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SUMMARY OF THE WORKSHOP ON COMPLIANCE UNDER THE KYOTO PROTOCOL: 1-3 MARCH 2000

The Workshop on Compliance under the Kyoto Protocol to the Framework Convention on Climate Change (FCCC) was held from 1-3 March 2000 at the Wissenschaftszentrum, Bonn, Germany. The Workshop was designed to assist in the development of elements of procedures and mechanisms relating to a compliance system for in-depth consideration at forthcoming meetings of the Joint Working Group on Compliance (JWG). The workshop was organized by the FCCC Secretariat and the Co-Chairs of the JWG. Eighty-one participants attended the workshop, including representatives of governments, inter-governmental organizations (IGOs) and non-governmental organizations (NGOs).

Participants heard presentations and discussed various issues related to the creation of a compliance system under the Protocol including: linkages between Articles 5 (methodological issues), 7 (communication of information) and 8 (review of information) and the compliance system; institutional design; outcomes or consequences of non-compliance or potential non-compliance; general provisions; and a framework. On the basis of discussions during the workshop as well as their working paper resulting from the consultations held in Montreux in February**,** the Co-Chairs will endeavor to develop a text that could form the basis for negotiations at the twelfth session of the subsidiary bodies (SB-12).

A BRIEF HISTORY OF THE FCCC AND THE KYOTO PROTOCOL

The FCCC was adopted on 9 May 1992, and was opened for signature at the UN Conference on Environment and Development in June 1992. The FCCC entered into force on 21 March 1994, 90 days after receipt of the 50th ratification. It has currently received 181 instruments of ratification.

COP-1*:* The first Conference of the Parties to the FCCC (COP-1) took place in Berlin from 28 March - 7 April 1995. In addition to addressing a number of important issues related to the future of the FCCC, delegates reached agreement on the adequacy of commitments and adopted the "Berlin Mandate." Delegates agreed to establish an open-ended *Ad Hoc* Group on the Berlin Mandate (AGBM) to begin a process toward appropriate action for the period beyond 2000, including the strengthening of Annex I Parties' commitments through the adoption of a protocol or another legal instrument. COP-1 also requested the Secretariat to make arrangements for sessions of the subsidiary bodies on scientific and technological advice (SBSTA) and implementation (SBI). SBSTA serves as the link between the information provided by competent international bodies, and the policy-oriented needs of the COP. SBI was created to develop recommendations to assist the COP in the review and assessment of the implementation of the Convention and in the preparation and implementation o its decisions.

AD HOC* GROUP ON ARTICLE 13:* AG13 was set up to consider the establishment of a multilateral consultative process (MCP) available to Parties to resolve questions on implementation. AG13-1, held from 30-31 October 1995 in Geneva, requested Parties, non-Parties, IGOs and NGOs to make written submissions in response to a questionnaire on an MCP. At their fifth session, delegates agreed that the MCP should be advisory rather than supervisory in nature and AG13 should complete its work by COP-4, which it did at its sixth session.

AD HOC* GROUP ON THE BERLIN MANDATE:* The AGBM met eight times between August 1995 and COP-3 in December 1997. During the first three sessions, delegates focused on analyzing and assessing possible policies and measures to strengthen the commit-

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ments of Annex I Parties, how Annex I countries might distribute or share new commitments and whether commitments should take the form of an amendment or a protocol. AGBM-4, which coincided with COP-2 in Geneva in July 1996, completed its in-depth analysis of the likely elements of a protocol and States appeared ready to prepare a negotiating text. At AGBM-5, which met in December 1996, delegates recognized the need to decide whether or not to permit Annex I Parties to use mechanisms that would provide them with flexibility in meeting their quantified emissions limitation and reduction objectives (QELROs).

As the protocol was drafted during the sixth and seventh sessions of the AGBM, in March and August 1997, respectively, delegates "streamlined" a framework compilation text by merging or eliminating some overlapping provisions within the myriad of proposals. Much of the discussion centered on a proposal from the EU for a 15% cut in a "basket" of three greenhouse gases (GHG) by the year 2010 compared to 1990 emission levels. In October 1997, as AGBM-8 began, US President Bill Clinton included a call for "meaningful participation" by developing countries in the negotiating position he announced in Washington. In response, the G-77/China distanced itself from attempts to draw developing countries into agreeing to new commitments.

COP-3*:* The Third Conference of the Parties (COP-3) was held from 1-11 December 1997 in Kyoto, Japan. Over 10,000 participants, including representatives from governments, IGOs, NGOs and the media, attended the Conference, which included a high-level segment featuring statements from over 125 ministers. Following a week and a half of intense formal and informal negotiations, Parties to the FCCC adopted the Kyoto Protocol on 11 December.

