

8 December 1993

Original: ENGLISH/FRENCH/
RUSSIAN/SPANISH ONLY

INTERGOVERNMENTAL NEGOTIATING COMMITTEE
FOR A FRAMEWORK CONVENTION ON CLIMATE CHANGE
Ninth session
Geneva, 7-18 February 1994
Item 2 (e) of the provisional agenda

MATTERS RELATING TO COMMITMENTS

CRITERIA FOR JOINT IMPLEMENTATION

Comments from member States on criteria for joint implementation

Note by the interim secretariat

The Committee, at its eighth session, requested the interim secretariat to provide further documentation on joint implementation, including a list of possible criteria, taking into account all the views expressed and submissions made during the session, and any further comments which member States may transmit to the interim secretariat before 30 September 1993, for distribution to all delegations (A/AC.237/41, para. 51).

The interim secretariat received such submissions from Algeria, Australia, Belgium (on behalf of the European Economic Community and its member States), Canada, Colombia (on behalf of the Group of 77 and China), Denmark (see A/AC.237/Misc. 30),* Finland, France (see A/AC.237/Misc. 27),* Germany (see A/AC.237/Misc. 29),* Japan, Malaysia, Mexico, Nauru, the Netherlands, Norway, the Russian Federation, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. These submissions are attached, and, in accordance with the procedure for miscellaneous documents, are reproduced in the language(s) in which they were received.

* Circulated during the eighth session.

The secretariat also received the following documents which are not being circulated but which may be requested from the submitters:

1. Study to develop practical guidelines for joint implementation under the United Nations Framework Convention on Climate Change. A CICERO study to the OECD Environment Directorate. Center for International Climate and Energy Research, Oslo, Norway.
Fax No.: (47-2) 856 284.
2. Comments on joint implementation, The RainForest ReGeneration Institute, Washington, D.C. Fax No.: (1-202) 483 5175.
3. Joint comments of Edison Electric Institute, National Coal Association and the Climate Council on certain joint implementation issues before the INC/FCCC. Patton, Boggs and Blow, Washington, D.C. Fax No.: (1-202) 457 6315.

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PAPER NO. 1: ALGERIA

POSITION DE LA DELEGATION ALGERIENNE SUR LE CONCEPT D'APPLICATION CONCERTEE

DES ENGAGEMENTS DES PARTIES A LA CONVENTION

(Septembre 1993)

Le Concept d'application concertée entre les parties à la Convention est régi principalement par les dispositions de l'article 4 paragraphe 2 a et 2 d de la Convention. La référence à ce concept au niveau de l'article 4, consacré exclusivement aux engagements spécifiques librement contractés par les pays industrialisés figurant à l'annexe N° 1 de la Convention, est hautement significative des intentions des rédacteurs de la Convention de limiter son application aux seuls pays industrialisés Parties à la Convention. La référence à ce concept au niveau de l'article 3.3 du chapitre relatif aux principes conforte une telle approche. En effet, l'application concertée ne peut s'appliquer à des Parties ayant contractées des engagements différents. Elle se doit de s'appliquer aux Parties de la Convention liées par des engagements similaires. Tel est le cas des pays industrialisés.

Le concept de mise en oeuvre conjointe entre les Parties figurant à l'annexe N° 1, est de nature à constituer un instrument propice à l'application des engagements contractés, dans la mesure où il peut s'avérer être un moyen efficace d'accélération de la mise en oeuvre des objectifs de la Convention. Ceci est particulièrement vrai pour les pays industrialisés qui se trouvent engagés dans un processus d'intégration économique.

Cependant, l'application de ce concept à des Parties Contractantes ayant accepté des obligations différentes, compte tenu

.../...

de leurs degrés de responsabilité historique ainsi que de l'ampleur de leurs besoins de croissance économique et de développement, produirait inévitablement des résultats inverses de ceux recherchés, à l'origine, par / les rédacteurs de la Convention. Toute tentative visant à élargir le champ d'application du concept d'application concertée aux pays qui ne figurent pas sur la liste de l'annexe N° 1, comporte le risque de remettre en cause les fondements de base qui sous-tendent la Convention. Elle conduirait à battre en brèche l'un des principes essentiels de la Convention, celui qui se rapporte à la responsabilité commune mais différenciée des Etats. Elle entraînerait ainsi la négation tant de la spécificité des conditions socio-économiques que de la reconnaissance des besoins énormes de développement des pays en voie de développement et, en particulier de ceux dont les préoccupations particulières sont consacrées dans les dispositions du paragraphe 8 de l'article 4 de la Convention.

Par ailleurs, une telle interprétation ouvrirait la voie à certains pays industrialisés pour échapper à leurs responsabilités en transférant une partie de la charge de leurs obligations à des pays en voie de développement. De ce fait, la première session de la Conférence des Parties Contractantes qui se tiendra en Avril 1995 devrait, conformément aux dispositions du paragraphe 2 d de l'article 4 de la Convention, décider de critères objectifs et clairement définis pour l'application du concept de mise en oeuvre conjointe, applicables aux seuls pays figurant à l'annexe N° 1 de la Convention.

Compte-tenu des implications hautement politiques du concept d'application concertée, reconnues aux termes des délibérations de la huitième session du Comité intergouvernemental de négociation sur les changements climatiques qui s'est tenue à Genève en Août 1993, l'élargissement du champ d'application, de ce concept aux pays en voie de développement pourrait être convenu par la Conférence des Parties Contractantes à ses sessions ultérieures sur la base d'un amendement de la Convention, en application des dispositions de son article 15.

PAPER NO. 2: AUSTRALIA
Joint implementation: Preliminary Australian views

Introduction

Australia has been following the debate on joint implementation with interest. Although still developing its ideas on the issue, Australia offers this preliminary discussion paper canvassing the concepts and criteria that might apply to joint implementation as an informal contribution to the debate. We welcome the opportunity to further discuss these ideas with other delegations.

General discussion

The Australian Government supports efforts to elaborate a workable set of criteria to enable joint implementation to operate as one of a number of approaches to meet the objective of the Framework Convention on Climate Change (the Convention).

Australia considers that joint implementation is a means of addressing the global nature of the greenhouse problem by enabling one Party to provide resources for emission abatement measures in the territory of another Party. Joint implementation arrangements would be consistent with common but differentiated responsibilities, be undertaken in the spirit of partnership and cooperation, and offer benefits to all participants.

Joint implementation has the potential to assist all Parties in limiting anthropogenic emissions in a cost-effective manner. For a variety of reasons, there will be differences among countries, whether developed or developing, in the marginal cost of emission abatement measures. Joint implementation projects could result in a more effective limitation of emissions from the resources available for this purpose.

Australia considers that joint implementation should apply to current commitments under the Convention and that it would complement other domestic activities which would be used by Annex 1 countries to meet these commitments. In this respect, we note that Article 4.2(a) refers to implementing measures "jointly with other Parties". In Australia's view this means both Annex 1 Parties and non-Annex 1 Parties.

The private sector holds much of the technology that can be used for emissions abatement. Joint implementation would be an important means of drawing on additional private and public resources that may not otherwise be available for this purpose. If joint implementation is not restricted to Annex 1 Parties, then other Parties may benefit from increased access to these resources and the opportunities and benefits they bring.

Joint implementation offers host countries an opportunity to gain technology and expertise over and above what they could be expected to receive under other arrangements in the Convention. There is also the potential to derive additional environmental and social benefits because emission abatement measures often provide broader sustainable development gains. Australia sees no reason why these benefits should not be available to Parties as soon as possible.

Joint implementation projects should be additional to other sources of cooperation under the Convention (Articles 4.3, 4.4 and 4.5). Funding for joint implementation projects should be kept separate from, and additional to, required contributions to the funding mechanism.

In addition to the above considerations, Australia offers the following comments as a possible starting point for the development of suitable joint implementation criteria.

Type of arrangements

Joint implementation arrangements would meet the following conditions:

- . projects that result in net reductions of emissions;
- . consistency with the national plans and priorities of host Parties;
- . no negative social and environmental impacts on host Parties;
- . voluntary arrangements based on mutual agreement between participants;

and could be based on the following principles:

- . simplicity - to encourage early and widespread participation;
- . accountability - to engender trust amongst participants and non-participants;
- . transparency - to determine whether emission reductions take place; and
- . flexibility - to ensure that a wide variety of projects are eligible.

Australia supports a phased approach to the introduction of joint implementation, starting with projects with readily definable net emission reductions over business-as-usual arrangements. In the initial stages of joint implementation, it would be useful to use some pilot projects as a means of testing how the arrangements might work, and building on these experiences in further developing joint implementation.

Types of projects

In accordance with Australia's support for comprehensive response measures, we believe that in principle joint implementation projects should cover both sources and sinks of emissions. From a practical viewpoint, sources would be likely to predominate in the first instance.

Unfunded projects in national plans could be eligible for joint implementation. So could enhancement of an existing or planned project where the enhancement yields a demonstrable reduction in emissions (for example rural electrification through renewable energy technologies in place of diesel).

Private sector involvement

We would suggest that the setting of criteria for private sector involvement could be left to the Parties to a joint implementation project. It would be desirable, however, for final agreement between two parties to be at the government-to-government level. It may be possible to have an overall agreement between two Parties under which private sector projects can be carried out with little involvement of the governments concerned.

Funding

Funding for joint implementation projects should be arranged directly between Parties.

Communication of information

The communication of information on joint implementation projects by Annex 1 Parties should be a discrete part of their normal reporting requirements under the Convention.

Sharing emission benefits

It may not be necessary to formally allocate the benefits from joint implementation projects. Under the current provisions of the Convention, and during the early developmental phase of joint implementation arrangements, one option would be for projects to be listed under the reporting requirements mentioned above.

In principle, however, the emission benefits from joint implementation projects should be available to all participating Parties. If this principle were adopted, it may be necessary to establish a system for sharing the benefits. Australia suggests that any emission benefits from projects should not automatically accrue to the donor countries, but could be divided by mutual agreement between all participants to an arrangement. Efforts should be made to eliminate the possibility of double counting.

Verification

It would be essential that projects be open to independent verification and that they be followed through until completion to ensure that the calculated benefits do finally eventuate.

**PAPER NO. 3: BELGIUM (On behalf of the
European Economic Community and its member States)**

1. The European Community and its Member States welcome the document prepared by the Secretariat, which deserves all credit and thanks for recalling the framework which was laid down for joint implementation by the Convention, and for making us aware along which lines a discussion on the further development of joint implementation is necessary.
2. Ours will be general comments on the concept of joint implementation and on how we think this concept could be put into practice. We are not making detailed suggestions for criteria at this stage.

This is the first time the INC has addressed the issue. What we need at this stage is an open dialogue about all relevant aspects of joint implementation in order to understand the various implications, before starting detailed negotiations.

3. The European Community and its Member States have repeatedly supported the principle of common but differentiated responsibility, and equity in accordance with respective capabilities presently embodied in the Convention as its first principle. According to this principle, the developed country Parties must take the lead in combatting climate change and its adverse effects.
4. A crucial question is how joint implementation should be understood in the context of the Convention. In relation to the objective of the Convention - stabilization of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system - the real challenge is to control and reduce global emissions. If current scientific assessments are correct, drastic reductions might be needed compared to present global levels. The Convention we negotiated makes a first small step in that direction by requiring industrialized countries to stop the growth of their emissions. Global emissions will continue to grow however.

Joint implementation offers an opportunity to reduce global emissions in a cost-effective manner. By encouraging investments in efficient technologies, joint implementation could generate substantial new flows of investment from industrialized countries towards participating countries.

5. It is, however, the view of the European Community and its Member States that joint implementation also entails the risks of development in the wrong direction. In order to fulfil the specific commitment of Annex I parties (contained in Article 4.2(b)) to return their emissions, individually or jointly, to their 1990 levels, countries must limit their greenhouse gas emissions at home through their own actions and should not use other countries to do their work for them. We all think it would be harmful for the further life of the Convention if industrialized countries gave the impression to wish to avoid fulfilment of their own obligation to protect the climate by means of joint implementation.

Regarding the ultimate objective of the Convention, short-term benefits of joint implementation may be offset in the longer term, if technical innovation, structural change and way-of-life evolution are not fostered by the necessity to fulfil unambiguous commitments.

Therefore, the European Community and its Member States believe that all Parties should implement a significant and specified share of any future commitments through measures taken on their own territories.

6. Consequently, we consider that the present commitment of the Convention to return greenhouse gas emissions to their 1990 levels by the year 2000, are not to be met by joint implementation projects. They are to be met by measures in the individual countries and in regional economic integration organizations.

Another important point to make is that investments in joint implementation should not be mixed up with the financial mechanism. Joint implementation should be held strictly separate from and be additional to the financial obligations of Annex II countries under the Convention.

7. Clear and unambiguous criteria are needed to ensure credibility and transparency of joint implementation. Criteria for accounting and crediting should allow only activities with sound scientific bases for the calculation of costs and reductions of gas emissions. Until the CoP

has laid down criteria for the determination of sinks, this should not be included in the scope of joint implementation. "Base-line" information needed to assess the incremental impact of a project on greenhouse gas emissions and sink capacity should be defined very carefully.

8. In the light of the outstanding problems and uncertainties connected to the use of joint implementation the concept of joint implementation ought to be tested during a pilot period. After an evaluation the final criteria can be laid down. In designing criteria for joint implementation, INC should ensure that such projects are encouraged by making it possible that they will be registered as international contributions by the sponsoring Party, pending future decisions about crediting them against further commitments agreed under the Convention.

PAPER NO. 4: CANADA

**INTERVENTION BY CANADA ON
JOINT IMPLEMENTATION**

We welcome the frank exchange of views by all Parties on the subject of Joint Implementation. We would like to thank the Secretariat for its note on this subject (document A/AC.237/35) which has provided an important reference point for our discussion. Canada recognizes that there are divergent views on Joint Implementation, but it is important to recognize that we have an opportunity to work together to define the conditions under which Joint Implementation can work to serve the objectives of the Convention and to provide benefits for all Parties.

Convention Provisions Relating to Joint Implementation:

Canada believes that Joint Implementation, as one element in a concerted international effort to respond to climate change, can offer considerable benefits for all Parties to the Convention. We believe that Joint Implementation - both among Annex 1 Parties and involving other Parties - is fully consistent with the objective of the Convention. Joint Implementation activities based on well-designed criteria would contribute to real and measurable reductions in global greenhouse gas emissions and hence, can provide a positive step towards the stabilization of concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

Canada would like to stress its support for the principle of common but differentiated responsibilities which is at the heart of the Convention. Canada, along with other developed countries, has made specific commitments to take actions aimed at limiting emissions and we will honour these commitments. Joint Implementation in no way undermines the responsibility of Canada and other developed countries to meet their specific commitments under the Convention.

Canada would also like to reaffirm its support for the commitments to provide new and additional financial resources to developing country Parties as agreed in the Convention. Joint Implementation activities, and in particular private sector investments in greenhouse gas emissions reduction projects, open up a new source of financial resources and technologies which can flow between countries, such as from developed countries to developing countries and economies in transition. These financial resource flows would be in addition to other sources such as the GEF and existing Overseas Development Assistance.

Canada views Joint Implementation activities as voluntary, based on equal partnerships between investors and hosts which can yield important benefits for both Parties. Host countries are in a position to negotiate projects which offer local social and economic benefits, in line with development priorities. In our Committee discussions, all Parties interested in being future hosts or investors for such projects have a clear opportunity to shape the development of international criteria which will define eligible Joint Implementation activities.

To illustrate the potential benefits of a Joint Implementation project, consider the case where an investor invests in a major capital project to limit greenhouse gas emissions by improving the energy efficiency of industrial processes in a host country.

- First, a well-designed project, with appropriate review and verification, can secure a net, incremental reduction in global greenhouse gas emissions.

- Second, the host country would receive an incremental flow of financial and technological resources which could strengthen its ability to compete economically. Localized environmental impacts might be reduced as a result and other socioeconomic needs better met through the economic spin-offs of a strengthened economy. In order to ensure the sustainability of any results achieved, capacity building would be an important element of the project.

- Third, the benefit for the developed country would be that the cost of reducing emissions through the project may be less than an alternative project at home.

It is important to stress that Joint Implementation offers an opportunity for additional financial flows to host countries. As the Secretariat notes in its paper, these flows are in addition to various kinds of financial and/or technical assistance which Annex 2 Parties are committed to provide under the Convention.

Considerations Relating to Criteria:

In developing criteria of eligibility under the Convention for Joint Implementation activities, Canada believes that it is important to clearly identify the potential benefits of such activities for all Parties involved and to discuss broad principles which will ensure that these benefits can be achieved. This will help Parties to the Convention to address some of the more general concerns with Joint Implementation. We can then work together, building on these principles, to develop appropriate criteria and procedures for consideration by the COP at its first session.

Some general principles which the Committee may wish to consider are as follows:

- projects must contribute to real, measurable and verifiable net reductions in emissions of greenhouse gases.

- projects must be consistent with the local economic and social development priorities of host countries and must be acceptable in terms of their impact on the local economy, public health and the quality of the environment.
- projects should help to strengthen endogenous capacities in host countries.

Based on the discussion at this session, we encourage the INC Secretariat to prepare another paper, containing draft principles and suggested criteria and procedures for Joint Implementation, for INC 9.

Process and Institutions:

In its paper, the Secretariat notes that there may be a need for certain arrangements and procedures under the auspices of the Convention. We agree with the Secretariat that such arrangements must take into account the possible role of private investors in Joint Implementation projects. We believe that it is important to encourage voluntary Joint Implementation activities wherever there is interest. In particular, projects involving private sector investments based on bilateral arrangements for project investments should be encouraged.

The primary function of any institutional arrangements related to Joint Implementation should be to ensure that projects lead to real and measurable emissions reductions and are beneficial to all Parties involved. It will be important to have an effective system of monitoring and verification in place to ensure this.

Institutional arrangements could provide additional functions to encourage and strengthen an effective Joint Implementation system. For example, the Secretariat's suggestion regarding a clearinghouse for information about possible projects may help to bring potential host and investor partners together.

PAPER NO. 5: COLOMBIA (ON BEHALF OF THE
GROUP OF 77 AND CHINA)

**INC-FCCC: VIII
Working Group I**

**INTERVENCION DE COLOMBIA A NOMBRE DEL GRUPO DE LOS 77
Y LA CHINA
(Ginebra, 18.08.93)**

En nombre de los países asociados en el Grupo de los 77 y la República Popular de China, deseo compartir con el Grupo unas reflexiones preliminares y generales sobre el asunto de la Aplicación Conjunta.

Nos permitimos hacer énfasis en el contenido del artículo 4 de la Convención y especialmente en el aparte 4.2, en cuanto se refiere a las obligaciones de las partes relacionadas en el anexo I.

Deseamos poner en el ambiente los siguientes puntos:

- Primero: Entendemos que el espíritu de la Convención expresa que entre países desarrollados y otros países en el Anexo I la Aplicación Conjunta no sustituye de ninguna manera los compromisos individuales adquiridos en la Convención, inclusive cuando la Aplicación Conjunta se realice por parte de una asociación regional.
- Segundo: Entendemos que en el espíritu de la Convención la posibilidad de la Aplicación Conjunta con partes ajenas al Anexo I solo se puede hacer sin perjuicio del cumplimiento de los compromisos relacionados con la reducción de emisiones y los financieros y que por tanto se dará en adición a ellos.

Frente a estas dos situaciones debemos recordar que, de conformidad con el Artículo 4.2(d) la Conferencia de las Partes debe definir parámetros que garanticen la transparencia del funcionamiento de la figura de la Aplicación Conjunta.

La tercera situación que interpretativamente plantea el documento /35 es la eventualidad de Aplicación Conjunta entre países desarrollados y países en desarrollo en el contexto de la Convención Marco.

En este contexto se deberá tener en cuenta lo siguiente:

1. La cooperación es la política acordada en la Convención como principio básico y por lo tanto es anterior y precedente a la modalidad de Aplicación Conjunta.

2. No debe entenderse, y menos aceptarse, que se confundan los flujos financieros corrientes entre dos países, con los compromisos de financiamiento "*nuevo y adicional*" que asumieron los países desarrollados cuando pactaron la Convención.
3. En ningún caso puede ser objetivo primario "dar crédito" a los países desarrollados para permitirles continuar emitiendo gases de efecto invernadero a cambio del financiamiento a otros países en el ámbito de la "Aplicación Conjunta"; el objetivo primario que en toda instancia se debe preservar es alcanzar el mayor beneficio para el medio ambiente global con base en el principio de equidad.

