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UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Ad Hoc Group on Article 13
Fourth session
Bonn, 25-28 February 1997
Item 3 of the provisional agenda

**SCOPE AND ELEMENTS OF THE PROCEDURE OF ANY
PROPOSED MECHANISM**

Submissions from Parties

Note by the secretariat

The Ad Hoc Group on Article 13, at its third session, invited Parties to submit by 15 February 1997 any further proposals on the scope and elements of the procedure of any proposed mechanism, especially proposals on the elements listed in annex II of the Report on the session (see FCCC/AG13/1996/4 para. 16). Three such submissions* have been received.

In accordance with the procedure for miscellaneous documents, these submissions are attached and are reproduced in the language in which they were received and without formal editing.

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*In order to make these submissions available on electronic systems, including the World Wide Web, these contributions have been electronically scanned and/or retyped. The secretariat has made every effort to ensure the correct reproduction of the texts as submitted.

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GENERAL STATEMENT

Ireland, speaking on behalf of the European Community and its Member States, wishes to commend the Secretariat for its synthesis of responses to the questionnaire relating to the work of this group, contained in document FCCC/AG13/1996/1. This document offers an excellent framework for the substantial discussion. It shall, in connection with the EU Response, serve as the basis of the following general intervention.

We note with appreciation that the notion of establishing regimes for facilitating the implementation of international environmental instruments by assisting and encouraging Parties to fulfil their obligations and commitments is gaining further global support. In this context, we welcome the relevant observations and recommendations recently adopted by the governmental expert group under the UNEP Governing Council earlier this month in the course of the mid-term review of the Montevideo Programme for the Development and Periodic Review of Environmental Law for the 1990s. For those delegations interested in the text of these observations and recommendations there are some copies available for delegates at the back of the room - paragraph 8 being the relevant paragraph.

The European Union believes that, for the effective operation of the FCCC, it will be necessary to establish a Multilateral Consultative Process (MCP) to resolve questions with regard to the implementation of the Convention by an individual Party. Such a process should deal with any questions relating to the performance of individual Parties in the implementation of the Convention. Further it should be simple, facilitative, cooperative, non judicial and transparent. Apart from these principles; an MCP should aim at the avoidance of disputes and, in order to bring about full implementation of the Convention, strive for solutions.

For the process to have a clear purpose and meaning, the EU considers that it will need to have a structure distinguishing it from other structures already envisaged by the Convention.

We believe that a new standing body ("multilateral Consultative Committee") should be established.

The functions of the Committee would be to receive, consider and report on any submission made by one or more Parties on any questions with regard to implementation of the Convention by an individual Party. In doing so, the Committee should aim to secure a constructive resolution of the matter on the basis of respect for the provisions of the Convention. Ultimate decision-making power should remain with the COP.

As instruments in addition to the Convention are bound to enhance the regulatory character of the International Climate Regime, the demand for reviewing individual compliance would undoubtedly increase. Therefore, the Ad Hoc Group on Article 13, in order to make maximum use of its efforts and time should aim at designing the procedure in such a way, that it could be adapted to related legal instruments. In this context, we welcome what we

view as a strong indication of support for a compliance procedure in the new framework compilation instrument currently being designed under AGBM.

Mr. Chairman, as the meeting progresses and themes for specific discussion emerge I expect that we will be addressing these as they arise. For the moment therefore I conclude our general comments and thank you for attention.

Functions of a Multilateral Consultative Process

Ireland, on behalf of the European Community and its Member States, wishes to state that in making this and other interventions in the role of Presidency we will be stating in general terms the view of the European Union in so far as we have reached conclusions on certain matters. As many of the questions posed in the elements paper are not yet fully evaluated by us, as I have stated already, we will return to these at some future session of the AG 13.

The European Union believes that, for the effective operation of the FCCC, it will be necessary to establish a Multilateral Consultative Process (MCP) to resolve questions with regard to the implementation of the Convention by individual Parties. Such a process should deal with any questions relating to the performance of individual Parties in the implementation of the Convention. Furthermore, it should be simple, facilitative, cooperative, non-judicial and transparent. Apart from these principles, an MCP should aim at the avoidance of disputes and, in order to bring about full implementation of the Convention, strive for solutions.