In the Protocol, Annex I Parties to the FCCC agreed to commitments with a view to reducing their overall emissions of six GHGs by at least 5% below 1990 levels between 2008 and 2012. The Protocol also established emissions trading, "joint implementation" (JI) between developed countries, and a "clean development mechanism" (CDM) to encourage joint emissions reduction projects between developed and developing countries. To date, 84 countries have signed and 22 have ratified the Protocol. The Protocol will enter into force 90 days after it is ratified by 55 States, including Annex I Parties representing at least 55% of the total carbon dioxide emissions for 1990.

COP-4*:* The Fourth Conference of the Parties (COP-4) was held from 2-13 November 1998 in Buenos Aires, Argentina, with over 5,000 participants in attendance. During the two-week meeting, delegates deliberated decisions for the COP during SBI-9 and SBSTA-9. Issues related to the Protocol were considered in joint SBI/SBSTA sessions. A high-level segment, which heard statements from over 100 ministers and heads of delegation, was convened on Thursday, 12 November. Following hours of high-level closed door negotiations and a final plenary session, delegates adopted the Buenos Aires Plan of Action (BAPA). Under the Plan of Action, the Parties declared their determination to strengthen the implementation of the FCCC and prepare for the future entry into force of the Protocol. The BAPA contains the Parties' resolution to demonstrate substantial progress on: the financial mechanism; the development and transfer of technology; the implementation of FCCC Articles 4.8 and 4.9, as well as Protocol Articles 2.3 and 3.14 (adverse effects); activities implemented jointly (AIJ); the mechanisms of the Protocol; and the preparations for the first Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP-1).

SBI-10 AND SBSTA-10*:* The subsidiary bodies to the FCCC held their tenth sessions in Bonn, Germany, from 31 May - 11 June 1999, and began the process of fulfilling the BAPA. SBSTA considered topics such as Annex I communications, methodological issues and the development and transfer of technology. SBI discussed, *inter alia*, administrative and financial matters and non-Annex I communications. SBI and SBSTA jointly considered the mechanisms of the Protocol, AIJ and compliance. A joint SBI/SBSTA working group on compliance (JWG) discussed identification of compliance-related elements, including gaps and suitable forums to address them; design of a compliance system; and consequences of non-compliance. The JWG resolved to hold a workshop to facilitate informal exchange of views on relevant issues, including experiences under other conventions.

INFORMAL EXCHANGE OF VIEWS AND INFORMATION ON COMPLIANCE UNDER THE KYOTO PROTOCOL: The informal exchange of views and information on compliance under the Kyoto Protocol was held in Vienna, Austria, from 6-7 October 1999. The informal exchange was designed to facilitate deliberations on the development of a compliance system under the Protocol. Ninety-seven participants attended the meeting, including experts, representatives from governments, UN agencies, and IGOs and NGOs. Participants met in several sessions over two days to hear presentations from experts and discuss various issues related to compliance, including: compliance regimes under the Montreal Protocol, the Convention on Long-range Transboundary Air Pollution and its protocols, the International Labor Organization and the World Trade Organization; institutional issues such as facilitative and enforcement functions, eligibility to raise issues and information gathering; and issues related to the consequences of non-compliance.

COP–5: The Fifth Conference of the Parties (COP-5) met in Bonn, Germany, from 25 October - 5 November 1999. With over 3000 participants in attendance and 165 Parties represented, delegates continued their work toward fulfilling the BAPA. Ninety-three ministers and other heads of delegation addressed COP-5 during a high-level segment held from 2-3 November. During its last two days, COP-5 adopted 32 draft decisions and conclusions on, *inter alia*, the review of the implementation of commitments and other FCCC provisions, and preparations for COP/MOP-1. On compliance, COP-5 adopted the JWG Conclusions (FCCC/SB/1999/CRP.7) which, *inter alia*: invited Parties to submit further proposals on compliance by 31 January 2000; confirmed that a workshop on matters relating to a compliance system would be convened in March 2000; and requested the JWG Co-Chairs to further develop the elements of procedures and mechanisms relating to a compliance system for in-depth consideration at forthcoming meetings of the JWG and to serve as a basis for negotiation of a compliance system at SB-12. Informal consultations were convened in Montreux, Switzerland from 9-11 February 2000, in preparation for the workshop on compliance.

