M2C - advance copy

A/AC.237/WG.II/CRP.8
17 December 1991

ORIGINAL: ENGLISH

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR
A FRAMEWORK CONVENTION ON CLIMATE CHANGE
WORKING GROUP II
Fourth session
Geneva, 9-20 December 1991
Agenda Item 2(b)

NEGOTIATION OF A FRAMEWORK CONVENTION ON CLIMATE CHANGE

Elements related to mechanisms

Vanuatu:* draft annex relating to Article 23 (Insurance) for inclusion in the revised single text on elements relating to mechanisms (A/AC.237/WG.II/Misc.13) submitted by the Co-Chairmen of Working Group II)

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* On behalf of the States participating in the Committee which are members of the Alliance of Small Island States.

ANNEX

INSURANCE MECHANISM

1. The Parties recognize that:

(1) There should be established, as an integral part of the Framework Convention on Climate Change, an International Climate Fund to finance measures to counter the adverse consequences of climate change, and a separate International Insurance Pool to provide financial insurance against the consequences of sea level rise;

(2) Revenue for the Insurance Pool should be drawn from mandatory sources, in particular, developed country assessments;

(3) The financial resources of the Insurance Pool should be new, additional and adequate;

(4) The Insurance Pool should be under the control and direction of the Conference of the Parties.

(5) The resources of the Insurance Pool should be used to compensate the most vulnerable small island and low-lying coastal developing countries for loss and damage resulting from sea level rise.

2. The Parties further recognize that the formulation of an Insurance Pool scheme involves consideration of the following main questions:

- Methods of funding an International Insurance Pool;
- Classification of the types of loss to be covered by the Insurance Pool;
- Criteria for establishing entitlement to claim against the Pool;
- Methods of evaluating loss resulting from sea level rise;
- Limitations on the amount of compensation payable by the Pool.

3. The Parties accordingly agree as follows:

(1) The financial burden of loss and damage suffered by the most vulnerable small island and low-lying developing countries (Group 1 countries) as a result of sea level rise shall be distributed in an equitable manner amongst the industrialized developed countries (Group 2 countries) by means of an Insurance Pool.

(2) The Insurance Pool shall be funded by contributions levied on Group 2 countries.

(3) The administrating authority ("the Authority") for the scheme shall be a body controlled on an equitable basis by the Group 1 and Group 2 countries within the framework of the Conference of the Parties.

(4) The contributions referred to in paragraph 2 shall be calculated according to a formula modelled on the 1963 Brussels Supplementary Convention on Third Party Liability in the field of Nuclear Energy, as follows:

(a) As to 50%, on the basis of the ratio between the gross national product at current prices of each Group 2 country and the total of the gross national products of all Group 2 countries in the year prior to the year in which the contribution was levied ("the contribution year");

(b) as to 50%, on the basis of the ratio between the total emissions of CO_2 of each Group 2 country and the total CO_2 emissions of all Group 2 countries in the year prior to the contribution year;

(5) Ten years from the date on which the Convention enters into force the Group 2 countries shall contribute to the Insurance Pool an agreed percentage of the total of the gross national products of all Group 2 countries in the year prior to the contribution year, apportioned as in paragraph 4, provided that over the 10-year period the rate of global mean sea level rise will have reached an agreed figure. If the rate of global mean sea level rise has not reached the agreed figure by the end of the 10-year period, a review shall thereafter be carried out at five-yearly intervals and the obligation of the Group 2 countries to contribute to the Insurance Pool will not arise until the year following the review in which it is established to the satisfaction of the Authority that the rate of global mean sea level rise has reached the agreed figure or that absolute global mean sea level rise has reached an agreed figure.

(6) The insurance fund so constituted shall be invested by the Authority in interest-bearing securities as determined by the Conference of the Parties.

(7) No right to claim against the Pool in respect of loss or damage in any area of a Group 1 country shall arise until:

(a) It shall have been established to the satisfaction of the Authority that the rate of global mean sea level rise and the absolute level of global mean sea level rise has reached agreed figures;

(b) It shall have been established to the satisfaction of the Authority that the relative mean sea level rise for any insured area in a Group 1 country has reached an agreed level above base levels determined for each area insured (such relative mean sea level figures having been determined within 10 years of the Convention coming into force); and

(c) One year shall have elapsed from the date upon which the figures referred to in sub-paragraph (a) shall have been established as having been reached (that date plus one year being "the inception date"):

(8) In the first instance those areas of Group 1 countries which would be directly affected by sea level rise to a level of an agreed number of centimetres above the base levels referred to in paragraph 7(b) shall be valued for insurance. Marketed assets shall be valued on the basis of gross domestic product for the insured area in question. Non-marketed interests shall be valued on the basis of formulae to be agreed.

