28 February 1996

CHINESE/ENGLISH/FRENCH/
RUSSIAN/SPANISH ONLY

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Ad Hoc Group on Article 13

RESPONSES TO QUESTIONNAIRE RELATING TO THE ESTABLISHMENT OF A MULTILATERAL CONSULTATIVE PROCESS

Submission by Parties and non-parties

Note by the secretariat

The Ad Hoc Group on Article 13, at its first session, decided to request Parties to make written submissions relating to a multilateral consultative process (FCCC/AG13/1995/2, para. 17). These, and any other issues Parties considered to be relevant to the exercise, were to be identified through a questionnaire to be circulated by the secretariat no later than 30 November 1995. The Group also requested that inputs should be submitted by 8 February 1996 to be compiled and synthesized by the secretariat. In addition, inputs from intergovernmental and non-governmental organizations were also welcomed. The compilations were to be made available during the sessions of the subsidiary bodies to be held in February/March 1996. The compilation and its synthesis will be considered by the Group at its second session in July 1996.

In accordance with that decision, the secretariat has produced the attached compilation consisting of inputs from the following Parties: Australia, Bolivia, Burkina Faso, Canada, Chile, China, Czech Republic, Estonia, the European Community, France, Honduras, Japan, Kuwait, Latvia, Mali, Mexico, the Russian Federation, Senegal, the United Kingdom of Great Britain and Northern Ireland, and Zambia, and from the following non-party: Turkey. The compilation containing inputs from intergovernmental and non-governmental organizations is issued in document FCCC/AG13/1996/MISC.2.

In accordance with the procedure for miscellaneous documents, submissions are reproduced in the language(s) in which they are received and without formal editing. Any submission that is received following the issuance of this document will appear in an addendum to this document.

FCCC/AG13/1996/MISC.1
GE.96-60759

CONTENTS

Paper No.		Page
	Questionnaire on Article 13	
1.	Australia (Submission received on 21 February 1996)	4
2.	Bolivia (Submission received on 12 February 1996)	9
3.	Burkina Faso (Submission received on 8 February 1996)	12
4.	Canada (Submission received on 13 February 1996)	15
5.	Chile (Submission received on 13 February 1996)	24
6.	China (Submission received on 8 February 1996)	31
7.	Czech Republic (Submission received on 29 January 1996)	37
8.	Estonia (Submission received on 15 January 1996)	38
9.	European Community (Submission received on 12 February 1996)	40
10.	France (Submission received on 16 February 1996)	44
11.	Honduras (Submission received on 30 January 1996)	45
12.	Japan (Submission received on 19 February 1996)	47

Paper No.		Page
13.	Kuwait (Submission received on 8 February 1996)	50
14.	Latvia (Submission received on 17 January 1996)	52
15.	Mali (Submission received on 10 January 1996)	54
16.	Mexico (Submission received on 15 February 1996)	55
17.	Russian Federation (Submission received on 26 January 1996)	58
18.	Senegal (Submission received on 27 February 1996)	62
19	Turkey (Submission received on 6 February 1996)	66
20.	United Kingdom of Great Britain and Northern Ireland (Submission received on 14 February)	68
21.	Zambia (Submission received on 9 February)	70

PAPER NO. 1: AUSTRALIA

AUSTRALIAN COMMENTS ON QUESTIONS RELATING TO THE MULTILATERAL CONSULTATIVE PROCESS SET OUT IN ARTICLE 13 OF THE FRAMEWORK CONVENTION ON CLIMATE CHANGE

SECTION A: DEFINITION AND SCOPE OF THE PROCESS

Q1: What should be understood by the term "multilateral consultative process" and what "questions regarding the implementation of the Convention" should be covered by such a process?

In part the nature of the article 13 process is governed by the very way it is described in article 13: i.e. multilateral and consultative. This seems to distinguish the process from any bilateral, adversarial or investigative procedure and suggests that (irrespective of the nature of the outcomes which parties may wish possibly to pursue following conclusion of the process) the process itself is a non-binding one.

In addition to these characteristics we consider that the process should be seen as forward rather than past oriented and be considered as a mechanism to assist parties individually and collectively to implement the Convention. In line with this nature we consider that the process should be "non-confrontational", "cooperative" and "transparent". All parties should be kept informed of questions raised through the article 13 process and have the opportunity to submit comments for consideration in the process. The process should be distinguished from "non-compliance procedures" which operate under some other international regimes. We would question the value of seeking to utilise the article 13 process in this way in the context of the existing institutional framework of the FCCC.

We are reluctant at this stage to attempt the task of defining the range of questions that might be addressed under the article 13 process given the many uncertainties still associated with it. Nonetheless we would observe that the process should avoid overlap with existing mechanisms under the Convention e.g. the work of the Subsidiary Body for Implementation (SBI). The question then becomes one of attempting to identify a non-exclusive list of areas where the article 13 process could add value to the work of the Convention. Three possibilities which suggest themselves are:

a. providing assistance to the parties individually, or collectively, in their interpretation of the Convention (NB: The article 13 process could not in our view issue 'authoritative' interpretations of the Convention, given the relevant provisions of the 1969 Vienna Convention on the Law of Treaties. It is the responsibility of individual parties to interpret the application of the Convention to themselves taking into account however, among other things, "any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions". The article 13 process could assist by providing advice to a party individually or parties collectively on the interpretation or application of the relevant provisions of the Convention.)

b. providing advice to a party which requests assistance on its own implementation of the Convention

c. providing advice to the SBI on matters the SBI considers the article 13 process could assist with (including advice assisting it to carry out its functions in respect of the in-depth review process).

Q2: What is meant by the word "process" in article 13. Should it be understood as a sequence of events or as a mechanism or as an institution? Could it imply all of these.

The word 'process' as used in article 13, seems to us to embrace all the possibilities raised by this question. If article 13 is to be made effective however the Ad Hoc Group on Article 13 would need to make some recommendations on what features the "process" should include in practice. It seems however premature to attempt a definitive statement on this point, as the "process" will not become clearer until it is more clearly understood what role the article 13 process will play.

Q3: What principles should govern the process? Is it sufficient that the process be simple, transparent, facilitative and non-confrontational in character.

See our response to Question 1.

Q4: Is it necessary to establish such a multilateral consultative process? If so, what measures should the Conference of the Parties take for its adoption? Decision of the COP? Amendment? Protocol?

Australia does not at this stage have a view on whether it is necessary to establish a multilateral consultative process. In our view a more appropriate question would be whether it is desirable to establish a multilateral consultative process. It would seem to us necessary to have a clear understanding of how parties would benefit from this process before a definitive conclusion could be reached. Nonetheless, as suggested by our responses to questions 1 and 7 there could be value in the process.

On the question of the type of measure to be adopted in respect of the process, we suggest that it would be inappropriate to seek to embody the outcome in an amendment or a protocol. As it is our understanding that there would be no legally binding determinations emerging from the process, it is not clear to us that there would be any legal obligations that would require a legal instrument to be put into effect. Furthermore either an amendment or protocol would introduce difficulties in bringing the process into effect (particularly for some parties) and would introduce unwarranted rigidities which would hinder parties from modifying the process as experience is gained in its operation. In our view a decision of the Conference of the Parties would be all that is required to establish the process.

Q5: If a new mechanism, or institution were to be established under Article 13, should its membership be general or restricted to specialists such as legal, economic, social or technical experts? In this context, should a roster of experts to provide advice be envisaged?

In our view, if such a mechanism is established, some formal mechanism would be useful in order for the article 13 process to produce useful outcomes. However, it should be as small as possible to minimise costs associated with it. This mechanism should be well integrated with other Convention institutions and be able to call on their assistance where appropriate.

While the specific form will need to be carefully considered as the nature of the article 13 process becomes clearer, two possible alternatives which could be considered are:

a. a small standing committee which would consider questions raised by the parties individually or as a group; or

b. a single "rapporteur" who would be responsible for consulting widely with parties, and others as appropriate, on any question raised with him or her, and reporting back to the appropriate Convention body. We note that a rapporteur would be less costly and have the capacity to be more responsive to parties as well as avoiding the potential complications of selection of a number of members or experts to serve on a standing committee.

Whatever mechanism or institution is established, it should in our view have the capacity to refer to experts for advice on any questions where this course of action is appropriate.

SECTION B: RELATIONSHIP OF ARTICLE 13 TO CONVENTION INSTITUTIONS AND PROCESSES

Q6: What linkages would need to be established with other articles of the Convention, notably, articles 7.2 (c), 8.2(c), 10, 12 and 14? (For example, are the provisions on the review process complete in themselves or is there scope for them to receive support through the process envisaged under Article 13? What is the relationship of Article 13 to Article 14? Would the process under Article 13 automatically be halted if a party invokes Article 14?)

Our view is that article 13 should be seen as additional to existing processes under the Convention, and should be available where it can facilitate implementation by parties individually or collectively. We would however be keen to avoid any duplication with those processes. The following are our specific comments on the relationship we envisage between existing processes and article 13.

Article 7.2(c): We believe the article 13 process, if it is established, should primarily operate outside the COP. However we do not believe that the article 13 process should have any decision making authority, and, as with other subsidiary organs of the Convention, its work should ultimately be subject to consideration and review by the COP, where appropriate.

Article 8.2(c): The resources of the Secretariat should be available to assist the work of whatever organs are established to carry out the article 13 process.

Article 10: The Subsidiary Body for Implementation and the article 13 process are by their natures closely related. We would suggest that the article 13 process operate principally under the aegis of the SBI, although parties should be able to access the process directly, as seems to be envisaged by article 13. Article 13 should not be used to carry out work already being carried out by the SBI. The SBI could for instance be responsible for appointing any persons charged with responsibility for the article 13 process and could be the first organ for multilateral review of any recommendations of the article 13 process requiring consideration of all parties.

Article 12: We do not envisage a role for the article 13 process in respect of the aspects of this article dealing with communication of information related to implementation. The development of guidelines for national communications is already being carried out through other processes, leaving little scope for a useful contribution by the article 13 process.

The question posed above also asks if the review processes are complete in themselves or whether they could be supported through the article 13 process. In line with the possible role

on interpreting the Convention we have suggested for article 13, the process should be available to individual parties and the SBI as a mechanism to carry out expert consideration of questions of interpretation that may arise as a result of the in-depth review process.

Article 14: The article 13 process should operate without prejudice to the dispute resolution procedure under article 14 which provides specific procedures for the resolution of disputes between parties. We agree with the proposal by Canada (point 6 of the proposed mechanism in FCCC/CP/1995/Misc.4) that if at any time a Party notifies the COP that there is in fact a dispute between the parties then article 14 procedures will automatically apply. Conversely however, it is would also seem to be a necessary conclusion that once established, the article 13 process, which appears to be available to parties as of right, should not be prejudiced by dispute resolution procedures under article 14. It would seem likely that any outcomes from the article 13 process would assist in resolving disputes and should not therefore be terminated by the article 14 process.

Q7: Is there a gap between the processes on review of implementation and on settlement of disputes? If so, what is the extent of that gap and how could Article 13 contribute to narrowing it?

The article 13 process appears to provide the opportunity to establish less formal and more flexible mechanisms through which individual parties can seek to develop their understanding of implementation processes and seek assistance in carrying out their implementation of the Convention. This mechanism can operate at the initiation of individual parties and is not subject to the limitations that apply to consideration of matters in other forums. For instance the review process operates to a particular timetable and does not provide parties an opportunity to raise issues outside that timetable. In this sense the article does appear to fill a gap between the review processes and dispute settlement process.

In more concrete terms the Article 14 process is an adversarial mechanism involving two Parties which are in dispute. It does not provide a forum for questions to be raised by Parties and considered in a consultative and non-confrontational way. Similarly the subsidiary bodies established under the Convention do not appear to fulfil this role either. The SBI and the SBSTA have been established to provide the COP with advice and assistance. The SBI is focused on assessment and review of the effective implementation of the Convention. The SBI's functions are limited to consideration of information provided under Article 12 and to assisting the Conference of the Parties. The SBSTA is required to give advice to the COP on scientific and technological advice.

Q8: Is there a relationship between the Article 13 process and the subsidiary bodies established under the Convention, for example, the AGBM?

There do not appear to be specific linkages between the AGBM and the article 13 process. In relation to other subsidiary bodies see our comments on questions 6 and 7.

SECTION C: LEGAL AND PROCEDURAL CONSIDERATIONS

Q9: What is the legal status of the process?

The process should not be legally binding nor have legal consequence. Any outcomes it produces should not be mandatory.

Q10: What is meant by the Article 13 phrase: "Parties on their request"? Who may trigger the process apart from Parties themselves? Is the process compulsory or optional?

The term "Parties on their request" should be interpreted to allow Parties individually or collectively to invoke the article 13 process. These words exclude invocation of this process by non-parties or by non-governmental organisations. We regard the article 13 process as entirely non-compulsory in nature.

Q11: Should the multilateral consultative process be made to apply to related legal instruments in addition to the Convention?

This question appears to be one primarily to be considered in the context of the negotiation of any related legal instruments. We would not, at this stage, rule out the possible application of the article 13 process to any such instruments.

REPUBLICA DE BOLIVIA

MINISTERIO DE RELACIONES EXTERIORES Y CULTO

PAPER NO. 2: BOLIVIA

RESPUESTA A CUESTIONARIO REFERIDO AL ART. 13 DE LA CONVENCIÓN MARCO DEL CAMBIO CLIMATICO.

Establecido el Mandato de la Convención Marco de las Naciones Unidas sobre el Cambio Climático, en su artículo 13 y la Decisión 20 de la Primera Conferencia de las Partes (COP-1), se procede a desarrollar el Cuestionario planteado por el Grupo Especial, referido al artículo 13.