Gracias.

PAPER NO. 6 : DENMARK

Position note

on

JOINT IMPLEMENTATION

Introduction.

Article 4.1 in the Framework Convention of Climate Change contains commitments to be met by all Parties. These commitments includes national inventories of emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol and the inclusion of climate change considerations in other policies. This Article must therefore be interpreted in such a way that all countries should meet these commitments whether they chose to implement jointly or not.

According to Article 3 of the Convention the main responsibility for climate change is caused by the emissions from industrialised countries and the industrialised countries must therefore take the lead in combating climate change.

Taking the lead implies that developed countries have an obligation to take initiatives which show that they are willing themselves to make efforts to meet the commitments of the Convention in their own country.

The convention and joint implementation.

The Framework Convention on Climate Change was developed with the objective of achieving stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

In the attempts of developing a proper and workable framework for joint implementation it is therefore important to keep the ultimate goal in sight in order not to forget that it is the protection of the environment which was the prerequisite for the Convention when it was signed during the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992.

However it was also stressed by many delegations during the negotiations of the Convention - and not contested by any - that the economic element of obtaining the objective of the Convention also was an important factor to be taken into account in the implementation of the Convention.

The Convention on Climate Change contains in several places references to joint implementation. This issue was developed during the discussions of the Convention in order to ensure that Parties to the Convention have the possibility of meeting the commitments of the Convention together with the aim of achieving this goal in the most cost-effective manner.

The Convention mentions joint implementation in 2 places respectively in Article 4.2.a and 4.2.d. Furthermore Article 4.2.b mentions the aim of returning individually or jointly to their anthropogenic emissions of carbon dioxide and other greenhouse gases and Article 12.8 gives the possibility of making a joint communication.

Other parts of the Convention have wordings which provides possibilities of interpretation of the intentions behind joint implementation.

Joint implementation is also mentioned directly is in Article 4.2.d where the Conference of the Parties is requested at its first session to take decisions regarding criteria for joint implementation.

Parties to the concept of joint implementation.

The clearest indication of the content of joint implementation is given in Article 4.2.a. The paragraph gives the opportunity for developed country parties (Annex I Parties) to implement the policies and measures to mitigate climate change with other Parties to the Convention in achieving the objective of the Convention and in particular that of the same subparagraph.

Interpreting these words it must be understood that the main commitment of the Convention is that of Article 4.2.a and that Parties with this commitment under certain circumstances can implement the commitment together.

Since the paragraph requests developed countries to take the lead to return, by the year 2000, to earlier levels of CO₂ and other greenhouse gases not controlled by the Montreal Protocol and since this is the clearest commitment of the Convention, it must be understood that the joint implementation in relation to Article 4.2.a has to take place among these developed country Parties.

Otherwise the Commitment which is taken by developed countries could have a very limited effect in these countries.

To implement jointly a commitment seems to require that those who are going to implement are committed, Developing countries could become committed by notifying the COP/SBI of their intention to be bound by Article 4.2(a) and 4.2(b).

Financial commitment.

The other important commitment for the developed country parties (Annex II Parties) is mentioned in Article 4.3. and relates to the provision of new and additional financial resources to meet the agreed full incremental costs incurred by developing country Parties in complying with the communication of information related to implementation (Article 12) as well as financial resources including transfer of technology needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by Article 4.1 and that are agreed upon by a developing country Party and the GEF.

It must be ensured that these resources will be made available to the developing country Parties despite any later agreement on joint implementation.

Furthermore it must be ensured that the existing development aid continues and that contributions according to the Climate Change Convention are given on top of the ODA.

Criteria for Joint Implementation.

If joint implementation is used by industrialised countries as an attempt to "buy" themselves free from the commitments of the convention with respect to the emission of greenhouse gases it could not be expected that developing countries would take their commitments under Article 4.1 seriously. Therefore it is very important that the criteria for using joint implementation will be clear and transparent so that the intention of the developed countries could not be misunderstood.

EC-positions.

During the negotiations on the Framework Convention on Climate Change it was the position of the EC that joint implementation contains attractive elements and that it should be possible for the industrialized countries to use joint implementation to a certain degree and on criteria to be decided upon.

The EC agreed upon three basic conditions for application of joint implementation:

1. Joint implementation should not be used to fulfil the commitment of stabilization but only for the following reductions after the year 2000,
2. Joint implementation should only be used among countries committed in accordance with Article 4.2.a and b,
3. The donor-countries should implement measures to make a certain share of the reduction nationally.

Further criteria to be discussed in the deliberation on joint implementation.

4. If the concept of joint implementation should only include committed Parties (Annex-1-country Parties) the effect of the concept could be rather limited. Therefore it could be considered to include developing country Parties on the condition that should fulfil certain criteria to be laid down.
5. It should be secured that the industrialized countries do not use their present development assistance (ODA) to buy emission credit.
6. The level of ambition in the climate convention should be retained by setting up criteria on how many financial resources a country can use compared with the resources allocated to the climate convention and development assistance (ODA). One provision **could** be that only countries which are fulfilling the recommendation of Agenda 21 of allocating 0.7% of GNP as ODA should have the possibility of participating as a donor-country in a joint implementation programme/project.
7. In the light of the outstanding problems and uncertainties connected to the use of joint implementation the concept of joint implementation ought to be tested during a pilot period. After an evaluation the final criteria can be laid down. The pilot period should be limited to a certain number of donor/recipient-countries.

The evaluation of the pilot period should inter alia include

- an assessment of how cost-effective joint implementation is in the real world taking into account e.g. the infrastructural needs,
 - an assessment of the socio-economic implications of projects carried out under the joint implementation compared with the costs of emission reductions in the donor-countries, and
 - an assessment of the impact of joint implementation on the pace of development of new technology.
8. The credit of the CO₂-emission for projects under joint implementation should be limited in time and determined with a decreasing crediting over the lifetime of the project.
 9. In order to limit the problems with respect to control and documentation the concept should only include reduction of CO₂ emissions from fossil fuels and the obligation of reporting should be strengthened considerably.

Until the COP has laid down criteria for determination of sinks this should not be included in the concept of joint implementation.

The obligation of reporting, ref. Article 12, should be strengthened for

those countries including developing countries which wishes to participate in joint implementation.

10. It is of great importance that socio-economic criteria for the "base-line-scenario" for the period in question are defined very carefully.

PAPER NO. 7: FINLAND

JOINT IMPLEMENTATION

The basis for joint implementation is provided in Article 3.3 of the Convention and more specifically in Article 4.2.(a). According to the latter Article, the measures of Annex I countries to limit the greenhouse gas emissions and to protect and enhance the greenhouse gas sinks and reservoirs may be implemented jointly with other interested Parties, either with those enlisted in Annex I or with the developing country Parties.

The aim of joint implementation is to improve global cost-efficiency of the mitigation measures and to enable and promote these activities even in countries with limited resources to address the climate change by themselves. Joint implementation should be in line with the principles of common but differentiated responsibility and equity.

The criteria for joint implementation activities should base on these considerations. In order to avoid bureaucracy and waste of resources we should, when developing these criteria, aim at a method as pragmatic and simple as possible.

In order to encourage a prompt start for joint activities and to gain more experience, the joint implementation could already be part of the policies and measures which aim at the return of the emissions of greenhouse gases to earlier levels by the end of the present decade.

At the first stage joint implementation could best be applicable to activities between Annex I country Parties - but in principle, at a later stage, also between Annex I countries and developing countries. The elaboration of the criteria for joint implementation should proceed step by step and in accordance with the elaboration of the Convention.

At the early stage of implementing the Convention, the most pragmatic and prompt way is to let the participating countries themselves to agree on how the emission and sink benefits, as well as the funding, will be allocated. The participating countries should report in their respective national communication to the Convention on the joint activities and on their effects on the emissions and sinks. The Conference of the Parties should then review the joint activities and their effects by using the same methods as when reviewing the national measures and the adequacy of the commitments.

Accordingly, the criteria for joint implementation could be based the following principles:

- 1) Joint implementation is voluntary in nature.
- 2) Joint activities should only be a complementary part of the national policies to fulfill the commitments in a cost-effective way. Joint implementation is not intended, or should not be used, as a means of undermining the other commitments undertaken by the Parties in Annex I.
- 3) The effects of joint activities on the emissions by sources and removals by sinks should be evaluated by using the same methods as evaluating the effects of activities taken within the national territory. These reviewing methods should have international transparency.
- 4) The evaluation of the effects should cover the full life cycle of the project and joint activities.
- 5) To avoid double counting joint implementation activities should be reported to the Convention by participating countries in a consistent way.
- 6) The joint activity projects should be initiated and implemented after the signature of the Convention. They should not be part of earlier cooperation agreements. Joint implementation should promote mobilization of additional resources. Transfer of resources in the context of joint implementation should be separate and additional to those commitments which Parties have undertaken under the financial mechanism of the Convention.

At a later stage there is a need to create a mechanism, e.g. a clearing-house, to deal with multilateral joint implementation activities. This mechanism could be used to take care of joint activities between countries without defined commitments or targets. The mechanism would assist the financing and recipient Parties to find each other. These kind of multilateral activities need specific common criteria. The principles mentioned above could form a base for the later elaboration of these criteria. This mechanism would mainly serve the needs of the developing countries and the criteria should be worked out taking into account their specific needs. It would be appropriate that the clearing house would be a part of the future financial mechanism.

PAPER NO. 8 : FRANCE

**Document d'information sur les "actions conjointes"
("joint implementation") visées au paragraphe
2.a de l'article 4 de la Convention Cadre sur
les changements climatiques**

I - La prévention du changement de climat exige un développement de la coopération et de la solidarité internationale. Il convient en particulier d'encourager le financement par les pays riches d'actions visant à réduire les émissions de gaz à effet de serre dans les pays pauvres, que ce soit dans un cadre bilatéral ou dans un cadre multilatéral (Fonds pour l'Environnement Mondial).

II - Pour organiser le développement de telles actions, on pouvait concevoir deux approches :

1) Les pays riches s'engagent à un niveau minimal (en termes financiers) d'aide, fonction de leur niveau de vie et de leurs propres émissions. Cette aide est consacrée à financer des réductions d'émissions dans les autres pays.

2) Les pays riches s'engagent à respecter un quota d'émission à une échéance donnée. Pour respecter ce quota, ils peuvent déduire de leurs propres émissions, les réductions d'émission qu'ils ont financées dans d'autres pays.

III - La convention cadre sur les changements climatiques a retenu la deuxième solution.

On doit noter que, si la première solution ne comportait pas d'effets pervers, la seconde présente des inconvénients.

L'approche prévue par le paragraphe 2.a de l'article 4 permet théoriquement d'optimiser globalement les coûts des actions engagées en réalisant d'abord les

actions les moins coûteuses : un pays ("donneur") peut financer une action dans un autre pays ("receveur") si son coût est moindre que celui de l'action la moins coûteuse réalisable chez lui.

En effet, on avance souvent qu'il est, notamment en matière de CO₂, très coûteux de réduire les émissions dans les pays développés et très peu coûteux de le faire dans les pays en développement (ou dans les pays dont l'économie est dite "en transition").

En réalité, cette affirmation est souvent inexacte, si elle mélange le coût économique d'une action et son coût politique, si elle sous-estime les aléas liés à la mise en oeuvre d'une action dans un pays dont l'économie est encore instable, et quand elle néglige les avantages d'une dynamique d'innovation :

- beaucoup d'actions ont un coût faible ou même négatif, dans les pays industrialisés ; en particulier, le secteur de l'activité économique des pays industrialisés dont les émissions croissent le plus vite est celui des transports ; or les transports routiers sont souvent implicitement subventionnés, dans la mesure où ils sont loin de supporter la totalité des coûts externes qu'ils engendrent, à commencer par les coûts d'infrastructure, de congestion et d'insécurité. Le développement des transports excède de ce fait leur utilité sociale réelle : une imputation complète de ces coûts externes aurait un effet bénéfique au plan macro-économique pour les pays développés ; on a de bonnes raisons de penser que le coût économique de la réduction des émissions dues aux transports est négatif. Mais toute action sur les transports routiers dans les pays développés a un "coût politique" élevé, car ces pays ont une culture où la mobilité est presque devenue une fin en soi. L'extrapolation au reste de la planète des habitudes de mobilité des pays industrialisés n'est pas compatible avec l'objectif ultime de l'objectif de l'article 2 de la convention (stabiliser les concentrations).

.../...

- sur un autre plan, il faut souligner que beaucoup d'actions que l'on envisage d'encourager dans les pays en développement auraient un bon rapport coût/avantages si on avait à les réaliser dans un pays développé, mais que leur efficacité réelle et la pérennité de leur résultat sont souvent plus faibles que prévu, en raison des caractéristiques actuelles du milieu dans lesquelles on les réalise ; par ailleurs leur coût de mise en oeuvre est souvent plus élevé que ce n'eût été le cas si on les avait engagés dans un pays développé.

- enfin, dans l'évaluation du rapport coût/avantages des actions entreprises dans les pays développés (surtout quand il s'agit d'actions innovantes), on ne doit jamais oublier l'impact futur de ces actions (très difficile à estimer), en particulier lorsqu'elles infléchissent le modèle technologique que les trois quarts de la population (celle des pays en développement) copieront plus tard : le développement d'une technologie nouvelle dans un pays industrialisé a des avantages futurs que ne présente pas la mise en oeuvre, dans un autre pays, d'une technologie existante.

En conclusion, les pays industrialisés ont d'abord l'obligation de changer le modèle culturel et technologique qu'ils offrent au reste du monde ; on doit craindre très fortement que, si ces pays ont la possibilité de ne guère modifier leurs émissions en allant réduire celles des pays en développement, on obtienne au mieux quelques résultats intéressants à court terme mais que l'on retarde toujours les inflexions qui seront décisives pour le long terme.

IV - Un certain nombre de dispositions paraissent nécessaires pour éviter que les pays riches ne privilégient indûment les actions conjointes par rapport à la réduction de leurs propres émissions :

- une réduction d'émission de 100 par pays receveur devrait être portée au crédit du donneur que pour une fraction de son résultat, par exemple 50 %.

- les crédits ainsi portés au compte du pays donneur ne devraient pas dépasser un certain pourcentage de ses propres émissions (par exemple 5 %) ou un certain pourcentage de ses propres réductions d'émissions (par exemple 25 %).

- le pays donneur devrait avoir chez lui déjà réalisé toutes les actions dont le coût unitaire par tonne d'émission évitée est inférieur ou égal à celui de l'action entreprise chez le receveur. En particulier, le donneur devrait avoir facturé à ses usagers de la route les coûts d'infrastructures et d'accidents qu'ils occasionnent.

V - Si le résultat des actions conjointes bilatérales, en terme de réduction des émissions, est porté au crédit du pays donneur, il faut aussi prévoir que les réductions d'émissions obtenues grâce au FEM soient réparties entre les pays qui ont alimenté ce fonds, au prorata de leurs contributions.

VI - Certaines modalités devraient en outre être précisées :

- s'il est facile (dans le cas du CO₂) de vérifier le niveau d'émission d'un pays qui s'est engagé à respecter un quota d'émission, il est beaucoup plus difficile d'évaluer la réduction d'émission suscitée, dans un pays receveur, par une action conjointe. Cette réduction d'émission est facile à estimer quand on améliore la performance énergétique d'une installation existante (par exemple conversion d'une cimenterie existante de la "voie humide" à la "voie sèche"). Mais doit-on prendre en compte

les gains d'émission réalisés en choisissant tel procédé plutôt que tel autre, lors d'un accroissement de capacité de production, sachant que les deux procédés en cause ont des avantages et des coûts différents sur divers plans ?

Comment évaluer les gains d'émission résultant de la réalisation d'un chemin de fer à la place d'une route, ou de la mise en place d'un transport collectif dans une ville, sachant que ces gains résident non seulement dans le niveau des émissions spécifiques de gaz à effet de serre relatifs à chaque mode de transport mais aussi (et même surtout) dans les impacts différents de ces divers modes en matière d'évolution de l'organisation urbaine, de l'organisation de la production et de l'aménagement du territoire.

Lorsque l'économie de CO2 résultant d'une action ne peut être évaluée de façon indiscutable, il faudrait que puisse être recueilli, si le pays donneur le souhaite, l'avis préalable d'une instance d'évaluation qui fixerait pragmatiquement une jurisprudence.

Par ailleurs, un contrôle de l'efficacité des actions conjointes serait réalisé par sondage (ou systématiquement ?) a posteriori par une instance internationale qui pourrait être la même que l'instance consultative d'évaluation préalable évoquée ci-dessus.

On a parfois évoqué la possibilité pour des entreprises privées de conduire des actions conjointes. Cette éventualité doit être écartée dans la mesure où seuls les Etats se sont engagés sur des réductions d'émission : ces Etats seraient les promoteurs de ces actions, dont le résultat serait porté à leur crédit ; ceci n'exclut pas, bien entendu, que des entreprises privées soient les opérateurs de ces actions.

VII - Les inconvénients du dispositif d'actions conjointes prévu dans la convention cadre, inconvénients décrits au paragraphe III ci-dessus, justifient que l'on étudie la possibilité de ne pas pérenniser ce dispositif. Il pourrait être mis en vigueur pour le respect de l'engagement de l'article 4, paragraphe 2.a jusqu'à la fin de la présente décennie.

Ultérieurement devrait être instaurée l'obligation d'une aide minimale aux pays en développement ou "en transition". Les actions conjointes seraient alors portées au crédit du donneur, non plus au titre de son engagement de réduire ses propres émissions mais au titre de son engagement d'apporter une aide minimale.

Cette aide minimale pourrait être définie en termes de résultats de réduction des émissions des pays receveurs ou en termes de moyens financiers consacrés à de telles réductions.

Dans le premier cas, le résultat des actions conjointes serait porté au crédit du donneur selon les modalités évoquées au paragraphe VI ci-dessus.

Dans le second cas, on comptabiliserait au crédit du donneur le coût de l'action conjointe sous réserve que son rapport coût/réduction d'émission reste inférieur à un certain plafond.

(Unofficial translation)

INFORMATION DOCUMENT ON THE "JOINT IMPLEMENTATION" REFERRED TO
IN ARTICLE 4, PARAGRAPH 2 (a) OF THE FRAMEWORK CONVENTION ON
CLIMATE CHANGE

Note by the French delegation

I. The prevention of climate change requires a development of international cooperation and solidarity. In particular, the rich countries must be encouraged to finance actions aimed at reducing emissions of greenhouse gas in the poor countries, whether in a bilateral framework or a multilateral one (Global Environment Facility).

II. To organize the development of such actions, two approaches are conceivable:

1. The rich countries commit themselves to a minimum level of assistance (in financial terms), according to their standard of living and their own emissions. This assistance is then used to finance the reduction of emissions in other countries.

2. The rich countries commit themselves to respect an emission quota by a given date. To respect this quota, they can deduct from their own emissions any emission reductions that they have financed in other countries.

III. The Framework Convention on Climate Change has chosen the second solution.

It should be noted that, although the first solution has no harmful effects, the second has some drawbacks.

The approach provided for in article 4, paragraph 2 (a), makes it theoretically possible to optimize on a global basis the costs of the actions undertaken by first implementing the cheapest actions: a ("donor") country can finance an action in another ("recipient") country if its cost is less than that of the cheapest action that could be implemented at home.

It is often suggested indeed that, particularly with regard to CO₂, it is very expensive to reduce emissions in the developed countries and very cheap to do so in the developing countries (or in countries with economies "in transition").

In actual fact, this statement is often inaccurate in that it mixes the economic cost of an action with its political cost, underestimates the risks linked with the implementation of an action in a country where the economy is still unstable and neglects the advantages of innovation dynamics:

Many actions have a low or even negative cost in the industrialized countries. In particular, the economic sector in the industrialized countries in which emissions are increasing most rapidly is that of transport. Road transport is, however, often implicitly subsidized inasmuch as it is not being charged anything like the full external costs it generates, such as the infrastructural costs, the costs arising from congestion and the costs of accidents. Consequently, the development of the transport sector is exceeding its real social utility. If these external costs were charged in full, this would be beneficial for the developed countries at the macroeconomic level, since there is good reason to believe that the economic cost of reducing emissions due to transport is a negative one. However, any action regarding road transport in the developed countries has a high "political" cost, since these countries have a culture in which mobility has almost become an end in itself. Extrapolation to the remainder of the planet of the mobility habits of the industrialized countries is incompatible with the ultimate objective of article 2 of the Convention (stabilizing concentrations).