REPORT OF THE WORKSHOP

The Workshop on Compliance under the Protocol was opened by Co-Chair Amb. Tuiloma Neroni Slade. He informed participants that the Co-Chairs, in pursuance of their mandate from COP-5 to consult widely, had convened an informal consultation in Montreux, Switzerland, from 9-11 February 2000. Based on the results of this consultation and 15 written submissions from Parties, the Co-Chairs had prepared a working paper outlining the elements of a compliance system for consideration during the workshop. Co-Chair Slade described the workshop as an informal exchange of views, not a negotiating session, aimed at providing the Co-Chairs with a better understanding of Parties' positions so as to enable them to formulate a paper for consideration at SB-12. He identified the need to discuss four groups of issues:

- general issues, including nature, principles and scope of application;
- functions and institutional arrangements for carrying out functions;

- outcomes and consequences of non-compliance; and
- other issues, including relationship with Articles 16 (MCP) and 19 (dispute settlement).

ELEMENTS OF A COMPLIANCE SYSTEM UNDER THE KYOTO PROTOCOL

PRESENTATIONS: Participants heard six presentations on Parties' proposed elements for a compliance system under the Protocol.

AOSIS identified four basic functions and the institutional arrangements to carry them out. First, Expert Review Teams (ERTs) would conduct technical assessments of information submitted by Annex I Parties under Articles 5 (methodological issues) and 7 (communication of information). Second, the Mechanisms' Eligibility Committee would determine the eligibility of a Party to participate in the mechanisms, an administrative rather than a quasi-judicial function. Third, the Compliance Committee would promote Parties' compliance with Protocol commitments during the compliance period, and fourth, the Enforcement Panel would determine non-compliance with Article 3.1 (quantified emission limitation and reduction commitments) and impose penalties and consequences. The IUCN asked if it may be appropriate to have enforcement type activities during the compliance period. AOSIS responded that it envisaged an overlap between enforcement and compliance functions.

JAPAN said one of the features of its proposal was the existence of a Committee on the Kyoto Mechanisms. This committee would be part of the Compliance Body and handle questions of compliance with the mechanisms' eligibility. To avoid a traffic jam before the first commitment period, she said eligibility would not be automatically determined, but could be considered on a voluntary basis or if questions of implementation were raised. On the functions of the Compliance Body, she said it could take either facilitation and enforcement kind of action. She then highlighted a special procedure for the Committee on the Kyoto Mechanisms that would ensure an expeditious resolution of issues within 60 days, in principle, including through the use of electronic meetings. On the consequences of non-compliance, she suggested an indicative list adopted without an amendment to the Protocol whereby the suspension of specific rights and privileges could be recommended to the COP/MOP only as a last resort. She concluded by stressing the need to take advantage of the existing articles in the Protocol in order to allow its early entry into force.

The US proposal highlighted five functions of the compliance entity: to decide which referred matters would be pursued; to provide advice and facilitation; to address allegations about the eligibility to use mechanisms; to determine whether an allegation of non-compliance is well founded; and to determine outcomes of non-compliance. He said the compliance entity would be divided into two components: a facilitative one, to consider all aspects of compliance with the Protocol and could go as far as issuing warnings; and a judicial one, focusing on Article 3.1 and on the mechanisms' eligibility. He added that there was a need for consequences of non-compliance with Article 3.1, such as the subtraction of tons from a subsequent period with a penalty rate, to be identified in advance. He then reviewed four linkages between the compliance regime and the mechanisms. First, on the eligibility, he referred to the linkage between, on the one hand, compliance with Articles 5 and 7 and, on the other hand, loss of access to the mechanisms. He also highlighted the possibility of adjustments by ERTs as a way of preventing non-compliance with Article 5.2 (methodologies for estimating emissions). Second, on who reviews what aspect of compliance related to the mechanisms, he suggested that: ERTs review the use of sinks as well as the eligibility to use the mechanisms; a CDM body, such as the executive board, review the validity of Certified Emission Reductions (CERs); and an audit process review Emission Reduction Units (ERUs).Third, on the relationship with Article 7 he stressed the need for domestic compliance institutions and suggested that Parties have the obligation to report on these. Finally, he commented on whether there was a need for a distinct treatment in handling compliance with Article 3.1 and eligibility issues. Following a question by SAUDI ARABIA, he said the enforcement component of the compliance entity would primarily deal with developed country obligations under Article 3.1.

AUSTRALIA, in outlining its vision for a compliance system, said the compliance process would be initiated through the Article 8 (review of information) expert review process. Questions of Annex B Parties' implementation of their legally binding obligations identified by ERTs would be directed to the compliance system. In this context, she highlighted the need to include criteria in the guidelines to be provided to ERTs under Article 8.4 (COP/MOP to adopt and review guidelines for the review of implementation of the Protocol by ERTs). Such criteria would identify what constitutes "questions of implementation" and when these would move from the technical review stage to the compliance system. She stressed the need for a facilitative stage to precede an enforcement stage. If a Party is found in non-compliance after the commitment period, she suggested it be allowed to choose one from a menu of consequences, which would be most suitable to its national circumstances. On linkages, she identified Articles 5, 7 and 8 as the backbone of the compliance system since they provide the tools for assessing Parties' compliance with their Article 3 target. Further, she suggested that since mechanisms eligibility issues were intrinsically linked to Article 3.1 target issues, the same compliance body deal with both kinds of issues. Arising from this linkage, she recommended that only a finding that an Annex I Party is not in compliance with Articles 5 and 7 affect its mechanisms eligibility. She also suggested that there be a nexus between the compliance problem under these articles and the extent of the loss of eligibility to participate in the mechanisms.