Sección A: Definición y ámbito de aplicación del mecanismo:

1.- ¿ Cómo debe entenderse la expresión " mecanismo consultivo multilateral" y cuales son las " cuestiones relacionadas con la aplicación de la Convención" que deberá abarcar ese mecanismo ?

R.- El mecanismos consultivo será aquel que permita a todos los países Parte de la Convención allanar cualquier tipo de consulta referida a los compromisos establecidos en la Convención. En ese sentido se entiende que las cuestiones relacionadas con la aplicación de la Convención se refieren a las diferentes obligaciones de los países desarrollados, mencionados en los anexos I y II, así como los países en vías de desarrollo que se explicitan en el artículo 4, incisos 2a y 2b, y el artículo 12.

2.- ¿Que se entiende por "mecanismo" en el contexto del artículo 13?, debe entenderse como una secuencia de acontecimientos, como un proceso o como una institución?. ¿Puede ser todo esto a la vez?.

R.- Al ser un mecanismo consultivo este cumple el rol de institución, al interior de la cual se establecen una serie de procesos por los cuales se atienden las cuestiones relacionadas con la aplicación de la Convención.

3.- ¿Por qué principios se debe regir el mecanismo? ¿Es suficiente que ese mecanismo sea sencillo, transparente, que facilite la resolución de cuestiones y que no sea de carácter controversial?

R.- Los principios que deben regir el mecanismo consultivo multilateral son del más alto espíritu democrático que permita la participación de todos los países Parte y debe constituirse en un mecanismo sencillo y transparente que permita la resolución de las cuestiones y no precisamente su inhabilitación o interrupción. Por tanto debe eliminar cualquier cuestión de índole burocrática.

4.- ¿Es necesario que se establezca ese mecanismo consultivo multilateral?. De ser así, ¿Qué medidas debería apoyar con éste fin la Conferencia de las Partes: una decisión, o una enmienda o protocolo?

REPUBLICA DE BOLIVIA

MINISTERIO DE RELACIONES EXTERIORES Y CULTO

R.- Si, es necesario establecer dicho mecanismo consultivo bajo las premisas anteriormente citadas. Es en ese sentido que la Segunda Conferencia de las Partes (COP-2) debería adoptar una decisión que establezca y defina las funciones de dicho mecanismo.

5.- ¿Si en virtud del artículo 13 estableciera un nuevo mecanismo o una nueva institución, ¿su composición debería ser de Ámbito general o limitado a especialistas, esto es. los expertos jurídicos, económicos, sociales o técnicos?. En este contexto, ¿cabría establecer una lista de expertos que prestaran asesoramiento?.

R.- Al considerarse una institución deberá contar con dos niveles de análisis, el primero de Ámbito general que pueda resolver cuestiones muy primarias y el segundo conformado por especialistas sectoriales que analicen cuestiones de mayor profundidad. Por tanto debe establecerse una lista de expertos de diferentes países para cada sector.

Sección B: Relación entre el artículo 13, las instituciones y los mecanismos de la Convención:

6.- ¿Que vinculaciones deberían establecerse con otras disposiciones de la Convención en particular el inciso c) del párrafo 2 del artículo 8 y los artículos 10. 12 y 14?. (Por ejemplo, ¿son en si suficientes las disposiciones sobre el procedimiento de examen o existe la posibilidad de que se preste apoyo a ese examen mediante el mecanismo previsto en el artículo 13? ¿Cual es la relación entre el artículo 13 y el artículo 14? ¿Se interrumpiría automáticamente el recurso al mecanismo del artículo 13 si cualquiera de las Partes invocara el artículo 14?.

R.- El inciso c del artículo 7 y del párrafo 2 del artículo 8, así como los artículos 10, 12 y 14 de ninguna manera son contradictorios con el artículo 13, éste último se constituye en un elemento de análisis científico de apoyo a las Partes que encontraran dificultades en la aplicación de la Convención.

7.- ¿Existe alguna diferencia entre el examen de la aplicación y el arreglo de controversias? De ser así. ¿cuan importante es esa diferencia y cómo podría el artículo 13 contribuir a reducirla?.

R.- Existe una diferencia sustancial puesto que el examen de la aplicación consiste en establecer si uno o varios países Parte están o no cumpliendo con la Convención, y la controversia se refiere básicamente a la discusión posterior al examen de la aplicación.

El artículo 13 se constituye en un organismo que permite a las Partes acudir a un mecanismo para resolver interrogantes científicas y procedimentales que les permitan cumplir con la Convención.

8.- ¿Existe una relación entre el mecanismo del artículo 13 y los organismos subsidiarios creados en virtud de la Convención, por ejemplo, el Grupo Especial del Mandato de Berlín?.

R.- Los organismos subsidiarios creados en la COP-1, en Berlín, se constituyen en instancias circunstanciales que luego de definidas sus tareas y alcanzados sus objetivos quedan cesantes.

Sección C: Consideraciones legales y de procedimiento:

9.- ¿Cual sería la condición jurídica del mecanismo?

R.- Jurídicamente en virtud del Art. 8 de la Convención, el mecanismo defenderá de la Secretaría y actuará como un ente netamente consultivo.

10.- ¿Que significa la parte de la oración del artículo 13 que dice "(Las Partes), si así lo solicitan"? ¿Quien puede poner en marcha el mecanismo además de las propias partes? ¿El recurso a este mecanismo es obligatorio o facultativo?.

R.- Significa que el mecanismo será utilizado por las Partes cuando estas vean problemas en la aplicación y/o interpretación de la Convención, lo que explica que el mecanismo se pondrá en marcha a pedido de las Partes o a solicitud expresa de la Secretaría de la Convención.

Al ser consultivo el recurso de este mecanismo es facultativo.

11.- ¿Debería hacerse aplicable el mecanismo consultivo multilateral a otros instrumentos jurídicos conexos además de la Convención?

R.- Si, sobre todo teniendo en cuenta los compromisos asumidos por las partes en otros organismos de protección al Medio Ambiente y en aquellos de las Naciones Unidas.

PAPER NO. 3: BURKINA FASO

MINISTERE DE L'ENVIRONNEMENT
ET DE L'EAU

CONSEIL NATIONAL POUR LA
GESTION DE L'ENVIRONNEMENT

DIVISION DES POLITIQUES ET DE LA
PLANIFICATION ENVIRONNEMENTALES

BURKINA FASO
La Patrie ou la mort, nous vaincrons!

CONTRIBUTIONS DU BURKINA FASO AUX TRAVAUX DU GROUPE SPECIAL SUR L'ARTICLE 13

SECTION A: DEFINITION ET CHAMP D'APPLICATION DU PROCESSUS

1) « Le Processus Consultatif Multilatéral » est un mécanisme de concertation permanent que les Parties à la Convention s'obligent à établir entre elles afin de contribuer à l'atteinte de l'objectif ultime de la Convention. Le Processus devrait considérer les engagements des Parties, le mécanisme financier, l'application des instruments juridiques connexes à la Convention.

2) Le terme Processus est à notre sens un enchainement d'activités qui s'harmonisent au travers d'un mécanisme et qui peut évoluer vers une institution.

3) Ce processus doit être souple et transparent, fonctionner sur la base d'un consensus et avoir un caractère non conflictuel afin que toutes les parties aient confiance et oeuvrent vers l'atteinte de l'objectif de la Convention.

4) Il est nécessaire de mettre en place un tel processus à travers une **décision** de l'organe supprême de la Convention. La création de tout autre instrument juridique pourrait ralentir le processus et allourdir le fonctionnement de l'administration.

5) Si un nouveau mécanisme ou une nouvelle institution venait à être créé, sa composition devrait se limiter aux spécialistes (experts juridiques, économiques, etc...) qui auront à donner des avis et conseils techniques se rapportant aux questions qui leur seront confiées.

Une liste d'experts pourrait être établi sur la base des nominations des Gouvernements. Ce répertoire permettra un meilleur suivi du mécanisme ou de l'institution.

SECTION B : RAPPORT ENTRE L'ARTICLE 13, LES INSTITUTIONS ET LES PROCESSUS DE LA CONVENTION

6) Entre l'article 13 et les articles 7.2 c), 8.2), 10, 12 et 14, c'est la volonté de concertation des parties, l'expression de leurs besoins propres afin de rendre souple et harmonieux la mise en oeuvre de la Convention. La Conférence des Parties devra établir des liens fonctionnels entre ce processus ou l'institution et les autres organes subsidiaires de la Convention auxquels il devra rendre compte à leur demande.

Il devra exister entre les articles 13 et 14 un rapport de complémentarité. En effet une question relative à l'application de la Convention qui ne trouverait pas de solution à l'amiable en vertu de l'article 13 sera reversée à la compétence de l'article 14 pour règlement selon les modalités consignées dans ledit article.

7) En référence au point 6 du présent document, il n'y a aucun décalage entre le processus d'examen et celui du règlement des différends. Ce sont des évènements successifs en cas de divergences d'opinions sur des sujets précis. L'article 14 prenant en plus dans ses missions les questions d'interprétations de la Convention; lesquelles ne ressortent pas à l'article 13 du même traité.

8) Il devrait exister un rapport entre l'article 13 et les organes subsidiaires de la Convention compte-tenu que tous oeuvrent à faciliter l'application de la Convention et à l'atteinte de son objectif.

SECTION C: CONSIDERATIONS JURIDIQUES ET DE PROCEDURES

9) Le processus est **consultatif et technique.**

10) « des Parties sur leur demande » signifie que toute la base demeure les Etats Parties. Eux seuls ont le droit et le pouvoir de déclencher le processus. C'est la souveraineté des Etats qui prime. Dans ces conditions, le processus est nécessairement facultatif. Aucune obligation ne doit être affliger un Etat Parties souverain dans ce contexte précis.

11) Il est préférable, économiquement et stratégiquement que le processus s'applique aux instruments juridiques connexes à la Convention. Une duplication des institutions provoquerait des problèmes fonctionnels, des charges considérables et une participation limitée des pays en développement. Cependant la composition rotative des membres devra tenir dûment compte des pays Parties aux instruments additionnels car les Parties à la Convention pourraient ne pas toutes ratifier les instruments juridiques du même ordre.

SECTION D: AUTRES QUESTIONS

12) a- Le chevauchement des sessions de travail de l'AGBM et de l'AGA13 ne permet pas aux petites délégations de contribuer conséquemment aux travaux. A titre d'exemple, la première session tenue les 30 et 31 Octobre 1995 a connu la participation de moins cinq (5) pays d'Afrique.

PAPER NO. 4: CANADA

Questionnaire Relating to the Work of the Ad Hoc Group on Article 13

The response to this questionnaire represents the preliminary views of Canada with respect to the work of the Ad Hoc Group on Article 13. These views may evolve as discussions proceed.

Section A: Definition and scope of the process

1. What should be understood by the term "multilateral consultative process" and what "questions regarding the implementation of the Convention" should be covered by such a process.

The phrase "multilateral consultative process" could be interpreted in a number of ways and thus permits the Parties flexibility to consider various options under Article 13. One possibility would be establishing a non-compliance or implementation system similar to those in the Montreal Protocol or the UN ECE Second Sulphur Protocol. Or the process could be broader in scope and function, addressing issues from the viewpoint of providing advice, facilitating dispute avoidance and dealing with issues of interpretation.

It is Canada's view that a multilateral consultative process should be a process that is broadly based and involves the participation of a representative group of Parties. Its method should be consultative, in that questions raised would be discussed with all Parties involved, will include input from outside experts as well, if useful and that all relevant views will be considered. Its emphasis should be on providing advice and facilitating dispute avoidance. As a process, its deliberations should not result in a binding output but, when appropriate, a set of conclusions or recommendations could be put to an appropriate body of the Convention. Ultimately, recommendations could be adopted by the Conference of the Parties. A process must be administered by a responsible body however, and we are of the view that the responsible body should be an existing Convention body.

"Questions regarding the implementation of the Convention"--The fact that the word "questions" is used rather than disputes or concerns implies that the nature of the issues being raised is not necessarily contentious. As long as a question deals with the implementation of the Convention, it is not limited by subject. It is foreseeable that questions could deal with the interpretation of the Convention or with scientific or technical issues relating to the Convention. Similarly legal issues and funding issues could be raised. Most questions will relate to obligations under the Convention. Questions could deal with general concerns

regarding implementation of obligations or with concerns regarding the implementation of obligations by any Party or group of Parties. While the language does not require questions to deal with disputed issues or issues of compliance, such questions are not precluded, although they would be handled in a consultative, rather than adjudicative manner.

2. What is meant by the word "process" in Article 13? Should it be understood as a sequence of events or as a mechanism or as an institution? Could it imply all of these?

According to Black's Law Dictionary, a process can be a series of actions, motions or occurrences or a method or mode whereby a result or effect is produced. Canada views the Article 13 "process" as a method whereby a result-- a response to a question regarding implementation of the Convention-- is obtained. The method is left to the Parties to determine and should be developed by the Parties according to the principles elaborated in question 3. While the "process" is not a mechanism or an institution, some means to establish, operate and oversee the process will be required. The process could be established by the Conference of the Parties. Its operation and supervision might require a "mechanism". It will not be an institution, as the process will involve existing institutions, such as the Subsidiary Body for Implementation(SBI).

3. What principles should govern the process? Is it sufficient that the process should be simple, transparent, facilitative and non-confrontational in character?

The process should at a minimum be simple, transparent, facilitative, timely and non-confrontational in character. Further, the process should be multilateral, in that discussion will take place in a multilateral forum and that questions of multilateral import can be discussed. We include some characteristics of such a process that would flow from these principles.

Simple--simple to access, simple procedurally

Transparent--emphasis on openness, access to consultations and discussions

Facilitative--seeking solutions through appropriate consultation

Non-confrontational--advisory and consultative in nature

Multilateral--discussions and consultations to benefit from multilateral forum; process to better address multilateral and global issues and concerns.