At another level, it should be emphasized that, while many of the actions which it is proposed to encourage in the developing countries would have a good cost/benefit ratio if they were implemented in a developed country, their genuine long-term effectiveness is often less than foreseen because of the characteristics of the setting in which they are carried out; moreover, it is often more expensive to do so in a developing than in a developed country.

Lastly, when evaluating the cost/benefit ratio of actions in developed countries (especially innovatory actions), the future impact of these actions, though very difficult to estimate, should never be overlooked, particularly when they change the technological model that three-quarters of the world's population (in the developing countries) will subsequently copy. The development of a new technology in an industrialized country has future advantages which are not present in the implementation, in another country, of an existing technology.

In short, the industrialized countries must first of all change the cultural and technological model that they are offering to the rest of the world. There is a considerable danger that, if these countries are given the possibility of making little or no changes in their own emission behaviour providing they reduce the emissions of the developing countries, a few interesting short-term results may at best be obtained but the changes of direction that will be decisive in the long term will be put off indefinitely.

IV. A number of provisions would seem to be needed to prevent the rich countries from giving undue preference to joint implementation rather than to reducing their own emissions:

A reduction of a recipient country's emissions by 100 should be credited to the donor to a partial extent only, e.g. 50 per cent.

The credits thus added to the account of the donor country should not exceed a certain percentage of its own emissions (e.g. 5 per cent) or of its own emission reductions (e.g. 25 per cent).

The donor country must have already implemented at home all actions whose unit cost per ton of emission avoided is less than or equal to that of the action undertaken in the recipient country. In particular, the donor should have charged its road users the infrastructural costs and accident costs for which they are responsible.

V. If the result of the bilateral joint implementation, in terms of emission reductions, is credited to the donor country, arrangements must also be made for the emission reductions achieved through the GEF to be distributed among the countries that have supplied the Facility, in proportion to their contributions.

VI. In addition, certain procedures should be specified:

Although it is easy (in the case of CO₂) to verify the emission level of a country which has committed itself to respecting an emission quota, it is much more difficult to evaluate the reduction of emissions in a recipient country as a result of a joint implementation action. Such a reduction in emissions is easy to estimate when the energy performance of an existing plant is improved (e.g. conversion of an existing cement factory from the "wet process" to the "dry process"). Should account be taken, however, of the emission gains achieved by selecting one process rather than another, when increasing production capacity, in view of the fact that the two processes in question have different advantages and costs at various levels?

It is also difficult to evaluate the emission gains resulting from the construction of a railway rather than a highway, or of installing a public transport system in a town. Such gains consist not only of the level of specific emissions of greenhouse gas for each transport mode but also (and even mainly) of the different impacts of these various modes on the development of urban organization, the organization of production and physical planning.

Where the CO₂ economy resulting from an action cannot be evaluated beyond all doubt, it should be possible, if the donor country so desires, to seek a prior opinion from an evaluation organ which would establish pragmatic precedents.

Moreover, the effectiveness of joint implementation should be subsequently verified through sampling (or systematically?) by an international organ which could well be the same advisory organ that carried out the prior evaluation mentioned above.

Reference has sometimes been made to the possibility that private undertakings might engage in joint implementation actions. That possibility should be set aside inasmuch as it is the States alone which have committed themselves to emission reductions: the States would thus be the promoters of such actions, whose results would be credited to them. This does not, of course, exclude the possibility that private enterprise might implement such actions.

VII. The disadvantages of the joint implementation provision in the Framework Convention, as described in paragraph III above, mean that it is worth studying the possibility of restricting the time-frame of the provision. It might be applicable for the purpose of meeting the commitments under article 4, paragraph 2 (a), until the end of the present decade.

Beyond that date, the obligation of giving minimum assistance to the developing or "transition" countries should be introduced. Joint implementation actions would then no longer be credited to the donor by virtue of its commitment to reduce its own emissions but by that of its commitment to supply minimum assistance.

This minimum assistance could be defined in terms of ~~the~~ reduction in the emissions of the recipient countries or in terms of the financial resources allocated to such reductions.

In the former case, the result of the joint actions would be credited to the donor in the manner set out in paragraph VI above.

In the latter case, the cost of the joint action would be credited to the donor's account provided that its cost/benefit ratio in terms of emissions is below a certain ceiling.

PAPER NO. 9: GERMANY

Information Document on Criteria for Joint Implementation
Agenda item 2 b)

1. Germany sees Joint Implementation as an instrument contributing to reach the objective in Art. 2 of the Framework Convention on Climate Change. It offers an opportunity to achieve progress in climate protection in an economically efficient way and for the benefit of all participants.

Therefore we take interest in an intensive and constructive discussion within the framework of this first meeting of working group I in order to create a basis for the development of an operational framework for the implementation of this concept.

At present we are not yet in a position to submit a comprehensive concept and differentiated criteria for Joint Implementation. Nevertheless, we should like to make some general comments on our understanding of Joint Implementation already now and also to address some points contained in the document of the secretariat A/AC 237/35.

The secretariat deserves all credit and thanks for bringing back into our memories with the document and in such an excellent manner the framework which was laid down for Joint Implementation by the Convention and for making us aware along which lines a discussion on the further development of Joint Implementation is now necessary.

2. With reference to our statement of 12 December 1991 on the 4th meeting of the INC, we should like to make the following general comments on Joint Implementation.

To ensure that Joint Implementation be applied by the international community it has to be developed into an instrument whose theoretically possible benefits can be put into practical terms and whose draw-backs can be kept as low as possible. The decisive question will be in particular whether it will be possible to provide for the following scopes of action by giving the Joint Implementation an appropriate shape:

- The desire of the countries to develop their economies must be taken into account. By the transfer of technology and investment into the developing countries and/or countries in transition to market economy which is automatically linked to Joint Implementation, economic development and climate protection can be connected in a purposeful way.
- The flexibility inherent to Joint Implementation may make it easier for contracting parties to commit themselves to far-reaching reduction obligations, the more so as cost savings can also be expected. Thereby quicker stabilisation of the greenhouse gas concentrations and thus the goal of the Convention could be promoted.

- By means of Joint Implementation reduction potentials may also be made use of in countries which, due to their present level of economic development, cannot yet be expected to meet specific obligations pursuant to Article 4.2 of the Framework Convention on Climate Change.

In addition to these benefits, Joint Implementation however also entails the risks of developments in the wrong direction. It is in the common interest of both developed and developing countries to make global climate protection as efficient as possible. This has to be done within the framework of equal partnership. It would be harmful for the further development of a strategy on climate protection which is backed by as many countries as possible, if the developing countries gained the impression that the developed countries were desirous of using Joint Implementation for avoiding fulfillment of their own obligations to protect the climate.

3. We should like to make the following comments to the document of the secretariat:

a) Section II "Convention Provisions relating to Joint Implementation"

- This section quotes the climate convention provisions relevant for Joint Implementation and adds helpful explanations and interpretations. The German delegation gives full support in particular to the comments on items 5, 7, 10 and 11.

The Convention does not contain a definition of Joint Implementation. However, such a definition is urgently required for all further discussions. The distinction made in item 11 of the secretariat's document between "measures or commitments, as provided for in Article 4.2 (a) and (b) and, on the other hand, various kinds of financial and/or technical assistance" is helpful but, in our opinion, requires further specification. We suggest that Joint Implementation be understood merely on the basis of the application of the offset concept. According to this idea Joint Implementation is considered a procedure by which contracting parties of the climate convention jointly apply the concept of emissions-trading and, in particular, the offset-principle contained within this concept: according to this interpretation, fulfilling a certain part of the obligation to reduce greenhouse gas emissions of one Party by a reduction measure in the territory of another Party would therefore be central for Joint Implementation. An important advantage thus arising for the partner is given by a transfer of financial resources and technology. Joint Implementation is to be understood along these lines.

- Concerning the question of different partnerships in Section II B of the secretariat's document:
The document mentions Joint Implementation of contracting parties included in Annex I among each other and with other contracting parties not included in Annex I and between private companies from these countries.

Concerning the question of Joint Implementation on the level of private business we assume that within the framework of the Convention only contracting parties will be eligible for crediting for Joint Implementation (offsetting reduction obligations against

emission credits).

b) Concerning section III "Considerations relating to Criteria"

We mentioned earlier scopes for action which are to be provided by Joint Implementation. In our opinion, these scopes of action represent general criteria, whose realization is the most essential requirement for justifying Joint Implementation from the outset, and the degree to which they are put into practical terms may be used as a measure for the success of Joint Implementation.

Section III of the secretariat's document refers to the criteria for the practical structure and application of Joint Implementation. Discussions on such criteria are very difficult as they depend on the different levels where Joint Implementation might take place. In particular for discussing the criteria for accounting procedures and communication of results clear ideas on possible levels of Joint Implementation are necessary. These ideas still have to be developed. We will refer to them in our comment on section IV "Process and Institutions" of the secretariat's document.

Concerning the criteria mentioned in item 15 of the secretariat's document we should like to make the following comments:

Ad a:

The problem of the use of different reference years ought to be solved in a pragmatic way. We assume that the present commitment in the convention to return greenhouse gas emissions to their 1990 levels by the year 2000 as well as the commitment taken by the European Community and its member states to stabilize CO₂-emissions by the year 2000 are not to be met by Joint Implementation projects but by measures in the individual countries. This does not rule out assistance to other countries but precludes crediting of emission reductions for such assistance. As we clearly said already in our December 1991 statement: Joint Implementation under the Framework Convention on Climate Change in our understanding is to be applied to reduction commitments. Moreover, we continue to advocate that Parties should have to implement a certain and specified share of their reduction commitments through measures taken on their own territories. This is essential in order to further develop the state of the art for the reduction of greenhouse gas emissions at a national level and so to maintain the necessary incentives for technological innovation.

With regard to more far-reaching reduction obligations planned we ought to try to agree on the same reference years.

Ad b)

Concerning this item, we believe that a Joint Implementation activity between the countries included in Annex I cannot be initiated before the criteria required by Article 4 para 2 d) have been agreed by the first Conference of Contracting Parties.

Ad c)

We agree with the secretariat that it is necessary "to consider the full cycle of processes involved in a project". Otherwise, for example in the case of relocations of plants to other countries, a situation could occur where emissions are lower than the standard in the country receiving the respective plant, but which, at a global level, means a deterioration as compared to the status quo ante. Such a measure would obviously be harmful for climate protection and would therefore be unsuitable for getting an emission credit. Evaluation problems with regard to emission credits can also arise in the case of new investments. Therefore the question concerning the comparative basis of Joint Implementation projects has to be asked in general. In order to make progress at this point it might be worth considering whether typical Joint Implementation projects could be compiled in a list. Possibly a certain degree of "standardisation" of emission credits arising from such "typical" projects might be achieved. However, untypical projects would have to be decided upon according to the conditions prevailing in the individual case. The procedure of accounting ought to be agreed upon.

Ad d)

Concerning the "contribution of the project to other specific commitments" we assume that it is not permitted that provisions of this Convention be contravened by these projects but that in general they are only measured against the criterion "reduction of greenhouse gas emissions".

As recommended by the secretariat under item 18 we also agree that the points mentioned under item 17 ought to be left to the discretion of the collaborating parties.

c) Concerning Section IV: "Process and institutions"

We share the view of the secretariat that a first step might be the establishment of the Clearing House for the exchange of information on possible projects. In addition, however, the discussion will have to be intensified considerably.

We will have to reflect on which of the following three levels and in which way Joint Implementation can be put into practice with regard to institutions and procedures:

- private business
- intergovernmental level
- and arranged by an international Clearing House in the framework of the Convention.

These three levels of Joint Implementation can serve to achieve different advantages and may thus complement each other in their objectives.

4. These few examples alone show what comprehensive and challenging work lies ahead. Germany will continue to take on an active and committed role in accomplishing this work.

PAPER NO. 10: JAPAN

Comments on criteria for joint implementation
of the Government of Japan

1. The Government of Japan believes that the joint implementation is one potential means of achieving the overall objective of the convention. As was indicated in the discussions at INC 8, a crucial question is whether joint implementation can be applied only to the Annex I Parties or to the other Parties as well.

The Government of Japan fully understands the concerns expressed by developing countries and sees a great need to deepen the mutual understanding on every aspect of the joint implementation. We wish that the discussions underway will serve this purpose. The Government of Japan is convinced that joint implementation could be something that would benefit all those who participate, so that it should be used not only among the Annex I Parties but also between the Annex I and the other Parties. In addition, it is necessary to pay sufficient consideration to incentives given to the both Annex I Parties and other Parties involved in joint implementation.

Joint implementation between Annex I Parties and the other Parties would enhance the cost effectiveness for global abatement. According to a research conducted by the OECD, the costs of achieving given global abatement targets could be reduced many-fold if countries coordinate their abatement policies.

Joint implementations could also bring about certain benefits to developing countries because joint implementation between the Annex I Parties and the other Parties would often be accompanied by:

- 1) an improved quality of environment in host countries, and
- 2) the transfer of technologies and know-how to the developing countries, which would help address their domestic environmental concerns.

2. Joint implementation is a new concept for all of us, so we have to work together to elaborate on the details before we embark. These are some specific comments on some paragraphs in the document A/AC.237/35, which is an excellent spring-board for our discussions.

(1) Paragraph 10

With regard to the question whether joint implementation between Annex I Parties and other Parties should lead to reduction or increases in removals beyond the commitment for Annex I Parties to return their emissions individually or jointly to 1990 levels, the Government of Japan believes that such achievement beyond the commitment will certainly be what we are all trying to attain in the long term but should not be regarded as compulsory, at least in the short term.

(2) Paragraph 11

The Government of Japan fully supports the necessity to avoid double counting financial flows as both financial assistance and joint implementation. In particular, when the financial resources are covered by Article 4, paragraph 3, and are to be provided in accordance with Article 11, such financial flow should be distinguished from any public or private financial resource flows for joint implementation in a strict manner.

(3) Paragraph 18

It seems that the Secretariat paper suggests that some of the criteria for eligibility should be decided by the COP and others by the participating countries in joint implementation projects. However, we think that, as far as the criteria of eligibility are concerned, they should all be agreed upon by the COP.

(4) Paragraph 20

The Government of Japan believes it necessary for the COP I to agree on the methodologies for calculating the results of joint implementation measures. For this purpose, we would like to propose that the INC Secretariat should develop a document of specific methodologies for calculation before the INC 9, which contains suggestions on the appropriate allocation of credit between Annex I Parties and the other Parties.

In deciding allocation of credit between Annex I Parties and other Parties, it is necessary to pay sufficient consideration to incentives given to the both Annex I Parties and other Parties involved in joint implementation by credit allocation. As for the actual allocation rate, experience will tell which ratio is appropriate. In this regard, some bilateral pilot projects of joint implementation will be useful, provided that the information of the effects of pilot projects will be disseminated to all the signatories of the Convention through the secretariat.

(5) Paragraph 21

The Government of Japan supports the principle expressed in this paragraph that any indication of a credit or attribution to one or more of the Parties should not be interpreted as creating any commitments beyond those currently contained in the Convention.

(6) Paragraph 27

We support the necessity for each Party involved in a joint implementation project to describe the results of the project in a separate section of its communication, in order to avoid any possibility of double counting.

(7) Paragraph 29

The Government of Japan recognizes the significance of a role to be played by the clearing house for

information about possible projects. We would like to further consider its appropriate modalities, particularly in terms of its resource implication.

PAPER NO. 11: MALAYSIA

Preliminary Comments on Joint Implementation Submitted by Malaysia

In response to the A/AC.237/35 prepared by the Secretariat on "Criteria for Joint Implementation", Malaysia wishes to present its preliminary comments.

One of the principles of the Convention is "common and differentiated responsibility" and it is further recognised that the developed country Parties should take the lead to combat climate change and the adverse effects thereof. In addition, the objective of the Convention is to stabilise the greenhouse gas emissions in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Therefore, the developed country Parties must sincerely take the lead in stabilising and reducing their greenhouse gas concentrations.

The Convention recognises the possible difficulties that could be faced by some developed country Parties in meeting their obligations of stabilisation and reduction and therefore contains a permissive provision relating to joint implementation activities among developed country Parties in annex 1.

The Preamble of Article 4.2 of the Framework Convention on Climate Change stipulates clearly that the commitments of subsequent sub-paragraphs are for the "**developed country Parties and other Parties included in annex 1**". The subsequent para. (a) further stated that "these [*developed country*] Parties may implement such policies and measures jointly with other Parties [*included in annex 1*] and may assist other Parties [*included in annex 1*] in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph." Therefore the Convention explicitly states that joint implementation should only be implemented among the country Parties included in annex 1.

In addition, Malaysia sees the inference to "such policies and measures" in the last sentence of para. (a) to be a clear reference to the specific "national policies and corresponding measures" described in the previous two sentences of the para. (a) which only Annex I Parties are obliged to adopt and implement. The nature of the "policies and measures" referred to in para. (a) must necessarily relate to "limiting *its* anthropogenic emissions of greenhouse gases and protecting its greenhouse gas sinks and reservoirs." This connotes the obligation on behalf of Annex I Parties to undertake *national* policies and measures in respect of emissions which arise and reservoirs and sinks which are located within the jurisdiction, control and territorial area of the Annex I Party. Thus, joint implementation would only appear to cover actions which deal with Annex I Parties' own aggregate anthropogenic emissions and the total sinks and reservoirs that lie within the limits of their collective national jurisdiction or control, or in the case of a Party which is a regional economic organisation, within the competence of that regional economic integration organisation. Alternative interpretations of the Convention to allow joint implementation between country Parties in Annex 1 and

developing country Parties would blur the distinction between Parties' general and specific commitments under the Convention.

Malaysia is disappointed with the distorted interpretation of Article 4.2, by developed countries. This move clearly contravenes the objective of the Convention to achieve early stabilisation of greenhouse gas emission.

Malaysia is concerned with the intensive promotion of joint implementation activities among developed country Parties and developing country Parties even before the Convention comes into force. Malaysia fails to see the benefits of joint implementation activities as stated by some developed country Parties; such as bringing about faster transfer of funds from developed country Parties to developing country Parties and also improving the socio-economic developments in the latter. So far, examples of joint implementation activities involve mainly enhancement of sinks in developing country Parties. These activities involve only small amounts of fund which are restricted to the investments of the projects themselves only and little transfer of technology.

Malaysia also shares the worries of many developing country Parties that joint implementation among developed and developing countries Parties may lead to a transfer of commitments of stabilisation and reduction to the latter. The developed country Parties will be allowed to continue with their present emission levels but the developing country Parties may be required to commit their targets of stabilisation and reduction. The joint implementation activities will turn into a transfer of commitments to developing country Parties.

Malaysia sees that it is a prerequisite condition for developed countries to meet the obligations of Article 4.2 fully first, before they could embark on any joint implementation activities with developing country Parties. However, to meet their obligations of stabilisation at 1990 level of greenhouse gas emissions by the year of 2000 and further reduction of 20% by the year of 2005, developed country Parties could carry out joint implementation activities among country Parties in annex 1.

As such, the criteria of joint implementation among the developed country Parties include:-

- a) Joint implementation must lead to a real reduction of greenhouse gas emissions of Parties involved.
- b) Funds provided to projects involved in joint implementation activities should be considered as additional to the normal commitments of financial resources from developed country Parties to the Convention. This is to ensure that there will be sufficient fund available for developing countries to meet their obligations.
- c) Developed country Parties must first meet the obligations of stabilisation and reduction fully at their respective national levels before any joint implementation with developing country Parties could be considered.

PAPER NO. 12: MEXICO

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"URGENTE"

1. LOS CRITERIOS A ESTABLECERSE PARA LA IMPLEMENTACION CONJUNTA, DEBERAN EVITAR LA POSIBILIDAD DE QUE LA APLICACION CONJUNTA DESVIE LAS OBLIGACIONES CONTRAIDAS POR LAS PARTES EN EL TEXTO DE LA CONVENCION.

2. LA APLICACION CONJUNTA, EN CUALQUIER CASO, NO DEBE EXCEDER UN PEQUEÑO PORCENTAJE DE LA EVENTUAL CUOTA BAJO RESPONSABILIDAD DE LOS PAISES PARTICIPANTES.

3. LA REALIZACION DE UN PROYECTO DE IMPLEMENTACION CONJUNTA DEBE ORIGINAR UN RESULTADO DE REDUCCION DE EMISIONES, SUPERIOR, O EN SU DEFECTO IGUAL, A LA QUE SE OBTENDRIA DE ACTIVIDADES INDIVIDUALES DE LOS PAISES COOPERANTES.

