

## FEATURES OF A PROTOCOL OR ANOTHER LEGAL INSTRUMENT (agenda item 6)

29. The AGBM agreed on the need to avoid the proliferation of new bodies under an amendment or protocol. It stressed the Convention provisions and the importance of institutional economy in this regard. It was preliminarily agreed that most of the existing institutions under the Convention could serve either an amendment or a protocol. For example, the secretariat could serve in either case. It was suggested that the secretariat's report to the fourth session could examine practical ways in which the secretariat and the subsidiary bodies established under the Convention could assume additional duties arising from an amendment or protocol.

30. Several Parties queried the need for the establishment of a separate Conference of the Parties and a separate Bureau to serve a protocol. Many agreed that the decision-making processes under both an amendment and a protocol would need to take into account differing memberships. In this regard, the need for coordination and policy coherence between the Convention and any legal instrument to be adopted was stressed. It was suggested that the report to be prepared for the fourth session should review cases where the adoption of protocols or related legal instruments has not led to the establishment of separate Conferences of the Parties, as well as decision-making mechanisms in agreements having established several regimes.

31. Many Parties stated that only a legally binding instrument would meet the requirements of the Berlin Mandate. It was mentioned that, in addition to an amendment or protocol, other legally binding instruments, such as subsidiary agreements and a completely separate legal instrument, could be explored by the AGBM. Some Parties reminded the Group that the legal instrument should not seek to establish a comprehensive regime but should focus on the strengthening of a specific area of the Convention, namely, Article 4.2(a) and (b). The possibility of concluding decisions, resolutions, declarations and guidelines, in addition to, but not in place of, a legally binding instrument, was also mentioned.

32. Many Parties stated their preference for a protocol. Many others stressed the importance of awaiting further developments on the scope and nature of the commitments to be agreed upon before deciding on the form of the instrument. Some Parties stated that although they had chosen neither an amendment nor a protocol as the definitive option, the adoption and operation of an amendment could prove less complex than a protocol. They also noted that an amendment might be a more viable option considering the lack of consensus on the rules of procedure of the COP. In this regard, the urgency of the COP adopting its rules of procedure at its second session was stressed.

33. One delegation stressed the need for the legal instrument chosen to have the capacity to evolve in light of the future developments of commitments beyond the Berlin Mandate. It also considered that the chosen legal instrument should be able to take into account new scientific evidence, reflect regional approaches on the basis of regional scenarios, progress achieved and other relevant socio-economic data and to reflect such information in evolving commitments.