The EU identified the functions of the compliance system as preventing non-compliance, facilitating compliance and repairing non-compliance. He said the compliance body should be a standing body with separate enforcement and facilitative branches. He advocated a total or partial determination of eligibility to participate in the Kyoto mechanisms prior to 2008. Members of the enforcement branch should have judicial experience to ensure due process. He highlighted the necessity of an expedited procedure to determine compliance with Article 3.1. This process would ensure due process. Questions raised on the eligibility of Parties to participate in emissions trading and JI would be referred to the expedited procedure but questions raised on CDM participation would be referred to the executive board of the CDM. On the relationship between the review process and the compliance procedure, he said that if serious problems, such as failure to submit the annual GHG inventory, are identified during the initial check by the Secretariat, the case might be referred directly to the compliance body. For less serious problems, the next stages of the review process, namely synthesis and assessment and individual review, can take place. During the individual review of GHG inventories conducted by the expert review teams two types of problems could be identified: those with consequences for assigned amounts and for the assessment of compliance with Article 3 commitments, and those relevant to the process of inventory construction. While the former could be resolved by applying adjustments under Article 5.2, the latter would require show of progress in subsequent reviews. Where the adjusted estimates are not accepted by the concerned Party, or if institutional and procedural problems are not addressed over subsequent reviews, then the matter could be referred to the compliance committee. On the timeline of compliance process, he suggested that the submission of information under Articles 5 and 7 be improved so as to bring forward the final determination of non-compliance.

NIGERIA sought elaboration of the EU position on the question of enforcement and, in particular, on the nature of consequences and how they relate to Article 18 (non-compliance). The EU said that the consequences should not only make non-compliance unattractive but also repair non-compliance. Non-compliance should be faced with predictable and robust outcomes entailing clear economic consequences for Parties in breach. He expressed his reservation with respect to the proposal permitting borrowing from future commitment periods. CHINA queried if the ERTs could trigger cases of non-compliance. The EU responded that while the ERTs had a clear role in identifying questions of implementation, it could only forward them to the compliance body through the Secretariat. He said that no enforcement was possible during the commitment period. He added, however, that the information made available to the compliance committee during the commitment period could be handled through facilitation. The US sought clarification on the phrase "compliance with KP criteria" in the context of eligibility criteria for the mechanisms. The EU explained that the phrase was intended to convey a distinction between criteria for project-based mechanisms and criteria related more generally to the Parties.

SAUDI ARABIA said the compliance system should be simple and close to what was agreed to in the Protocol, in particular Articles 5, 7 and 8. He said the compliance system would have facilitative and enforcement functions, in accordance with Articles 16 (MCP) and 18, and follow a staged approach. He stressed that issues of eligibility should not be dealt with by a compliance system since these were only reflected in Article 6 (JI), and not in Article 18. Co-Chair Slade questioned such a narrow reading of Article 18.

LINKAGES: ARTICLES 5, 7 AND 8, THE KYOTO MECHANISMS AND THE COMPLIANCE SYSTEM UNDER THE KYOTO PROTOCOL

PRESENTATIONS: Participants heard 11 presentations on linkages between Articles 5 (methodological issues), 7 (communication of information) and 8 (review of information), the Kyoto mechanisms and the compliance system under the Protocol.

Introducing her submission on the linkages between Article 8 and adjustments under Article 5, JAPAN highlighted the three stages of the inventory review process: initial check by the Secretariat; synthesis and assessment of inventories; and review by ERTs. She said a Party could make adjustments during these three stages only in two cases: the Party's inventory is incomplete; and/or country-specific methodologies and/or emissions factors are used but supporting documents are considered insufficient. The ERTs' report would indicate if a Party neither made adjustments nor accepted the emissions estimate made by the ERTs. This report would be published and sent to the Parties and the compliance body through the Secretariat. Following a question by the US, she said that a voluntary adjustment by a Party during the review process did not mean that the issue could not go to the compliance body. In cases of egregious violations the issue could be sent to the compliance body.