EL PAIS DONANTE NO PODRA ATRIBUIRSE LA INTEGRALIDAD DE LA DISMINUCION RESULTANTE.

4. EL EJERCICIO DEBE DE DEMOSTRAR QUE GRACIAS A LA APLICACION CONJUNTA SE OBTUVO UN MEJOR RESULTADO PARA LA SALUD DEL CLIMA GLOBAL. Y AL MISMO TIEMPO, UNA MEJOR RELACION COSTO-BENEFICIO QUE LAS OBTENIBLES A TRAVES DE ACTIVIDADES SIMILARES INDIVIDUALES.

LA IMPUTACION DE DISMINUCIONES A LOS PAISES COOPERANTES, EN NINGUN CASO DEBERA EXCEDER, EN EL ORDEN TEMPORAL, EL TIEMPO DE VIDA, ASI COMO LA EFICIENCIA DEL PROYECTO REALIZADO.

5. TRATANDOSE DE IMPLEMENTACION CONJUNTA A REALIZARSE ENTRE PAISES EN DESARROLLO Y AQUELLOS DEL ANEXO I, DEBERA ASEGURARSE QUE LOS RECURSOS TRANSFERIDOS SEAN NUEVOS Y ADICIONALES, INDEPENDIENTEMENTE Y POR ARRIBA DE LOS COMPROMETIDOS POR EL DONANTE AL MECANISMO FINANCIERO DE LA CONVENCION, ESTO ES, TANTO AQUELLOS CON PROPOSITOS DE CUMPLIMIENTO DE LOS INCISOS 4.1 Y 12.1, CUANTO AQUELLOS COMPROMETIDOS POR OTRAS ACTIVIDADES DE APOYO FINANCIERO Y TECNOLOGICO FAVORABLES A LOS PAISES EN DESARROLLO.

ESTO ES, SE DEBE DE GARANTIZAR QUE LA IMPLEMENTACION CONJUNTA NO RESULTE EN DETRIMENTO DE OTRAS OBLIGACIONES FINANCIERAS O TECNOLOGICAS, IMPIDIENDO LA DOBLE CONTABILIDAD (DOUBLE COUNTING).

ASIMISMO, DEBEN SER ADICIONALES E INDEPENDIENTES DE LOS DEDICADOS A LA ASISTENCIA INTERNACIONAL PARA EL DESARROLLO (ODA).

6. POR OTRA PARTE, DEBE DE EVITARSE QUE LOS PROYECTOS DE IMPLEMENTACION CONJUNTA ENTRE PAISES DEL ANEXO I Y OTROS PAISES, ACARREE UNA DISTORSION DE LAS PRIORIDADES DEL DESARROLLO DEL PAIS RECEPTOR, POR LO QUE SE DEBE DE DAR PREFERENCIA, O EN SU

CASO, EXCLUSIVIDAD, A PROYECTOS PRESENTADOS POR VOLUNTAD DE LOS PAISES EN DESARROLLO AL MECANISMO FINANCIERO, ANALIZADOS Y APROBADOS PREVIAMENTE POR DICHO MECANISMO, BUSCANDO QUE EL RECURSO ADICIONAL DE APLICACION CONJUNTA, INCREMENTE LA CAPACIDAD DEL PROYECTO PRESENTADO EN FORMA INDEPENDIENTE POR EL PAIS RECEPTOR.

7. POR ULTIMO, LA TRANSFERENCIA DE RECURSOS PARA UN PROYECTO DE IMPLEMENTACION CONJUNTA, NO DEBE INVOLUCRAR RESTRICCIONES O ATADURAS FINANCIERAS O TECNOLOGICAS, SINO SEGUIR LOS CRITERIOS DEL PROYECTO PRESENTADO ORIGINALMENTE POR EL PAIS RECEPTOR.

1. Executive Summary

This paper analyzes the concept of joint implementation (JI) of commitments under the Framework Convention on Climate Change (FCCC, the Climate Convention, the Convention), and how it might contribute to the achievement of the Convention's Objective. Two types of JI are discussed: closed system (market permits) and open system (bilateral and multilateral projects). The closed system is based on a universal emission standard, which would be difficult to apply under the Convention because only developed countries presently have obligations in respect to greenhouse gases (GHGs). Therefore, the closed JI system is presumed to be inapplicable to JI partnerships formed under the Convention.

In respect to open system JI, we raise concerns that are related to legal/institutional, environmental, technological, economic and equity/political considerations within the framework of the Convention. Pending resolution of these concerns, and assuming that JI is not constrained to a small percent of developed country commitments, it is suggested that JI between developed and developing countries might: 1) raise complex and presently unresolved legal, institutional and procedural questions; 2) increase the net global emissions of GHGs over the longer term; 3) impede the development of the technologies based on renewable energy sources and retard further improvements in end use efficiency; 4) yield less net economic benefit than may be commonly supposed; and 5) create potential equity and political difficulties, including especially the distortion of the developmental priorities of developing countries.

In light of these findings, we offer for discussion several broad principles to govern the specific criteria of open system JI partnerships, which may assist all Parties in working together to realize the Objective of the Convention. The proposed general principles include:

1) JI partnerships could be restricted to Parties who have accepted quantitative GHG emission limits, presently those developed country Parties and Parties with economies in transition to a market system as listed in Annex I of the Convention;

2) JI projects between Annex I countries could be considered only after those countries have reduced GHG emissions within their own territories;

3) partner countries to JI agreements may wish to limit joint emissions to the sum of commitments for individual emissions, so as to avoid circumvention of the Objective of the Convention;

4) JI could be limited to an appropriately small fraction of total commitments of developed country partners in order to avoid creating disincentives to appropriate technological innovation and transfer;

5) resource flows currently obligated under the Convention could be treated independently from those implicit in JI; and

6) prior to any JI, Parties may wish to seek consensus on the legal, institutional and administrative framework governing JI.

II. Introduction and Context

The potential disruption of the global climate by the emission of GHGs into the atmosphere is increasingly recognized as among the most significant challenges of the 21st century. There is fairly broad agreement in the scientific community that GHG emission is raising the global temperature and causing sea level rise. Long term implications could include destruction of coastline and wetlands, generation of more destructive storms, and more extreme climatic variations. The main outstanding scientific questions are not whether global warming is taking place, but rather, how much, how fast, and what are the regional distributions and extent of the effects.

Owing to the comparative scientific unanimity, there is also a broad consensus in the international diplomatic community that concerted international action is justified. This concern prompted the rapid negotiation of the FCCC over a 14 month period, culminating in its signature by 154 Countries and Regional Economic Organizations at Rio de Janeiro, Brazil, in June of 1992. The Objective of the Climate Convention is to combat global warming by stabilizing GHG concentrations in the atmosphere at a safe level (Article 2). The Climate Convention is expected to enter into force before the end of 1995, within 12 months of the necessary 50th ratification. The first meeting of the Conference of the Parties is tentatively scheduled for 28 March - 5 April, 1995, in Berlin.

The industrialized ("developed") countries are responsible the most anthropogenic GHG emissions. The Climate Convention therefore recognizes that the primary responsibility for redressing global warming lies with the developed countries. The Climate Convention recognizes also that the emissions of GHGs by developing countries must continue to grow for the time being in order to meet essential development goals. The Convention provides for the transfer of financial resources and technology to developing countries to enable them to achieve these goals, although the modalities for these transfers are still under negotiation.

III. Overview of Joint Implementation

A. Definition of Joint Implementation

Against this background stands joint implementation (JI) of commitments. JI is not defined precisely within the Convention, but it is generally understood to mean that a developed country Party will implement legally binding commitments to stabilize and reduce its GHG emissions by reducing sources and/or enhancing sinks of GHGs in the partner country(ies). The consequent reductions of emissions within the partner country(ies) would then be credited against the commitments of the developed country or shared between the cooperating states.

JI is a new concept, whose implications for global climate have just begun to be discussed in the context of the Intergovernmental Negotiating Committee (INC) for a FCCC. The topic was discussed at the eighth session of INC (INC-8), held in Geneva in August of 1993, based on a paper prepared by the Interim Secretariat (UNGA A/AC.237/35). The paper elicited a wide range of views, but no firm conclusions, and further discussions were considered useful by all delegations. The purpose of this paper is to contribute constructively to such further discussion.

B. History of Joint Implementation

The concept of joint implementation is relatively new to international law.¹ It originates historically in the idea of "tradeable emission permits" or "emissions credits" that evolved from the U. S. Clean Air Act of 1990. By this concept, a quantitative and legally binding emission standard is established on the basis of environmental and practical economic concerns. Companies that emit less than this standard are in a state of "overcompliance" and may sell their rights to emit further, up to the average standard of compliance, to other companies at prevailing market value for the emission credits. Companies that are unable to meet the established average standard can therefore emit above that standard by purchasing emission credits from companies that are in a state of overcompliance. It has been argued that this system of tradable permits has the advantage of cost effectiveness, flexibility, and incentive to maintain emissions at a generally accepted and enforced "average" level.

Within the FCCC, JI was introduced and considered at the Third and Fourth Meetings of the Intergovernmental Negotiating Committee for a FCCC,² in relation to two different but related concerns: flexibility in meeting commitments, and cost effectiveness. In view of differences in opinion as to how these concerns could best be met, and as many delegations genuinely did not appreciate how JI might work in practice, discussions were continued to future negotiating sessions. Thus, although the Convention contains provisions allowing JI, the exact way it might take place remained to be decided at the first meeting of the Conference of the Parties (COP), which shall "take decisions regarding criteria for joint implementation."³

By their acceptance of this language, all signatories to the Convention have agreed that developed country Parties can meet some of their agreed Convention commitments through JI with other developed country Parties. The criteria for such JI partnerships have yet to be negotiated, however, including the eligibility for JI partnerships. A particular issue is whether such JI partnerships can occur between developed and developing countries.

C. Types of Joint Implementation

As noted, JI has not been defined precisely for purposes of the Convention. Two distinct formulations merit consideration:

¹ A limited form of JI is established by Articles 2 (5) and 2 (8) (a) of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer as Adjusted by the Second Meeting of the Parties, London, 27 -29 June 1990, Further Amended by the Third Meeting of the Parties, Nairobi, 19 - 21 June 1991 and the Third Meeting of the Parties, Copenhagen, 23-25 November 1992 (The Montreal Protocol).

² Norwegian Non-Paper, U. N. Document A/AC.237/Misc. 1/Add.2, pp. 17 - 19, 11 June 1991, at INC-2; Intervention by the Netherlands on Behalf of the European Community and Its Member States: Commitments, 11 September 1991, INC-3; and Statement of Prof. Ansgar Vogel, Federal Ministry for the Environment, Nature Protection and Nuclear Safety of Germany, 12 December 1991, INC-4.

³ Article 4.2 (d) of the FCCC.

1. Closed System JI. This formulation, also termed the permit system of JI, is based on the tradeable permit system established under US Clean Air Act. The closed system for of JI has two major features: 1) the establishment by a regulatory authority of a quantitative defined emission standard for a particular gas or gases for a defined class of polluters (usually companies) which every individual polluting company within that class is legally obliged to observe; and 2) the establishment of a market in which individual companies that emit less than this standard (and have in effect "overcomplied" with their legal obligations), may sell their right to emit up to the level of the standard to other polluters who may find it more advantageous to buy such "credits" than to achieve compliance through their own efforts.

2. Open System JI. This system, also termed the project system of JI, is distinguished from closed system JI primarily by the absence of an agreed emission limit that applies to all Parties, and the consequent absence of a general free market in emission permits. It is based on bilateral or multilateral "projects" that have the effect of reducing GHG emissions outside the territory of the country whose commitments would thereby be credited.

The closed system JI reflects a faithful reconstruction of US national law, and has not been systematically extrapolated to the international community. Because it is based on a universal emission standard -- which is not contained within the Convention -- it may not be applicable to JI partnerships between developed and developing countries without substantial amendment of the Convention (see below). Discussions within the INC have focussed more on the open JI system model, in which Annex I Parties would earn credits toward their commitments under the Convention in return for their investment in specific projects that yield reductions of GHG sources or enhancement of sinks in other countries.

D. Assumptions Underlying Joint Implementation

JI invites the attractive possibility of international cooperation in meeting the Objective of the Convention, together with possible benefits to all Parties. Assumptions that are generally considered as the foundation of JI proposals are five:

1. For developed countries, fulfilling their reduction commitments within their own territories will be economically burdensome since cheap abatement opportunities have already been implemented. Further emission reductions would increase the cost of energy services, reducing economic growth.

2. The unit cost (financial investment) per unit benefit (reduction of sources or enhancement of sinks) in developing countries is lower than in developed countries because cheap abatement strategies are abundant in developing countries.

3. The international community at large will therefore benefit from JI partnerships between developed and developing countries because the cheapest abatement strategies will be implemented first, increasing the cost efficiency of abatement investments and therefore assuring maximal net global reduction in GHG emission per unit investment.

4. Financial and technical flows to developing countries under the Convention can be enhanced by JI.

5. JI opens many avenues for the satisfaction of commitments, thereby imparting useful "flexibility" in the meeting of goal of reducing GHG emissions.

We examine each of these assumptions below in detail. On the basis of this analysis, we offer for consideration six general principles to govern whatever specific criteria for JI that delegations may wish to negotiate.

IV. Joint Implementation Between Developed and Developing Country Parties

A. Legal and Institutional Issues

As noted, there are two conceptually distinct forms of JI, "closed system" (based on tradeable permits) and "open system" (based on projects). The closed system assumes a universal emission standard and the consequent formation of a market in tradeable permits, while the open system is based on bilateral or multilateral partnerships to implement agreed projects, without a universally applicable emission standard. The closed (permit) and open (project) systems raise distinct legal and institutional issues for JI partnerships between developed and developing countries, and will therefore be considered separately.

1. Implications of a Closed (Permit) JI System

The closed or permit system of JI raises a complex array of legal and institutional issues. Perhaps most telling, the permit or market system is based upon the acceptance of a common, legally binding standard for all participant Parties. It is not anticipated, however, that developing country Parties will have specific GHG emission standards under the Convention, at least for the foreseeable future. If the closed system JI were applied now to partnerships between developed and developing country Parties, it could imply obligations in excess of those imposed by the Convention itself.

Moreover, in absence of a universal emission standard, the formation of a market in tradeable permits is difficult to conceive, for those without such commitments have no incentive to participate in such a market. The lack of a universal emission standard thus alone would appear to render the closed system of JI inapplicable to partnerships formed under the Convention, or at least very difficult to establish.

The closed or permit system of JI could also present enforcement problems related to the legal principle of enduring sovereignty over natural resources. The exploitation and development of natural resources within a State is recognized in international law as falling within the State's permanent sovereignty.⁴ The selling of permits to emit GHGs could restrict the seller from

⁴ See, e. g., United Nations General Assembly (UNGA) Resolution 1803 of 12 December 1962 on Permanent Sovereignty Over Natural Resources which has been recognized in a number of international arbitral awards and subsequently in Principle 21 of the Stockholm Declaration.

exploitation and development of its own natural resources, and is hence might be revokable at any time under the principle of national sovereignty.⁵ The establishment of confidence in a lawful system of tradeable permits could require sufficient long term certainty to engender confidence in the utility and value of those permits; while the principle of national sovereignty could introduce substantial long term uncertainty.

Additional legal and institutional issues under the closed or permit system of JI arise from the unprecedented degree of international cooperation and lawfulness that is required for implementation and verification of credit or permit systems. The market in tradeable permits under a closed system implies the development of additional rules and procedures, beyond those contained in the Convention itself, for the buying and selling of permits in an orderly and lawful way as required for international confidence in the market. The effective operation and implementation of such rules and procedures in turn suggests the need for an institution or institutions with regulatory oversight and the legal authority to settle disputes in a consistent, transparent and equitable manner.

Perhaps the development of such rules, procedures and institutions is provided for by the requirement of COP 1 to elaborate "criteria for joint implementation," (Article 4.2 (d)). If such criteria are to apply to an international market in tradeable permits, however, their elaboration would appear to require the formulation and universal agreement of new principles and rules of international law implying the vestment of legal powers in the various institutions created by the FCCC and other institutions, such as the International Court of Justice.

It might be unrealistic to expect the adoption of such criteria in the near future, given the uncertainties introduced by the principle of national sovereignty, the dearth of global institutions and legal mechanisms that can mediate conflicting interests on a global public interest basis, and the lack of global or national institutional experience and competence in verifying, enforcing and regulating tradeable permits and credits.

For all of these reasons -- but especially because the closed system JI requires a universal emission standard -- the closed system JI may not be considered applicable to JI under the Convention. For purposes of further discussion in this paper, we have considered only the open system of JI.

2. Implications of an Open (Project) JI System

The lack of a universal emission standard means that climate stabilization will need to be achieved in the context of a non-comprehensive regime of reduction commitments. Our further discussion of JI in the sections below

⁵ See, e. g., UNGA Resolution 3201 of 1 May 1974 on the Declaration on the Establishment of a New International Economic Order, and UN?GA Resolution 3281 of 14 December 1974, Charter of Economic Rights and Duties of States. Resolution 3201 provides, in relevant part, that "Each State is entitled to exercise effective control over [its natural resources] and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State."

therefore focuses on the impacts of JI between the two types of countries relative to such a non-comprehensive regime in the absence JI.

As elaborated in the next section, such arrangements could in principle increase the global emissions of GHGs over what emissions would have been without JI. Such a rise in emissions could, in turn, circumvent the Objective of the Convention to "achieve....stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." This feature of the open JI system could raise the issue of the legality of partnerships between developed and developing countries, since Parties would presumably not wish any single provision of the Convention to contravene its central Objective.

The absence of a universal standard in the open JI system causes other concerns of a legal and institutional nature. For example, partnerships between developed and developing countries could create dilemmas in the interpretation and fulfillment of various articles of the Convention with respect to its Objective set out in Article 2.

As one illustration of the dilemmas that could arise, the Conference of the Parties could experience difficulty assessing the effectiveness of the Convention (an obligation of Article 7.2 (e)) in light of its Objective (Article 2) if JI provisions adopted under Article 4.2 (d) led to an indefinite increase in GHG emissions. These and many other examples indicate the potential dimensions of the legal quagmire that could be created by JI under an open system between developed and developing country Parties.

Although an open system JI could require less complex international institutions than a closed system JI, open system JI partnerships between developed and developing countries likewise raise significant administrative, verification and enforcement issues. As detailed in the next section, for example, bilateral partnerships between developed and developing countries under an open system JI would require extrapolation of future emission pathways by both Parties (the "baseline" issue discussed below). Thus, the international community would have to develop universally agreed methodologies of forecasting credible future emission trends -- something that has never been accomplished -- while at the same time agreeing to mechanisms of enforcement, emissions crediting, and verification.

In summary: JI partnerships between developed and developing countries are questionable under a closed (permit) system owing to the deliberate absence in the Convention of a universal emission standard applicable to developed and developing country Parties. Such partnerships raise significant legal and institutional concerns also under an open (project) JI system, by requiring unprecedented institutional structures and cooperation related to prediction, crediting, verification and enforcement.

B. Environmental Implications: The Baseline Issue

The open JI system applied to partnerships between developed and developing countries could in principle contribute to an indefinite increase in the global emission of GHGs, thereby potentially circumventing the Objective of the Convention. Such an increase could occur because of the lack of a universal emission reduction standard for developed and developing countries. Such an

increase could also occur in absence of JI, however, and thus cannot be attributed to JI alone.

JI between developed and developing country Parties introduces a significant complexity, however, namely the need to project the emissions of the developing country Party. Assessing the credits to be assigned to the developed country Party requires a credible assessment of what emissions would have taken place in the developing country in the absence of JI. Reductions from this projected emission baseline would then represent the basis for assigning credits to the developed country partner.

Such baseline projections have a prerequisite that may prove elusive. Namely, they require a credible forecast of future emissions. Once such a projection is made, it could have the status of a *de facto* quantitative emission limit applicable to the developing country partner. This would in turn establish new obligations on the emissions of developing countries -- which are not foreseen at the present time within the framework of the Convention.

Moreover, projecting the future emissions of a developing country partner in JI might also create an intrinsic conflict of interest for all Parties involved in such JI. This conflict of interest could arise because both developed and developing countries would have a proprietary interest in maximizing the estimated future emissions of the developing country Party. Developed country Parties might profit from such overestimates because the reduction credits to the developed country would then be larger. Developing country Parties might profit from such overestimates because they could enlarge the implicit *de facto* limit on their own emissions and at the same time accelerate resource and technology transfer to the developing country Party.

