

# From Kyoto to Buenos Aires: Prospects for COP 4

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## Introduction

In May 1992, over 150 governments decided that climate change was a serious threat. In response, they adopted the UN Framework Convention on Climate Change, with the ultimate objective of stabilizing greenhouse gas concentrations in the atmosphere at a “safe” level. The Convention has now been ratified by over 174 Parties (as of 15 September 1998) and it is nearing universal membership.

The Convention calls on developed countries, the so-called Annex I Parties, to return their emissions to 1990 levels by 2000. When countries adopted the Convention, however, they knew that these commitments would not be sufficient to meet its objective.

Therefore, at the first Conference of the Parties (COP) to the Convention (March 1995, Berlin), negotiations were launched to agree on stronger commitments for developed countries by the third COP. Intensive and difficult negotiations took place over 31 months and these were finally concluded at COP 3 in Kyoto, on 11 December 1997, when the Kyoto Protocol to the UNFCCC was eventually adopted, by consensus.

When the Kyoto Protocol was adopted in the early morning after almost 72 hours of round-the-clock negotiations, most of those present were too exhausted to fully comprehend what had just been agreed to. Over the past nine months, much time and effort has been expended by all those involved in the process to try to make sense of the Kyoto Protocol puzzle and understand its implications. These efforts have intensified in the run-up to COP 4 (2-13 November 1998, Buenos Aires).

## Climate change: The issues

Climate change has particular features which render it a unique environmental problem and one which poses some of the greatest challenges for our current structures of governance:

- It is one of the very few truly global problems in terms of both causes and impacts. Tackling climate change therefore requires global cooperation;
- The stakes are high - even under optimistic scenarios, the impacts of climate change will be significant and irreversible; under some scenarios, and for some regions, the impacts will be catastrophic;

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- Long time scales are involved; politicians must therefore act on a problem whose worst effects will not be felt until after the end of their term in office and which will affect not present voters, but their grandchildren;
- Climate change has important equity implications; the bulk of the problem has been caused by those countries which will be the least affected by it.

Further challenges presented by climate change are its linkages to other issue areas and therefore to other international agreements. Potential conflicts between international action to tackle climate change and trade agreements, such as under the World Trade Organisation (WTO), have been the subject of particular attention. In this context, it is important to remember that climate change, and therefore the UNFCCC and the Kyoto Protocol, concern economics and development as much as they do the environment. Addressing climate change will require making important changes to economic systems to move them towards a lower carbon path; the precise aim of the Kyoto Protocol is to change the pattern of business as usual. Such shifts in economic structures may, in turn, have repercussions on international trade in a number of ways. What those effects might be, and how they would be linked to the WTO, are as yet uncertain.

### **The Kyoto Protocol**

The challenges for governments posed by climate change means that the adoption of the Kyoto Protocol was a remarkable achievement. The negotiations overcame a multitude of obstacles to forge a “package deal” which struck a delicate balance between the widely diverging positions of Parties. The key now is to maintain and strengthen that balance.

It may help to make sense of this “package deal” if the Protocol is broken down into 6 parts:

- Emission commitments for Annex I Parties
- Mechanisms for implementation
- Mechanisms for credibility
- Mechanisms for review
- Advancing the existing Convention commitments for all Parties
- Institutions and introductory and final clauses.

The centrepiece of the Kyoto Protocol is, of course, its legally-binding emission commitments for Annex I Parties which, assuming compliance, will together lead to a reduction in emissions from 1990 levels for that group of Parties of around 5.2%.

Another way of looking at this target is to compare it with business as usual projections. The reduction in Annex I Party emissions due to Protocol commitments below what they would otherwise have been around 2010 is approximately 29% (taking the average of 5 projections from authoritative sources). Assuming compliance, this will be the key achievement of the Protocol - to have reversed the historical upward trend in emissions in the industrialized world over the past 150 years.

## Unfinished business

When negotiators emerged from the exhaustion and excitement of Kyoto, they began to realise just how much the negotiations had left unresolved and how many decisions had been pushed back to future meetings. In hindsight, this large burden of unfinished business was inevitable: the practical complexity of some of the issues at stake (e.g. emissions trading) meant that their details could never have been ironed out during the negotiations leading up to Kyoto, whilst the differences among Parties also meant that consensus could only be forged by leaving some questions to future negotiations.