The FCCC Secretariat presented compliance-related issues in the work on Articles 5, 7 and 8. On guidelines for national systems, he said one issue was how registries might be reflected in national systems. On reporting, he highlighted, *inter alia*, the coverage and detail of reporting, and the timing and frequency of submission of supplementary information. On review, he said Parties generally suggested that, inter alia: there should be a pre-commitment review of the assigned amount units (AAUs) and of Articles 5 and 7 to allow the use of mechanisms; there should be guidance to identify questions of implementation; and the results of the two-year technical inventory review trial under the FCCC are directly relevant to the Article 8 guidelines and could lead to enhancements in the future. He added that among the issues to be considered were the overall timing of the review, adjustment and compliance processes. In this regard he cautioned that the different steps between the end of a year for which an inventory needed to be submitted and a COP decision on compliance could require as much as 38 months.

Following concern expressed by the US and the EU on the need for an expeditious procedure on eligibility, the Secretariat said he hoped to gather experience by 2008, solve issues before the beginning of the first commitment period, and find ways to expedite the review process.

The FCCC Secretariat outlined the state of play on negotiations on the mechanisms. She informed participants that a draft text was to be reviewed at the informal consultations on mechanisms to be held in Kuala Lumpur later this month. She indicated the proposals made by Parties on, *inter alia:* eligibility; compliance-related issues; institutional issues related to the CDM; and the executive board. On eligibility to participate in mechanisms, one proposal was that Annex I Parties must be in compliance with Articles 5 and 7 and that both Annex I and non-Annex I Parties comply with FCCC Article 12 (communication of information related to implementation). On compliance-related issues, one proposal was that if a Party is not in compliance with Article 3 (quantified emission limitation and reduction commitments), CERs acquired should be invalidated either in part or in full.

CANADA sought a clarification on the idea of "pre-commitment review of the assigned amount." The Secretariat said that Parties needed to decide whether a preliminary calculation of the assigned amount is required before the commitment period commences. On post-commitment review, the US and the EU expressed concern about the 38-month timeline identified by the Secretariat for review under the Protocol. The Secretariat said that it expected to revise this estimate with increasing experience with the technical review process. He highlighted the need for Parties to cooperate on timelines and the role of money in facilitating and expediting the review process. Co-Chair Harald Dovland suggested that the submission of preliminary data might shorten the review period. Co-Chair Slade stressed the importance of reporting on domestic compliance. The INTERNATIONAL CHAMBER OF COMMERCE asked what the practical impact would be on projects in case unclear questions arise in the review process or if non-compliance is determined to exist. In response, the FCCC said it would depend on the way the CDM is developed by the Parties.

The OECD's presentation highlighted the common issues and inter-linkages between compliance, eligibility and baselines, free riders, monitoring and review, and domestic systems. On emissions trading, she said linkage issues included defining "supplemental" to domestic action, eligibility, liability, accounting for AAUs and inventories. She added that if participants included private/legal entities, national implementation was key and the market was more likely to thrive. She stressed that national implementation systems were needed not only for emissions trading but also to monitor the effects of policies and measures. On the CDM, she said that the oversight bodies such as the executive board and the operational bodies were already built into the Protocol and that their relationship with the review process needed to be clarified. On the review of national communications, she highlighted the new functions introduced by the Protocol: assess demonstrable progress by 2005; assess eligibility; identify potential problems or factors influencing the fulfillment of commitments; and start the facilitation process. She concluded by listing the priorities for COP-6: basics of the compliance system; institutional design and oversight of the CDM; baselines guidance; eligibility rules for the mechanisms; role of adjustments; and stronger and more focused review of Annex I national communications.

ENVIRONMENTAL DEFENSE said both NGOs and the industry agree on the need for an accountability and compliance framework for "making the atmosphere whole" and for competitiveness reasons,

respectively. She highlighted that the failure of a Party to report on emissions should result in the attribution of "uncontrolled" emissions levels and suspension of selling of allowances. In cases where the emissions exceeded the net assigned amount, the Party concerned would be subject to an immediate true up through the purchase of surplus AAUs, ERUs or CERs. In case of failure to do so, the excess emissions would be deducted from the next commitment period with a penalty.

Following a question by BRAZIL on the compatibility of such a deduction with the objective of "making the atmosphere whole," she said this deduction, although necessary, would not be a sufficient incentive for ensuring compliance during the budget period. Other incentives and measures under Article 18 needed to be elaborated. She then suggested that, in the absence of an international enforcement authority, "constituencies for compliance," be created both among nations, and among communities and companies at the domestic level. She concluded by stressing the importance for clear rules on an accountability and compliance framework to be adopted at COP-6 in order to allow investment decisions leading to emissions reductions to take place before 2008.

The CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW outlined the elements of a Compliance Fund. If there are insufficient credits available during the true up following the end of the commitment period, Parties could be faced with breaching their Protocol obligations, even if they have the will to comply. In such cases, Parties could pay a fee into the Compliance Fund and receive credits equivalent to the extent of their overage and thus avoid being out of compliance when the true up ends. Fees collected by the Compliance Fund would be used to underwrite highly reliable "gold standard" GHG mitigation projects throughout the world, such as renewables and demand-side management projects. The fees would be set on the basis of actual estimated mitigation costs, plus a surcharge to account for administrative costs, funding for adaptation and the risk of project failure. He suggested that the CDM administer the Fund. He identified several strengths of the Compliance Fund, including simplicity, reliability and efficiency and one weakness, namely that it requires payment to an international institution, which is politically unpalatable. He said that one way of addressing this question would be to set up a domestic fund, administered by the Party in overage. He pointed out however that significant oversight and verification issues would arise in this case.

The WORLD WILDLIFE FUND elaborated on various measures, remedial and punitive, to address non-compliance. On remedial measures, she highlighted various types of financial penalties, including the dynamic or floating financial penalty based on the costs of developing gold standard mitigation projects and the fixed rate financial penalty based on a per ton rate. On the notion of allowing a Party to cure its overage from one commitment period by reducing its assigned amount from the next, she said: it allows Parties to defer taking action to eliminate the overage; it contains the possibility that Parties will repeatedly roll-over their overage by freely borrowing from commitment period to commitment period thereby destroying the integrity of the commitment period; it may provide an incentive rather than a disincentive for non-compliance if the penalty pay-back rate is set too low; and it provides little assurance to other Parties that the environmental harm and economic benefits of non-compliance will be corrected, thus potentially diminishing the will of those Parties to comply with their own targets. On punitive measures, she highlighted several options including public approbation, suspension of treaty privileges and trade-related measures. She stressed that even in the case of *deminimis* violations the full penalty should apply since the Party could easily cure the overage through the use of mechanisms or the Compliance Fund. Failure to do so demonstrated bad faith and warranted consequences.

The CENTER FOR CLEAN AIR POLICY stressed that GHG accounting was fundamental. He said ERTs should be more than what they had been until now and that the private sector could help in ensuring the quality of data either as a subcontractor of part of the ERTs' work or to pre-certify the quality of the data systems generating activity data. He also said there was a need to establish clear rules on when an inventory could be adjusted and when the methodologies for estimating GHGs presented such major problems that an adjustment was not possible, therefore emissions trading could not take place. On tools to ensure compliance, he suggested preventive as well as deterrent measures. He said preventive measures could include the annual submission by a Party of the listing of AAUs retired to cover its estimate of aggregate equivalent emissions in that year. He added that although sanctions could be of a political and/or economic nature, he favored treaty-related sanctions, such as the requirement to purchase AAUs or the deduction of AAUs from the subsequent period with a penalty, and trade-related sanctions, such as the loss of the rights to sell or buy AAUs during the subsequent period. He also highlighted that the success of other trading systems such as the US SO_2 market had been attributed to the existence of financial penalties.

The INTERNATIONAL CHAMBER OF COMMERCE pointed out that while governments would be bound by the Protocol, companies are bound by national legislation. He said differences in national legislation might have an impact on companies' business strategies. On mechanisms, he said cost-effectiveness was essential and that excessive rules, regulations and costs should be avoided. He referred to possible ceilings on the use of mechanisms and said these would bring uncertainties since they could lead to the non-approval of a long-planned CDM project. On the consequences of non-compliance, he asked how enforcement measures would treat a company in compliance with domestic legislation in a country that was itself not complying with its international obligations. He added he could not accept the retrieval of GHG reductions resulting from mechanisms' transactions in cases where companies had made such transactions in good faith.

The EDISON ELECTRIC INSTITUTE supported the concept of a true-up period at the end of the commitment period and some reasonable form of enforcement consistent with Article 18 (non-compliance) that does not have the effect of driving Parties from the Protocol or FCCC pursuant to Protocol Article 27 (withdrawal). He did not support the requirement of financial penalties for any purpose as this would, in the US case, be paid by US taxpayers. He suggested that as the Protocol was unique with regard to compliance, the focus be on facilitating compliance and learning from experience. He recognized, however, the need for Parties to have some certainty about the binding consequences that would follow from non-compliance findings, and agreed that an indicative list of consequences might be helpful. He said that such consequences could never be automatic in light of Article 18, which specifies that the list of consequences to be developed by the Parties should take into account such factors as the "cause, type, degree and frequency of non-compliance." These factors would necessarily require case-by-case consideration. He also cautioned that suggestions that Parties could lose the right to use the mechanisms because of alleged violations of Articles 5 and 7and the related non-mandatory guidelines could jeopardize their economic value for Parties and the private sector. He reminded Parties that the Article 3 commitment is for a budget period of five years. Consequently annual compliance ideas are adverse to this provision.