(9) The insured values covered shall be negotiated between the Authority and the Government of each Group 1 country in accordance with valuation principles to be agreed. The same "policy conditions" shall be applicable to all Group 1 countries.

(10) All assets and interests intended to be insured under the scheme shall be listed by Group 1 countries for registration with the Authority. Records of assets and interests registered shall be kept up to date. Valuations of assets and interests registered for insurance shall be carried out in accordance with the agreed formulae and shall be assessed as soon as possible after the setting-up of the Authority and in any event within 10 years of the Convention coming into force. Revaluations shall be carried out periodically as appropriate.

(11) The first period of insurance shall commence on the inception date as defined in paragraph 7(c) and shall cover an agreed period following the inception date. Loss or damage occurring within the first and each following period of insurance, if accepted as a valid claim by the Authority, shall be paid out of the Insurance Pool as accumulated at the closing date of the period of insurance.

(12) If the funds in the Pool are insufficient to meet all valid claims, the claims shall be paid out on an equitable basis. If, after payment out of all valid claims in full, any surplus shall remain in the Pool, the surplus shall be carried over to the credit of the following insurance period.

(13) Prior to the closing date of the first period of insurance and of each subsequent period, the Conference of the Parties shall, after consultation with the Authority:

(a) fix the length of the next period of insurance;

(b) estimate the probable extent of claims on the Pool during the next insurance period;

(c) determine the level of contributions to be levied on Group 2 countries sufficient to meet the estimated claims, after taking account of any surplus carried forward from the preceding period.

(14) Claims against the Insurance Pool in respect of insured assets and interests shall be dealt with by the Authority. The Authority shall investigate the cause of any claimed loss, prepare estimates, determine whether the claim comes within the terms of the insurance, evaluate the extent of loss and assess the amount of the claim recoverable by reference to the insured value of the asset or interest and any applicable limits.

(15) All assets in insured areas of Group 1 countries, whether commercially insured or not, shall in the first instance be valued for insurance, but no claims shall be accepted by the Pool in respect of property which at the time loss or damage occurs is insured commercially, whether by a private insurance company or otherwise.

(16) In assessing claims against the Pool, the Authority shall determine whether the loss or damage claimed could have been avoided or mitigated by measures which might reasonably have been taken at an earlier stage. In determining whether measures could or could not reasonably have been taken at an earlier stage, account shall be taken, amongst other things, of the availability of funds, both domestic and international, which would have enabled mitigating or preventative measures to have been taken, and the availability of commercial insurance on reasonable terms.

(17) If differences of opinion arise between the Authority and the participating countries, every effort shall be made to negotiate a resolution, but if this is not achievable disputes shall be submitted to an [the] arbitration tribunal under a special arbitration scheme [the Convention].

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Explanatory Notes on Insurance Annex

(a) The Ministerial Declaration of the Second World Climate Conference identified small island and low-lying coastal developing countries and developing countries particularly vulnerable to desertification and drought as the two groups of countries whose survival was most threatened by the adverse consequences of climate change. The proposed insurance scheme is directed towards the consequences of sea level rise, but it might serve as a model for a parallel insurance scheme for those developing countries most vulnerable to desertification and drought.

(b) Under the Insurance scheme no contributions would become payable by the industrialized developed countries for at least 10 years - the period within which, it has often been stated, it would be possible to establish with more certainty the extent to which global warming and sea level rise will increase if greenhouse gas emission policies remain unchanged.

(c) No claims on the Insurance Pool would arise unless the rate of global mean sea level rise and the absolute increase in global mean sea level were to reach certain figures. These figures might be set to reflect a rate of increase beyond which the vulnerable ecosystems of the insured countries could not easily adapt and an absolute rise beyond which significant damage to small islands and low-lying coastal areas would occur.

(d) It has been suggested that the method of funding the International Insurance Pool should be along lines similar to those adopted in the Nuclear Damage Conventions and that in the context of global warming and sea level rise this should be by reference to GNP and total CO_2 emission levels of the industrialized developed countries.

(e) The scheme would therefore offer incentives to the industrialized developed countries to limit their CO_2 emissions so as to mitigate the rate and extent of global warming and consequent sea level rise.