Addressing your questions on advisory or supervisory, and specific or general, our preferred approach contains strong elements of advisory and strong elements of specific.

Article 7.2 (c) addresses overall implementation regarding two or more Parties. A future MCP, while building on this article, should focus on individual cases. It seems to the EU that, at the first stage it would be up to a Party, whether to invoke Article 7.2 (c) or Article 13. The COP, however, should be given the authority, to seek the views of the MCP or of another subsidiary body. In none of these cases would the ultimate decision-making authority of the COP be reduced.

As stated yesterday, we believe that, pursuant to Article 8.2 (c) the Secretariat has the function of facilitating but not invoking assistance to Parties, particularly developing country Parties, in the compilation and communication of information.

There is still a lot of experience to be gained but as it stands Article 10.2 (a) does not address the question of how individual performance should be assessed. The nature of the relationship between the SBI and a future MCP can be deduced from Article 10.2 (a) which stipulates that assessments to be undertaken by the SBI should concentrate on the "overall aggregated effect" of steps taken by Parties. Cooperation between the SBI and the MCP seems necessary, as both organs would draw on similar bases of information.

The application of the MCP should be without prejudice to the provisions of Article 14.

Institutional arrangements of Multilateral Consultative Process

Ireland, on behalf of the European Community and its Member States wishes to remind the meeting of the approach being adopted by the European Union in the discussion on your elements paper, namely in a general statement and then as appropriate interventions from Member States without prejudice to a final European Union position on these topics.

In order to achieve the flexibility required by the advisory character of the process, the European Union believes that a new standing body ("Multilateral Consultative Committee") should be established. We consider ten members to be the right size. Members should be nominated by Parties and be elected by the COP, based on equitable geographical distribution. Members should be well qualified in the legal, economic, social, technical and/or environmental field related to the subject the Convention.

This body should meet as often as necessary to perform its functions. In so far as a roster of experts for use by the MCP could be seen as necessary, it is the view of the EU that the MCP should have expert advice as needed, possibly from other bodies established under the Convention. In any event duplication of expert rosters should be avoided.

Procedures for a Multilateral Consultative Process

Ireland, on behalf of the European Community and its Member States wishes to state that as before this intervention is a general one and additions thereto or other matters arising may be made by Member States without prejudice to final developed positions from the EU to be made at a future meeting of AG 13.

In so far as the questions raised in your element paper at paragraph 4, procedures, is concerned it is the view of the European Union the legal status of the process will be that of a mechanism institutionalised by the Parties to the Convention by implementing Article 13 through a decision taken by the COP. The Committee should report to the Conference of the Parties. After receiving a report by the Committee the Parties could, taking into consideration the circumstances of the case, decide upon and call for steps directed towards helping or encouraging Parties with their implementation of the Convention.

In relation to the timetable we would wish to see the outcome or result available at least by COP 4. On the matter of which body would govern the process it is our view, and we have stated it on a number of occasions, that decision-taking should be restricted to the COP in accordance with its inherent powers.

Statement relating to characteristics of a "Multilateral Consultative Process"

Ireland, speaking on behalf of the European Community and its Member States, wishes to state that the EU believes that for the effective operation of the FCCC, it will be necessary to establish a Multilateral Consultative Process (MCP) to resolve questions with regard to the implementation of the Convention by an individual Party. Such a process should deal with any questions relating to the performance of individual Parties in the implementation of the

Convention. Furthermore, it should be simple, facilitative, cooperative, non-judicial and transparent. Apart from these principles, an MCP should aim at the avoidance of disputes and, in order to bring about full implementation of the Convention, strive for solutions.

A number of delegates have already touched upon the question of relationships between a future MCP and other institutions and processes under the Convention, so we would like to elaborate on that.