DISCUSSION: AUSTRIA suggested that the Compliance Workshop identify common ground on the linkages between the compliance system and Articles 5, 7 and 8 and present it to the workshop on Articles 5, 7 and 8. He expressed the hope that they could find ways to reduce the timeline of the overall review and compliance process. He also suggested the need for the compliance workshop to identify mandatory requirements under Articles 5, 7 and 8 and convey them to the methodological experts dealing with these Articles. The UK and AUSTRALIA said that the identification of mandatory requirements under Articles 5, 7 and 8 should be left to the groups dealing with the mechanisms and Articles 5, 7 and 8. AOSIS suggested that a distinction be made between mandatory elements of a technical nature and other mandatory requirements such as reporting on domestic compliance. He recommended that the former be determined by the Articles 5, 7 and 8 group and the latter by the compliance group. The CENTER FOR CLEAN AIR POLICY suggested that the JWG agree on basic threshold levels in determining what would constitute an egregious breach and provide some guidance to the ERTs to allow them to decide when a matter is beyond adjustment and a Party should enter into trading restrictions. The US said Article 7 needed to be elaborated in a legally binding way.

ENVIRONMENTAL DEFENSE highlighted the need for the forthcoming Articles 5, 7 and 8 workshop to consider where the burden of proof lies. For instance, the system could assume that a Party's inventory is valid unless a question is raised or vice versa. Supported by NEW ZEALAND, she suggested discussion on the issue of linkage between Articles 5, 7 and 8 and Article 4 (joint fulfillment of commitments). On the issue of burden of proof for complying with the eligibility criteria, SAUDI ARABIA said the good faith principle required that a Party be considered "innocent" until proven "guilty." SAMOA suggested referring to "eligibility" and "ineligibility," and said a Party had to demonstrate its eligibility before it could participate in the mechanisms. NEW ZEALAND, with AUSTRALIA, CANADA, the US and JAPAN, stressed that Parties had a right to use the mechanisms until a breach had been identified through the review process. He said that the principle according to which States are expected to act in good faith should not be challenged. The CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW said Article 17 did not establish a right to participate in emissions trading. The UK explained that the burden of proof regarding eligibility was on the shoulders of the Party submitting its inventory, yet in the case of a Party challenging another Party, it was up to the challenger to prove its case. The EU suggested that Parties have the possibility to submit themselves to a voluntary assessment of their eligibility. Co-Chair Dovland promised to submit a report to the Articles 5, 7 and 8 group and convey the message that the compliance group was concerned with reducing the timeline of the review process, without losing quality.

FUNCTIONS AND INSTITUTIONAL DESIGN OF A COMPLIANCE SYSTEM

Co-Chair Slade, referring to the Co-Chairs' working paper, highlighted the four functions of a compliance system: screening, facilitation, enforcement and assessment of eligibility. On the institutional design of the compliance system, he said there was general agreement that there would be a standing compliance body or bodies, with a distinct treatment for the mechanisms and a possible special treatment for compliance with Article 3.1 (quantified emission limitation and reduction commitments). One option was to have a single compliance body with a sub-structure of a body dealing with mechanisms in an expeditious way and a body dealing with compliance with Article 3.1. Another option was to have a single body with two branches, a facilitative one and a quasi-judicial or enforcement one dealing with the mechanisms, as well as compliance with Article 3.1. He invited participants to comment on: whether there was a need to go through a facilitative process or if there would be two separate facilitative and enforcement branches; in the case of two separate branches, what their specific mandates would be; and what the structure of the compliance body/ies would be.

CANADA questioned the Co-Chair's assumption that there was a general agreement on the need for a distinct institutional treatment for mechanisms. The EU, with the US, said that not all issues would need to go through a facilitative process. Some issues, such as eligibility, would go directly to the enforcement branch and be submitted to an expedited procedure. For other issues, he supported a staged approach.

SAUDI ARABIA said the COP/MOP should have a screening function and determine whether an issue would go to a facilitative compliance body, the SBI or SBSTA. An *ad hoc* committee could handle enforcement at a later stage. NEW ZEALAND suggested a three-tier approach: a technical review team, a single compliance body and a further review body. He asked the EU who would decide which branch an issue should go to. The EU said the issues going directly to the enforcement branch would be pre-identified. Such issues would include eligibility and situations in which inventories presented such major problems that an adjustment was not possible. In other cases, for example when an adjustment was possible, there would be a staged approach: the facilitative branch would be used and could lead ultimately to an enforcement process in case of failure by a Party to accept the adjustment proposed through the facilitative process. NEW ZEALAND said it should be up to the compliance body to determine cases where there should be facilitation or enforcement. JAPAN also questioned the EU distinction between a facilitative and an enforcement process and said assistance would always be helpful as a first step.