Timely--expeditious in seeking resolutions; mindful of the precautionary principle.

4. Is it necessary to establish such a multilateral consultative process? If so, what measures should the Conference of the Parties take for its adoption: decision of COP? Amendment? Protocol?

The Convention imposes an obligation on Parties to consider the establishment of a multilateral consultative process: it does not oblige them to establish one. Canada views the establishment of a such a consultative process as an important element of the Climate Change Convention and is strongly supportive of taking action to make it operational in a timely way. The legal status of the process will depend on the method used by the Parties to establish it. A decision of the Parties could establish the process quickly by consensus. However, technically, a decision is not considered legally binding on Parties. An alternative method is to establish the process by amendment to the Convention, thus creating a process that is binding on the Parties (although no result or recommendation of the process will be binding unless the Parties design the process in such a manner). Canada views the route of a Decision of the Conference of the Parties as the most expeditious, especially as no binding results are envisaged from the process.

5. If a new mechanism or institution were to be established under Article 13, should its membership be general or restricted to specialists such as legal, economic, social or technical experts. In this context, should a roster of experts to provide advice be envisaged?

The Article 13 process should be overseen by the SBI. A Standing Committee should be created under the SBI, consisting of a limited number of members from Parties, providing geographic representation. Members should be government representatives but should have access to a panel of experts in the scientific, technical, legal and economic fields.

Section B: Relationship of Article 13 to Convention Institutions and processes

6. What linkages would need to be established with other Articles of the Convention, notably, Article 7.2(c), 8.2(c), 10, 12 and 14. (For example, are the provisions on the review process complete in themselves or is there scope for them to receive support through the process envisaged under Article 13? What is the relationship of Article 13 to Article 14? Would the process under Article 13 be automatically halted if a Party invokes Article 14.

The Article 13 process would be administered by existing Bodies under the Convention. However, its mandate would arise from the obligations found in various sections of the Convention.

Article 7.2(c). The obligation under this subsection is to facilitate the coordination of measures adopted by two or more Parties. While the Article 13 process could be used to raise the question of how such facilitation might be achieved and any ensuing report could be submitted to appropriate bodies of the Convention, the facilitation itself would remain with the Conference Bodies. It is also noteworthy that under subsection 7.2(j) the Conference of the Parties has been authorized to review reports submitted by the subsidiary bodies and under subsection 7.2(g) it is given the mandate to make recommendations. Thus the any reports or proposed recommendations from the Standing Committee regarding the Article 13 process should be forwarded to the Conference of the Parties.

Article 8.2(c). This subsection provides that the Secretariat should facilitate assistance to the Parties in the compilation and communication of information required under the Convention. The Article 13 process does not have a mandate to provide assistance directly: however, general questions regarding the compilation of such information and its communication could be raised via the Article 13 process as could be questions regarding how any one Party or group of Parties could provide such information. Other Convention bodies and/or experts could also provide or participate in providing such information.

Article 10. Article 10 charges the SBI with the assessment and review of the effective implementation of the Convention. As the Article 13 process also addresses the implementation of the Convention, it would be appropriate if the Article 13 process were administered under the SBI. However, given that the SBI is an open ended body, it may be more efficient if this was done through the creation of a Standing Committee under the SBI, which would be directed and supervised by the SBI. The question arises whether the Article 13 process should be utilized by the SBI to address

the overall assessment and review of the effective implementation of the Convention. Canada is of the view that the Article 13 process was intended primarily to respond to questions regarding implementation arising from Parties or groups of Parties. It could be tasked, on an ad hoc basis, by the SBI, as a group of Parties, to consider issues of implementation pertinent to several or all Parties but should not be involved in issues of assessment on an overall basis. The process must remain available to Parties to address their questions regarding implementation as they arise.

Articles 12, 13 and 14 are discussed in Question 7.

7. **Is there a gap between the processes of review of implementation and on settlement of disputes. If so, what is the extent of that gap and how could Article 13 contribute to narrowing it?**

Article 12 deals with national communications relating to implementation of the Convention. Under Article 10, the SBI is to "assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention." It is also "to assess the overall aggregated effect of the steps taken by Parties...". There is no clear provision for review or assessment of steps taken by any particular Party or group of Parties. Nor is there any provision for any Party to request guidance on meeting its own obligations under the Convention. Similarly there is no means for a Party to request guidance on the interpretation of the Convention short of elevating a question to the level of a formal dispute. All of these are matters that could be dealt with under Article 13.

Article 14 provides a traditional method of dispute resolution including settlement through negotiation, other peaceful means of resolution and conciliation at the request of a Party (although without a binding result). Also, Parties may opt for compulsory submission to the ICJ or to a yet to be determined arbitration procedure. However, dispute resolution is different in nature from review of implementation although the review process could be a first step towards dispute identification and therefore ultimately dispute resolution. Also, the dispute resolution process can be initiated without recourse to the review process. However, Canada does not anticipate that traditional methods of dispute resolution will play a significant role in assisting with the implementation of climate change commitments for the Parties.

Dispute resolution mechanisms in Multilateral Environmental Agreements are rarely used by Parties. One of the underlying reasons may be the reluctance to label a divergence of views or a concern with another Party's implementation as a dispute. Another may be a result of the limited applicability that a model based on bilateral disputes would have with respect to obligations based on global commitments and addressing a problem occurring outside of national jurisdiction. It would be difficult to link failure to implement Convention obligations by one particular Party to direct adverse impact on any other particular Party. Thus, the issue arises of which Party would raise an issue of non-implementation. A limited number of questions that could be labelled as disputes suitable for resolution under Article 14 could arise regarding implementation of the Convention. However, we do anticipate that numerous valid questions could be raised by Parties regarding interpretation of the Convention and implementation of the Convention without these constituting disputes or having a direct bilateral causation and effect relationship. Article 13 could provide a means to deal with such issues.

In the cases where recourse to Article 14 is appropriate, it is our view that once notification of an Article 14 dispute is given, the Article 13 proceedings should be suspended until such time as the Article 14 proceedings have been concluded. This would recognize the primacy of Article 14 with respect to traditional dispute resolution mechanisms.

In summary, it is likely that questions regarding implementation that will not be addressed by either the reporting or the assessment and review contemplated by Articles 12 and 10 will arise. Similarly there is no mechanism for advisory service and dispute avoidance or for interpretation of Convention obligations that fall outside a dispute situation as contemplated by Article 14. The process envisaged under Article 13 could be used to fulfil these functions.

8. Is there a relationship between the Article 13 process and the subsidiary bodies established under the Convention, for example, the AGBM?

The SBI has been tasked with assisting with the assessment and review of the implementation of the Convention. As Article 13 is to address questions regarding the implementation of the Convention, it is the view of Canada that the Article 13 process should be operated under the SBI via a Standing Committee of the SBI, accountable to and operating through the SBI. Any reports would be submitted to the SBI and recommendations could go forward from the SBI.

The SBI would task the Standing Committee and direct it with respect to how a question could be handled, for example, whether it would be forwarded to a Panel of Experts or whether it could be handled via discussion at the SBI or Standing Committee level.

The Article 13 process should make use of Subsidiary Bodies as well as other experts in the process of consultation. Of particular usefulness might be the Subsidiary Body for Scientific and Technological Advice(SBSTA) which under Article 9.2(e) is to respond to scientific, technological and methodological questions put to it by the Conference of the Parties or other Convention bodies. Questions from the Subsidiary Bodies, who would be acting as groups of Parties, might also be raised via the Article 13 process. The SBI as the guardian of the Article 13 process would discuss and resolve any contentious issues regarding the use of the Article 13 process or possibly refer such disputes to the Conference of the Parties.

We do not envisage a relationship between the Article 13 process and the AGBM, largely because the AGBM is an ad hoc body, created to deal with a specific mandate. Unlike the other institutional mechanisms under the Convention, it is not designed to have an ongoing institutional presence.

Section C: Legal and procedural considerations

9. What is the legal status of the process?

The legal status of the process will depend on the method used by the Parties to establish it. A decision of the Parties could establish the process quickly by consensus. However, technically, a decision is not considered legally binding on Parties. An alternative would be to establish the process by amendment to the Convention, thus creating a process that is binding on the Parties (although no result or recommendation of the process will be binding unless the Parties design the process in such a manner). Also, if established by amendment, the process would only be applicable to those Parties that accept that amendment. Canada prefers to proceed by way of a Decision of the Parties to establish the process quickly.

Should an amendment be pursued, under Article 15, Parties are obliged to attempt to reach consensus. If attempts to reach consensus fail, then a three fourths majority is required to pass an amendment. As amendments to the Convention must be ratified by governments in question, the process of ratification and entry into force could delay the establishment of the Article 13 process. Annexes form an integral part of the Convention but are restricted to lists, forms and any other material that is of a scientific,

technical, procedural or administrative in nature. The basic elements of the Article 13 process could be included in the text of an amendment with the other detailed material, descriptive in nature, included in an Annex.

10. What is meant by the Article 13 phrase: "Parties on their request"? Who may trigger the process apart from the Parties themselves. Is the process compulsory or optional?

The wording of the Convention permits Parties to raise questions of a general or specific nature about implementation of commitments. We interpret this language to permit subsidiary bodies of the Convention that act of behalf of Parties, for example, the SBI and SBSTA, to raise questions as well. The wording of the phrase is not determinative as to whether the Secretariat could trigger the process but we would be inclined to permit this, possibly with a right of objection by a Party at the SBI level.

The process we envisage would require the SBI, via the Standing Committee to answer a question once a Party or group of Parties asks a question (unless the Party submitting the question withdrew it). If implementation of obligations by a particular Party or group of Parties is under discussion, then that Party would not be obliged to enter into such discussions, but by not entering into such discussions would not be able to influence the material before the Standing Committee concerning the issue. We do not believe that it would be productive to encourage Parties to object to questions to avoid discussion, although such a provision could be contemplated.

11. Should the multilateral consultative process be made to apply to related legal instruments in addition to the Convention?

The Parties to any related legal instrument must determine whether and what kind of consultative process will be part of that instrument. The nature of any consultative process under such an instrument will be shaped by the nature and degree of generality of its obligations. However, our preliminary view is that the multilateral consultative process should be applicable to related legal instruments in addition to the Convention, unless a related legal instrument provides for a separate procedure to apply to that instrument.

The current obligations under the Convention are simultaneously wide ranging and general in nature. They are differentiated between Parties, as to substance and timing. Implementation of obligations, in many cases, will be difficult to assess. The considerable uncertainly in the Convention is best dealt with by a consultative process that can serve to assist Parties. A protocol or other related instrument would probably contain obligations that are better

defined. The obligations may still vary by Party and may be characterized by a certain degree of generality. Thus the need for interpretation, advice and expert guidance would likely remain.

Also in some cases, it may be difficult to separate policies and measures undertaken under the Convention and policies and measures adopted further to a Protocol or other legal instrument. In these cases, with Article 13 applicable to both, no difficulty will arise in determining which consultative process would apply.

This being said, as noted above, the negotiators of any particular legal instrument are in the best position to determine what kind of consultative, review and/or compliance mechanism may be useful for any particular legal instrument. Thus, the drafters of any legal instrument related to the Climate Change Convention should be free to replace or supplement the Article 13 process as appropriate. Any future instrument should include a provision noting whether the Article 13 process or a separate process for that specific instrument would apply.

Section D: Other issues

12. The nature of the climate change phenomenon will shape the features of an appropriate consultative mechanism just as it has affected the features of the Convention. The emphasis on the precautionary principle must be reflected in a process that emphasizes facilitative solutions and dispute avoidance and builds confidence in the overall regime. Given the global nature of the challenge of climate change, the risk of non-implementation of obligations becomes a global concern. Thus a consultative process must operate in a multilateral context to identify and remedy implementation problems quickly and in a non-adversarial manner.

PAPER NO.5: CHILE

RESPUESTAS AL CUESTIONARIO RELATIVO AL TRABAJO DEL GRUPO ESPECIAL SOBRE EL ARTICULO 13

Sección A: Definición y ámbito de aplicación del mecanismo.

1.- La expresión "mecanismo consultivo multilateral" debiera corresponder a un órgano creado dentro del seno de la convención, integrado por un grupo de miembros ampliamente representativo. Debiera existir un equilibrio entre países del anexo I y no-anexo I.

La competencia de este órgano debiera abarcar cualquier tema relacionado con el imcumplimiento de la convención o de su futuro protocolo, así como también cualquier asunto relativo a problemas surgidos debido a la existencia de lagunas o erradas interpretaciones de los textos legales.

2.- El término "Mecanismo" engloba una serie de características, dentro de las cuales se encuentra, en primer lugar, la idea de una institución que se rige por normas específicas, a través de un procedimiento adecuado. Un proceso o secuencia de eventos puede conducir a la operación de un mecanismo que se institucionaliza sin estructurarse necesariamente como órgano permanente.

3.- El mecanismo debe ser transparente, simple y no controversial. Debe basarse en el principio de la debida representación y del debido proceso, es decir, todas las partes involucradas deben tener derecho a ser escuchadas y a contar con los antecedentes necesarios, con la debida anticipación.

4.- Siempre es útil contar con un mecanismo de estas características en un instrumento tan delicado como es la Convención Marco sobre Cambio Climático. Su utilidad radica en la existencia de un procedimiento preestablecido y transparente, aprobado por todas las partes, que facilita y evita situaciones complicadas en la aplicación del convenio.

Para su creación la Conferencia de las Partes debiera encomendar a un grupo de juristas la creación del reglamento del mecanismo adecuado, el cual debiera corresponder a un anexo del protocolo respectivo.

