



# Earth Negotiations Bulletin

A Reporting Service for Environment and Development Negotiations

Vol. 12 No. 52

Published by the International Institute for Sustainable Development

Tuesday, 5 August 1997

## HIGHLIGHTS FROM THE SEVENTH SESSION OF THE AD HOC GROUP ON THE BERLIN MANDATE 4 AUGUST 1997

The Chair of the *Ad Hoc* Group on the Berlin Mandate (AGBM) held a briefing on the results of the non-group sessions conducted on Friday and Saturday. In a morning Plenary session, delegates reviewed the organization of work and heard NGO statements. The non-group on institutions and mechanisms met immediately after Plenary and in the afternoon. The non-group on QELROs met in the morning and a new non-group on policies and measures met in the afternoon. The Subsidiary Body for Implementation met in the evening to consider outstanding issues.

### PLENARY

AGBM Chair Raúl Estrada-Oyuela (Argentina) noted that Evans King (Trinidad and Tobago) had returned home. The non-group on Article 4.1 will now be chaired by John Ashe (Antigua and Barbuda). Luiz Gylvan Meira Filho (Brazil), Chair of the non-group on QELROs, reported that the group considered issues of coverage and related methodological issues and noted that a Chair's proposal was forthcoming. He stated that the non-group has also considered the nature of targets and baselines and will produce a bracketed paper. The question of whether the targets will be in annual rates of emissions or in the form of a budget period was also discussed. He noted a broad consensus that countries with economies in transition should receive flexibility on their initial baselines.

He informed delegates that a contact group will be meeting to consider the issues of banking, borrowing and trading emissions and issues regarding activities implemented jointly (AIJ). On compliance, he noted that there have been proposals considering the possible impacts on developing countries. In the observer briefing prior to Plenary, he stated that he had called on delegates to draft a more precise text because joint implementation has different meanings in several proposals. He noted that the text regarding joint implementation would probably remain in brackets. He stated that the distribution level and timing of QELROS would most likely not be considered in this meeting.

Takao Shibata, Chair of the non-group on institutions, mechanisms and final clauses noted that there is broad-based consensus on the notion of institutional economy. He stated that the same COP, Secretariat, subsidiary bodies and financial mechanism would operate for both the Convention and the Protocol. He noted that a Chair's proposal would be available later and that the non-group will consider issues related to introductory and final elements at its next meeting.

The Chair established a non-group on policies and measures (P&Ms) chaired by Mohamed Ould El Ghaouth (Mauritania) and called on NGOs to make their presentations. The INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVES (ICLEI) called on delegates to heed the lessons learned by local governments implementing policies and measures to reduce CO2 emissions. She said successful communities have invested in

energy efficiency and transportation projects to reduce local energy use. She called on the AGBM to implement aggressive emissions targets. She noted that benefits of local initiatives to reduce CO2 emissions outweigh the financial costs, and that reductions in CO2 emissions are a boon to the local economy and urban livability. She noted that the primary constraint for developing country cities is the lack of adequate financing for urban infrastructure and called for the enhancement of the financial mechanism to support developing country cities.

A representative speaking on behalf of business and industry NGOs noted the unique role that her sector plays in furthering the objectives of the FCCC. She called on the Parties to use the diversity of business interests as a resource. She noted the following four elements of sustaining a healthy international economic environment: open markets free of trade barriers; orderly turnover of capital stock and infrastructure; free flow of trade, capital and technology with protection of intellectual property rights; and a stable and transparent legal and regulatory framework. She stated that business plays an integral role in the development, commercialization and dissemination of technologies. She noted the need to analyze the impact of climate policies on national economies, businesses and jobs and the potential benefits of utilizing the technical and management expertise of the business community. She stated that flexible approaches that account for changing circumstances and information provide for more effective solutions.

A representative from the CLIMATE ACTION NETWORK reminded delegates of the pledges made by developed countries to take the lead in combating climate change. She noted that developing countries are concerned by the procrastination shown by many developed countries. She highlighted the impacts of climate change on regions afflicted by poverty and noted that the IPCC will be releasing a regional impact assessment in the fall. She stated that climate change poses the highest risk for developing countries and that the transfer of technology and financial resources to developing countries has not occurred. She called on developed countries to take concrete steps in setting legally binding targets and timetables and noted support for the AOSIS draft protocol.

JAPAN commented on an NGO report suggesting that Japan had proposed targets that would allow for large increases of CO2 emissions by Annex I countries by the year 2010. He stressed that Japan had not made such a proposal and reiterated Japan's position to reduce CO2 emissions to less than 1 tonne per capita by the year 2100. He noted that any protocol or legally binding instrument must fully encompass the Berlin Mandate and the Geneva Declaration. He underscored Japan's willingness to work with other developed countries to set meaningful, realistic and equitable targets that will result in the reduction of GHG emissions by 2010. On QELROs, he indicated that Japan places a high priority on finding a common ground framework.

The Chair of the OECD Expert Group on Annex I Countries indicated that the group sought to provide analytical support for AGBM. He noted that it had embarked on an ambitious programme on trading initiatives. The expert group was seeking to propose practical options for emissions trading and was assessing international criteria on this. He mentioned that studies were being conducted on monitoring and compliance mechanisms for

QELROS and indicated that the group sought to further support countries with economies in transition in their GHG mitigation efforts. He pointed out the expert group's intention of continuing to report to the AGBM.

