY

Article 7 enhances the technology transfer provisions of the Convention by requiring that the "best available technologies... are expeditiously transferred to developing countries under "fair and most favourable conditions. This language is borrowed from the Montreal Protocol on Substances That Deplete the Ozone Layer, is significantly stronger than the technology transfer provisions in Article 4(1)(c) and (b), and Article 4(5) of the Convention. It is intended to provide an incentive for developing countries to participate in reaching the Objective shared by the Convention and the Protocol and to ensure that advanced technologies forced by Annex I Parties strengthened commitments will be transferred expeditiously to the South

ARTICLE 8: THE MEETING OF THE PARTIES

The Protocol establishes a Meeting of the Parties with powers to review the implementation of the Protocol, adopt new targets and timetables, and assess the effectiveness of the steps taken by developed countries.

A long list of specific functions and powers are specified in Article 8(1), including the catch all which entitles it to exercise such other functions as are required for the implementation of this Protocol. The majority of these provisions are identical to powers attributed to the Conference of the Parties for the implementation of the Convention by Article 7(2) of the Convention.

Article 8(2)-(4) of the Protocol, which contains the rules governing the holding of sessions of the Meeting of Parties, and attendance, are the same as the provisions in Article 7(4)-(6) of the Convention, which cover sessions of the Conference of the Parties.

Article 8(1)(d)-(c) provides that the Meeting of the Parties will receive, review and ensure the publication of the reports submitted by Annex I parties on their implementation of greenhouse gas control measures, and to regularly assess the overall aggregated effect of the steps taken by Annex I parties.

Essentially these provisions give to the Meeting of the Parties the function in relation to the Protocol, that the Convention, in Article 10, entrusted to the Subsidiary Body For Implementation. The publication of national reports and the international assessment helps to promote transparency and facilitates public analysis by the media and NGOs of how effectively industrialized countries are fulfilling their commitments under the Protocol.

FINAL CLAUSES:

DISPUTE SETTLEMENT

Article 9 states that any disputes are to be settled in accordance with the terms of the Convention. It leaves open the possibility that the Parties to the Protocol may decide, in cooperation with the Parties to the Convention, to make use of whatever Multilateral Consultative Process may be established under Article 13 of the Convention.

AMENDMENTS

Article 10 establishes the same procedure for the proposal, adoption and entry into force of amendments to the Protocol as apply in relation to amendments to the Convention. However one notable difference is that the Convention provides for adoption of amendments by a 3/4 majority when consensus cannot be reached, whereas the Protocol specifies a smaller majority at only 2/3.

OTHERS

The provisions dealing with annexes, right to vote, the depositary, signature, ratification, entry into force, reservations, withdrawals and authentic texts are the same as in the Convention.