(f) After a minimum of 10 years a single contribution of a percentage of GNP (adjusted to reflect respective CO_2 emissions) would be made by the industrialized developed countries. If any contributing country preferred to put aside and invest its contribution in, for example, 1992, it could, at real rates of interest of 5%, produce its estimated contribution for 2002 by putting aside three-fifths of that estimated figure in 1992.

(g) Depending upon the rate of global mean sea level rise and absolute global mean sea level rise, no claim on the Pool might arise for several decades, even on a "business as usual" scenario. A fund of US$x billion established in 2002 and invested at real rates of interest of 5%, would produce a fund of $4.3x billion in 30 years and $7x billion in 40 years.

(h) The Working Group set up by the Intergovernmental Panel on Climate Change to consider Response Strategies (Working Group III), and in particular the Coastal Zone Management Subgroup set up by Working Group III, categorized the responses to sea level rise under three broad headings, namely "Retreat", "Accommodation" and "Protection". To quote the CZM Subgroup's report, page iv:

> "Retreat involves no effort to protect the land from the sea. The coastal zone is abandoned and ecosystems shift landward. This choice can be motivated by excessive economic or environmental impacts of protection. In the extreme case, an entire area may be abandoned.
>
> Accommodation implies that people continue to use the land at risk but do not attempt to prevent the land from being flooded. This option includes erecting emergency flood shelters, elevating buildings on piles, converting agriculture to fish farming, or growing flood- or salt-tolerant crops.
>
> Protection involves hard structures such as sea walls and dikes, as well as soft solutions such as dunes and vegetation, to protect the land from the sea so that existing land uses can continue."

In general losses resulting from the "Retreat" option would seem to fall naturally within the scope of the Insurance Pool, whilst expenditure incurred in implementing "Protection" responses would fall within the proposed International Climate Fund. More difficult is the question whether, and to what extent, losses or expenditure resulting from the adoption of "Accommodation" responses should be covered by the Insurance Pool or should be dealt with in the context of the Climate Fund, but it is suggested that much of the loss or expenditure falling within this category should be covered by the Insurance Pool. This would accord with ordinary commercial insurance principles that expenditure incurred or loss suffered in responding to an immediate threat of the insured peril should be treated as a loss by that peril. Measures taken in advance of any immediate threat, even if taken on reasonable grounds, would not however be covered by the Insurance Pool, but would be dealt with in the context of the Climate Fund.

(i) In principle the main criterion for entitlement to claim should be proved loss attributable to sea level rise. Apart from inundation and flooding, the most widely predicted consequences of climate change so far as small islands and low-lying coastal countries are concerned are increased incidence and intensity of hurricanes, typhoons and severe storm surges and coral bleaching. It may not yet be possible to prove conclusively that such events are attributable to climate change consequent upon global warming. It is suggested therefore that claims against the Insurance Pool should include, at a minimum, loss or damage resulting from sea level rise, together with expenditure incurred in connection with immediate "Accommodation" responses, and that the criteria for entitlement to claim against the Pool should be set by reference to the rate of global mean sea level rise over a given period and to total global mean sea level rise from a given date.

(j) For many developing countries traditional insurance definitions of physical and economic loss would in no way reflect the impact of sea level rise. For example, the total inundation of a small island with a minimal economic life of its own would result in the inhabitants' loss of their homeland (quite apart from the costs of resettlement). It might also involve loss of development potential and even loss of the potential economic benefit of its surrounding 200-mile Exclusive Economic Zone. Losses suffered by small island and low-lying coastal countries should therefore be assessed by reference to "Total Economic Values" - that is to say, values arrived at not only by reference to actual use value, but also to option value and existence value.

(k) Consideration has been given to the necessity for setting an overall limit to the liability of the Insurance Pool and to the necessity to structure an equitable system of distribution such that the resources of the Pool are not completely absorbed by a single massive loss suffered by one large country. In addition consideration has been given to the question whether losses suffered, which might otherwise be claimable against the Pool, could have been mitigated by measures which could reasonably have been taken by the claimant country at an earlier stage.

(l) Loss or damage to commercially insured property would not be recoverable under the scheme, but it is not thought that this would discourage insured countries from arranging commercial insurance where available at reasonable rates, because:

(i) Claims would not be recoverable in full where the totality of claims against the Pool in any one insurance period exceeded the funds in the Pool; and

(ii) In assessing claims, the Authority would take into account whether steps could have been taken at an earlier stage to avoid or mitigate the loss and this would include taking out commercial insurance if it could have been obtained at reasonable rates of premium.

(m) The reasons listed in (l) would encourage insured countries to take preventative or mitigating measures where possible, even where no commercial insurance was available.