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INTERGOVERNMENTAL NEGOTIATING COMMITTEE
FOR A FRAMEWORK CONVENTION ON CLIMATE CHANGE

PROCEDURAL AND LEGAL MATTERS

CONSIDERATION OF THE ESTABLISHMENT OF A MULTILATERAL
CONSULTATIVE PROCESS FOR THE RESOLUTION OF QUESTIONS
REGARDING IMPLEMENTATION (ARTICLE 13)

Submissions from delegations relating to Article 13

Note by the interim secretariat

At the tenth session of the Committee, a number of representatives requested that background papers on consideration of the establishment of a multilateral consultative process for the resolution of questions regarding implementation, that had been prepared by delegations before the adoption of the Convention, be circulated to all delegations prior to the first session of the Conference of the Parties (COP 1)(A/AC.237/76, para. 113).

In response to that request, the present document reproduces the edited version of negotiating texts on this topic that were compiled subsequent to discussions during the fourth session of the Committee. These were contained in the consolidated working document attached as annex II to the report on the fourth session (A/AC.237/15) and reflect the views expressed by delegations at that time. (The original texts were issued in A/AC.237/Misc.17/Add.4.)

It may be noted that the consolidated working document included a number of other texts that had some relationship to a possible consultative process but that had been submitted under other rubrics (notably as part of proposals regarding subsidiary bodies). Should work on Article 13 be carried forward after COP 1, it may be useful to recall those texts as well. For the time being, however, the attached texts should suffice to give delegations a sense of the background to Article 13.

(VII. 2. (Alternative A))

RESOLUTION OF QUESTIONS REGARDING
INTERPRETATION AND IMPLEMENTATION OF THE CONVENTION

Process

[1. [Subject to paragraph 5] The Conference of the Parties shall, in a timely fashion, consider and resolve questions regarding the interpretation and implementation of the Convention [including those questions] that are brought to its attention in writing by Parties or by its subsidiary bodies. To this end, it may establish [one or more ad hoc] [a] Panel(s) of its members, designated [with specific and limited terms of office] in accordance with Annex ... (Annex to be drafted). [If questions relate to a specific Party, the ad hoc panel(s) shall invite a representative of the Party that is the subject of the question (hereinafter referred to as the "Party concerned") to attend the meetings of the Panel.] [In considering the question before the next ordinary meeting of the Conference of the Parties and following the meeting at which the ad hoc Panel was established, the ad hoc Panel shall:

- (a) If the question relates to a specific Party, [(hereinafter referred to as the "Party concerned")] notify in writing the Party concerned that a question regarding [its] interpretation and implementation of the terms of the Convention has arisen;
- (b) [If the question relates to a specific Party,] request the Party concerned to respond [and] take part in consultations with the Panel [and attend meetings of the Panel];
- [(c) Request any Party which brought the question to the attention of the Conference of the Parties to take part in consultations with the Panel and attend meetings of the Panel;]
- (d) Consult, as it deems necessary, representatives of any Party and other expert bodies;
- (e) Request that the Party concerned advise the ad hoc Panel(s) of its capacity to implement fully the provisions that were the subject of the question, the provisions of the Convention as a whole, and of its needs relevant to the implementation of the Convention;

- (f) Promote, using the means, institutions, and funds available under the Convention, the capacity of the Party concerned to comply with and implement its commitments under the Convention; and
- (g) Report the results of the consultations to the Conference of the Parties, including, if necessary, a recommendation for resolution of the question.]

[Possible addition to paragraph 1

The Conference of the Parties may, pending final resolution of the question, take any interim action it deems necessary to advance the objectives of the Convention.]

[Alternative to paragraph 1

1. The Conference of the Parties shall, in a timely fashion, consider and resolve questions regarding the interpretation and implementation of the Convention that are brought to its attention in writing by Parties or by its subsidiary bodies. To this end the Committee on Implementation established under Article [VI. 5.] (Implementation Committee) shall consider such questions and submit a report to the Conference of the Parties.]