Since the credits assigned to developed countries would proportionately reduce their need to limit GHG emissions from their own territories, the possible exaggeration of emission baselines of developing country partners could result in greater emissions from developed countries than would otherwise have occurred. Under the worst case scenario, therefore, emissions would be greater than they would have been without the JI project.

All Parties would undoubtedly do their best to estimate future emission pathways of developing country Parties as fairly and accurately as possible, and would presumably succeed in the vast majority of cases. However, Parties who are currently shaping the criteria for JI may nonetheless wish to avoid creating an unnecessary conflict of interest which has the potential to undermine the Objective of the Convention.

It will be noted that the "baseline" problem does not characterize JI partnerships between countries with similar commitments, e. g., between Annex I Parties, since these commitments can be measured against an agreed past year for which accurate data are generally available (typically the emission levels of 1990) rather than against a hypothetical future emission pathway.

In summary: the open system of JI between developed and developing countries requires projecting the emissions of developing countries. This baseline could then represent an emission limit that goes beyond obligations established in the Convention. Moreover, projecting such a baseline could present an intrinsic conflict of interest to all Parties

and, under worst case scenarios, lead to a net increase in global GHG emissions above and beyond what they would have been without JI.

C. Possible Impediment of Technology Innovation

A central assumption underlying proposals for JI between developed and developing countries is that the flow of technology and resources to developing countries would be enhanced by such partnerships (Section III, D., 4). Such flows are already obligated under the Convention, however. As to the possible acceleration of such flows by JI, partnerships between developed and developing country Parties could actually impede the development of technology that could satisfy the Objective of the Convention.

This conclusion is based on the premise that the chief incentive for technology innovation is necessity. When human societies must solve a problem, then historically they are maximally motivated to develop the appropriate technology. If developed countries must reduce their GHG emissions as a matter of legal obligation under the Convention, they will presumably be maximally motivated to develop the technology to do so. But if they can avoid the need for such technological innovation by displacing their obligations elsewhere, as could occur under JI between developed and developing countries, then the chief incentive for technological innovation that would satisfy the Objective of the Convention could be reduced or eliminated altogether. JI between developed and developing Parties could thus impede the very technological innovation that is most important to realizing the Objective of the Convention.

The developed countries are the only ones that are in the position to quickly and broadly expand the range of commercially viable low carbon energy supply technologies. These countries also produce and define state of the art levels of energy efficiency for virtually all industrial process technologies, vehicles, appliances, buildings and all other energy using capital stocks that are involved in developing modern economies worldwide. JI partnerships between developed and developing countries could impede this process. The consequent reduction of technological innovation could result in more GHG emissions in both developed and developing countries than could possibly be offset by the modest impacts of JI projects in the developing world.

Therefore JI partnerships between developed and developing countries, while effective and apparently cheaper in the short run, may actually hinder developing countries in what must be their central long term aim -- to "leap-frog" fossil fuel economic infrastructures in favor of economies of scale based on highly efficient end use technologies and renewable sources of energy.

This adverse impact of open system JI on technological innovation would be expected to occur in direct proportion to the percentage of developed country commitments are fulfilled by JI. This generality applies to JI between developed and developing country parties, but also to JI that is limited to partnerships between Annex I Parties. Therefore, Parties may wish to limit JI in any form to fulfilling an appropriately small percentage of the total commitments of developed country Parties, e. g., 5 - 10%.

In summary: to the same degree that JI partnerships substitute commitments by developed countries, they may undermine innovation capable of introducing renewable energy technologies. Technologies transferred under JI partnerships between developed and developing countries might improve less swiftly over time than in the absence of JI. Therefore, such JI partnerships could hinder developing countries in "leap-frogging" fossil fuel economy infrastructures as early as possible. Limitation of JI to a small fraction of total commitments would minimize these potential adverse effects of JI on technological innovation.

D. Economic Concerns

Cost effectiveness is one of the primary assumptions of JI between developed and developing countries. Cost effectiveness is in turn based on two assumptions: 1) emissions reductions in developed countries are difficult to achieve and therefore expensive (assumption 1 in Section III D, above); and 2) emission reductions in developing countries are much easier to achieve, and hence more cost effective in that they yield greater reduction per unit capital invested (assumption 2 in Section III, D., above).

The first assumption -- that emission reductions is difficult to achieve in developed countries -- is debatable. A number of studies indicate that substantial reductions in GHG emissions (up to 50%) could be realized in developed countries not at a cost, but rather at a savings of up to tens of billions of dollars to the corresponding economy.⁶ An additional benefit of reducing GHG emissions at home is technological innovation followed by the opening of significant new global markets. The opening of such markets could contribute to global growth and prosperity in both the short and long terms.

The second assumption -- that emission reductions are significantly cheaper in developing countries -- is also debatable. The perception of large differences in costs per ton of avoided carbon emission rests on comparisons of the most expensive options within developed countries, e. g., using a nuclear or solar powered plant instead of a coal plant, with the least expensive options in developing countries, e. g., certain afforestation schemes. When opportunities for reducing emissions in developing countries are compared with larger and much more important options for reducing emissions in developed countries -- e. g., more efficient industrial plants and other end use devices -- cost differences per unit investment in developed and developing countries are modest in absolute terms.

Such efficiency improvements in developed countries are potentially able to save large amounts of money because they are significantly cheaper than new energy supplies. So long as these negative cost options for reducing emissions have not been exhausted at home, developed countries may not experience net gain from JI. Instead, the developed countries would forego profitable opportunities for reducing energy bills at home in lieu of more costly (in relative terms) JI projects abroad.

⁶ See Krause, F., Haites, E., Howarth, R. and Koomey, J. (1993). *Energy policy in the greenhouse*. Vol. II, *Cutting carbon emissions: Burden or benefit?* El Cerrito, CA: IPSEP, Part I, studies summarized in Table ES.2a, pp. ES.9 - ES.11.

The principal beneficiaries of such JI might not be developed societies as a whole, but rather a narrow segment of developed societies -- namely, the fossil based energy suppliers. Under JI, these suppliers would benefit from *de facto* government subsidization that preserves domestic fossil fuel market advantage at the expense of providing incentive for more socially beneficial technologies.

Finally, all existing estimates of cost effectiveness do not take into account two critical factors: long-term economic benefits of technological innovation -- which could be slowed or lost under JI between developed and developing countries -- and the economic implications of transaction costs.

The benefits of technological innovation are discussed in the preceding section. As developed there, JI between developed and developing country Parties would reduce the incentive for such innovation in respect to GHG reduction technologies, including more efficient end use technologies and technologies aimed at using renewable energy sources, and thereby sacrifice the economic benefits of such innovation. While the economic benefits of future technological innovation are difficult to quantify with precision, they are real and significant, and they have not been factored into the cost effectiveness of JI.

Transaction costs refer to the costs of establishing essential regulatory mechanisms for JI between developed and developing country Parties. These costs may be significant, since as noted, JI is a new concept. As documented above (A. Legal and Institutional Questions), extensive legal, institutional and procedural mechanisms would have to be established for projecting and verifying future emission baselines of developing countries, regulating JI credits, verifying achieved reductions, and enforcing the obligations assumed by JI partners. These mechanisms, which are indispensable to JI, have real economic costs which detract from the overall cost effectiveness of JI.

Many of these transaction costs are also especially vulnerable to loss of benefit of emission credit from already incurred investments owing to the long time course of certain JI projects. For example, in order to realize benefits from an afforestation project implemented jointly in a developing country, the project must be sustained, verified and enforced for as long as three decades. This requirement presupposes unprecedented stability of governmental policy, together with the operation of non-existent administrative institutions and agencies, to ensure that poor, land starved people do not make use of newly planted trees for basic survival needs. The costs of enforcement under such circumstances -- not to mention the potential political implications and social costs to those dependent on forest resources -- may well far outweigh the limited cost advantages of emission reduction opportunities in developing countries relative to those in developed countries, and may diminish and even eliminate net environmental gains.

In summary: the supposed global economic benefits of JI between developed and developing countries could be smaller than commonly believed, since they generally ignore: 1) economic savings implicit in carbon reduction in developed countries; 2) economic losses from delaying technological innovation; and 3) transaction costs incurred from administering JI.

E. Equity and Political Issues

Even if JI between developed and developing countries is cost effective in the short run, it might operate to the long term disadvantage of developing countries. In terms of equity, such JI partnerships could undermine the spirit of global cooperation and fairness that must be part of any viable long term solution to the climate issue. Such partnerships could be considered to minimize the historical inequities that characterize the past exploitation of atmospheric resources by developed countries. As recognized in the Convention, developed countries bear the historical responsibility for global warming. The acknowledged past inequities in GHG emission may be best addressed now by reductions in such emissions in developed countries, together with appropriate resource flows from developed to developing countries. JI risks the appearance -- and perhaps the reality -- of the buying up of rights to ever greater GHG emissions by developed countries in the future.

Partnerships in JI between developed and developing countries could also distort developmental priorities of developing countries. The choice of projects under JI is likely to be determined largely by the type of technology offered by the country seeking credit, thereby placing developed countries in a position of control over the type of technology that is transferred.

For example, the most economically beneficial type of JI project from the perspective of the developing country might be the transfer of high efficiency, state of the art industrial plant or manufacturing facility for high efficiency energy devices, since these will reduce energy costs for developing country consumers below what they would have been otherwise. By contrast, the developed country partner might be most interested to sell a certain power plant technology -- e. g., nuclear -- that does not offer the same type of economic advantages to the developing country.

Moreover, the choice of projects under JI is likely to be determined also by the need to minimize transaction costs (see above). For example, a developed country Party may find it much easier to finance a large power plant on the supply side than a series of demand side efficiency programs for developing country energy uses. This combination of broader political forces, short term economic benefits for developed country Parties and the imperative to minimize transaction costs may diminish significantly the influence of development priorities of developing countries as a determinant of JI projects.

JI is, in principle, based upon voluntary partnerships that are entered into freely by all participants. In practice, however, participation in JI could be influenced by external political and economic factors, such as the desire to obtain benefit in an unrelated context, the perceived need to advance trade or economic agreements that are independent of JI, etc. Objective evaluation of global cost savings or even of the interests of the developing country partner may not be the chief determinant of such partnerships. As in any market based system, the most wealthy participants could have the greatest leverage and could inevitably possess significant advantage.

In summary: JI partnerships between developed and developing countries raise several problems of equity and politics, including the perceived inequity of developed countries "buying out" their historical obligations in order to increase, rather than decrease, their own future

emissions of GHGs, and the potential distortion of the developmental priorities of developing countries.

V. Principles for Criteria of Joint Implementation

The elaboration of specific criteria can be achieved only through sustained intergovernmental negotiations. The purpose in the present paper is not to propose such specifics, but rather to enumerate several general principles which, in light of the above analysis might assist in formulating more specific criteria. It is assumed that the closed system (permit) JI is not presently applicable under the Convention, and hence that the following principles apply only to open system (project) JI.

A. Principle 1: Limitation of JI Partnerships to Countries Having Quantitatively Defined Commitments

The arguments elaborated here illustrate the types of concerns that exist regarding JI partnerships between developed and developing country Parties. To avoid these difficulties, and their consequent deleterious impact on the implementation and operation of the Convention, **JI partnerships might best be limited to partnerships between countries having quantitative commitments to limit emissions. Presently this includes only Annex I Parties. JI partnerships involving developing country Parties should be considered only if the developing country has agreed to be bound by Article 4.2 (a) and (b) of the Convention and has given notice according to Article 4.2 (g).**

B. Principle 2: Meeting of Prior Emissions Limitations by Developed Country Parties

One way to facilitate the evolution of a regime of global cooperation is for the developed countries to demonstrate their willingness and ability to take the lead in actions to mitigate climate change. The implementation of commitments by the developed countries, in the form of legally binding obligations to curb their emissions of GHGs, would contribute essential confidence building. In addition, meeting such commitments would initiate the process of technological innovation that could be so beneficial to developed and developing countries alike. **Therefore, JI might best be initiated after developed countries accept, implement and complete meaningful GHG emission reduction targets and timetables.** This has been proposed also by Germany in the INC-8 meeting.

C. Principle 3: Avoiding the Circumvention of Commitments Established Under Article 4.2 (a) and (b)

In order for JI to remain consistent with the Objective of the Convention, it must contribute to the stabilization of atmospheric concentrations of GHGs at safe levels. The IPCC is currently working toward a definition of such safe levels; but to merely stabilize atmospheric concentrations of carbon dioxide at existing levels will require emissions reductions of 60% or greater. All Parties have an interest in ensuring that JI does not lead to an increase in global emissions, and ensuring further that JI does not encourage developed country Parties to circumvent their obligations under the Convention. Toward this end, **the sum of emission reductions from countries that participate in joint implementation**

should be equal to or greater than the sum of committed emission reductions of the countries individually.

D. Principle 4: Limitation of JI Projects to an Appropriately Small Fraction of Total Commitments

Perhaps the greatest long term danger of JI is that it will impede the development of innovative technology that can assist global society in harnessing renewable energy sources and further improving the efficiency of energy use. The adverse effect on such technological innovation is directly proportional to the fraction of total commitments that are jointly implemented. Therefore, **Parties may wish, at least initially, to limit the total fraction of developed country commitments implemented jointly with other developed countries to an appropriately small fraction of total commitments.**

E. Principle 5: Independence of Financial and Technology Flows

Enhancement of resource flows to developing partner countries is one of the assumptions of JI partnerships involving developing countries. All Parties have agreed, however, that such resource flows are already obligated under various provisions of the Convention. These are presumably independent of additional flows that could be realized under JI. In recognition of this separation, **financial and technology flows associated with JI should be independent of, and additional to, any financial and technology flows obligated under the Convention.**

F. Principle 6: Prior Clarification of Legal, Institutional and Procedural Questions

As noted above, the prospect of JI between developed and developing countries -- and for that matter amongst Annex I countries -- raises a host of legal, institutional and procedural issues. Such issues would have to be agreed by all parties, even if JI applies only to Annex I Parties, inasmuch as such criteria shall be established by the Conference of the Parties, and such criteria will establish a global regime in which all Parties may eventually participate. Consensus is essential also to remove legal uncertainties that could damage confidence in an emerging credit market and result in lack of investment by potential investors in JI activities. Accordingly, **Parties may wish to consider implementing JI only after first attaining consensus on all relevant legal, institutional and procedural aspects of JI.**

VI. Conclusions

The introduction to this paper reviewed five assumptions that underlie JI partnerships between developed and developing countries. These assumptions can now be revisited in light of the analyses provided in the body of this paper.

The first assumption is that commitments to reduce GHG emissions within developed countries would be difficult and reduce economic growth. We believe that reduction of emissions could actually save money, stimulate new growth markets for appropriate technologies, and at the same time protect the climate over the long term, as is essential to sustainable development and joint prosperity.

The second assumption underlying JI between developed and developing countries is that the cost of GHG reduction is lower in developing countries, imparting cost effectiveness to partnerships between developed and developing countries. We believe that such estimates of cost effectiveness may omit several relevant costs, such as losses from undermining the incentive for technology development, lost opportunity costs available from cheap energy savings at home through conservation, and transaction costs. JI involving developing countries may therefore be less cost effective than commonly represented. Indeed, when all costs are accounted properly, JI may even be cost ineffective.

The third assumption is that, consequent to the first two assumptions, the international community will benefit from JI partnerships between developed and developing countries. We believe that such partnerships would benefit only a narrow segment of developed country economies, namely, fossil fuel suppliers, and even this benefit would be short term. In the long term, JI partnerships between developed and developing countries have the potential to undermine the Objective of the Convention by decreasing appropriate technological innovation and thereby increasing net GHG emission.

The fourth assumption is that resource flows to developing countries would be enhanced by JI partnerships with developed countries. Such resource flows are already an obligation under the convention, and resource flows under JI could actually reduce the motivation to implement flows that are already obligated under the Convention. We believe that JI partnerships between developed and developing countries would slow necessary technology innovation, thus impeding global progress toward climate stabilization. JI between developed and developing country Parties could also distort the developmental priorities of developing countries.

The fifth assumption underlying JI is that it would impart flexibility in meeting commitments under the Convention. Given the existing concerns, however, such "flexibility" might accrue mainly to the relatively narrow segment of developed economies consisting of fossil fuel suppliers, to the long term disadvantage of the remainder of global society and in contravention to the Objective of the Convention. Such "flexibility" may be disadvantageous to society at large and to future generations.

JI remains, in principle, an attractive potential supplemental mechanism for achieving the Objective of the Convention. It offers the possibility of international cooperation that can help developing countries "leap-frog" fossil fuel infrastructures in favor of more sustainable options. In the proper context, therefore, JI might well contribute to the joint prosperity that is required for sustainable global development. If these theoretical benefits could be realized in practice, and if the concerns raised can be resolved, there could be a role for JI between developed and developing countries in the future. After implementation of the above principles for governing JI criteria at COP 1, Parties may wish to continue discussions of JI within subsequent COPs, with the goal of evolving a universal JI regime that resolves existing concerns and provides genuine net benefits to global society.

VII. Attribution and Disclaimer

Although preparation of this paper was a cooperative effort of several individuals, primary responsibility rests with Dr. W. Jackson Davis, Ph.D., Scientific Adviser to the Republic of Nauru, Executive Director, Environmental Studies Institute (ESI), Professor of Biology and Environmental Studies, University of California at Santa Cruz, Santa Cruz, CA. Prof. Davis undertook work on this paper in the context of the Adlai Stevenson Program on Global Security, University of California at Santa Cruz, Santa Cruz, CA 95064. Responsibility for errors in presentation or interpretation rests entirely with him. The following individuals, listed alphabetically, contributed to the preparation of this paper or provided helpful comments on earlier drafts: Mr. Navroz K. Dubash, Energy and Resources Group, University of California, Berkeley, CA; Dr. Bill Hare, Ph.D., Director, Atmosphere and Energy Campaign, Greenpeace International; Dr. Florentin Krause, Ph.D., Executive Director, International Project for Sustainable Energy Paths (IPSEP), El Cerrito, CA; and Ms. Farhana Yamin, Staff Lawyer and Co-Director, Climate Change and Energy Programme, Foundation for International Environmental Law and Development (FIELD). The listing of institutional affiliations is intended solely for background information and does not imply that the institutions advocate, support, or warrantee, expressly or otherwise, the facts, views, analyses, and opinions represented herein.

PAPER NO. 14: NETHERLANDS

INC Working Group 1
Intervention by The Netherlands on Joint Implementation

Thank you, mister chairman,

In addition to the remarks made on behalf of the EC and its MS earlier today by Belgium, which the Netherlands of course fully supports, I would like to make some additional comments.

First of all I would like to underline the importance of having an extensive dialogue on this important subject in preparation for decisions by the CoP. As a small contribution to this dialogue I would like to draw the Working Groups attention to a conference The Netherlands will organize on the subject of joint implementation in June of next year. Announcements have been made available in the back of the room.

Practical hands-on experience with joint implementation is very scarce. This makes the debate about the role of joint implementation and the criteria that should be developed to ensure a proper application a somewhat theoretical exercise. It is important to make use of the available expertise of those who are experimenting with specific forms of ji. I therefore would like to point delegates attention to a paper produced by the Dutch Electricity Generating Board on its experiences with acid rain reduction and tree planting projects to capture carbon dioxide in partnership with other countries. Copies of this paper will be available to delegates.

I will now make some remarks on the concept of JI in the light of attempts to realise the potential benefits of Ji to help control global emissions and at the same time support economic development in so called host countries as well as avoiding possible negative impacts (as was stressed in the EC intervention).

It is our interpretation that the convention, in particular art. 4.2, was not meant to exclude non-Annex 1 countries from ji arrangements. The provision that criteria should be established by the CoP before JI could be applied was however deliberately included to ensure that application of this concept would be in the interest of achieving the objectives of the convention and the interests of all Parties. These criteria will determine whether JI will or will not be a positive contribution to achieving that purpose. So we should focus on those criteria. They will determine which countries can play a role in such arrangements. We have to realise that certain criteria might more easily be met by non- Annex 1 countries than by Annex-1 countries.

There are in our opinion 3 main categories of criteria that need to be fulfilled:

1. emission reductions should be real

This includes aspects such as establishing clear baselines in order to avoid double counting; you have to be able to answer the questions "is this project leading to lower emissions than otherwise would have occurred?". It is obvious that this condition can be met much more easily by Annex 1 countries that have quantitative obligations under the Convention. However, even in this Annex 1 group there are potential complications in case one of the partners faces serious economic recession leading to an autonomous decline of GHG emissions. We would not want this autonomous decline to be captured under a JI arrangement, I think.