#### **NON-GROUP ON POLICIES AND MEASURES**

Chair Mohamed Ould El Ghaouth convened the first meeting of the non-group on policies and measures. The discussion focused on whether P&Ms should be legally binding and whether they should be differentiated. Some delegations favored legally binding P&Ms and referred to proposals on several annexes setting differentiated policies and measures. A group of countries submitted a non-paper on this issue. Other delegations favored a flexible approach whereby countries should be able to set their own P&Ms. It was decided that the Chair would produce a consolidated text to facilitate the work of the group. However, some delegations indicated that all positions should be duly reflected.

#### **NON-GROUP ON INSTITUTIONS**

At its morning session, the non-group discussed the Chair's consolidated text on dispute resolution. Most of the text remains in brackets. There was general agreement that there should be provision for the possibility of a multilateral co-operative process, while decisions about its relation to AG13 (Multilateral Consultative Process) were left open.

In the afternoon, Parties engaged in a detailed exchange on the core issue of the relationship that will be established between the COP/FCCC and any new protocol or other legal instrument. While there was general support for "institutional economy," whereby the COP shall serve as the meeting of the Parties to the Protocol, opposing views were put forward on what procedural rights the COP would have in regard to the Protocol. Some developing countries were uneasy with the prospect of the Protocol developing a life of its own, and eventually subsuming the FCCC. They argued for the right of all Parties to the Convention to propose amendments to a Protocol. A number of developed country Parties argued that this would not be legally possible and that such a right should derive only from ratification. Some indicated a concern that non-Parties would exercise influence over the Protocol without coming into a new process at some stage.

Much of the argument revolved around Parties' use of the word "integral" when describing the Protocol's relationship to the COP/FCCC. A decisive intervention came when a delegate with legal expertise suggested that Parties were confusing a political and legal understanding of the term. In Article 16.1 (FCCC), for example, the word integral is used to describe annexes which legally become part and parcel of the FCCC upon adoption. In such cases the provisions of the FCCC are used exclusively where amendments are required. He argued that it was not possible to describe a Protocol as integral in the same sense. A Protocol would not be legally part and parcel of the FCCC. If this were not so, there would be no need to negotiate formal and separate mechanisms for amending and ratifying a Protocol, an independent legal instrument. It was fair, however, to describe the Protocol as politically integral to the FCCC.

This distinction was heavily criticized by developing country Parties who continued to argue that a Protocol would be intimately bound up with the FCCC and subordinate, citing FCCC Articles 4.2 (a) and (b) on Annex I Party commitments, and 7.2, which affirms that the COP, as supreme body, shall regularly review the implementation of the Convention "and any related legal instrument." The Chair is expected to produce a revised text including a draft Preamble affirming that a Protocol will be intimately bound up with the FCCC, with Articles underlining their dependence on the FCCC process.

In the discussion on annexes, a number of developing and newly industrialized countries sought to ensure that the status of any Parties included in annexes evolving out of the AGBM agreement would be subject to an amendment procedure as rigorous as that which applies in the FCCC.

#### **NON-GROUP ON QELROS**

The non-group on QELROs engaged in a procedural discussion and established a series of contact groups on: possible impacts on developing countries, compensation, policies and measures, timing, communication of information, compliance mechanisms and flexibility. It was agreed that contact groups would produce documents on compliance, compensation and policies and measures for further consideration. The contact group on flexibility will consider emissions budgets, joint implementation and banking. A draft compilation text on these issues was circulated in the evening. The group discussed annexes generally but did not discuss Annex B. The group will consider issues related to targets and differentiation at its next meeting.

#### **IN THE CORRIDORS**

During the morning observer briefing, business NGO representatives were unsuccessful in challenging the AGBM Chair to clarify his earlier statement that a number of items for discussion are, strictly speaking, not consistent with the mandate of the AGBM. The Chair declined to comment and said these matters were subject to interpretation. The business lobbyists later indicated that they were concerned about references in AGBM documentation to discussion topics on evolution and the possible impacts on developing countries of new commitments, and wondered what precise instructions had been given to non-group chairs for dealing with such issues.

#### **IN THE CORRIDORS II**

While some delegates and observers are giving increasing attention to the impact on employment of potential AGBM outcomes, a number of environmental NGOs have argued that the issue is being manipulated to frighten political constituencies in developed countries. They believe that the success of the strategy has driven some developed Party views on the need to bring developing countries on board the Berlin Mandate process sooner rather than later -- and avoid the alleged economic consequences of unilateral commitments by Annex I countries.

### **THINGS TO LOOK FOR TODAY**

**SBI:** SBI is expected to meet at 10:00 am in the Beethoven Room.

**NON-GROUP ON QELROS:** The non-group is expected to meet at 10:00 am in the Maritim Room.

**SBSTA:** SBSTA is scheduled to meet at 3:00 pm in the Beethoven Room.

**NON-GROUP ON INSTITUTIONS:** The non-group is expected to meet at 3:00 pm in the Maritim Room.

**INFORMAL GROUPS:** An informal group on possible impacts on developing countries is expected to meet from 2:00 - 3:00 pm in the Haydn Room.

### **LINKAGES INTERNET COVERAGE**

The Linkages WWW-server, in addition to the daily ENB reports, now features photos and Real Audio recordings, including excerpts from Chair Estrada's and Executive Secretary Zammit-Cutajar's opening statements. The Linkages site can be found at <http://www.iisd.ca/linkages/climate/climate.html>.