Consideration of Report

[2. At its next [ordinary] meeting, the Conference of the Parties shall consider the report of [an ad hoc Panel] [Committee on Implementation] and [take any course of action] [adopt any recommendation] [issue recommendations on actions] [it deems] necessary to further the objectives of the Convention. In doing so, the Conference of the Parties [or an ad hoc Panel] may, at any time, seek an advisory opinion from [an ad hoc Panel of Legal Experts.] [a subsidiary body established by or under the Convention.] [The Conference of the Parties may also, if appropriate, request an advisory opinion from the International Court of Justice.]]

Decisions by the Conference of the Parties

[3. If the Party concerned does not comply with the course of action set out by the Conference of the Parties, the Conference of the Parties may, again, take any further action it deems necessary to advance the objectives of the Convention [including:...].]

Voting

4. The Parties shall make every effort to take [action] [decisions] under this Article by consensus. If [all] efforts at consensus have [been exhausted] [failed], [action] [recommendations] shall [, as a last resort,] be [taken] [adopted] by a [two-thirds] [three-quarters] majority vote of the Parties present and voting.

[Possible additional paragraph

5. The Conference of the Parties may resolve not to use the procedure set out in this Article, if the particular question of interpretation or implementation is being considered by the Arbitral Tribunal pursuant to Article [VII. 2.] (Alternative 2) (Settlement of Disputes) or the International Court of Justice.]]

[POSSIBLE ALTERNATIVE TO VII. 2. (Alternative A)]

Process

1. Questions relating to the implementation of the Convention may be drawn to the attention of the Conference of Parties by Parties [and by any subsidiary body established by or under the Convention]. Any Party concerned about another Party's implementation of its obligations under the Convention or about its own capacity to implement fully those obligations may notify its concern, through the secretariat, to the Conference of Parties. The Conference of Parties shall, in timely fashion, consider any such question and promote its resolution. To that end it may, as necessary, establish an ad hoc Panel of of its members.

2. In considering the question before the next ordinary meeting of the Conference of the Parties, the ad hoc Panel shall:
 - (a) Invite the Party which has brought the question to the attention of the Conference of the Parties and any other Party whose implementation of the Convention is in question to attend meetings of the Panel and take part in consultations with it;

 - (b) Provide the Party whose implementation of the Convention is in question a full opportunity to inform the Panel of its capacity to implement its obligations under the Convention and of its needs relevant to that issue;

 - (c) Consult, as it deems necessary, any subsidiary body established by or under the Convention and other expert bodies;

 - (d) Promote, as necessary, the enhancement of the capacity of the Party whose implementation of the Convention is in question to implement fully its obligations under the Convention; and

 - (e) Report the results of its consultations, together with any recommendations, to the next ordinary meeting of the Conference of the Parties.

Consideration of Report

3. After considering the report of the ad hoc Panel, the Conference of the Parties may decide to adopt a recommendation or recommendations to promote the full implementation of the Convention and to further its objectives.

Voting

4. The Conference of the Parties shall make every effort to take decisions under this Article by consensus. If all efforts at consensus have been exhausted decisions shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting.

Additional rules

5. The Conference of the Parties may in elaboration of the provisions of paragraph 2 of this Article, lay down additional rules relating to membership of ad hoc Panels, their meetings and procedures.

Relationship to Dispute Settlement (VII. 2.) (Alternative B)

Option 1

6. If, after the expiry of . . . months following the initial submission of any question to the secretariat pursuant to paragraph 1 of this Article, any Party continues to have a concern relating to the implementation by another Party of its obligations under the Convention, it shall be entitled to invoke the dispute settlement procedures, established by Article [VII. 2.] (Alternative B) (Settlement of Disputes) of the Convention.

Option 2

6. The provisions of this Article are without prejudice to the operation of Article [VII. 2.] (Alternative B) (Settlement of Disputes) of the Convention.]