Other aspects under this category include for instance verifiability, available methods to quantify emissions and sinks (which may be particularly difficult for the time being as was indicated by prof Bolin earlier this week), and clear accounting and reporting arrangements.

2. additionality

Ji arrangements should be strictly separate from and in addition to financial obligations of Annex 2 countries under the Convention. JI may never erode the readiness of these countries to contribute to the financial mechanism of the Convention.

Also in terms of actions taken, JI should be additional to what Annex-1 Parties are doing to meet their obligations under the Convention as has been made very clear in the statement of the EC.

3. balance between actions taken within industrialised countries and elsewhere

First of all, as was stressed in the EC intervention, JI actions should not count against the current obligations of Annex-1 countries under the convention. That will ensure that these countries indeed stop the growth of their own emissions.

In developing JI as a contribution to further emission reductions beyond the current commitments, there need to be mechanisms to ensure a proper balance to be kept. I would like to briefly discuss three possible options for a practical solution.

One is the concept of partial crediting as has been elaborated by the delegate of France this morning: a certain percentage of the actual reductions under a JI project can be used for crediting against (future) commitments of Parties.

Another option would be to make use of a clearing house concept. This would mean that Parties wanting to get credit for JI projects would have to go through a central clearing

house or "fund". Credit could be obtained against a set price (for example: \$10/ton). The fund then will use those funds to get actual reductions through a mix of cost-effective projects and will be able to do that at a lower cost (say \$3/ton). The result would be a 3-fold increase in real reductions. I would like to call this the "global dividend". This could be a win-win proposition: global emissions would be reduced more rapidly, host countries would benefit in terms of increased technology transfer and investor countries would be cheaper off.

A third- and maybe much simpler- approach would be to keep separate accounts for domestic and international reductions. Annex-1 countries might then assume international commitments (to reduce a certain amount elsewhere) in addition to domestic commitments. Such an approach is sometimes called a "parallel accounting" system. This could maybe evolve into a "dual commitment" approach when further steps to reduce emissions beyond the current commitments are being negotiated. The balance between domestic and international actions can then be managed by setting the relative obligations under these two categories.

Let me now give you some brief comments on the question of specific criteria to be set as an indication of the most important issues the CoP should deal with.

First of all the suggestion in the secretariate paper to make a distinction between criteria to be decided by the CoP and those to be left to the partners in a Ji arrangement seems quite practical to us. The first category (which would include both general as well as some project related issues) should include inter alia:

- criteria to enable pilot projects to be taken into consideration when in the future crediting will be possible under an agreed system (so as to encourage pilot schemes to be developed, as was also stressed in the EC intervention)
- criteria about methodologies to be used to quantify effects of projects
- criteria related to the balance between domestic and international actions
- criteria regarding the "good standing" of partner countries with respect to their obligations under the convention
- criteria regarding, accounting, verification and reporting
- criteria regarding the life time of projects to be used under Ji arrangements
- criteria regarding the necessary "baseline" information in host countries
- criteria regarding the legal arrangements
- criteria on the "insurance" arrangements in case of failure of Ji projects

Apart from these aspects there are a number of other aspects that can be dealt with by the partners in a Ji arrangement.

Geneva, August 19, 1993

PAPER NO. 15: NORWAY

N O R W A Y

NON-PAPER ON CRITERIA FOR JOINT IMPLEMENTATION

Introduction

The approach to joint implementation (J/I) of policies and measures between Parties to the Framework Convention of Climate Change (FCCC) should be innovative, practical and flexible and be guided by cost-effectiveness and environmental effectiveness.

Norway sees J/I as an important element in establishing a climate regime characterized by mechanisms that aim at global cost-effectiveness without which it will be more costly and difficult to realize the objective of the FCCC in the long run.

The present focus, according to art. 4.2(d) refers to the COP, at its first session, taking decisions regarding criteria for joint implementation as indicated in art. 4.2(a). According to the latter, the central legal commitment is that "Each of the Parties (i.e. Annex I Parties) shall adopt national policies and take corresponding measures to mitigate climate change". Norway has favoured a quantitative commitment on emissions - initially stabilisation among the OECD-countries as a group. However, there is no quantitative commitment related to emissions in the FCCC. The discussion must reflect this fact. In this phase joint implementation should be related to "national policies" and "corresponding measures" (See VI below).

A discussion related to possible quantitative commitments in the future may be relevant, but it should be made clear that such a discussion relates to a future situation not reflected in the FCCC. For example, a detailed discussion on rules and arrangements for "credits" and "prices" is not of the same importance under today's regime than under a regime with quantitative commitments. Criteria for joint implementation will thus depend on the evolution of the FCCC.

One needs to stress that a necessary condition for joint implementations is voluntary agreements between two or more countries, i.e. that J/I is seen as beneficial for all parties involved in order to be realised.

Furthermore, J/I will only be one of the options the countries may use to meet their commitments. Joint implementation projects imply a cost for parties that will wish to use this option. Countries will therefore have strong incentives to develop a policy to utilize more than the no-regrets options at home before they spend money elsewhere, if they want to follow a cost-effective strategy.

It is also worth mentioning that joint implementation most likely will be a longer

term option. Experience with pilot projects indicates that it will take several years before such projects yield results in the form of substantially reduced emissions. Both the design phase, project preparation and physical implementation normally take years, which means that J/I initiated after the first Conference of the Parties probably will play a limited role in curbing emissions during this decade. In a longer time perspective, however, we see a very significant role for J/I with, as studies by the OECD and UNCTAD clearly show, very substantial resource transfers in the process.

I. The Primacy of the FCCC

The Norwegian point of departure on the discussion of criteria for joint implementation of policies and measures is the primacy of the FCCC and the positive language pertaining to joint implementation in a number of articles in the Convention:

Criteria on J/I can not annul the articles of the Convention.

Criteria on J/I can not be more restrictive than the language of the Convention.

Criteria on J/I can not restrict the use of J/I if this institute is positively allowed under the FCCC.

Criteria on J/I can not be used to reinterpret the Convention, and in particular the nature of the specific commitments in art. 4.2(a) and 4.2.(b).

Thus criteria on J/I should be limited to establishing the operational guidelines for how voluntary cooperation between Parties on J/I is to be practised.

II. The Place of J/I in the Articles of the FCCC

The FCCC opens voluntary and non-restrictive J/I between Parties in a number of articles under the FCCC:

- "Principles", Art. 3.3: *policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. Efforts to address climate change may be carried out cooperatively by interested Parties.*
- "Commitments", Art. 4.2.(a): *These Parties (i.e. Annex I Parties) may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention, and in particular, that of this subparagraph.*
- "Conference of the Parties", Art. 7.2(c): *Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address*

climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention.

- *"Financial Mechanism", Art. 11.5: The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.*
- *"Communication of Information Related to Implementation", Art. 12.7: From its first session, the Conference of the Parties shall arrange for the provisions to the developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as identifying the technical and financial needs associated with proposed projects and response measures under article 4. Such support may be provided by other Parties, by competent international organisations and by the secretariat, as appropriate.*

- III. A. There is no basis in the FCCC for limiting the institute of J/I to a particular "phase", e.g. the period commencing after the turn of the present decade. Neither is there a basis in the FCCC for contending that J/I should not be used as a fulfilment of Annex I Parties specific commitment, as J/I forms an integral part of the specific commitments undertaken by Annex I Parties in Article 4.2.(a).
- B. There is no basis in the FCCC for limiting the use of the institute of J/I to cooperation between a particular group of Parties, e.g. Annex I-parties, re Secretariat doc. A/AC.237/35, para II.B(b) [page 5], and "Draft conclusions by the Co-chairpersons of WG I", paras 3 and 4.
- C. There is no basis in the FCCC for limiting the use of the institute of J/I to policies of "Annex I Parties that have achieved sufficient national reductions to meet their specific commitments under the Convention, as well as to maintain these or go beyond them". ("Draft Conclusions, para 5). See also A/AC.237/35, II.B(b).10.
- D. There is no basis in the FCCC (read: it is a misunderstanding) for limiting the use of the institute of FCCC in such a fashion that Annex I Parties "should not earn any credit from participation in joint implementation with non-Annex I Parties".

The points A, B, C, D above must be seen in light of the specific commitments of Annex I Parties according to Articles 4.2.(a) and 4.2.(b).

IV. Re. FCCC Specific Commitments

The specific commitments in Art. 4 must be seen as a whole. in relation to other articles of the FCCC, in particular Art. 2, "Objective" and Art. 3 "Principles".

The legal specific commitments undertaken by Annex I Parties in Art. 4.2 are (limited to)

- in 4(2)a: *Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emission of green-house gases and protecting and enhancing its green-house gas sinks and reservoirs.*
- in 4(2)b: *In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of gg not controlled by the MP for the period referred to in subparagraph (a).*

The specific legal commitments in Art. 4.2 are tempered and specified by non-legal, political language that i.a. gives guidance, enumerates special circumstances and that - not the least - concerns implementation in the following manner:

"Guidance"

- 4.2(a): *These policies and measures will demonstrate that developed countries (Note: not Parties) are taking the lead in modifying longer terms trends in anthropogenic emissions consistent with the objective of this Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of CO₂ and other gg not controlled by the MP would contribute to such modification.*
- 4.2(b): *With the aim of returning individually or jointly to their 1990 levels of these anthropogenic emissions of CO₂ and other gg not controlled by the MP.*

"Special circumstances"

- 4.2(a): *and taking into account - the differences in these Parties starting points and approaches, - economic structures and resource bases, - the need to maintain strong and sustainable economic growth, - available technologies and other individual circumstances, as well as - the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective.*

"Implementation"

- 4.2(b): *These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph.*

Of central importance to the discussion on criteria for J/I is the clear positive language in 4.2(a) that Annex I Parties ("These Parties" ...) may implement the legal specific commitments (on policies and measures) jointly with other Parties, i.e. non-Annex I Parties.

From the above it is clear that the specific commitments in 4.2 must be read as a whole with predominance to the legal commitments to undertake policies and measures and appropriate weight given to the other different elements. Specifically there is no basis for isolating one element and turning it into the real commitments. It is thus mistaken and could amount to a reinterpretation of the FCCC when A/AC.237/35 in II.B.(b)10 turns the specific reporting commitment(!) in 4.2.(b) into "a specific commitment of Annex I Parties to return their emissions individually or jointly to 1990 levels" (by the year 2000).

Given the nature of the present specific commitments and the accent on policies and measures instead of national stabilization target commitments, the need to "credit" J/I measures is not to be read in any strict sense of the word (credit against what?). Equally, it makes little sense to establish criteria for J/I that require Annex I Parties to "go beyond" specific commitments, as far as joint implementation of policies and measures are concerned. J/I is part and parcel of the implementation of the policies and measures are committed to adopt according to 4.2.(a).

V. Practical J/I Criteria

The real task the INC should set itself in the time ahead is preparing for the decisions by the first session of the COP regarding practical criteria for joint implementation as indicated in Art. 4.2.(a). We agree that J/I should be:

- voluntary
- in accordance with the national priorities of host Parties
- additional to Annex I Parties' specific commitments regarding financial contributions to the Financial Mechanism.

We think that A/AC.237/35, III. "Considerations relating to criteria" offers a good basis for developing the needed non-bureaucratic criteria for J/I which need to satisfy the following conditions:

- efficiency good approaches to joint implementation should promote projects that will require less resources (lower costs) for a certain level of abatement than the alternative, while realizing that the lowest possible global expenditure of

resources for a certain level of abatement is an ultimate goal;

- equity the distribution of gains from joint implementation should be fair;
- effective joint implementation arrangements should be consonant with the attainment of agreed FCCC goals;
- robust joint implementation arrangements should be sufficiently flexible to adjust as the provisions of the climate convention evolve;
- practical joint implementation should be simple and transparent to arrange, administer, and monitor.

In order to develop workable criteria for J/I at least five classes of design and measurement issues arise:

1. Determination of the net abatement effect
 - (i) determination of a baseline
 - (ii) determination of project boundaries,
2. Establishing the price or compensation and distribution of climate gains
3. Performance issues
 - (i) verification issues
 - (ii) the treatment of risk.
4. Procedural issues
 - (i) documentation issues
 - (ii) contracts and records.
5. Incremental cost financing versus no-regret measures.

To address and reach conclusions on the above listed issues and thus arrive at criteria, pilot or demonstration J/I projects between Parties should be encouraged to gain needed practical experience. Among others Mexico, Poland and Norway are cooperating to this effect. Norway hopes to be able to share its experience with the INC.

Enclosed:

- Annex I: Analytical table on the nature of the specific commitments in Art. 4 of the FCCC.
- Annex II: Legal opinion on the nature of the specific commitments contained in Art. 4.2(a) and 4.2.(b) of the FCCC.
- Annex III: Study to Develop Practical Guidelines for "Joint Implementation under the UN FCCC" (CICERO, 1993).

N O R W A Y

ANALYTICAL TABLE ON THE NATURE OF THE SPECIFIC COMITMENTS

IN ART 4 OF THE FCCC

	Legal commitments	Action by C of P	Guidance	Special circumstances	Implementation
<p>4.2 (a)</p>	<p>Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its antropogenic emission of green house gases and protecting and enhancing its greenhouse gas sinks and reservoirs</p>		<p>These policies and measures will demonstrate that developed countries are taking the lead in modifying longer term trends in antropogenic emissions consistent with the objective of this Convention, recognizing that the return by the end of the present decade to earlier levels of antropogenic emissions of Co2 and other gg not controlled by the MP would contribute to such modification.</p>	<p>and taking into account - the differences in these parties starting points and approaches, - economic structures and resource bases, - the need to maintain strong and sustainable economic growth, - available technologies and other individual circumstances, as well as - the need for equitable and appropriate contributions by each of these parties to the global effort regarding that objective.</p>	<p>These parties may implement such policies and measures jointly with other parties and may assist other parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph.</p>
<p>(b)</p>	<p>In order to promote progress to this end, each of these parties shall communicate, within six months of the entry into force of the convention for it and periodically thereafter, and in</p>				

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Legal commitment	Action by C of P	Guidance	Special circumstances	Implementation
<p>accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of gg not controlled by the MP for the period referred to in subparagraph (a).</p>	<p>This information will be reviewed by the C of the P, at its first session and periodically, thereafter, in accordance with Article 7.</p>	<p>with the aim of returning individually or jointly to their 1990 levels of these anthropogenic emissions of Co2 and other gg not controlled by the MP.</p>		
		<p>Calculations of emissions from sources and removals by sinks of gg for the purpose of subparagraph (b)</p>		

Legal commitment	Action by C of P	Guidance	Special circumstances	Implementation
	<p>The C of the P shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter.</p>	<p>above should take into account the best available scientific knowledge, including the effective capacity of sinks and the respective contributions of such gases to climate change.</p>		
	<p>The C of the P shall at its first session, review the adequacy of subparagraph (a) and (b) above.</p>	<p>Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information.</p>		

(d)

Legal commitment	Action by C of P	Guidance	Special circumstances	Implementation
	<p>Based on this review, the C of the P shall take appropriate action,</p> <p>The C of the P, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above.</p> <p>A second review of subparagraphs (a) and (b) shall take place not later than 31 Dec. 1998, and thereafter at regular intervals determined by the C of the P, until the objective of this Convention is met.</p>	<p>which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above.</p>		

Legal commitments	Action by C of P	Guidance	Special circumstances	Implementation
<p>(e)</p> <p>Each of these parties shall:</p> <ul style="list-style-type: none">(i) coordinate with other such parties, relevant economic and administrative instruments developed to achieve the objective of the convention; and(ii) identify and periodically review its own policy and practices which encourage activities that lead to greater levels of anthropogenic emissions of gg not controlled by the MP, than would otherwise occur.				

N O R W A Y

THE CLIMATE CONVENTION. SPECIFIC COMMITMENTS CONTAINED
IN ART. 4.2 (a) AND 4.2 (b).

1. The headnote to Art. 4.2.

Art. 4.2 of the Climate Convention is, according to its headnote, directed at "(t)he developed country Parties and other Parties included in annex I". The headnote thus states which parties to the Convention are obligated by Art. 4.2. The headnote furthermore states that these parties "commit themselves specifically as provided for in the following". This part of the headnote accordingly makes it clear that the subparagraphs of Art. 4.2 contain specific commitments.

2. Art. 4.2 (a).

Art. 4.2 (a) of the Climate Convention refers to "these" Parties, i.e. the parties mentioned in the headnote. According to the first sentence of Art. 4.2 (a), each of the developed country parties (and other parties included in annex I)

"shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs."

The use of the word "shall" makes it clear that the commitments referred to in the first sentence of Art. 4.2 (a) for the developed country parties (and other parties included in annex I) are legal obligations. These parties are, accordingly, obligated to adopt national policies and take corresponding measures on the mitigation of climate change. These measures must consist of limitation of the anthropogenic emissions of greenhouse gases and of protecting and enhancing that party's greenhouse gas sinks and reservoirs. The commitments are, however, not specific in character. They are not time specific, as no date is given for the achievement of the obligations undertaken. Furthermore, the parties undertake no specific quantitative commitments in Art. 4.2.

The first part of the second sentence of Art. 4.2 (a) is a policy statement, saying that by implementing the policies and measures referred to in the first sentence of Art. 4.2 (a), the developed countries will demonstrate that they take the lead in reversing the emissions trends.

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In the second part of the second sentence of Art. 4.2 (a), the parties

"recogniz(e) that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to modification of the longer-term trends in anthropogenic emissions."

The second part of the second sentence of Art. 4.2 (a) is formulated like a statement regarding policy as well as objective. There is also a specific reference in that sentence to the objective of the Convention. A recognition that modification by a specific date to earlier emission levels would contribute to modification of the longer-term emission trends does not have the effect of imposing a legally binding obligation on the parties. Such recognition is, however, relevant in clarifying the Convention's objective of modifying the longer-term trends in anthropogenic emissions, as well as the policy step towards the achievement of that objective, of the return by the end of the present decade to earlier levels of emissions of greenhouse gases.

The last part of the second sentence of Art. 4.2 (a) contains a reference to the special circumstances of developed country parties and other parties included in Annex I. These parties will, in their implementation of the policies and measures outlined in subparagraph 2 (a), have to take these special circumstances "into account". The obligation to take these circumstances into account is basically a policy directive. There is, however, also a legal implication, insofar as they are not at liberty to refrain from taking the said special circumstances into account. This implication is, on the other hand, not legally stringent, as no directive is given in the subparagraph with respect to the implementation, except for the enumeration of the circumstances to be taken into account.

The last sentence of Art. 4.2 (a) states that developed country parties

"may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;"

The expression "(t)hese Parties" in the last sentence of Art. 4.2 (a) refers to developed country parties (and other parties included in annex I), in contradistinction to "other Parties", i.e. Parties

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other than the ones mentioned in the headnote to Art. 4.2 (a). The expression "these policies" in the last sentence refers to the policies and measures described in the first sentence of Art. 4.2 (a). The last sentence of Art. 4.2 (a) lists two options for the developed country parties, to implement jointly, and to assist other parties in contributing to the achievement of the objective of the Climate Convention.

The possibility to select joint implementation is a legal right under the Convention for the parties in question. The last sentence of Art. 4.2 (a) gives the developed country parties added flexibility in the implementation of their obligations under the Climate Convention. By its own wording, Art. 4.2 (a) makes it clear that joint implementation is a general option in implementing the policies and measures referred to in the Convention. Parties may thus implement their obligations unilaterally, or select to do it jointly with other parties. Although plural is used ("these parties"), the Convention must be interpreted in such a manner that joint implementation may take place between one party which is a developed country party and one party which is not, as well as between more than one party of each category of parties mentioned in Art. 4.2 (a).

The last part of the last sentence of Art. 4.2 (a) refers to

"the achievement of the objective of the Convention and, in particular, that of this subparagraph;"

The option to implement obligations jointly with other parties is thus not limited to the obligations referred to in Art. 4.2 (a). This is also evidenced by the fact that joint implementation is mentioned other places in the Convention, for instance in Art. 4.2 (b). The reference in the last sentence of Art. 4.2 (a) to the objective of that subparagraph, in addition to the reference to the objective of the Convention would, on the other hand, seem to indicate that joint implementation and assistance to other parties may be particularly relevant to the obligations contained in Art. 4.2 (a).

3. Art. 4.2 (b)

Art. 4.2 (b) requires that each of "these Parties", i.e. developed country parties (and other parties listed in annex I), shall communicate within six months of the entry into force of the Convention and periodically thereafter,

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"detailed information on its policies and measures referred to in (Art. 4.2 (a)) as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in (Art. 4.2 (a))".