Article 7.2 (c) addresses overall implementation regarding two or more Parties. A future MCP, while building on this article, should focus on individual cases. It seems to the EU that, at the first stage, it would be up to a Party, whether to invoke Article 7.2 (c) or Article 13. The COP, however, should be given the authority, to seek the views of the MCP or of another subsidiary body. In none of these cases would the ultimate decision-making authority of the COP be reduced.

We sympathize with the statement of the Chinese delegate this morning that, pursuant to Article 8.2(c) the Secretariat has the function of facilitating but not invoking assistance to Parties, particularly developing country Parties, in the compilation and communication of information.

There is still a lot of experience to be gained but as it stands Article 10.2 (a) does not address the question of how individual performance should be assessed. The nature of the relationship between the SBI and a future MCP can be deduced from Article 10.2 (a) which stipulates that assessments to be undertaken by the SBI should concentrate on the "overall aggregated effect" of steps taken by Parties. Cooperation between the SBI and the MCP seems necessary, as both organs would draw on similar bases of information.

For the reasons stated above, the European Union believes that there is a gap between the processes on review of implementation and on settlement of disputes. The process of review of implementation under Article 7(2) (e) deals with assessment of the overall implementation of the Convention by the Parties. The settlement of disputes under Article 14, in contrast, relates to specific disputes between two or more Parties about the interpretation or application of the Convention. The MCP could, using a preventative approach, contribute to narrowing the gap by providing a consulting option on individual cases to promote the effective implementation of the Convention.

Further statement relating to characteristics of a "Multilateral Consultative Process"

Ireland on behalf of the European Community and its Member States, wishes to refer to the discussion on characteristics based on the Chairman's elements paper in which we and individual Member States partook. Many of the elements brought to our attention in your paper are issues upon which the European Union requires further consideration to develop a final position. In this context, we do not propose to add any further commentary on the characteristics section but expect that, in accordance with your proposals for the organization of work that a more detailed commentary can be offered by the EU at a future session of AG13.

However, in the overall context of your elements paper and the questions posed therein, and in the interests of developing the discussion and contributing to the debate and to any questions which may arise in the course of that debate, Member States may be taking the floor in a constructive manner in order to probe and develop the thinking on these issues. These interventions are without prejudice to the final EU position on any issue and are intended to contribute the dynamic of the meeting based on the Chairman's elements paper, part 2, entitled Functions.

Having recognized, Mr. Chairman, that with regard to characteristics, certain points of convergence seen to have already become clear, we would like to see those areas identified and recorded in our Report. We would be prepared to propose and discuss with all interested Parties and with Mr. Chairman an appropriate wording..

AD HOC GROUP ON ARTICLE 13

**PROPOSALS OF THE REPUBLIC OF UZBEKISTAN IN REGARD TO THE
SCOPE OF THE DEFINITION OF ELEMENTS CONSIDERED
IN THE ANNEX II OF FCCC/AG13/1996/4**

As we deem, multilateral consultative process is the processes of rendering consulting services to one or limited number of Parties in order to promote getting the consensus and understanding of solution of questions concerning Convention implementation. This should be simple, transparent, non-judicial processes which should flexibly facilitate the Parties in the implementation of Convention obligations. The legal basis of this process formulation is fixed by Article 13.

The Parties can solve the questions regarding Convention implementation and get consultation in the existing bodies - SBI, SBSTA and AGBM. Nevertheless, the problems can arise concerning getting consulting services in the decision of the legal and economical matters, explanation of interpretation and promotion of agreements.

We consider that for providing such consulting services it is necessary to enlarge the competence areas of Group AG 13 and to establish the special body which should be headed by Group AG 13. This should be the special group on the constant basis with the geographic presentation of experts. They can be both governmental and individuals. The priority area of the experts competence is the following: law, economy, ecology and social issues. The recommendations of this group are not obligatory for the parties before the adoption by COP. The process of creation of this group should be established by the decision of COP.

The terms of the items discussion should be not less that 2 times a year, not been the same as the terms of SBI and AGBM session. The items under consideration should be adopted by the Secretariat of this group.

By our opinion such procedure will provide for the efficiency of the multilateral consultative process in the solution of items for the Convention implementation.