Two key elements of “unfinished business” which have charted the road from Kyoto to Buenos Aires are:

- Mechanisms for implementation
- Mechanisms for credibility

### *Mechanisms for implementation*

The Protocol contains four mechanisms through which Parties can implement their emission commitments: Domestic policies and measures (Article 2), and three so-called “flexibility mechanisms”-“joint implementation” (Article 6) the clean development mechanism (Article 12) and emissions trading (Article 17).

The focus on the flexibility mechanisms has largely overshadowed Article 2 on domestic policies and measures. It would be unwise to dismiss this Article, however, as it contains some important provisions which could be built on in the future. Building on Article 2 has not yet become an area of debate. It is only a matter of time until it does, however, as efforts are made to ensure that the industrialized countries implement the policies necessary to spur real changes towards less carbon intensive production and consumption patterns.

For the time being, however, it is the flexibility mechanisms, which have become the most controversial paving stones charting the road to Buenos Aires. To some extent, this is because little in-depth discussion of their details took place during the Protocol negotiations. For example, most Parties did not see the text on the CDM until 48 hours before it was adopted.

The three flexibility mechanisms share some common features:

- All the mechanisms involve action “*offshore*”. The Protocol, however, links such “offshore” activities to the implementation of domestic policies and measures by requiring use of the flexibility mechanisms to be supplemental to domestic emission reduction action (the terminology used in the case of the CDM is slightly different).
- The mechanisms provide new opportunities to *engage the private sector* in emission reducing activities.
- All have *integral linkages* with each other, and with the other Protocol articles, particularly the “mechanisms for credibility”.
- As *project-based mechanisms*, there are certain issues which are common to both joint implementation and the CDM. These include determination of baselines, processes for verification and certification, and the relationship with projects under the Convention’s pilot phase of Activities Implemented Jointly (AIJ).

As well as the commonalities between them, each mechanism comes with its own specific issues to resolve.

The clean development mechanism is perhaps the most innovative of the mechanisms - it certainly was the greatest surprise in Kyoto. Its early starting date in 2000 places added pressure on negotiators, as key decisions will need to be taken by late 1999. Some particularly problematic questions are likely to centre around the amount of the "adaptation levy" and the eligibility of projects involving carbon "sinks".

Emission trading is probably the most politically controversial mechanism. The most difficult set of issues is the concern of some developing countries that establishing an emissions trading system will confer "rights to emit" on the Annex I Parties. Such concerns over the principle and equity implications of emissions trading were left pending from Kyoto and will need to be addressed.

Clearly, many issues are to be resolved both concerning the principle and the practice of the mechanisms. The fate of the flexibility mechanisms is as yet uncertain, and the stakes are high. If they are poorly designed, the mechanisms could become dangerous loopholes undermining the credibility of the Protocol. If they are well-designed, however, they could provide an unprecedented opportunity to reduce emissions in an economically and environmentally effective manner and to engage the private sector in this effort.

### *Credibility mechanisms*

The fate of the flexibility mechanisms depends to a large extent on a less famous set of provisions in the Protocol, the "credibility mechanisms". These include provisions relating to measurement and reporting, monitoring and verification, and non-compliance. Negotiators sought to include these provisions in the Protocol to give meaning and credibility to the legally-binding nature of the Protocol's emission commitments. Once again, however, their details remain to be elaborated.

Article 5, for example, together with decision 2/CP.3, requires Annex I Parties to set up "national systems" for their greenhouse gas inventories based on common methodologies, thus increasing comparability and transparency.

Articles 7 and 8 establish that Annex I Parties must provide supplementary information on the actions they are taking to meet their commitments under the Protocol and that this information will be reviewed by expert review teams. Guidelines for the reporting of information and the expert reviews will be developed at the first COP serving as the meeting of the Parties to the Protocol (COP/MOP 1) after the Protocol's entry into force. These provisions promise to lead to a considerable strengthening of the corresponding procedures under the Convention.