5.- El órgano respectivo debiera estar compuesto por representantes de las distintas partes, manteniendo un equilibrio en cuanto a la representación geográfica. No

cabría establecer un criterio ex-ante en cuanto a qué tipo de características debieran tener sus miembros. Esto debe ser establecido por cada país miembro, en consideración a las materias específicas que se vayan a tratar en cada sesión. Sin embargo, y atendiendo a las caracteristicas de este mecanismo, debieran ser temas de toda índole.

Sección B: Relación entre el Artículo 13, las instituciones y los mecanismos de la Convención.

6.- En cuanto a la relación con distintos artículos de la Convención, cabe señalar lo siguiente:

No debiera interferir con la competencia de la Conferencia de las Partes, ni con la de la Secretaría, ya que este órgano estaría supeditado a estas dos instituciones y le correspondería proponer medidas, las cuales deben ser ratificadas por la Conferencia de las Partes.

En cuanto al órgano establecido en el artículo 10 y a la obligación establecida en el artículo 12, esto no debiera interferir con la labor del mecanismo del artículo 13, ya que, por el contrario, sirve de complemento a su función, al entregar los antecedentes necesarios para una mejor evaluación de los temas a examinar.

Por último, en relación al artículo 14 de la Convencón, el mecanismo ahí planteado no se contrepone a un mecanismo consultivo multilateral, ya que no todos los asuntos que ahí deben discutirse deben ser materia de conflicto a nivel bilateral. Pueden ser meras dudas o incluso controversias, que a través de un mecanismo más expédito y dentro de la esfera de competencia de la misma convención, puedan encontrar una mejor solución. Debiera establecerse, sin embargo, un mecanismo por el cual dos medios de solución no pueden actuar al mismo tiempo. Para ello debiera aplicarse el principio de la preclusión, por el cual al invocarse y al aceptar un mecanismo de solución, se renuncia al otro, no pudiendo invocarlo posteriormente.

7.- La diferencia fundamental entre el examen de la aplicación y el arreglo de controversias radica básicamente en que el examen de la aplicación no necesariamente desemboca en una controversia. Sin duda, el primer mecanismo es más amplio y abarca cualquier tipo de situación controvertida que necesite algún tipo de aclaración. El mecanismo del art. 13 puede servir de antesala a un arreglo de controversia, al precisar el alcance de alguna norma o situación, evitando así una suerte de juicio entre partes.

8.- Básicamente no existe relación por ser el Grupo del Mandato de Berlín un mecanismo transitorio, que debiera cesar en sus funciones al momento de entrar a regir un

Protocolo vinculante. El art. 13, en cambio, es un mecanismo que forma parte integrante de la Convención y, por ende, tiene caracteres de permanencia, incluso como mecanismo integrante del futuro Protocolo.

Sección C: Consideraciones legales y de procedimiento :

9.- Su condición jurídica debiera ser la de un mecanismo que forma parte de la Convención Marco, regido por un reglamento que figure en un anexo de ésta. Al ser aceptado por las partes contratantes, este mecanismo pasa a ser de carácter obligatorio y vinculante.

10.- Las Partes son el órgano principal de la Convención. Ellos pueden crear, modificar o extinguir normas y obligaciones, siempre que concurran los demás requisitos de procedimiento. Sólo las Partes pueden hacer correr el mecanismo del art. 13 . Este mecanismo no puede actuar de oficio, sino sólo a petición de parte interesada. Nadie más puede poner en marcha el mecanismo, a menos que se encuentre respaldada por una parte. No existe obligación de recurrir a este mecanismo, pero una vez hecho debe ser acatado su fallo.

11.- Este mecanismo debiera tener por objetivo regular de manera armónica todos los instrumentos que forman parte de la Convención Marco, por lo que su competencia se hace extensiva a todos los órganos e instrumentos que la integran.

(unofficial translation)

ANSWERS TO QUESTIONNAIRE RELATED TO THE SPECIAL WORKING GROUP ON ARTICLE 13

Section A: Definition and scope of application of the mechanism.

1. The expression "multilateral consultative mechanism" should correspond to an organ created within the framework of the Convention which should consist of an appropriately representative group of members, well balanced between Annex I and non-Annex I countries.

The competence of this organ should cover any topic related to non-observance of the Convention and its future protocol, as well as any matter related to problems which may arise from the existence of lacunas or erroneous interpretations of the legal texts; or inadequate functioning of the institutions of the Convention.

2.- The term "mechanism" encompasses a series of elements, the first of which is the idea of an institution that operates according to specific norms, laid down in appropriate procedures. A process or sequence of events may lead to the operation of the mechanism which, onece established, becomes an institution but may not necessarily be structured as a permanent organ.

3.- The mechanism should be transparent, simple and non-controversial. It should be based on the principle of due representation and due trial, i.e. that all the concerned parties will have the right to be heard and be informed about the necessary antecedents sufficiently in advance.

4.- It is no doubt useful to have a mechanism of these characteristics in an instrument as delicate as the Framework Convention on Climate Change. It means that there will be a pre-established and transparent procedure, approved by all parties, which

facilitates the application of the Convention and avoids complicated situations.

For its creation, the Conference of the parties should entrust a group of lawyers with the drafting of appropriate rules and regulations for such a mechanism, which should be included as an annex to the respective protocol.

5.- The mechanism should, when it is functioning, be composed of representatives of the different parties, maintaining a balanced geographical distribution. It does not seem appropriate, at this time, to fix any ex ante criterium as to the expertise required from its future members. This decision is up to each member country, depending on the specific matters which are to be treated in every session. Moreover, given the nature of this mechanism, it is expected to cover a very broad range of subjects.

Section B: Relation between Article 13, the institutions and mechanisms of the Convention

6.- As far as the different articles of the Convention are concerned, it is worthwhile mentioning the following:

There should be no interference with the competence of the Conference of the Parties, nor with the role of the Secretariat, since this new organ would be accountable to the Conference of the Parties and work closely with the Secretariat and its task would be to propose measures to be ratified by the Conference of the Parties.

With regard to the organ established in article 10 and to the obligation established in article 12, this should not interfere with the work of the mechanism of article 13, since, on the contrary, it is supposed to complement its function by providing the necessary antecedents for a better evaluation of the matters to be examined.

Finally, as far as article 14 of the Convention is concerned, the mechanism proposed therein is not incompatible with a multilateral consultative mechanism, since not all matters which are to be treated by that mechanism are a matter of conflict at bilateral level. It may be a question of mere doubt or even controversies, which through a more expedite mechanism and within the range of competence of the Convention, may be more appropriately solved. There should, however, be a mechanism which avoids the simultaneous access to two ways of solution. Therefore, the principle of preclusion is to be applied, by means of which the resort to and the acceptance of one mechanism of solution implies renouncing the other, with the interdiction to resort to it at a later date.

7.- The basic difference between review of the application and the dispute settlement is to be found basically in the fact that the first one does not necessarily lead to a controversy. No doubt, the first mechanism has a wider scope which comprises any type of controversial situation needing some kind of clarification. The mechanism of art. 13 may serve as a waiting-room to the solution of the controversy by providing greater precision about the scope of any particular norm or situation, thus avoiding a controversy between parties.

8.- Basically there is no relation, since the Group of the Mandate of Berlin is a transitory mechanism which is supposed to discontinue its functioning once a binding Protocol will become effective. The mechanism of Art. 13, however, forms an integral part of the Convention and, therefore, is of a permanent nature, and thus to be considered as part of the future Protocol.

Sección C: <u>Legal and procedural considerations:</u>

9.- Its legal status should be one of a mechanism forming part of the Framework Convention, governed by rules and regulations laid down in an Annex thereto. Once adopted by the Contracting Parties, this mechanism will become obligatory and binding.

10.- The Parties constitute the main organ of the Convention. They may create, modify or abrogate norms and obligations, provided that the appropriate rules of procedure are applied. Only the Parties may put in action the Art. 13 mechanism. This mechanism cannot operate 'de oficio', but only on request of a concerned party. No one else is entitled to actuate the mechanism, except when backed up by a Party. It is not obligatory to resort to this mechanism, but once this is done its decision must be respected.

11.- The purpose of this mechanism should be the harmonious regulation of all the instruments which form part of the Framework Convention. For that reason its competence should extend to all organs and instruments which make up this Convention.

PAPER NO. 6: CHINA

中国代表团关于气候变化公约第十三条“多边协商程序”及其结构的意见

(一)

1、根据柏林会议第20号决定，关于公约第13条的特设工作组应就多边协商程序（MCP）的建立及设计进行全面研究。我们认为首先应研究的问题是：有无必要在现行的公约机制之外再设立一个单独的程序，以解决与履约有关的问题。而回答该问题必须对公约现有的履约机制进行考察。

2、公约首先建立了一套评审公约履行的机制。根据公约第7.2(e)的规定，缔约方会议（COP）应就公约的履行情况进行评价；公约第4.2(d)规定，对附件一国家执行4.2(a)&(b)的情况，COP应定期审评，直至公约目标的实现。COP的这一职责是通过其下设的履约附属机构（SBI）来完成。根据公约第10条及第一次缔约方会议第6号决定（6 CP/1），SBI的职责主要是评审与评价公约的履行。其次，为解决因评审可能出现的问题，公约又在一定程度上建立了解决与履行有关的问题的机制。关于进一步评审发达国家履约信息的第2号决定规定：若评审组与缔约方在履约方面有不同意见，秘书处应将有关意见和报告交给附属机构；而6CP/1规定，SBI应就履约问题向COP作出建议。从这些规定中可看出，公约事实上已建立起了一套评审履约、解决因此而出现的问题的机制。

3、就公约现有机制的性质而言，公约虽没有明文的规定，但它显然具备了MCP应有“和解性、合作性、非对抗性和建设性”等一系列特点。

4、公约的这套机制刚开始运行，其有效性与合理性还有待进一步考察。在现有机制尚未充分运用的情况下，又着手建立新的程序，将有可能妨碍COP有效执行其职能，从而在解决与履行有关的问题上造成混乱。

根据以上的分析，我们作出以下建议：在现阶段，应充分适用公约现有机制，以积累经验。待运行一段时间后，再根据现行机制的运行情况，考虑有否必要建立新的与解决履行有关问题的程序或完善现有机制。

（二）

对未来MCP的设计，我们有以下设想：

1、MCP的性质　MCP应与传统的争端解决机制不同，它应是一种非对抗性的多边调解机制。如果出现缔约方不遵守义务时，应通过MCP采取各种措施帮助和鼓励缔约方遵守公约，而非采取强制措施。因此，其性质应具有协助性、协商性与合作性。

2、MCP应解决的问题　根据公约，MCP是解决与公约有关的问题。现有的履约评审机制和争端解决程序已包括了所有与履约有关的问题。MCP不应重复上述两种机制的内容，而是要解决处于两机制中间的与履约有关的问题。因而，首先应确定在两种机制之间是否存在这样的中间(GAP)问题。

3、MCP提起的主体　只有缔约方才能援用MCP，而且必须在各方同意的情况下，才能启动该程序。这种程序应是选择性的，缔约方应有选择声明接受或不接受的自由权。

4、决定权和采取的措施　只有COP才具有决定权，由其决定采取何种措施以保证公约的充分履行。而其采取的措施应是处罚性的，应具有协助性。

5、与ARC14的关系　MCP与ARC14是互相独立的单独程序，两者平行存在。缔约方有权采取其中的一个，但不应同时适用。

总之，MCP应是一种可择性的程序，其核心是通过缔约方的相互协助以保证公约的充分、有效履行。无论是什么程序，均必须符合公约的规定，均必须置于缔约方大会的指导之下。

PRELIMINARY COMMENTS BY THE CHINESE DELEGATION ON MULTILATERAL CONSULTATIVE PROCESS AND ITS DESIGN (AG 13).

I

1. In accordance with Decision 20/ CP.1, the Ad hoc open- ended working group on Article 13 of FCCC shall study all issues relating to the establishment of a multilateral consultative process (MCP) and its design. Among these issues, the priority issue to be studied is whether it is necessary to establish a separate process, outside the existing FCCC mechanisms, for the resolution of questions regarding the implementation of the Convention.. To reply this question, we should take a close look at the existing FCCC mechanisms.

2. A set of implementation review mechanisms have already been established under the Convention. Pursuant to Article 7.2(e), the COP shall assess the implementation of the Convention by the Parties. In link with Article 4.2(d), the COP shall review the adequacy and implementation of Article. 4.2(a) and (b) pertaining to Annex I Parties at regular intervals "until the objective of the Convention is met." The performing of such function of the COP is assisted by its subsidiary body, SBI. In accordance with the provisions of Article 10 of FCCC and Decision 6/CP.1(6/CP.1), under the guidance of the COP the main functions of SBI are primarily to assist the COP in reviewing and assisting the implementation of the Convention. Moreover, in order to resolve the questions arising from the review, a kind of mechanism has also

been set up. According to Decision 2/CP.1 on in-depth review of communications from Annex I Parties, should the Party and the review team be unable to agree on the treatment of a comment, the Secretariat will ensure that the comments of the Party are incorporated in a separate section of the review report, which will be submitted to Subsidiary Bodies and be distributed to all Parties. Furthermore, Decision 6/CP.1 stipulates that the SBI will develop recommendations to assist the COP in its review and assessment of the implementation of the Convention. It can thus be seen from the above provisions and decisions that a set of mechanisms for reviewing and resolving questions relating to implementation have already been established under the Convention.

3. As regards the characteristics of the existing set of mechanisms, though there are no specific provisions in the FCCC, these mechanisms have evidently the features of the proposed MCP, being "facilitative, non-controversial, non-confrontational and constructive."