1. Characteristics

How we propose to define the term "multilateral consultative process":

nature (transparent, simple, non-confrontational, non-judicial, timely),
objective (promote compliance, promote understanding),
expertise (address legal economical, social, technical matters),
application (optional),
evolution (dynamic).

2. Functions

How we propose to define the term "questions regarding implementation":

advisory (advice and support, assist implementation),
general (clarify interpretation, clarify questions),
broad areas of competence (communications, obligations. Issues),
relationships (with other Convention bodies, processes and Articles, avoidance of duplication).

3. Institutional arrangements

establishment (new institution),
nature-committee/panel (ad hoc/standing),
mandate,
size - open ended (equitable geographical representation),
constitution - government representatives (individual or official capacity).

4. Procedures

which body would govern the process (COP),
how would issues be taken up (secretariat),
what would be the result/outcome (recommendations to COP),
frequency of deliberations would be not less than two times in year at another time than SBI
and AGBM,
how the process would be established (COP decision).

United Nations Framework Convention on Climate Change

**Ad hoc Group on Article 13
Fourth session, 25-28.02.97, Bonn**

PROPOSAL ON THE ELEMENTS OF AN MCP

In accordance with the conclusions of the Chairman following the third session of AG 13, Switzerland hereunder presents its views on the establishment of a multilateral consultative process. In order to facilitate the work of the ad hoc group, Switzerland followed the structure contained in the Annex to the conclusions of the President on the third meeting of AG13, which lists the elements of an MCP.

1. Characteristics

The nature of the MCP should be facilitative, cooperative, transparent, simple, non-confrontational, non-judicial and timely.

Concerning the objective of the MCP, we consider that its primary one should be to provide assistance to Parties. Whilst aiming to achieve this objective, the MCP will strive to find solutions to the requests formulated by Parties through promoting the understanding of or promoting compliance with the Convention. We believe that the prevention of disputes will automatically result if this primary objective is reached.

On the question of expertise, we would like the MCP to be able to address a wide range of issues, going from legal, economic, social to technical and environmental fields, but also in the scientific and technological areas, only if this does not duplicate functions already exercised by other bodies of the Convention. In this respect, we believe that the MCP would have a subsidiary competence, i.e. would deal with issues which do not fall within the mandate of the SBI or SBSTA.

On the question of application, Switzerland considers that it would be on an optional basis, i.e. those who are entitled to trigger the MCP would do so on a voluntary basis. The MCP should be open to Parties concerned about another Party's implementation of the Convention. To maintain the distinction between the procedures of articles 13 and 14 and ensure the cooperative and non-confrontational characters of the MCP, participation of the addressed Party in the procedure should remain strictly voluntary.

Finally, although we agree that the MCP will certainly with time go through experiences which will call for its evolution, we think that, at the start, it should have a stable and fixed basis. The necessary adaptation of the MCP could occur through a review of the process on a regular basis.

2. Functions

Concerning the definition of the term "questions regarding implementation" Switzerland has the following views:

First of all, we believe that the spirit of the MCP should be more based one of advice than of supervision. Hence, we agree that the main function of the MCP would be to act as a "help desk" by providing advice and support to Parties. This service would aim at assisting Parties in the implementation of the Convention as well as in promoting compliance with this legal instrument. We believe that the implementation would not only relate to specific commitments of the Parties, such as under article 12 of the Convention, but could also to give advice and support concerning the assessment and review of the effective implementation of the Convention. The questions would cover a broad area since they could relate to any element of the Convention which calls for implementation. Hence, the questions could concern communications, obligations or other issues.