Under Article 18, procedures and mechanisms to determine and address cases of non-compliance are also to be agreed at COP/MOP 1. The eventual shape of these non-compliance procedures and mechanisms will be important in determining whether or not the Protocol has any "teeth", and how sharp those teeth are. Debates on non-compliance promise to match those on the flexibility mechanisms over the next few years.

With the exception of non-compliance, the "credibility mechanisms" do not have the same visibility or high profile as the "flexibility mechanisms". They are less media-friendly. However, it will be important for the full set of "credibility mechanisms" to be elaborated in tandem with the

“flexibility mechanisms” if the environmental and economic effectiveness of the Protocol is to be secured.

## **On the road to Buenos Aires**

### ***Prompt start provisions***

The architects of the Kyoto Protocol sought to compensate for the large volume of unfinished business left over from COP 3 by deciding on a “prompt start” process to close the remaining gaps in the Protocol.

This process was launched by decision 1/CP.3, which highlighted five Protocol provisions requiring further work and placed these on the agenda for COP 4. These include work on the flexibility mechanisms and on land-use change and forestry, another key issue requiring work beyond COP 3.

As previously mentioned, the Protocol identifies a number of important tasks to be carried out by the first COP/MOP. These mostly concern the “credibility mechanisms” (e.g. design of a compliance system and guidelines for national communication and reviews). Work on these complex issues will, of course, need to begin well before entry into force of the Protocol, and preferably in tandem with the flexibility mechanisms. Recognising this, decision 1/CP.3 provided a mandate to Parties to begin work on the tasks for COP/MOP 1 as soon as possible.

Parties began to consider these issues at the eighth sessions of the subsidiary bodies to the Convention (2-12 June 1998, Bonn).

### ***Expectations for COP 4***

The relatively slow pace of progress at the eighth sessions in filling in the details of the Kyoto Protocol resulted in more realistic expectations for COP 4; it is clear that Buenos Aires cannot be a re-run of Kyoto and that advances are likely to be incremental rather than spectacular. Nevertheless, hopes are still high that the momentum of Kyoto can be maintained and that key decisions advancing on Protocol work can be taken at COP 4, particularly on the mechanisms.

The success of COP 4 is important to the Convention process; many Parties need to have a clearer idea of the eventual shape of the Protocol before they can ratify it. The date of entry into force could be pushed back if the pace of work is seen to be slow. Likewise, it is important for the private sector, a key player in climate change mitigation and in the functioning of the mechanisms, to be given clear signals of the rules of the game so that the right investment decisions can be made.

It is important to remember that issues relating to the Kyoto Protocol make up only half of the COP 4 story. As well as the post-Kyoto work, COP 4 will also take up the “pre-Kyoto agenda”, that is, consideration of matters related to the implementation of the Convention. These issues had, to some extent, been placed on the back-burner over the past two years, as the efforts of Parties were focussed on the protocol negotiations.

So what can we expect from COP 4, on both the Convention and the Protocol? Some predictions are given below:

- A clear “action plan” for the design of the mechanisms, including deadlines showing what must be accomplished by when.

- Key decisions on the CDM, because of its early start date; perhaps agreement to arrange for an “advance application” of the CDM in 2000.
- A “prompt start” work programme on the Protocol tasks needing to be accomplished at COP/MOP 1, including on the “credibility mechanisms”.
- A decision on the status of the Global Environment Facility (GEF) as the financial mechanism of the Convention (and the Protocol).
- A decision on the process for consideration of non-Annex I national communications.
- A decision on the establishment of a multilateral consultative committee under Article 13 of the Convention.

## **Conclusions**

The Kyoto Protocol is not the final word in the climate change story. If we are to avert the worst effects of climate change, the commitments of the Annex I Parties will need to be strengthened and, eventually, emission commitments will need to be extended to a wider group of Parties.

There is reason, however, to be optimistic. It is only 10 years ago that the problem of climate change was first placed on the agenda of the UN General Assembly at its 43<sup>rd</sup> session in 1988, following a proposal by Malta. The international community has come a long way in tackling climate change since then - in 1988, few countries even had greenhouse gas inventories, let alone targets to reduce those greenhouse gases. Addressing climate change is clearly a long-term process. The Kyoto Protocol, however, with its legally-binding emission targets and review mechanisms to strengthen those targets, has laid the foundations for a truly effective international response to the problem.