4. The afore-mentioned mechanisms have just started operating, and their effectiveness and rationality call for further examination. Any attempt to establish any new procedure at the time when the existing mechanisms have not yet been fully operating may hamper the COP and its Subsidiary Bodies in carrying out their functions effectively, thus leading to the confusion in resolving questions pertaining to implementation of the Convention.

In the light of the above analysis, we would like to make the

following suggestion: At this stage, the existing mechanisms should be fully made use of, so as to accumulate the necessary experience. Only after their operation for a period of time may it be opportune to consider whether it is necessary to set up any new procedure, or whether it is advisable to improve and perfect the existing mechanisms, in the light of their operation and experience gained during this period.

II

As to the design of MCP, we have the following views:

1. ***Nature of MCP*** Being different in character from the traditional settlement of disputes, MCP should be a kind of non-confrontational, multilateral conciliatory process, whereby the Parties are encouraged and assisted to carry out their obligations when the non-compliance occurs, rather than a device to enforce compulsory measures. The nature of MCP must therefore be constructive, facilitative and cooperative.

2. ***Questions to be covered by MCP*** According to the Convention, MCP shall resolve questions related to implementation of FCCC. However, MCP should not deal with the questions which are covered by the afore-mentioned existing review and dispute resolution mechanisms. Instead, MCP should tackle the problems not covered by the existing mechanisms. Therefore, it is necessary firstly to identify whether there is any gap not covered by the two existing procedures.

3. ***The trigger of MCP*** MCP is "available to Parties on their requests", which means that only Parties have the right to trigger MCP and the application of MCP shall be subject to the consent of the concerned Parties. The process shall be optional, i.e., the Parties shall have the freedom to accept it or not.

4. ***Decisions and measures to be taken*** Only COP can take decisions and recommendations on measures to be taken to ensure the full implementation of the Convention. The decisions and measures, should there be any, shall be facilitative rather than punitive.

5. ***Relationship between MCP and Article 14*** MCP and Article 14 of the Convention are different and independent procedures in the Convention., and their relationship is parallel. The Parties have the right to invoke either one of them, but should not use them simultaneously.

In sum, MCP should be an optional procedure, the core of which is to help resolve questions regarding implementation of the Convention by means of consultation and cooperation, with a view to promoting the full and effective implementation of the Convention. Whatever the procedure might be, it shall be in conformity with the provisions of the Convention, and shall be subject to the guidance of the COP.

PAPER NO. 7: CZECH REPUBLIC

Responses to the questions - CZECH REPUBLIC

1. Our understanding of the term "multilateral consultative process" is the consultative process between Parties to implement the Convention and/or decisions of COPs into practice (special stress on Article 4 and Articles 5 and 6, respectively.) and to clarify all uncertainties.
2. The word "process" in Article 13 could be understood only as a sequence of a mechanism and an institution (incl. legal objectives), e.g. sequence of meeting and publications referring to Q1.
3. The process should be namely simple and transparent in character.
4. Yes, it is! Without any "multilateral" consultation the process cannot be adopted. The most appropriate measures for its adoption are decisions of COP.
5. The new mechanism established under Article 13 must be general! Such mechanism should be consulted with the set of experts - legal and technical experts specifically. Before its adoption, the different circumstances, responsibilities and capabilities of the Parties have to be taken into account. However, exist experts in this field?
6. We feel a very strong linkage with Article 7.2(c). The COP should adopt, within its mandate, the decisions necessary to promote the designated implementation rules under the multilateral process (see Q4). The process would not be automatically halted if (one) Party invokes Article 4. Our understanding is that the process could be halted only by the new COP decision. The linkage with the Article 8.2(c) and/or 12 and 14 is only in the "standard way". Many items and experience could be gained by the fut ure development.
7. We do not see any substantial gap.
8. We comprehend a very substantial relationship between the Article 13 process and AGBM. Policies and measures on mitigation of climate change must correspond with the criteria for implementation of the Convention. Our understanding is that P&M are the part of the implementation process.
9. ?
10. Each Party under the Convention has possibility to put the request on the additional consultative process under the Article 13. To trigger the process may only COP. If some implementation rules are settled (e.g. by the decisions of COP, etc. - see Q4), they must be adopted compulsory and not only optionally.
11. It seems to us it is necessary.
12. We do not have any additional substantial comments.

PAPER NO. 8: ESTONIA

Possible features of a protocol or another legal instrument.

Submission of Estonian delegation to the 3rd session of the AGBM

Following discussions held during the AGBM 2 and Secretariat's letter requesting for Party's views on possible features of a protocol or another legal instrument, Estonian delegation would like to communicate its preliminary ideas about the topic.

In order to facilitate further negotiations on the implementation of the Berlin Mandate and the formulation of delegation's positions we would prefer to have a draft structure of a legal instrument agreed upon at an earliest possible stage of negotiations. Negotiations on the outline of a legal instrument should in our view take place in parallel with, or to be even shortly ahead of negotiations on policies, measures and quantified emission limitation and reduction objectives as well as other items on the agenda of the AGBM. That could assist Parties in formulating their positions and help to make following discussions more fruitful and target oriented especially when considering the tight time frame prescribed by the Berlin Mandate.

A new legal instrument derives from the UN Framework Convention on Climate Change and the Berlin Mandate. It would therefore be wise, helpful and cost-effective if the new legal instrument had structural similarities and relationship with the Convention and its institutional arrangements. Estonian delegation is in favour of having different annexes to the new legal instrument, specifying differentiated policies and measures according to their priority or

other features. In this regard the EU proposal on the outline of possible protocol structure could serve as a basis for further negotiations.

Taking into account the principle of common but differentiated responsibility and different economic and social circumstances among the Annex I Parties, Estonian delegation would welcome the elaboration and inclusion of additional annexes, which could provide the differentiation among the Annex I Parties considering their different economic and national circumstances, into the new legal instrument. The main criteria for differentiation could in our view be the GDP per capita. The share of respective Party to the global warming should also not be forgotten in the list of such criteria.

Which gases should be covered by the new legal instrument? Estonia prefers at this stage the "basket approach", i. e. greenhouse gases should be dealt with together, taking also into account their removals by sinks.

With this we would conclude our remarks on possible features of a protocol or another legal instrument at this stage.

Tallinn, 15 January 1996

PAPER NO. 9: EUROPEAN COMMUNITY

SECTION A: DEFINITION AND SCOPE OF THE PROCESS

Question 1:

a)

A Multilateral Consultative Process (MCP) should be established under Art. 13 FCCC to resolve, upon request of Parties, questions with regard to the way in which an individual Party has been, is or will be contributing to the implementation of the Convention.

b)

A MCP should deal with any questions relating to the performance of individual parties in the implementation of the Convention.

c)

A MCP should be guided by the principles established under Article 3. The question whether an MCP could play a role in further developing the understanding of those principles, would merit further discussion.

Question 2:

A "process" can be a sequence of events, a mechanism or an institution. The Convention thus leaves it open to the Parties to decide which one or more of these options to develop. For the process to have a clear purpose and meaning, the EC considers that it will need to have a precise structure distinguishing it from other structures already envisaged by the Convention. To this end, it should operate through a committee of limited and rotating membership whose task it would be to consider representations made to it and which would have power to make recommendations but not to take decisions. Decision-taking should be restricted to the COP in accordance with its inherent powers. The process envisaged would contain elements not just of a sequence of events but also of a mechanism and institution. The EC would recommend that Parties should concentrate on determining what, in terms of environmental protection, it is desirable to achieve under the flexible phrase "multilateral consultative process" and avoid discussion and recommendations focusing to a great extent on the terminology to which Question 2 draws attention.

Question 3 :

A MCP should be simple, cooperative, non-judicial and transparent. Apart from these principles a MCP should aim at the avoidance of disputes and, in order to bring about full implementation of the Convention, strive for solutions. The process should also facilitate, that is to say directed towards helping or encouraging Parties that are, or are at risk of being, in breach of their commitments to achieve compliance.

Question 4:

a)

Article 13 does not require the Parties to establish a MCP: that Article stipulates merely that the COP shall "consider" the establishment of such a process. This said, the European Union is of the view that for the effective operation of the FCCC it is necessary to establish a MCP. Reasons underlining the necessity of establishing a MCP have been expressed in the responses to Questions 3 and 7.

b)

The MCP should be established by means of a decision of the COP. Article 7.2 (i), which enables the COP to "establish such subsidiary bodies as are deemed necessary for the implementation of the Convention", would serve as the procedural basis for such a decision. In substance, this decision would be, of course, based on Article 13.

Question 5:

The new standing body to be established under Article 7.2 (i) should have restricted membership. it should be composed of at least 5 but no more than 10 members nominated by Parties. These members should be well qualified in the legal, economic, social, technical and/or environmental field related to the subject of the Convention. The establishment of an additional roster of experts for use by the MCP could be seen as necessary.

SECTION B: RELATIONSHIP OF ARTICLE 13 TO CONVENTION INSTITUTIONS AND PROCESSES

Question 6:

When establishing a MCP, relationships to the following other articles of the Convention should be considered as follows:

a)

Article 7.2 (c) deals with questions of implementation regarding two or more Parties, whereas the MCP should handle individual cases. It seems 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.

b)

Pursuant to Article 8.2 (c) the Secretariat has the function of facilitating assistance to Parties, particularly developing country Parties, in the compilation and communication of information. There would be scope for the MCP to involve the Secretariat when dealing with questions concerning communication of information.

c)

Article 10.2 (a) does not address the question of how individual performance should be assessed (see the response given to Question 1). The nature of the relationship between the SBI and a future MCP can be deducted 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.

d)

The MCP should draw upon all relevant information related to implementation as provided under Article 12.

e)

The application of the MCP should be without prejudice to the provisions of Article 14. However, this does not necessarily mean that the process under Article 13 would automatically be halted, if a Party invokes Article 14.

Question 7:

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. There is therefore a "gap" between the process only in the sense that they address different questions and serve different functions. The MCP could contribute to narrowing the gap by providing a consulting option to promote the effective implementation of the Convention.

Question 8:

The response to this question can be found, to a large extent, in the responses to Questions 6 and 7.

SECTION C: LEGAL AND PROCEDURAL CONSIDERATIONS

Question 9:

The legal status of the process will be that of a mechanism institutionalized by the Parties to the Convention by implementing Article 13 through a decision taken by the COP (see the response given to Question 4).

Question 10:

a)

Article 13 stipulates, that a future MCP should be available to Parties "on their request". This wording confines the right to initiate the procedure to any Party to the Convention.

b)

Further characteristics of the MCP, e.g., whether it be compulsory or optional, would have to be decided upon by the COP when establishing the mechanism.

Question 11:

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. The Parties to any future related instrument would decide, whether that instrument should make use of a MCP.

PAPER NO. 10: FRANCE

PARIS, le 15 février 1996

COMMUNICATION DE LA DELEGATION FRANCAISE

Groupe de travail spécial sur l'article 13 ; questionnaire élaboré au cours de la session de Genève (octobre 1995)

En réponse au questionnaire concernant le processus consultatif multilatéral , la délégation française fait référence à la réponse commune établie par les Etats membres de la Communauté Européenne, avec laquelle elle se trouve en plein accord.

A titre complémentaire , elle souhaite faire part des quelques réflexions suivantes:

QUESTION 10: La formulation de ce membre de phrase est très ouverte. Elle permet d'envisager aussi bien une saisine par une Partie individuelle que par un groupe de Parties, ou par l'ensemble des Parties s'exprimant par un mandat de la Conférence des Parties.

QUESTION 11: Il est très important d'éviter la multiplication des structures subsidiaires de la convention, et d'utiliser au mieux les structures existantes. Lors de l'élaboration du processus à établir selon l'article 13, il convient de faire en sorte que le même processus soit organisé pour être mis au service de la convention-cadre comme du ou des futurs instruments juridiques associés.

Même si la présente note est adressée tardivement pour une prise en compte dans le document de synthèse préparé par le secrétariat pour la session de Genève de fin février, elle est destinée à contribuer aux travaux préparatoires du secrétariat.

PAPER NO. 11: HONDURAS

SECTION A: DEFINITION AND SCOPE OF THE PROCESS

1. Una entidad a la que puedan recurrir las partes para obtener información sobre procedimientos que se requiren para aplicar la Convención.

2. Sería un órgano que planifique y establezca mecanismos de acción para las Partes que soliciten cooperación o asistencia. Asimismo, se pueden organizar eventos a los que asistan las Partes para intercambio de opiniones, experiencias o problemas.

3. Los procedimientos deben ser claros, transparentes, de carácter facilitador e imparcial.

4. Sí es necesario que se establezcan mercanismos consultivos multilateral a través de un Protocolo.

5. El Organo debe contar con un equipo de expertos multidisciplinarios.

SECTION B: RELATIVE OF ARTICLE 13 TO CONVENTION INSTITUTIONS AND PROCESSES

6. Todos los articulos antes mencionados estan relacionados, ya que este nuevo Organo podrá cooperar para cumplir el Art. 7 c) y el 8.2 c). El artículo 10 establece un Organo subsidiario de ejecución el cual puede ser lo que se establece en el art. 13 y por tanto puede desarrollar lo que se dice en el artículo 12 y 14. Pero todos estos artículos aún deben de "amarrarse". Asimismo, pueden incluirse otras funciones, como ser: proveer de información técnica, legal y administrativa (como canalizar fondos), etc.

SECTION C: LEGAL AND PROCEDURAL CONSIDERATIONS

9. Los procedimientos legales del "mecanismo" deberan ser establecidos dentro del Protocolo (ver pregunta No. 4)

10. Toda Parte que requiera de los servicios que proporcione el " Mecanismo" (Organo) lo podrá solicitar cuando lo necesite.

11. No necesariamente. Pueden aplicarse a otros tópicos relacionados con aspectos técnicos o procedimientos administrativos.