On the issue of the relationships with the other bodies or processes of the Convention, we strongly endorse the need to avoid duplication. More specifically, Switzerland's views are the following:

- Article 7, 2 c: we can see a potential overlap between such a competence of the CoP and what could do the MCP. However, it would be up to two or more Parties to request the CoP for facilitation in the coordination of measures, whereas the MCP could also be triggered by one single Party. it would be up to the CoP, as the supreme organ of the Convention, to decide whether an issue submitted to him under article 7, 2 c be better treated in the framework of the MCP.
- Article 8, 2 c: information required from the Secretariat based on this article would normally be of a more formal, less complicated nature than issues brought up within the MCP. The Secretariat should nevertheless have the possibility to suggest to a Party to have its questions submitted to the MCP if the Secretariat is not itself in a position to answer them on its own.
- Article 10: the SBI only has the mandate to assist the CoP in the assessment and review of the effective implementation of the Convention. A single Party may not request such an assistance to this organ. Moreover, it seems that the SBI would be more concerned with the overall effective implementation of the Convention.
- Article 12: we believe that this article would have a double relation with the MCP: on one hand, it specifies commitments under article 4 of the Convention and thus, opens the door to questions concerning the implementation of that article, on the other hand, it provides information to the MCP which could help answering specific questions. We believe that article 12.7 requires a little more attention since it provides that the CoP shall arrange for the provision of technical and financial support in compiling and communicating information under this article. On the basis of this article, the CoP would intervene upon request, but only from developing country Parties. Moreover, it would not provide itself such support but would arrange for the provision of the

support. One can conclude that a way of arranging for the provision of this support would be for the CoP to establish the MCP.

- Article 14: We believe that the two articles have different purposes and objectives, namely on one hand to facilitate implementation of the Convention and on the other hand to settle disputes. Moreover, whilst one is multilateral, the other one is a bilateral process. In trying to establish relationship between these two articles, we must take into account the experiences gained in previous negotiations, such as in the Montreal and in the Second Sulphur Protocols.

3. Institutional arrangements

We favour the establishment of a "Standing Committee" composed between ten and fifteen experts which would be nominated by Parties and elected by the Conference of the Parties for a two year mandate and on a rotating basis. Membership would reflect the five UN geographical groups on an equitable basis. The experts would act as Government representatives and could have, if necessary, recourse to experts from a roster. Questions concerning the procedure of nomination of experts remain to be discussed. We consider that the SBI should and could play a role as the subsidiary body responsible to assist the CoP in the assessment and review of the effective implementation of the Convention. The "Standing Committee" could be established within the SBI. However, it would work independently.

On the question of the mandate of the MCP, we consider that it would be a broad one since it would relate not only to questions relating to the implementation of specific commitments undertaken by Parties, such as under articles 4.1.a), 4.1.j), 4.2.b) and 12, but to specific concerns relating to the implementation of other articles of the Convention for example on a particular function of the CoP, the Secretariat or one of the subsidiary bodies of the Convention. Hence, we believe that a Party could ask the MCP to clarify a specific function assigned to the Secretariat. Finally, a Party may ask clarifications on articles which neither contain a specific commitment, nor establish a function but state a general rule, such as article 4.7 of the Convention. We will here reiterate that the MCP will only have a subsidiary competence, i.e. which falls within the scope of application of articles related to the SBI or SBSTA could not be dealt with by the MCP. The respective bodies should nevertheless have the possibility to trigger the MCP for questions the body does not feel itself in a position to answer.

4. Procedures

The "Standing Committee" in charge of the MCP would be established by a decision from the CoP. It should meet as often as needed. On the question of the way issues would be brought to it, we are of the view that one or more Parties, a group of Parties (such as a subsidiary organ) or all the Parties (the CoP) could trigger the process. Moreover, and although the language of article 13 seems to limit this possibility, we would favour a solution giving also to the Secretariat the possibility of requesting the assistance from the MCP.

The CoP, as the supreme body of the Convention, would ultimately govern the process. However, the recommendations issued by the "Standing Committee" could be accepted as such by the Parties concerned and would therefore not need to be formally endorsed by the CoP. On the other hand, the "Standing Committee" could submit its recommendations to the CoP for discussion and approval if it considers that this is necessary with regard to the importance of the question treated. Also, the CoP should have the possibility to discuss, on its own initiative, matters dealt with by the MCP. For this purpose, the "Standing Committee" delivers an annual report to the Secretariat.

Finally, on the basis of the principle of institutional economy, we encourage the establishment of a single mechanism for the convention and its related legal instrument(s) which might be adopted at a later stage.

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