This reporting requirement is a legal obligation for the parties in question. It is also a directive with respect to the contents of the reporting, i.e. detailed information on the party's policies and measures adopted pursuant to Art. 4.2 (a), and the resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases.

Art. 4.2 (b) goes on to say that the reporting is

"with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol."

Art. 4.2 (b) accordingly states an objective for the reporting, i.e. the return to the parties' 1990 levels for emissions of greenhouse gases.

Art. 4.2 (b) does not contain any legal obligation for the developed country parties to achieve within the time frame referred to in Art. 4.2 (b), cf. Art. 4.2 (a), the results of the national policies adopted and the measures taken in order to achieve the mitigation of climate change stated as an objective of the Convention. The reporting requirement is to inform about the parties' progress in achieving the objective of the return to their 1990 levels for emissions of greenhouse gases.

The initial wording of Art. 4.2 (b), "(i)n order to promote progress to this end", is not clear. It is open to interpretation whether the expression "this end" refers to joint implementation in the preceding last sentence of Art. 4.2 (a), the achievement of the objective of the Convention, or the policies and measures referred to in Art. 4.2. A clarification of this interpretative question would, however, seem to have little impact on the interpretation of the reporting requirement in Article 4.2 (b).

4.

As outlined above, subparagraphs (a) and (b) of Art. 4.2 contain specific legal commitments and rights for the parties to the Climate Convention, in addition to statements concerning objectives and policy. The parts of these subparagraphs which do not contain legal rights

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or obligations could, however, nevertheless have a certain bearing on the interpretation of the Convention. The Vienna Convention on the Law of Treaties is considered to express a general rule in international customary law when it states in Art. 31(1) that the general rule of treaty interpretation is that

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

In accordance with this rule, also the parts of subparagraphs (a) and (b) of Art. 4.2 which do not constitute legal rights and obligations could have significance for the interpretation of the Climate Convention. In case of doubt concerning the interpretation of the parties' legal rights and commitments in the Convention, and in particular with respect to the understanding of the rights and obligations contained in the subparagraphs themselves, also the non-legally binding parts of the subparagraphs could contribute to the understanding of the object and purpose of the rule in question. On the other hand, the parts of the said subparagraphs which are not legally binding, could not be construed as constituting justification for detracting or deviating from the parties' legal rights or obligations under the Convention, such as for instance the obligation for developed country parties to implement the policies and measures outlined in Art. 4.2 (a), their right to implement such policies and measures jointly with other parties, or their obligation to report in accordance with Art. 4.2 (b).

PAPER NO. 16: RUSSIAN FEDERATION

2. A/AC.237/35

2.1. В разделе В, п.9 (Стр.5 русского текста: "Совместное осуществление Сторонами Приложения I") нужно учесть предложение, изложенное выше в п.1.3. Кроме того, представляется уместным при формулировании общих подходов к критериям совместного осуществления как сторонами Приложения I, так и совместно с другими Сторонами (пп.9 и 10, а и b) отразить необходимость указания конечной задачи или конкретного обязательства, которое принимается для совместного осуществления.

В первую очередь мы прокомментируем раздел, касающийся различных вариантов партнерских отношений совместного осуществления. Нам представляется, что в пп. "а" и "b", следовало бы показать возможные формулировки той конечной задачи или задачи конкретного обязательства, которое принимается для совместного осуществления рядом стран или партнеров, хотя в определенном смысле об этом упоминается в п.17.

Идея представления предложений по совместному осуществлению в качестве "консолидированного" проекта является разумной и заслуживает поддержки.

2.2 В разделе III А (стр.6 и 7 русского текста) дополнительные факторы по критериям на уровне двусторонних проектов (п.17) предлагается изложить непосредственно в п.15. Одновременно, вместе с оценкой рентабельности проекта в сравнении с альтернативными инвестициями, имеет смысл учесть оптимальные сроки выполнения проекта и реальные экономические возможности партнеров.

Далее, нам представляется, что дополнительные факторы, которые можно было бы использовать в качестве критериев, изложенные в п.17, можно было бы перенести в п.15. При этом следовало бы "раскрыть" понятие рентабельности возможного совместного проекта осуществления обязательства соображениями не только стоимостного характера и более оптимальных сроков выполнения проекта, но также и с учетом реальных экономических возможностей партнеров.

2.3 В разделе IV (Процесс и учреждения) не отражены возможные процедуры формального одобрения совместного проекта, должен ли совместный проект соответствовать всем критериям или возможны случаи соответствия только части из них. Предлагается также рассмотреть вопрос о правах партнеров, вступающих в соглашение по совместному проекту и о процедуре его формального завершения, с учетом необходимости принятия решений КС.

На данной стадии для нас не очень ясен возможный порядок формальной процедуры одобрения совместного

проекта, должен ли предлагаемый проект соответствовать всем критериям, или только части из них, или может быть даже одному из критериев. В этом случае было бы целесообразным заранее определить права партнеров, вступающих в соглашение по совместному проекту, в частности например, если проект отвечает очевидным образом одному из критериев, можно ли приступить к его осуществлению и по завершении доложить должным образом КС о результатах. Или необходимо будет дожидаться следующей ежегодной сессии КС для принятия решения?

Было бы важным с нашей точки зрения, иметь возможность, при необходимости, принимать решения достаточно быстро, не затягивая рассмотрение вопроса от одной сессии КС до другой.

(Unofficial translation for Paper No. 16)

2. A/AC.237/35

2.1 In paragraph B.9 (p. 4 of the English text: "Joint implementation between Annex I parties") the proposal made in paragraph 1.3 above should be taken into account. Moreover, in formulating general approaches to the criteria for joint implementation, both between Annex I parties and between Annex I parties and other parties (paras. 9 and 10, items "a" and "b"), it seems appropriate to reflect the need to indicate the final aim or aims of the specific commitment adopted for joint implementation.

We wish to comment on the section concerning different versions of joint implementation partnerships. It seems to us that items "a" and "b" should indicate possible formulations of the ultimate aim or aims of the specific commitment being adopted for joint implementation by a number of countries or partners, although, in a sense, this is mentioned in paragraph 17. The idea of presenting joint implementation proposals as a "consolidated" project is reasonable and deserves support.

2.2 With regard to section III.A (pp. 6 and 7 of the English text) it is proposed that the additional factors relating to the criteria at bilateral project level (para. 17) be mentioned directly in paragraph 15. At the same time, together with the evaluation of the cost-effectiveness of the project as compared with alternative investments, it makes sense to take into account the optimum project implementation period and the real economic capacities of the partners.

Moreover, in our view, the additional factors which could be used as criteria, listed in paragraph 17, could be transferred to paragraph 15. At the same time, the notion of the cost-effectiveness of a possible joint project for the implementation of a commitment should be "expanded" to include not only considerations of costs and optimum project implementation times but also the real economic capacities of the partners.

2.3 Section IV ("Process and institutions") does not mention possible procedures for the formal approval of a joint project: should the joint project satisfy all the criteria or would it be possible in some cases for it to satisfy only some of them. It is also proposed that consideration be given to the question of the rights of the partners and the procedure for the formal conclusion of a joint project agreement, taking into account the need for decisions to be taken by the COP.

At this point, we are not clear about the possible formal procedure for approving a joint project: should the proposed project satisfy all the criteria or only some of them or possibly just one. In this case it would be desirable to define beforehand the rights of the partners entering into the joint project agreement. In particular, for example, if the project clearly satisfies one of the criteria, could it be implemented and the results duly reported to the COP on completion. Or would it be necessary to wait until the COP's next annual session for a decision to be taken?

In our view, it would be important to be able, if necessary, to take decisions fairly quickly, without dragging out the consideration of the question from one session of the COP to another.

*Preliminary views on joint implementation**Submission by Sweden*

Sweden has, ever since the international negotiations of a climate treaty started, held the view that international cooperation to achieve global targets to combat climate change should be based on an internationally equitable approach, both between industrialized and developing nations and among the industrialized nations. The demands placed on any State should stand in relation to the economic potential of that State and to a fair distribution of measures among States.

Sweden presented, in line with this basic view, the idea that commitments under the convention should be based on the principle of common but differentiated responsibility. Different groups of countries should take on different sets of commitments based on objective criteria, i.e. GDP per capita.

The Climate Convention represents in our view a first step in the development of an effective and equitable instrument to combat climate change. Sweden firmly believes that the next phase of the negotiations must result in obligations to limit or reduce emissions of green-house gases for all Parties. Attention has of course to be paid to the problem of minimizing the costs of future actions. One of the negotiating objectives within the Convention will be to achieve cost-effective solutions.

The aim of reaching such solutions must not overshadow the needs to formulate ambitious obligations for each Party or groups of Parties. It is important to keep in mind that cost-effectiveness can only be measured in relation to clear targets.

During the initial negotiating phase, Sweden favoured the inclusion of provisions on joint implementation to enable two or more Parties to cooperate in fulfilling their obligations to the climate Convention. One reason is that marginal costs to reduce green house gases vary strikingly between countries. This variation will probably increase with reduced emissions. Some Parties may in the future face a situation where further national measures would be significantly more costly than measures elsewhere. Provisions on joint implementation should in our view be regarded as an incentive for industrialized Parties to take on equitable quantitative obligations to reduce green house gases according to their economic capacity and to make it possible for those Parties to implement measures and reallocate economic resources to Parties with lower marginal abatement cost. This will reduce the risk that Parties with high marginal costs take unduly restrictive positions in future negotiations. Joint implementation will in that sense facilitate future revision of

commitments and may also result in additional resource flows to the less developed countries in the world.

This, however, also means that Sweden would prefer to develop the concept of joint implementation as a long term mechanism of the Convention. Taking into account the wide range of views on the subject at the latest meeting of the INC in August 1993 as well as the complexity and far-reaching political implications, we think it is important to continue an open-minded dialogue until the views have converged in a constructive direction. The character of existing commitments does not seem to necessitate the use of joint implementation measures. A rash procedure to decide upon criteria for joint implementation might also make future negotiations more difficult.

We therefore would favour allocating the necessary time to deliberations on the criteria for this mechanism. In view of continued discussions at the February session we believe that the Secretariat should compile an inventory of ongoing bilateral cooperative activities aimed at CO₂ reductions and make a preliminary assessment of the key features of such projects. Such a study would provide a useful background to further discussions of criteria for joint implementation.

Sweden has recently started some projects, which could be described in such a study. A committee has also been appointed by the Swedish government to study the joint implementation concept. We would of course be very happy to provide the Secretariat with relevant information about our activities.

JOINT IMPLEMENTATION

Agenda Item 2(b): Notes for a statement

Mr. Chairman,

There is a broad provision for Parties to cooperate in implementing measures to limit greenhouse gas emissions in Articles 3 and 4 of the Convention. We understand joint implementation as a means to foster global partnership ~~and not partnership~~ ^{which is} ~~that it should be~~ responsive of the principles (common but differentiated responsibility, precaution, etc.) embodied in the Convention and be environmentally as well as socially acceptable. Well-defined criteria are needed relating to the ways joint implementation programmes are carried out and reported and to what type and level of commitment they apply.

We feel that while joint implementation is appropriate between partners bound by clear commitments - i.e. Annex I Parties - it seems to us rather premature to envisage joint implementation programmes between Annex I Parties and other Parties. Indeed, we consider that defining precise regulations and guidelines for the latter case in the absence of well-defined obligations or emission targets amounts to putting the cart before the horses. The possibility of a joint implementation of policies and measures between Annex I and other Parties, as provided for in Article 4.2(a), should be understood as ^{not} ~~involving~~ ^{cooperation} emission crediting and should be additional to existing foreign assistance programmes.

Clearly, therefore, joint implementation has to take into account the framework nature of the Convention and be conceived as an evolutionary process which develops in sync with the Convention.

This being said, Mr. Chairman, we should like to mention a few criteria which should regulate joint implementation programmes between Annex I countries.

1. The commitment to returning to their 1990 levels emissions CO₂ and other greenhouse gases not controlled by the Montreal Protocol should in our view be implemented by Parties at the national level, consistent with the first step approach and the common but differentiated responsibility.
2. The cost-effectiveness criteria should be defined broadly so as to include environmental and social effectiveness; this implies, in particular, that impact assessments be performed and reported on for joint implementation projects.
3. A mechanism or subsidiary body will have to be created for or tasked with reviewing compliance as well as assessing the effects on emissions of joint implementation programmes; this mechanism or SUB body could undertake information gathering in the territory of the receiving country.
4. Standard reporting guidelines will have to be developed for Parties involved in joint implementation programmes; in particular, Parties should be required to demonstrate the additional nature of the programmes, i.e. that the positive impact on emissions would not have been obtained otherwise.
5. Agreed accounting methods in case where sinks or different greenhouse gases are included in the joint implementation programmes will have to be developed.

Finally, since joint implementation represents one specific aspect of the application of the Convention which implies a well-defined set of rules and criteria, we wonder whether it would not justify the elaboration of a specific protocol or an annex to the Convention.

PAPER NO. 19: TURKEY

VIEWS OF THE TURKISH STATE METEOROLOGICAL SERVICE ON THE POSSIBLE CRITERIA FOR THE JOINT IMPLEMENTATION

The developed countries hold a major responsibility in reducing the emissions of greenhouse gases within the United Nations Framework Convention on Climate Change. Thus, developed parties should take the lead in taking the required measures and creating alternative options to keep the emissions of greenhouse gases within the tolerable limits for the global climate. The main objective of the Convention is defined as "preventing the adverse impacts of increasing concentration of greenhouse gases on the climate system by keeping the release of greenhouse gases to atmosphere at a safe level.

Turkey considers the joint implementation as a mechanism to provide the necessary financial resource, information and technology within the objectives of the Convention. Turkey however, believes that the Joint Implementation should be a regulation which will serve to the interests of all the parties included in the Convention as regard to reducing the emissions of anthropogenic greenhouse gases to atmosphere in an economically feasible form. Furthermore, as it is stressed in the Convention, common but differentiated responsibilities of each country need to be taken into account concerning the increase in the emissions of greenhouse gases.

Some possible criteria in association with the Joint Implementation

The Joint Implementation should not replace the commitments of the countries included in the Annex I with respect to either reducing the emissions of greenhouse gases or stabilizing them at the 1990 levels.

A time span is needed at least either until the year 200 or important steps are taken in fulfilling the commitments emerged within the framework of the Convention for the credit of the parties included in the Annex II (the member countries of OECD).

The expenses projected for reducing the emission of greenhouse gases need to be cut back by productive and rational use of financial sources allocated for that purpose with the help of the Joint Implementation.

Financial and technological capacity of the private sector need to be utilized in addition to the official resources.

The Joint Implementation, should be open to the all parties beside the Annex I countries.

The Joint Implementation should be considered as an extra opportunity for the host countries in addition to the opportunities given to them within the framework of the Convention.

The Joint Implementation projects need to be excluded from the cooperation envisaged in the Convention, and new financial resources need to be sought for those projects.

The Joint Implementation projects need to be prepared with due consideration to the priorities of the host countries so that the projects will result in a reduction in the emission of greenhouse gases.

The projects should not cause any adverse impact on the socio-economic structure and environmental conditions of the host countries.

Initial results of the Joint Implementation projects need to be submitted to the first meeting of the Conference of the Parties for evaluation.

The Joint Implementation projects ought to include analysis and follow-up of the sources, reservoirs, sinks, and climate systems.

Reporting of the results the Joint Implementation projects need to be kept separate from the national reports which will be prepared by the participating countries included in the Annex I.

The emission advantages resulted from the implementation of the projects should be for the benefit of all the participating countries and should not be restricted only to those who support the projects and those who provide the necessary means.

It is believed that it is not possible to fulfill all the commitments for keeping the emissions of greenhouse gases in the 1990 level only through the Joint Implementation projects. Therefore, it should not be right for the parties to try to discharge all the responsibilities arising from the Convention by only making contributions to the other countries within the joint implementation projects. In other words, it is essential for the parties to fulfill their responsibilities and obligations to reduce the emissions of greenhouse gases through the measures that will be taken by themselves in their own territories.

JOINT IMPLEMENTATION

Paper by the United Kingdom delegation on the possible development of this concept under the Framework Convention on Climate Change

Role of joint implementation under the Convention

1. The concept of joint implementation (JI) is specifically referred to in Article 4.2(a) of the Convention. This states that Annex I Parties may undertake "such policies and measures" (those required under Article 4.2(a)) "jointly with other Parties." The UK's interpretation is that, since this provision concerns the carrying out of Annex I Party obligations, it implies that - as the Convention stands - joint implementation should be limited to those Parties to whom the obligations apply. However, it is recognised that different interpretations are possible, and that it will be necessary to agree a working definition.

2. Article 4.2(d) provides that the Conference of the Parties must take decisions on criteria for joint implementation. This implies that JI should not take place in any formally recognised way under the Convention until such criteria have been established - though again, other interpretations are possible.

3. JI has the potential to make an important contribution to the Convention's objectives if it enables Parties to take actions collectively that go beyond what could be achieved individually. Thus it can help to promote the most cost-effective solutions, and to facilitate the transfer of resources and technology to developing countries. Conversely, it could undermine and weaken the existing commitments of developed country Parties under the Convention as it stands. Developed countries have recognised in the Convention the need to take a lead. It could only be harmful for the future of the Convention - and for the prospects of JI as a useful part of its operation - if JI were perceived as a means of evading existing commitments and avoiding difficult actions at home.

4. Consequently, the UK considers it important that

(i) Effective criteria must be established which safeguard the Convention's objectives and the existing commitments of Annex I Parties;

(ii) Elaboration of the definition and role of joint implementation under the Convention should go hand in hand with the elaboration of any further commitments. The COP will need to be able to assess the adequacy of their combined effects.

(iii) It should be related to the future commitments of all Parties. This entails addressing the concerns and future commitments of developing countries, as well as Annex I countries.

5. The remainder of this paper examines possible means of achieving the first of these aims. The other aims must be addressed in conjunction with the review of the adequacy of commitments.

Criteria for joint implementation

6. Clear and unambiguous criteria must be set down by the Conference of the Parties regarding the general principles under which JI measures can be used as part of national programmes under the Convention. Within these 'programme-level' criteria, more detailed, technical criteria might if necessary be laid down by the COP to be applied at project level. 'Programme-level' criteria are by definition addressed to national governments; 'project-level' criteria could be applied to schemes carried out by public or private sector agencies within national programmes. The following principles apply to the former only:

* Criteria relating to additionality

- JI should produce demonstrable positive net benefits towards the objectives of the Convention as against what would otherwise have been achieved without such action;
- JI should be confined to Parties which have undertaken specific commitments under the Convention (to be defined by the COP);
- All Annex I Parties should undertake certain minimum commitments (to be defined by the COP) through action on their own territories. "Credits" for actions under JI should be additional to this minimum.
- Funding for JI should be separate from, and additional to, the financial obligations of Annex II Parties, including those under Article 4.3.

* Criteria relating to transparency and verification

- JI measures should be the subject of a recognised bilateral arrangement agreed between the Parties concerned;
- Both Parties to a JI arrangement should have communicated to the COP the information required under Article 12. This must include inventories, programmes of measures, baseline data and projections, and any other specific requirements determined by the COP;
- Parties should provide in their communications to the COP specific information on the environmental effectiveness and positive net benefits, as well as the economic cost-effectiveness, of the measures;
- JI should be confined to activities where a sound scientific basis exists for assessing the costs and

benefits of actions to mitigate climate change, as determined by the COP. (Initially this should be restricted to measures relating to emissions of CO₂).

7. The COP (advised by a subsidiary body) would be responsible for approving JI arrangements and for verifying that these criteria had been or would be met. Only then would the measures be "credited" against a Party's commitments. The COP would also be responsible for confirming the extent and duration of any such credits.

PAPER NO. 21: UNITED STATES

U.S. Intervention on Joint Implementation
Working Group I
Intergovernmental Negotiating Committee
Framework Convention on Climate Change
August 1993

Thank you, Madame Chairperson:

This has been an excellent discussion. We have enjoyed the constructive comments of many delegations, and have noted the interesting and wide-ranging views that have been presented. We would like to make a few comments on three aspects of the joint implementation question, including (1) on criteria, (2) on the overall context of joint implementation, and (3) on some of the legal issues with regard to the Convention.