SECTION D: OTHER ISSUES

12. Consideramos que el Mecanismo Consultivo Multilateral debe ser diseñado de tal forma que sea un Organo Consultivo el cual este integrado por expertos multidisciplinarios para que brinden información sobre aspectos legales, técnicos, y administrativos (cómo obtener fondos) y que sea accesible a cualquiera de las Partes. El Organo podrá desarrollar eventos para que asistan las Partes para intercambio de experiencias e información. Asimiso, deberá ser como un facilitador de información o de cualquier problema que pudiese surgir entre las Partes.

PAPER NO. 12: JAPAN

TENTATIVE ANSWERS OF JAPAN TO QUESTIONNAIRE RELATING TO THE WORK OF THE AD HOC GROUP ON ARTICLE 13

Section A: Definition and scope of the process

1. The word "Consultative" implies that the process would be non-confrontational and would not lead to any legally binding decisions.

What "questions regarding the implementation of the Convention" should be covered are not clear at this stage. However, we do not believe that all questions should be submitted to the process because we need to avoid duplication between the process and existing mechanisms. For example, it seems that pure technical and scientific issues are obviously out of the scope of the process. They should be covered by SABSTA.

We understand that those "questions" are concerned with the implementation of the Convention in one or a limited number of countries. If a question directly concerns all countries, it should be discussed at open-ended fora such as SBI and COP.

2. The word "process" would usually mean a sequence of events. In this particular case, however, the "process" may also need a mechanism or an institution.

3. It is acceptable that the process should be simple, transparent, facilitative and non-confrontational in character. However we should consider this again after we identify "questions regarding the implementation of the Convention" that should be covered by the process under Article

13.

4. We should improve the process under Article 13 step by step on the basis of the accumulated experiences in the process of the implementation of the Convention.

From this point of view, it would be better for us to start the process under Article 13 based on the decision of COP. An amendment of the Convention or a new protocol is not necessary for the process.

5. We should consider this again after we identify the "questions regarding the implementation of the Convention" that will be covered by the process under Article 13.

However, in the light of the experience of the implementation committee of the Montreal Protocol, it may be better to restrict the membership to designated specialists and experts in order to make discussions productive.

Section B: Relationship of Article 13 to Convention institutions and process

6. 7. Problems to be identified through the review of the implementation of the Convention are likely to have global implications. On the other hand, Settlement of Disputes (Article 14) is essentially a bilateral process. Therefore, it would not be so easy to solve above-mentioned global problems by the mechanism of the Settlement of Disputes. "Multilateral consultative process" under Article 13 might be helpful to solve those global problems. From this point of view, the process under Article 13 should not automatically be halted when a Party invokes Article 14.

8. It seems reasonable that the process has a relationship with

the Subsidiary Body for Implementation, because the process should cover "questions regarding the implementation of the Convention."

Section C: Legal and procedural considerations

9. We should develop the process step by step. From this point of view, as a first step, we should establish the process based on the decision of the COP rather than an amendment of the Convention. In this context, the detailed design of the process does not need to be clearly defined, which gives it flexibility for possible modifications and adjustments as required.

10. It is not easy to answer this question before identifying the "questions regarding the implementation of the Convention". However, at this stage, we should not entirely exclude the possibility that not only a party but also their group which include a subsidiary body of the COP will be made entitled to trigger the process. Because, in the light of the previous experience of multilateral environmental agreements, a party tends to hesitate to trigger such a process in order to avoid harming bilateral relationship.

11. Article 13 does not refer to any related legal instruments. It seems that the process unedr Article 13 does not apply to them under current arrangements. However, we should watch carefully the course of discussions at AGBM and consider carefully possibility of cross- application of the process under Article 13 to a protocol or other legal instruments which will be developed by AGBM, because we should make use of existing mechanisms of the Convention if the above-mentioned protocol or other legal instruments so provides.

بسم الله الرحمن الرحيم

مجلس حماية البيئة

ENVIRONMENT PROTECTION COUNCIL

PAPER NO. 13: KUWAIT

Reference _____ الرقم : _____

Date _____ التاريخ : _____

QUESTIONNAIRE RELATING TO THE WORK OF THE AD HOC GROUP ON ARTICLE 13

II. QUESTIONS

SECTION A : Definition and scope of the process

1. A system by which a subsidiary body on permanent or ad-hoc advices COP on questions regarding the implementation of the Convention.

2. A mechanism.

3. Principle.

4. Not essential since SBI and SBSTA have already been established in addition to the IPCC process which represents an independent source of assessment of *inter alia* the overall performance of the Parties.

5. Membership of the process could be drawn from SBI, SBSTA as well as from IPCC.

تلفون : ٢٤٥٩٨٣٥ ـ ٢٤٥٢٧٩٠ ـ فاكس : ٢٤٢١٩٩٣ـ٢٤٥٩٨٣٦ ص.ب : ٢٤٣٩٥ (الصفاة) الكويت الرمز البريدي 13104

Tel:2452790– 2456835 Fax: 2421993 – 2456836– P.O.Box: 24395 (Safat) Kuwait 13104

بسم الله الرحمن الرحيم

مجلس حماية البيئة

ENVIRONMENT PROTECTION COUNCIL

Reference _____ الرقم : _____

Date _____ التاريخ : _____

SECTION B : Relationship of Article 13 to Convention institutions and process

6. Having another body or mechanism, although will provide some advantages, it may at the be a another burden on the Secretariat (administrative and financial). The obligations of Articles 7, 8, 10, 12 are already defined. As for Article 14, it is our understanding that matters are addressed in accordance with the procedure outlined in the Article only in case the Secretariat, subsidiary or COP fail to resolve the subject of dispute. The creation of a mechanism by which SBI and SBSTA are involved in addressing issues relevant to Article 13, as a whole or through Committees formed on *ad hoc* bases amongst, them with possible input from IPCC, may help simply the process.

7. Not if the mechanism outlined above (6) is accepted.

8. Only as far as stated above.

SECTION C : Legal and procedural consideration

9. The process is not legally binding since the ultimate mechanism would be through Article 14.

10. It is clearly stated that the parties can trigger the process, individually or as a groups (including through the subsidiary bodies during their reviews.

11. No.

تلفون : ٢٤٥٦٨٣٥ ـ ٢٤٥٢٧٩٠ ـ فاكس : ٢٤٢١٩٩٣ـ٢٤٥٦٨٣٦ ص.ب : ٢٤٣٩٥ (الصفاة) الكويت الرمز البريدي 13104

Tel:2452790– 2456835 Fax: 2121003 2456836– P.O.Box: 24395 (Safat) Kuwait 13104

PAPER NO. 14: LATVIA

Answers to the Questionnaire Relating to the Work of the Ad hoc Group on Article 13

LATVIA

Questions
Section A: Definition and scope of the process

1. By the term "multilateral consultative process" and "questions regarding the implementation of the Convention" we understood:
providing of information to Parties concerning problems (obscure measures, etc.) of the implementation of the Convention for the purpose to facilitate this process.

2. By the word "process" we understood Consultative Bureau for Implementation (institution) together with sequence of events.

3. Multilateral consultative process should be simple, transparent, facilitative, free of charge and non-confrontational in character for Parties requested for assistance.

4. It is useful to establish multilateral consultative process by the simplest way for decision making of COP. We prefer Protocol.

5. Concerning membership of multilateral consultative process we consider that the chief of Consultative Bureau for Implementation may be elected by COP. Employees may be chosen by Climate Change Secretariat together with the chief of Bureau. If necessary Bureau can request expert's (legal, economic, social, technical etc.) services. Experts may be the representatives of Parties and of some international organizations involved in the FCCC activities and competent in the relevant field of expertise. Answers to requests of Parties should be restricted. Consultative process means: help to general question's settlement. Bureau can give advice or it can describe experience of different countries. It can organize meetings for Parties to solve problems connected with implementation of Convention and to strengthen multilateral co-operation, and to adopt draft proposals for COP. But Bureau can not make political decisions or calculations instead of Parties. Bureau is not obliged to prepare answers to very complicate and specific questions, and information designated by Parties as confidential.

Section B: Relationship of Article 13 to Convention Institutions and Processes

6. Linkages with:
- Article 7.2(c): It seems to us that Article 13 is more connected with Article 7.2 (b), but Article 7.2(c) should be taken into account. Bureau can prepare proposals for COP according to Article

7.2(c) and results of expertise carried out by Bureau. Article 7.2(c) seems more related to Article 10. and Article 12.
- Article 8.2(c): Bureau will be obliged to assist to developing country Parties.
- Article 10: Consultative Bureau for Implementation would be organized under Article 10. - as executive institution of SBI as well.
- Article 12: Bureau will collect all information concerning FCCC, including information described in Article 12. - inventories, descriptions of policies and measures, estimates of them, national communications, etc. Bureau will form data basis for legal, technical, economic etc. data.
- Article 14: Process under Article 13. should not be stopped if a dispute between Parties begins.

7. If the gap between the processes on the review of implementation and settlement of disputes depends on lack of information then Bureau can help. In the event of disputes the experts of Bureau would help to Parties to seek a settlement by negotiations and to participate as members of conciliation commission.

8. Bureau should collaborate with all subsidiary bodies of FCCC; SBSTA and AGBM as well. Bureau would be organized on basis of CC:INFO because very good information on activities of implementation of Convention is summarized up to now.

Section C: Legal and procedural consideration

9. The status of the process may be legalized by acceptance of Protocol by COP.

10. By the phrase "Parties on their request" we understood the decision of Parties on necessity to establish multilateral consultative process. If Parties conclude to organize such process it will be compulsory.

11. It would be information and consultative service provided by Consultative Bureau for Implementation (in the frame of Article 10.) which can advise and consult Parties on their requests referring questions (on legal, economic, social, technical etc. issues) about implementation of the Convention.

Section D: Other issues

12. Advisable to realize the multilateral consultative process in simple way. If necessary bilateral and multilateral relationships between Parties can be organized in the frame of consultative process.

PAPER NO. 15: MALI

REPONSES DU MALI AU QUESTIONNAIRE RELATIF AU TRAVAIL DU GROUPE SPECIAL SUR L'ARTICLE 13

Rappel de l'article 13 de la Convention

La Conférence des Parties étudiera, à sa première session la mise en place d'un processus consultatif multilatéral, à la disposition des Parties sur leur demande, pour le règlement des questions relatives à l'application de la Convention.

Questions :

Section A : Définition et champs d'application du processus.

1°et 2°) Le processus consultatif multilatéral doit être un mecanisme par lequel deux ou plusieurs Parties se concertent :
- soit pour coordonner des mesures qu'elles entendent prendre au regard de la Convention.
- soit pour aboutir à une conciliation en cas de litige

2°) Le processus pourrait se ramener à la désignation d'une commission de concertation ou de conciliation par la définition du nombre de membres par Partie et des Institutions techniques ou juridiques à impliquer selon le cas.

3°) Le processus doit être simple, transparent et avoir un caractère de facilitation.

4°) Le processus devrait être mis en place par Décision de la Conférence des Parties afin de lui conferer un caractère ad hoc.

Section B : Rapport entre l'article 13, les institutions et les processus de la conventions.

Les propositions faites dans la Section A prennent en compte les objectifs des articles (7-2-c, 8-2 c), 10, 12 et 14 de la Convention et permettent donc de réaliser une coherence entre l'article 13 et le reste de la Convention.

Section C : Considérations juridiques et de procédure.

Le processus doit être un mecanisme ad hoc qu'une des Parties concernées peut déclencher. Il doit être facultatif.

PAPER NO. 16: MEXICO

Sección A: Definición y ámbito de aplicación del mecanismo:

1.- La expresión de "mecanismo consultivo multilateral", debe entenderse como un mecanismo políticamente neutral con representación equilibrada de las Partes que integran el Anexo 1 y de las que no forman parte del mismo. El mecanismo debería abarcar cualquier aspecto técnico o jurídico relacionado con la aplicación de la Convención.

2.- Se entendería por "mecanismo en el contexto del artículo 13", una institución conformada por un grupo permanente de expertos internacionales, elegidos por la Conferencia de las Partes, con representatividad equilibrada de los países Parte del Anexo I y los países Parte no integrantes del mismo, para asegurar las respuestas a las consultas de las Partes.

3.- Los principios bajo los cuales se regirá el mecanismo deben ser sencillos, transparentes y facilitarán la resolución de cuestiones relativas a la aplicación de la convención. Asimismo, no deberá tener un carácter controversial.

4.- Sí es necesario que se establezca ese mecanismo de consulta multilateral.
El mecanismo podría ser incluido dentro de un Protocolo o bien,la Conferencia de las Partes podría adoptar para ese fin una decisión. Se trataría de un grupo permanente a donde acudir cuando se necesitara asesoría técnica y jurídica. El mecanismo podría emitir opiniones en una disputa internacional, antes de que el problema se ventilara en los foros correspondientes.

5.- La composición del nuevo mecanismo debería restringirse a un número determinado de especialistas, técnicos, jurídicos, economistas y sociales. En ese sentido, es pertinente establecer un listado de expertos que pudieran prestar este tipo de asesoramiento, siempre y cuando dicha lista sea elaborada sobre la base de las consideraciones hechas en las respuestas a las preguntas 1 y 2.

Sección B: Relación entre el Artículo 13, las Instituciones y los mecanismo de la Convención;

6.- Con respecto al inciso c) del artículo 7, el mecanismo se vincularía a la Conferencia de las Partes mediante el apoyo técnico que brindará en la resolución de problemas que surjan sobre la implementación de la Convención. También daría apoyo al Secretariado (artículo 8), facilitando la información técnica correspondiente. Con respecto al artículo 10, brindará el apoyo que tiene asignado al órgano subsidiario que evaluará y revisará la aplicación de la Convención. Al artículo 12 se vinculará en términos consultivos. Pensamos que el mecanismo que se estableciera sí podría prestar apoyo en el procedimiento de examen.

La relación entre el artículo 13 y el 14 es clara, si cualquiera de las Partes invocara al artículo 14 no se interrumpiría automáticamente el recurso al artículo 13, ya que el 14 indica como se organizarían las controversias y el artículo 13 sólo daría una opinión calificada que se tomaría en cuenta al momento de arreglar las controversias entre las Partes.

7.- Sí hay gran diferencia entre el examen de la aplicación y el arreglo de controversias, son artículos (10 y 14) con temas diferentes: el artículo 13 podría, a través del nuevo mecanismo, resolver los problemas que se detecten en el examen de la aplicación y dar una opinión calificada en el caso de que hubiera un arreglo de controversias entre las Partes.

8.- Sí existe una relación entre el mecanismo del artículo 13 y los órganos subsidiarios creados en virtud de la Convención, por ejemplo, el Grupo Especial del Mandato de Berlín. Si el mecanismo del artículo 13 funcionara dentro de un Protocolo, podría resolver cuestiones relacionadas con la aplicación del mismo Protocolo. El nuevo mecanismo daría una opinión sobre la controversia, como un cuerpo consultivo, y ésta última se arreglaría de acuerdo al artículo 14.

Sección C: Consideraciones legales y de procedimiento:

9.- Dado que se trata de un mecanismo consultivo y no de carácter controversial, el mismo deberá tener una personalidad jurídica restringida.

10.- Las Partes de la Convención son las que podrán solicitar los servicios del mecanismo, el recurso al mecanismo debería ser facultativo.

11.- Ya sea producto de la elaboración de un protocolo o de una decisión de la Conferencia de las Partes, el mecanismo consultivo multilateral deberá hacerse extensivo a otros instrumentos jurídicos conexos a la Convención, tales como los Protocolos y los Anexos.

Sección D: Otras cuestiones:

No hay comentarios para esta sección.

СПЕЦИАЛЬНАЯ РАБОЧАЯ ГРУППА ПО СТАТЬЕ 13 РАМОЧНОЙ КОНВЕНЦИИ ООН ОБ ИЗМЕНЕНИИ КЛИМАТА

КОММЕНТАРИИ РОССИЙСКОЙ ФЕДЕРАЦИИ В ОТНОШЕНИИ ПОНЯТИЯ И СФЕРЫ ОПРЕДЕЛЕНИЯ ТЕРМИНА "МНОГОСТОРОННИЙ КОНСУЛЬТАТИВНЫЙ ПРОЦЕСС" ПО СТАТЬЕ 13

Многосторонний консультативный процесс (МКП), предусмотренный Статьей 13 рамочной Конвенции ООН об изменении климата (далее – Конвенции), в нашем видении есть форма механизма предоставления спектра консультативных услуг в целях решения вопросов, касающихся осуществления Конвенции. Статья 13 закрепила общую правовую основу формирования такого механизма. В той или иной форме подобные механизмы работают практически во всех природоохранных договорах различного уровня (двусторонние, региональные, универсальные).

В рамках Конвенции уже функционируют элементы МКП – Конференция Сторон (КС), Вспомогательный орган по осуществлению (ВОО), Вспомогательный орган для консультирования по научным и технологическим аспектам (ВОКНТА), а также, в определенной мере, Специальная группа по Берлинскому мандату (СГБМ). Однако, по нашему мнению было бы целесообразным дополнить систему указанного механизма элементом, наделенным вполне конкретными функциями, не дублирующими функции других органов Конвенции. Речь идет о создании дополнительного вспомогательного органа КС, потребность в котором, на наш взгляд, вполне просматривается уже в настоящий момент, а в ближайшем будущем, по всей видимости, встанет со всей остротой.

Следует отметить, что поскольку ВОО, согласно Статье 10 Конвенции, состоит из экспертов по вопросам, связанным с изменением климата, а ВОКНТА, согласно Статье 9 Конвенции, состоит из компетентных в соответствующих отраслях знаний экспертов, то в системе МКП очевиден пробел в отношении обеспечения должной экспертизы и оценок в области права и экономики. Вместе с тем, важность реализации такого механизма в осуществлении Конвенции нельзя недооценивать.

В связи с вышеизложенным, считали бы целесообразным на основе Статьи 13 Конвенции создать вспомогательный орган, например, специальную Межправительственную группу экспертов по вопросам права (и экономики). Консультативные услуги, предоставляемые этим органом, могли бы быть использованы в целях содействия решению соответствующих вопросов в рамках Конвенции. Возможно, в первую очередь такие услуги могли бы быть применены для обеспечения функций ВОО, исходя из характера, сферы полномочий и структуры этого органа. Кроме того, такие услуги могли бы непосредственно применяться в качестве основного

механизма по обеспечению Статьи 14 Конвенции ("Урегулирование споров").

В этом контексте, специальная Межправительственная группа экспертов по вопросам права (и экономики) могла бы, на наш взгляд:

- по запросу заинтересованного государства или государств оказывать консультативную помощь по правовым и экономическим вопросам при подготовке национальных сообщений, по вопросам применения права в осуществлении Конвенции и ее толковании, а также при разработке Сторонами Конвенции соответствующих национальных нормативных актов и национальных программ, направленных на предотвращение опасных изменений климата и их отрицательных последствий;

- по запросу заинтересованного государства или государств осуществлять предварительную экономико – правовую экспертизу национальных и региональных программ, подготавливаемых Сторонами Конвенции на основании Статьи 4 (1b) Конвенции, а также национальных сообщений, включая вопросы осуществления взятых Сторонами обязательств. Результаты экспертизы могли бы, в частности, передаваться ВОО для последующего рассмотрения;

- осуществлять экономико – правовую экспертизу глобальных проектов и программ, разрабатываемых и осуществляемых в рамках Конвенции;

- оказывать экспертные консультативные услуги в преддверии или ходе переговоров, касающихся выработки решений и резолюций по осуществлению Конвенции, дополнительных к ней протоколов или иных документов.

Такая Межправительственная группа экспертов, как орган КС, имела бы согласованный количественный состав профессиональных экспертов, назначаемых на определенный срок. Ее создание в качестве нового вспомогательного органа КС, в соответствии со Статьей 7 (2i) Конвенции, требует соответствующего решения КС.

Российская Федерация подтверждает свое убеждение в необходимости и своевременности формирования в рамках МКП на основе Статьи 13 Конвенции эффективного механизма, обеспечивающего широкий спектр консультативных услуг, предоставляемых по запросу Сторон и нацеленных на содействие решению различных вопросов в рамках Конвенции. Мы считаем, что без такого механизма невозможно полноценное осуществление Конвенции как комплексного международно – правового процесса.

COURTESY TRANSLATION FROM RUSSIAN

Ad-hoc Working Group on Article 13

Comments of the Russian Federation on the term
"Multilateral Consultative Process" under Article 13 and its scope

A multilateral consultative process (MCP) to be established under Article 13 of the UNFCCC (Convention), in our opinion, is a type of mechanism for providing a range of consultative services in order to resolve issues related to the implementation of the Convention. Article 13 has established a general legal basis for such a mechanism. Similar mechanisms in varying form function in practically all the environmental treaties at various levels (bilateral, regional, and universal).

In the framework of the Convention there already exist elements of the MCP: the Conference of the Parties (COP), the Subsidiary Body for Implementation (SBI), the Subsidiary Body for Scientific and Technological Advice (SBSTA) and, to a certain extent, the Ad-hoc Group on the Berlin Mandate (AGBM). However, in our opinion, it would be advisable to supplement the above-mentioned mechanisms with an element which would have very specific functions, not duplicating functions of other Convention bodies. We hereby refer to an additional subsidiary body of the COP. The need to create such a body is, in our opinion, already evident and will become even more so in the near future.

It should be noted that since, according to Article 10 of the Convention, the SBI is comprised of experts competent on matters related to climate change, and the SBSTA, according to Article 9, is comprised of experts competent in the relevant field of expertise there is a gap in the system of the MCP concerning relevant expertise and evaluation in the legal and economic fields. It is therefore essential not to underestimate the importance of establishing such a mechanism.

Taking into account the above we would consider it advisable to establish under Article 13 of the Convention, a subsidiary body, for example an ad-hoc intergovernmental group of experts on legal (and economic) issues. Consultative services provided by this body could be used to consider and resolve relevant issues in the framework of the Convention. Such services could possibly be primarily used to support the functioning of the SBI taking into account its character, terms of reference and structure. In addition, such services could be used directly as a basic mechanism under Article 14 of the Convention (Settlement of Disputes).

In this context an ad-hoc intergovernmental group of experts on legal (and economic) issues could:

- at the request of an interested Party or Parties provide consultative services on legal and economic issues during the preparation of national communications, and on issues related to legal aspects of implementation and interpretation of the Convention, as well as during the development by Parties of their corresponding national legal instruments and national programmes aimed at mitigating climate change and its negative consequences;

- at the request of an interested Party or Parties conduct preliminary economic and legal analysis of national and regional programmes being developed by Parties to the Convention under Article 4.1 (b) as well as of national communications, including issues related to commitments. The results of such an analysis could be transmitted to the SBI for further consideration;

- conduct an economic and legal analysis of global projects and programmes being developed and implemented in the framework of the Convention;

- provide consultative services before or during negotiations on issues related to preparation of decisions and resolutions on implementation of the Convention, additional protocols or other instruments.

As a body of the COP such an intergovernmental group of experts could be comprised of an agreed number of professional experts nominated for a specific period of time. Its establishment as a new subsidiary body of the COP would require in accordance with Article 7.2 (i), a decision by the COP.

The Russian Federation reiterates its confidence in the need and timeliness for establishing, in the framework of the intergovernmental consultative process on the basis of Article 13, an effective mechanism which would provide a wide range of consultative services at the request of Parties and which would aim at facilitating the resolution of various issues arising from the Convention. We believe that without such a mechanism a full-fledged implementation of the Convention as a comprehensive international and legal process will not be possible.

VM/dg -01/02/96

PAPER NO.18: SENEGAL

OBJET : Questionnaire relatif au travail du groupe spécial sur l'article 13 de la Convention Cadre sur les changements climatiques

SECTION A : Définition et champ d'application du processus

1. Que faut-il entendre par l'expression " Processus consultatif multilatéral" et sur quelles "questions relatives à l'application de la Convention" ce processus devrait-il porter ?

C'est une série d'activités de négociation ou de concertation qui impliquent plusieurs parties liées par un accord ayant un intérêt à résoudre un problème. Dans ce cadre, le "Processus consultatif multilatéral" devrait porter sur toutes questions d'application de la Convention ayant une portée générale.

2. Que signifie le mot "Processus" à l'article 13 ? Faut-il entendre par là une suite d'activités, un mécanisme ou une institution ? Ce terme pourrait-il recouvrir toutes ces acceptations ?

Dans le cadre de l'article 13, "Processus" doit être entendu comme une suite d'activités, voire un mécanisme. Eriger le "Processus" en institution peut être financièrement lourd. Il peut être un mécanisme que le Secrétariat pourra actionner si une large majorité des parties en fait la demande. Cependant, au cas où des disponibilités financières pourraient être dégagées, le "Processus" peut devenir une institution qui sera utilisée pour règler des problèmes d'application de la Convention.

3 - Quels principes devrait régir le "Processus" ? Est-il suffisant que le "Processus" soit simple et transparent, qu'il soit conçu dans un but de facilitation et qu'il ait un caractère non conflictuel ?

Le "Processus" doit être transparent. En aucun cas, il ne devrait revêtir un caractère conflictuel, sa raison d'être ou son objectif devrait viser à faciliter une compréhension générale des questions relatives à l'application de la Convention en vue d'une application acceptée par les parties.

4 - Est-il nécessaire de mettre en place un tel "Processus consultatif multilatéral" ? Si oui, quelles mesures la Conférence des Parties devrait-elle prendre pour l'adopter : une décision, un amendement ou un protocole ?

Le "Processus consultatif multilatéral" est une nécessité. Son adoption dans un souci d'efficacité et de simplicité relevait d'une décision de la Conférence des Parties ou à la limite d'un amendement.

5 - Si un nouveau mécanisme ou une nouvelle institution devait être mise en place en application de l'article 33, devrait-il s'agir d'un organe à participation générale ou sa composition devrait-elle être limitée aux spécialistes, par exemple à des experts juridiques, économiques, sociaux ou techniques ? Dans ces conditions, faudrait-il envisager d'établir une liste d'experts chargés de donner des avis et des conseils ?

Il s'agit certainement ici de l'article 13, parce que la Convention ne contient pas 33 articles. Si tel est le cas, compte tenu de l'importance des domaines d'application de cette convention, et des impacts qu'ils peuvent avoir sur le développement des Etats, il devrait s'agir d'un organe à participation générale. C'est ainsi d'ailleurs que la transparence pourra être maintenue.

SECTION B : Rapport entre l'article 13, les institutions et les processus de la Convention

6 - Quels liens faudrait-il établir avec d'autres articles de la Convention, notamment les articles 7.2 c), 8.2 c), 10, 12, et 14 ? (Par exemple, les dispositions relatives au processus d'examen se suffisent-elles à elles-mêmes ou est-il possible de les étayer grâce au processus envisagé dans l'article 23 ? Quel est le rapport entre l'article 13 et l'article 14 ? Le processus prévu à l'article 13, serait-il automatiquement stoppé dans le cas où une partie invoquerait l'article 14 ?