Criteria

- Voluntary Nature. Joint implementation must be mutually voluntary projects between aimed at reducing net emissions of greenhouse gases, and would have to be agreed to and accepted by governments of participating countries.
- Additionality. Joint implementation cannot be seen as a system that simply reinforces business as usual; commitments and projects have to be above a certain baseline to ensure that real reductions are brought about. This applies to both the public sector resources that might be devoted to it, and also to private resources. Joint implementation projects from government funds would not be in lieu our existing commitments to bilateral or multilateral financial assistance. The major source of joint implementation project funds would be private capital, and such projects would be acceptable only if they were "above and beyond" what would have otherwise occurred. This is not an easy criteria to meet, but it is essential if we are to bring about a viable joint implementation program.
- Verifiable Reductions. On this issue, it is important and quite manageable to develop a system in which projects have baselines, and over the lifetimes of such projects, the emissions are carefully monitored or tracked to assure that projected reductions are achieved. This is important to build confidence in any joint implementation system, and would therefore help such a program in the long run.
- Diversified. In our view, joint implementation would be a very diverse system of projects. Some think it predominantly has to do with forests or sinks; we think a whole range of projects are likely to come forward, including energy projects and agricultural projects -- as well as those having to do with sinks.

Overall Context of Joint Implementation

We see joint implementation as a program that can lead to a significantly increased flow of resources between participating governments and countries. This involves the transfer of technology, increases in technology cooperation, and capacity building. It is an important opportunity to increase cooperation between governments for what is of ultimate importance -- the preservation of our climate system.

The second item to note in this context is that the greenhouse problem is a global one, and that there are limited resources available to take mitigation strategies. We must use those resources as wisely and as efficiently as possible and joint implementation offers us a potential path to doing that.

The third aspect to note is that we see joint implementation only as a component of a national plan. A national plan would certainly include a large number of measures at home -- but would also be coupled with investment on new technologies which are required to deal with this issue in the long run. We need substitute (often called backstop technologies) to deal with the ever rising concentrations of greenhouse gases in the atmosphere.

In the early stages of joint implementation, it might be helpful to keep ourselves in a flexible and experimental posture as we learn more about the system itself. It may be difficult to answer every question at the start; we expect to learn as we go.

Legal Issues

On the legal issues, we have read the Convention quite carefully -- as we know others have -- we believe that joint implementation is available as a measure between all parties. In article 4.2(a) the text of the convention says: "these parties (referring to Annex I Parties) may implement such policies and measures jointly with other parties." (Emphasis added).

Finally, as we read Article 4 of the Convention, we note that joint implementation is an available measure in the context of developed country commitments to the year 2000.

Thank you.

U.S. Comments on A/AC.237/35
(Joint Implementation)

Paragraph 10

-- This paragraph provides, in pertinent part:

"However, as Article 4.2(b) contains a specific commitment of annex I Parties to return their emissions individually or jointly to 1990 levels, the question arises whether joint implementation between Annex I Parties and other Parties should lead to reductions of emissions or increases in removals beyond that commitment." (emphasis added)

-- Because there is no "commitment" per se in this Article, the relevant sentences should be clarified as follows:

"However, as Article 4.2(b) contains a specific commitment of Annex I Parties to report on their policies and measures, as well as on resulting projected emissions by sources and removals by sinks, with the aim of returning them individually or jointly to their 1990 levels, the question arises whether joint implementation between Annex I Parties and other Parties should lead to reductions of emissions or increases in removals beyond that 'aim'."

Paragraphs 25 and 26

-- These paragraphs provide:

"Since Article 4.2(b) refers to each Annex I Party limiting its emissions and protecting and enhancing its greenhouse gas sinks and reservoirs, it may be assumed that each Annex I Party will communicate information on those policies and measures applied regarding emissions, sinks and reservoirs within its territory. The same Article 4.2(b) also refers to its resulting projected anthropogenic emissions by sources and removals by sinks and to the aim of returning individually or jointly to their 1990 levels 'these anthropogenic emissions' (emphasis added). Therefore, the communication on the projected and resulting emissions to the year 2000 would also appear to be for emissions originating in the Party's own territory."

"The effects of policies and measures implemented jointly with another Party would presumably be described in a separate part of the Annex I Party's communication. The total contribution of the latter Party to the global effort referred to in Article 4.2(a) regarding atmospheric concentrations of greenhouse gases would be the sum of all results of its efforts, within and outside its territory,

to limit emissions and protect and enhance sinks and reservoirs. The Party's contributions regarding financial and technical assistance, cooperation on science, observation and monitoring, research, and public education and the like could also be listed, but separately, and would complete the description of the Party's total effort to respond to climate change."

-- Taken together, these paragraphs appear to suggest that emissions reductions achieved through joint implementation may not be "credited" against an Annex I Party's aim. This is not the U.S. reading of the Convention and, based on the discussion at INC VIII, did not appear to be the view of many States. (Those States that oppose counting JI toward the "aim" opposed it on policy, not legal, grounds.)

-- Therefore, these paragraphs should be revised to present the issue without taking a position (which is the approach taken in other sections of the paper):

"25. (delete 26) Article 4.2(b) calls upon each Annex I Party to communicate information on its policies and measures, as well as its resulting projected anthropogenic emissions by sources and removals by sinks, with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions. (emphasis added) There is an issue whether projected effects to be achieved through joint implementation in the territory of another Party are to be reported pursuant to this provision.

Annex

-- The annex is quite confusing and should be deleted or clarified.

THE CLIMATE CHANGE ACTION PLAN

President William J. Clinton
Vice-President Albert Gore, Jr.

October 1993

JOINT IMPLEMENTATION

Efforts undertaken cooperatively between countries or entities within them to reduce net greenhouse gas emissions -- called joint implementation -- hold significant potential for combatting the threat of global warming and promoting sustainable development. Joint implementation is recognized under the Framework Convention on Climate Change (the Climate Convention) and is an approach open to all Parties to the Convention.

Joint implementation could potentially achieve greater emission reductions than might be possible if each country pursued only domestic actions, and could achieve these reductions more cost-effectively. Joint implementation may also spur technology cooperation -- increasing developing countries' access to energy efficiency and renewable energy technologies while stimulating export markets for industrialized countries. At the same time, significant questions arise about what kinds of activities might take place under the rubric of joint implementation: whether these would produce real reductions; whether they would be "new and additional" to ongoing development assistance or private business transactions; how to measure and track net emission reductions achieved; how to assure that reductions in one place do not give rise to increases in another; and how to assure that net reductions will not be lost or reversed through time.

The Intergovernmental Negotiating Committee, the body that negotiated the terms of the Climate Convention, took up the issue of joint implementation for the first time during its Eighth Session in August 1993. The Climate Convention calls upon the Conference of the Parties to adopt international criteria for joint implementation at its first session, tentatively scheduled for late March 1995. International efforts to develop criteria for joint implementation will clearly benefit from real world experience. At the same time, a number of U.S. firms, especially

electric utilities considering voluntary emission reduction commitments, have indicated their interest in international projects.

Joint Implementation Strategy

The Climate Change Action Plan will achieve the goal of returning U.S. greenhouse gas emissions to 1990 levels by the year 2000 with domestic actions alone. However, the Administration recognizes the enormous potential for cost-effective greenhouse gas emission reductions in other countries, and the promise of joint implementation can only be realized if pilot projects are evaluated under workable criteria that avoid the pitfalls mentioned above. The Administration is therefore announcing a pilot program -- the U.S. Initiative on Joint Implementation (USJI). The primary purpose of the U.S. initiative is to help establish an empirical basis for considering approaches to joint implementation internationally and thus help realize the enormous potential for joint implementation both to combat the threat of global warming and to promote sustainable development.

PRESIDENT CLINTON IS DIRECTING:

- The Department of State, in consultation with other Agencies, to develop the U.S. Initiative on Joint Implementation (USJI) as a pilot program.
- The Department of State to publish the initial guidelines for the USJI in the Federal Register for public comment. The USJI groundrules are found in Appendix II and include the following key features:
 - The USJI will provide a mechanism for investments by U.S. firms and potential government assistance to be evaluated for net greenhouse gas emission reductions.
 - The USJI will establish an interagency evaluation panel to certify net emission reduction estimates from qualified projects
 - The USJI will adhere to strict criteria to evaluate potential emission reductions in order to maximize international acceptance of emission reductions.
 - Net emission reductions achieved as a result of projects developed under the USJI will be measured, tracked, and scored. An accounting of these reductions will be part of the U.S. National Action Plan.
 - The U.S. Initiative will be evaluated and assessed within two years of its inception or within six months of adoption of international criteria for joint implementation by the Conference of the Parties under the Climate Convention, whichever is earlier.

APPENDIX II

GROUNDRULES FOR U.S. INITIATIVE ON JOINT IMPLEMENTATION

The following describes the U.S. Initiative on Joint Implementation (USJI), which shall be established as a pilot program.

Section 1 - Purpose

The purpose of the pilot program shall be to:

- (1) encourage the rapid development and implementation of cooperative, mutually voluntary projects between U.S. and foreign partners aimed at reducing net emissions of greenhouse gases, particularly projects promoting technology cooperation with and sustainable development in developing countries and countries with economies in transition to market economies;
- (2) promote a broad range of cooperative, mutually voluntary projects to test and evaluate methodologies for measuring, tracking and verifying costs and benefits;
- (3) establish an empirical basis to contribute to the formulation of international criteria for joint implementation;
- (4) encourage private sector investment and innovation in the development and dissemination of technologies for reducing net emissions of greenhouse gases; and
- (5) encourage participating countries to adopt more complete climate protection programs, including national inventories, baselines, policies and measures, and appropriate specific commitments.

Section 2 - Evaluation and Reassessment of Pilot Program

The pilot program shall be evaluated and reassessed within two years of its inception or within six months of adoption of international criteria for joint implementation by the Conference of the Parties to the United Nations Framework Convention on Climate Change, whichever is earlier.

Section 3 - Eligible Participants

A. Domestic

- (1) Any U.S. citizen or resident alien;

- (2) any company, organization or group incorporated under or recognized by the laws of the United States; or
- (3) any U.S. federal, state or local government entity.

B. Foreign

- (1) Any country that has signed, ratified or acceded to the United Nations Framework Convention on Climate Change;
- (2) any citizen or resident alien of a country identified in B(1) of this section;
- (3) any company, organization or group incorporated under or recognized by the laws of a country identified in B(1) of this section; or
- (4) any national, provincial, state, or local government entity of a country identified in B(1) of this section.

Section 4 - Evaluation Panel

A. An Evaluation Panel is hereby established.

B. The Evaluation Panel shall consist of eight members, of whom:

- (1) one shall be an employee of the Department of Energy, who shall serve as Co-Chair;
- (2) one shall be an employee of the Environmental Protection Agency, who shall serve as Co-Chair;
- (3) one shall be an employee of the Agency for International Development;
- (4) one shall be an employee of the Department of Agriculture;
- (5) one shall be an employee of the Department of Commerce;
- (6) one shall be an employee of the Department of the Interior;
- (7) one shall be an employee of the Department of State; and
- (8) one shall be an employee of the Department of the Treasury.

C. The Panel shall be responsible for:

- (1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USJI;
- (2) accepting project submissions from eligible U.S. participants and their foreign partners;
- (3) reviewing and evaluating project submissions;
- (4) approving or rejecting project submissions for inclusion in the USJI, based on criteria contained in section 5;
- (5) providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;
- (6) certifying net emissions reductions estimated to result from projects; and
- (7) preparing an annual report of its activities, including a summary of approved projects.

Section 5 - Criteria

- A. To be included in the USJI, the Evaluation Panel must find that a project submission:
- (1) is accepted by the government of the host country;
 - (2) provides data and methodological information sufficient to estimate current and future net greenhouse gas emissions in the absence of, and as the result of, the project;
 - (3) will produce net reductions in greenhouse gas emissions that would not reasonably be likely to occur, based on available information, but for the proposed project, and if federally funded, is or will be undertaken with funds in excess of those available for such activities in fiscal year 1993;
 - (4) contains adequate provisions for tracking the actual net greenhouse gas emissions resulting from the project, and on a periodic basis, for modifying net greenhouse gas emissions reduction estimates and for comparing actual results with those originally projected;
 - (5) contains adequate provisions for external verification of the actual net greenhouse gas emissions resulting from the project;
 - (6) identifies any associated non-greenhouse gas environmental impacts/benefits;

- (7) provides adequate assurance that actual net greenhouse gas reduction benefits accumulated over time will not be lost or reversed;
- (8) provides for registration of the project in the national inventory established under section 1605 of the Energy Policy Act of 1992*; and
- (9) provides for annual reports to the Evaluation Panel on the actual reduction achieved in net greenhouse gas emissions and on the share of such reduction attributed to each of the participants, domestic and foreign, pursuant to the terms of voluntary agreements among project participants.

B. In determining whether to include projects under the USJI, the Evaluation Panel shall also consider:

- (1) the potential for the project to lead to net changes in greenhouse gas emissions elsewhere;
- (2) the potential positive and negative effects of the project apart from its effect on net greenhouse gas emissions;
- (3) whether the U.S. participants are net emitters of greenhouse gases within the United States and, if so, whether they are taking measures to reduce such net emissions; and
- (4) whether efforts are underway within the host country to ratify or accede to the United Nations Framework Convention on Climate Change, to develop a national inventory and/or baseline of net greenhouse gas emissions, and whether the host country is taking measures to reduce its net emissions of greenhouse gases.

* With respect to information received about such projects under section 1605, the Department of Energy will coordinate with the Environmental Protection Agency to enable it to fulfill its responsibilities under the Global Climate Protection Act of 1987 and the Clean Air Act, as amended.

QUESTIONS AND ANSWERS REGARDING
THE U.S. INITIATIVE ON JOINT IMPLEMENTATION

Question 1: Will the reductions in net greenhouse gas emissions achieved through the Administration's pilot program on joint implementation be counted toward the U.S. commitment to reduce its emissions to 1990 levels by the year 2000? What if you get to 1998 and find that domestic measures alone won't meet the commitment -- would you use reductions achieved through joint implementation to get there?

Answer 1: We are confident that the 50 specific measures identified in the U.S. Climate Change Action Plan will enable the United States to meet its reduction commitment. We are committed to monitoring our progress closely at periodic intervals, and to taking additional domestic actions to meet the U.S. commitment if those adopted prove insufficient.

With respect to joint implementation, we will monitor, track and score the net emissions reductions achieved as the result of the U.S. pilot program, and an accounting will be kept of these reductions. However, no decision has been reached regarding the circumstances under which the United States would consider applying such reductions.

U.S. companies that enter into agreements with the Department of Energy and/or the Environmental Protection Agency under programs such as "Climate Challenge" and "Climate-Wise Companies" to limit emissions will be able to use joint implementation projects that satisfy the joint implementation groundrules contained in our plan to meet those voluntary commitments. But note that our plan contains no quantified projections of any net reductions that may result either from such agreements or from joint implementation projects. And as stated, no decision has been reached regarding any potential use of net reductions achieved through the U.S. Initiative on Joint Implementation.

Question 2: Will joint implementation projects count toward post-2000 commitments?

Answer 2: The President, in his Earth day speech, committed the United States to continue the downward trend in emission. While the mitigation plan in some cases provides projections for future reductions beyond 2000, the Administration is

planning on a continuing program to evaluate new measures to assure that this pledge is met. Joint implementation will be considered as one of the components of such a program.

Question 3: Has the Administration selected projects which would be included in the joint implementation pilot program?

Answer 3: No specific projects have yet been reviewed or certified for inclusion in the pilot program. As part of the U.S. Initiative on Joint Implementation (the groundrules for which are included in an annex to the plan), the Administration will invite project submissions and will set up a review panel to certify projects for inclusion in the program. This panel will include representatives from the Departments of Agriculture, Commerce, Energy, Interior, State and Treasury, the Environmental Protection Agency and the Agency for International Development.

Question 4: How will the administration assure that joint implementation projects do not merely "displace" the negative offsets? For example, if a project reduces deforestation in one area, does the initiative assure that it won't simply occur in another area?

Answer 4: The groundrules we will adopt for the program acknowledge such concerns and seek to meet them. In particular, the groundrules require that projects include data and methodological information sufficient to estimate current and future net greenhouse gas emissions in the absence of, and as the result of, the project. The aim will be to produce net emission reductions globally -- not to shift current emissions or to increase them. Furthermore, the groundrules require that projects be tracked to assure that emissions reductions projected are actually achieved.

Question 5: Will joint implementation projects be limited to other "Annex I" countries i.e., only to industrialized countries of the OECD and countries in transition to market economies?

Answer 5: No. Our program will be open to all countries to promote a broad array of joint implementation projects and to gain experience in a variety of sectors and regions of the world. In our view, the United Nations Framework Convention on Climate Change provides for joint implementation among all parties.

Question 6: Can projects included under the U.S. Joint Implementation Initiative be recorded under section 1605 of the Energy Policy Act of 1992?

Answer 6: Yes. All projects that are accepted for inclusion under the U.S. Initiative on Joint Implementation can be recorded under section 1605 of the Energy Policy Act of 1992.

Question 7: How will the Administration assure that projects included under the U.S. Initiative on Joint Implementation are "additional" -- won't some try to repackage existing activities or activities that would have been undertaken anyway and sell them as "joint implementation projects"?

Answer 7: The groundrules for our pilot program require that the Evaluation Panel must find that a project submission "will produce net reductions in greenhouse gas emissions that would not reasonably be likely to occur, based on available information, but for the proposed project, and if federally funded, is or will be undertaken with funds in excess of those available for such activities in fiscal year 1993." We will thus make every effort to assure that projects included under the U.S. Initiative on Joint Implementation are above and beyond existing activities or activities that would have taken place anyway.

Question 8: In the absence of a decision from the outset by the Administration to count joint implementation projects toward meeting the U.S. commitment, what incentive do U.S. companies have to get involved in the program?

Answer 8: We believe that there are a variety of incentives. Some U.S. firms consulted in developing our program said that they have undertaken projects to reduce emissions in other countries as part of their corporate commitment to environmental stewardship. In addition, some U.S. utilities have undertaken such projects in response to decisions of public utility commissions in their states designed to consider environmental performance when granting requests for new capacity. Some U.S. firms have also expressed interest in joint implementation as a means of offsetting potential future requirements.

Question 9: Does the Administration support extending emissions trading schemes, such as that for sulfur emissions under the Clean Air Act amendments, internationally?

Answer 9: The Administration is committed to finding cost-effective ways of meeting the threat of global warming, particularly through the use of market instruments. In this regard, we believe that our experience with emissions trading domestically may well be of interest in a larger context. However, establishing an international regime for emissions trading will require considerably more thought and discussion than has been devoted to this issue to date.

Question 10: Isn't it true that many developing countries have expressed strong reservations about joint implementation -- that it will enable rich, industrialized countries to avoid taking serious actions at home and will disadvantage developing countries?

Answer 10: Consideration of joint implementation internationally is still in its infancy. There will be further discussion of joint implementation in the coming months, both in international fora such as the Intergovernmental Negotiating Committee and among nations bilaterally. In our view, initial concerns such as those mentioned can be overcome as we demonstrate the practical advantages of well-designed programs, both for developing countries and for industrialized countries. We simply must find ways to tap the resources and ingenuity of the private sector if we hope to deal seriously with the threat of global warming.

Question 11: The United States has made a domestic commitment to reduce its greenhouse gas emissions; thus, why can't the United States decide to count reductions achieved under its own joint implementation program toward meeting its commitment?

Answer 11: First, we are convinced that the domestic measures and programs contained in our action plan will be sufficient to return U.S. emissions to their 1990 levels by the year 2000. Second, we are only now launching our joint implementation initiative -- no projects have yet been submitted, reviewed or certified for inclusion under our pilot program. Third, we are mindful that international efforts to develop agreed criteria for joint implementation are continuing -- it is our goal to contribute to those efforts, not to ignore them. In our view, nations may be more open to joint implementation if it is viewed at this stage as an addition to, rather than a substitute for, domestic reduction efforts.

Question 12: How does the Administration know that others will welcome U.S. joint implementation projects in their countries?

Answer 12: The groundrules for our joint implementation initiative provide that projects must be accepted by the government of the host country to be included in our program.

Question 13: How will the reductions achieved in joint implementation projects be apportioned among U.S. and foreign participants?

Answer 13: The groundrules for our program leave the issue of apportioning reductions among participants in a project to the terms of voluntary agreements among the participants themselves.

Question 14: How will reductions achieved by multinational companies be dealt with under the U.S. pilot program?

Answer 14: If a U.S. company with operations in several countries undertakes a joint implementation project, it will be up to that company whether to seek inclusion of the net reductions achieved under the U.S. program or under a similar program initiated by another country.