.. Liens avec l'article 7.2 c) : Le "Processus consultatif multilatéral peut précéder les réunions de la Conférence des Parties pour aider celle-ci de jouer le rôle qui est la sienne à l'article 7.2 c) ou la Conférence des Parties à l'occasion

d'une de ses réunions demandées au "Processus" devenu entretemps un mécanisme, d'assurer les tâches de l'article 7.2. c) pour lui permettre une décision à sa prochaine réunion.

.. Liens avec l'article 8.2. c) : Compiler, diffuser des informations requises par la Convention et à la demande des Parties, notamment les pays en développement, devraient relever de la compétence traditionnelle du Secrétariat. Ceci ne devrait pas concerner le "Processus consultatif multilatéral".

.. Liens avec l'article 10 : L'organe subsidiaire de mise en oeuvre peut utiliser valablement le "Processus consultatif multilatéral".

.. Liens avec l'article 12 : Si une question d'intérêt général naît d'une suite de l'application de cette article 12, alors le "Processus consultatif multilatéral" pourrait s'en saisir pour aider à trouver une solution. L'article 12 devrait avoir des rapports constants avec le "Processus multilatéral consultatif".

.. Liens avec l'article 14 : Le "Processus consultatif multilatéral" pourrait prévenir les différends entre les parties en aidant à expliciter pour trouver des solutions à des différends potentiels. Dans ce cadre, invoquer l'article 14 ne devrait pas stopper automatiquement le processus prévu à l'article 13. Tel que contenu dans l'article 13, l'esprit du processus tend vers un outil, un mécanisme pour une meilleure application de la Convention.

7 - Y - a - t-il un décalage entre le processus d'examen de l'application et le processus de règlement des différends ? Dans l'affirmative, quelle est l'ampleur de ce décalage et comment l'article 13 peut-il contribuer à le réduire ?

Dans le cadre de l'article 7 et en particulier 7.2., la Conférence des Parties assure et fait règulièrement le point de l'application de la Convention et des autres insnstruments connexes. Il y a effectivement un décalage entre l'article 7 et l'article 14, et il appartient à l'article 13 d'aider à réduire ce gap.

8 - Y - a - t-il un rapport entre le processus prévu à l'article 13 et les organes subsidiaires crées en application de la Convention, par exemple le Groupe Spécial sur le Mandat de Berlin (AGBM) ?

Comme dit dans la réponse à la question 6, l'organe subsidiaire de mise en oeuvre de la Convention peut s'appuyer sur le "Processus consultatif multilatéral", et il devrait être un outil à la disposition du Groupe Spécial sur le Mandat de Berlin.

<u>SECTION C</u> : Considérations juridiques et de procédure

9 - Quel est le statut juridique du processus ?

Pour des raisons déjà évoquées, le "Processus" ne devra pas être une institution si les moyens financiers nécessaires à son fonctionnement n'existent pas. Alors il faudra songer à lui donner un statut juridique de mécanisme de

facilitation, de compréhension et de résolution des questions en vue d'une meilleure application de la Convention.

10 - Que signifie dans l'article 13, le membre de phrase "Des Parties sur leur demande" ? Qui peut déclencher le processus en dehors des Parties elles-mêmes? Ce processus est-il obligatoire ou facultatif ?

"Des Parties sur leur demande" signifie, lors des Conférences des Parties, un groupe voire l'ensemble des parties, par consensus, se mettre d'accord qu'un point de la Convention doit faire l'objet d'un "Processus consultatif multilatéral". Si entre deux Conférences des Parties, un problème se posait alors qu'il n'est pas possible d'organiser une session extraordinaire, le Bureau de la Conférence des Parties devra être à même de déclencher le processus. On peut même songer que le Secrétariat puisse recevoir mandat de la Conférence des Parties pour déclencher le processus le cas échéant. Le processus ne devra pas être, par obligation, si d'autres voies existent et sont plus efficaces pour résoudre les problèmes causés.

11 - Faudrait-il faire en sorte que le "Processus consultatif multilatéral" s'applique en sus de la Convention, à des instruments juridiques du même ordre ?

Le "Processus consultatif multilatéral" peut s'appliquer à des instruments annexes à la Convention.

<u>SECTION D</u> : Autres questions

12 - Sans commentaire.

PAPER NO. 19: TURKEY

Answers to the questions in the questionnaire relating to the work of the Ad Hoc Group on Article 13

Section A: Definition and Scope of the Process

1. Providing multidisciplinary consultancy services for the resolution of the questions regarding the implementation of the convention in legal, economic, social or technical fields should be understood by the term "multilateral consultative process".

A Committee similar to the "implementation committee" of the montreal protocol may be instrumental.

2. Since resolution of the questions regarding the implementation of the Convention could involve a sequence of events, a mechanism or an institution, it could imply all of these mentioned above.

3. It is sufficient that the process be simple, transparent, facilitative and non-confrontational in character.

4. It is necessary to establish such a multilateral consultative process. the Conference of the Parties should decide for its adoption.

5. The membership of the new mechanism or institution to be established should be restricted to specialists such as legal, economic, social or technical experts. In this context, a roster of experts should be envisaged to provide advice.

Section B: Relationship of Article 13 to Convention Institutions and Processes

6. There is scope for other articles of the Convention to receive support through the process envisaged under 13. The relationship of Article 13 to Article 14 is that, Article 13 is related to problems which have not reached the level of dispute. the process under Article 13 would automatically be halted if a party invokes Article 14.

7. There is no gap between the processes on review of implementation and on settlement of disputes.

8. There is a relationship between the Article 13 process and the Subsidiary Bodies established under the Convention when support is requested from the mentioned bodies for the resolution of questions regarding the implementation of the Convention.

Section C: Legal and Procedural Considerations

9. The Convention constitutes the basis of legal rules that govern relationship among states and international organisations. the process should be considered to be part of those legal rules.

10. By "parties on their request" in Article 13 it is meant that, the parties would request the resolution of questions regarding the implementation of the convention whenever they need. Only the parties themselves may trigger the process. this process is optional.

11. The multilateral consultative process should be made to apply to related legal instruments in addition to the Convention.

Section D: Other issues

12. we have no additional inputs under this topic.

PAPER NO. 20 : UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

AG13 - QUESTIONNAIRE

COMMENTS FROM THE UNITED KINGDOM

The United Kingdom is fully in agreement with what is stated in the European Community's response to the questionnaire relating to the work of the Ad Hoc Group on Article 13 that was forwarded to the secretariat on 12 February 1996. It wishes to make only a few additional points by way of elaboration of those replies.

Question 1. The term "multilateral" indicates that the process is one that must involve more than two Parties whilst "consultative" emphasises that the procedure is not to be judicial or otherwise inquisitorial or confrontational.

Question 5. Whilst the members of any consultative Committee should be specialists from appropriate fields of expertise, the UK does not consider it necessary for these specialisations to be stipulated in the MCP instrument itself.

Question 6. With regard to the linkages between Article 13 and Article 12 (which latter provision is concerned with the communication of information by individual Parties to the COP), the UK would note that such information would be made automatically available, under paragraph 6 of Article 12, to any Committee created under the MCP and would thus form a means of enabling it to assess if a particular Party was in compliance with its Convention commitments and, if not, what needed to be done. With regard to the relationship with Article 14, it is a settlement of disputes procedure whilst the purpose of the proposed MCP would be more that of an avoidance of disputes procedure. This said, it is clear from the development of the non-compliance regimes for the Montreal Protocol and the second UN/ECE Sulphur Protocol that an MCP settlement of disputes regime have a potential to overlap: one of the more difficult problems the negotiators of those two Protocols had to face was to identify what, if any, priority ought to be attributed to the two regimes. In neither case was it possible to reconcile the two in a perfect manner, principally because the one was bilateral and the other was multilateral in nature. The UK recommends that the Montreal and Sulphur precedents should be considered carefully when dealing with this aspect of the MCP.

We hope that the above comments, allied to the comprehensive response prepared by the EC, will be of assistance to AG13 in its task of interpreting and making recommendations with respect to Article 13 of the Convention.

PAPER NO. 21 : ZAMBIA

ZAMBIA'S RESPONSES AND SUBMISSION RELATING TO THE WORK OF THE ADHOC GROUP ON ARTICLE 13 OF THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

SECTION A

DEFINITION AND SCOPE OF THE PROCESS

1. The "Multilateral Consultative Process" should be a forum for resolving questions that Parties to the Convention may have about the implementation of provisions of the Convection. It could consider any questions relating to the implementation of the Convention such as commitments, functioning of the financial mechanism and subsidiary bodies, amendments and annexes adopted pursuant to Articles 15 and 16, adoption of protocols to the Convention and even settlement of disputes, among others. The process should also serve as a dispute prevention forum and should reflect a collective concern of the Conference of the Parties (COP) to ensure that all Parties fulfil their commitments under the Convention. In this regard, the process should facilitate consensus.

2. The word "process" in Article 13 should be understood to be a sequence of events, a mechanism but not an institution.

3. The principles to govern the Process should be:

(a) It should be simple, facilitate or allow practical problem solving and resolution of issues by consensus.

(b) Due to the complexity of climate change, the process should be transparent, conciliatory, multilateral and non-confrontational in character.

(c) should leave the taking of decisions to the Conference of the Parties.

4. The establishment of a multilateral consultative process is necessary because despite the fact that the Convention has quite well defined dispute resolution processes, they are unlikely to be involved in the case of questions relating to implementation which, although potentially serious, are not normally about matters that would lead one Party to take another to court. Hence such questions are more likely to be resolved in a less controversial and confrontational and constructive process such an a multilateral consultative process.

The Conference of the Parties can take any of the following measures for its adoption but only after scrutiny of these measures:- decision-making of COP, Amendment or Protocol.

5. Due to the complexity of Climate Change it may be requested that questions regarding implementation be examined by individuals with expertise in the various aspects of the phenomenon, in order to provide knowledgeable and practical advice concerning implementation of the Convention. For now, the Inter-Governmental panel on Climate Change (IPCC) does specialist work for the Convention. It may be necessary to ensure that the IPCC uses services of several experts from other countries on an alternating basis.

SECTION B

RELATIONSHIP OF ARTICLE 13 TO CONVENTION INSTITUTIONS

6.

(a) Article 7 of the Convention which provides for the establishment of the Conference of the Parties also spells out the functioning of this supreme body. One of its functions is the facilitation of the coordination of measures adopted by Parties to address Climate Change and its effects. Similarly, the Multilateral Consultative Process being facilitative in character, will assist the COP in the coordination of the measures so adopted by the Parties.

(b) The Secretariat in Article 8.2(C) is charged with the responsibility of facilitating assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the Convention. This function could be supplemented by the efforts of the Multilateral Consultative Process as a flexible institution and mechanism.

(c) Article 10 provides for the establishment of the Subsidiary Body for Implementation (SBI) which is the main mechanism for assessment and review and effective implementation of the Convention. Consequently there should be a close relationship between the SBI and the Multilateral Consultative Process since both would be considering similar issues and drawing upon a similar base of information communicated by the Parties.

(d) In terms of communication, Articles 4 and 12 of the Convention ask Parties to communicate to the COP, through the Secretariat, the various commitment covering measures and policies undertaken or adopted. Likewise, the Multilateral consultative Process would provide an opportunity for Parties to discuss or present their undertakings with respect to the provisions of the Convention, thereby facilitating communication with the Secretariat.

(c) Article 14 establishes a traditional bilateral third-party dispute settlement procedure. The presence of a separate article in the Convention on dispute resolution suggests that the Multilateral Consultative Process envisaged Article in 13 and the dispute settlement procedure under Article 14 are not mutually exclusive. Article 14 sets out the procedure that Parties would revert to when disputes need to be resolved by an institution existing outside the Convention, notably by the International Court of Justice and the Arbitration and Conciliation Commissions. On the other hand, Article 13 should provide the procedure whereby Parties to the Convention should amicably resolve their differences, thus avoiding to resort to Article 14. Given the facilitative nature of the review process and the availability of a possible Multilateral Consultative Process, it will be unlikely that many disputes would be settled by recourse to Article 14. A Party should only invoke Article 14 as an alternative after other means of resolving the problem have been exhausted, although this is rarely used in environmental treaties. Otherwise settlement of disputes and the Multilateral Consultative Process are supposed to complement each other and therefore invoking Article 14 should not automatically halt the process under Article 13.

7. The gap between the processes on review of implementation and on settlement of disputes may exist indirectly and could possibly be narrowed by the Multilateral Consultative Process through its flexible mechanism. Otherwise the provisions of Article 14 are straight forward that they may not even intringe upon or affect the review of the effective implementation of the Convention as envisaged in Article 10. However, the Multilateral Consultative Process should be designed in such a way that it should be able to intervene in the operations of the various institutions and mechanisms of the Convention should confusion arise.

8. There is a relationship between the Article 13 process and the Subsidiary bodies established under the Convention. For instance, the Adhoc Group on the Berlin Mandate (AGBM) aim at, inter alia, strengthening the commitments in Article 4.2(a) and (b) of the Convention for developed country/other Parties included in Annex 1; provide for the exchange of experience on national activities in areas of interest, particularly those identified in the review and synthesis of available national communications and also provide for a review mechanism. Similarly, as already shown in 1 above, the Article 13 Process will clearly consider various questions relating to commitments including those covered in Article 4.2(a) and (b).

The relationship of the Article 13 Process and the subsidiary bodies established under the Convention is that they all comprise experts in the field of climate change. The subsidiary bodies might also ask the MCP to consider certain issues if they wish.

9. The legal status of the process is provided for in the Convention.

10. This means that Parties, if they so wish, may request for the process. This also implies that only states for bodies established by the Convention are empowered to raise questions to be handled by the MCP. Hence the process is optional.

11. If through experience it is established that it facilitates progress in the implementation of the Convention.

SECTION D

12. The Multilateral Consultative Process must be open ended.

- - - - -