On terminology, SOUTH AFRICA suggested that there be a "compliance system" with different bodies depending on their facilitative and enforcement role. She said she was not sure what a facilitative role for Annex I Parties would mean in practice. She added it would be unfair to treat all mechanisms in the same way. With the UNITED ARAB EMIRATES, she said that in the case of the CDM, non-Annex I Parties should not be affected by the fact that an Annex I Party is not eligible. She explained that the executive board was responsible for determining if participation in the CDM is possible and that if a participating Party breached its obligations, the executive board might have a role in referring the issue to a compliance system. AUSTRALIA said Article 3.1 and the use of mechanisms, should be at the core of the compliance system and dealt with by the same body. She added that every compliance issue should go through a facilitative process. She said the possibility of a review/appeal body should be kept in mind.

On the composition of the compliance body, BRAZIL stressed the need to involve the entire international community. On the question of the number of bodies, the US said that two components would make the split in functions clearer. He suggested that the two components have distinct functions, approaches and compositions. He said one of the components would have be quasi-judicial and composed of persons capable of hearing evidence and making appropriate decisions. He said that criteria would be set in advance to determine which component a particular case would go to. CHINA asked what would happen to a case that had been referred to the facilitation component but despite exhausting all the assistance that component could offer, the Party was still in non-compliance. In response, the US said that if facilitation runs its course and yet there is a substantial problem, the case should go to the enforcement/judicial component. SAUDI ARABIA suggested that the function of deciding which referrals to pursue be done by a body other than the compliance body. SAMOA

cautioned against making sharp distinctions between enforcement and facilitation. He said the entire process should be one of constructive engagement and a mix of expertise should be brought to bear on it.

REFERRAL AND SCREENING

On how the compliance system would be initiated, Co-Chair Slade pointed out that the questions involved were ones of referral and screening. Referral could be by: ERTs under Article 8 (review of information); a Party or a group of Parties with respect to itself or themselves; a Party or a group of Parties with respect to another Party or group of Parties (under certain circumstances); the COP/MOP; and the FCCC Secretariat. On screening, the issues would relate to who would screen and on what basis. He asked participants to focus on the criteria for screening and the role of the COP/MOP in the screening function.

The US suggested the need to discuss the term "under certain circumstances." JAPAN, with the US and SAMOA, questioned the need to specifically provide the COP/MOP with a referral function since referral could be by "a Party or group of Parties" She also questioned the need to involve the Secretariat in the referral process. CHINA, with the UNITED ARAB EMIRATES and NEW ZEALAND, said Parties should be the main initiators. With BRAZIL and the US, she questioned the role of the ERTs in the process of referral since they were concerned only with technical information. She argued that providing the ERTs, and the Secretariat, with the function of referral would undermine their objectivity. Co-Chair Slade clarified that a distinction existed between the report of the ERTs and the ERTs themselves. The UNITED ARAB EMIRATES said that the role of the ERT should end once it submits its report to the Secretariat and that the COP/MOP should merely have an appellate role. SAMOA stressed the need to preserve the non-confrontational aspect of the compliance process. He said that process should not move forward merely because one Party brings a case against another. He did not favor a role for the Secretariat, as its objectivity would be undermined. SAMOA said there were several difficulties with the two-body approach, since, for instance an allegation of a potential non-compliance could go both to the enforcement and facilitative body.

SOUTH AFRICA sought clarification on what screening was. In response, the US defined screening as the process that would knock out *deminimis* cases and determine whether a matter deserves to go forward. SAMOA highlighted the need to agree on criteria to determine and knock out *deminimis* cases. The US said that the COP/MOP need have no role in the screening process. SAUDI ARABIA suggested that the referral be by the ERTs after a subcommittee of the COP/MOP has screened the case and decides whether it would go to the compliance body, SBI or SBSTA. He said he did not see a need for referrals by a Party or group of Parties with respect to another Party or group of Parties, but if it was to be accepted, criteria for screening should be agreed upon.

BRAZIL said the COP/MOP had a role in referral although its size and the frequency of its meetings might jeopardize the efficiency of the compliance system. He suggested instead that a COP/MOP committee composed of Party representatives screen issues before a compliance procedure could be initiated. He opposed a referral function for the Secretariat but said it had a role to play in supporting the compliance system. The EU said the Secretariat could both constitute a source of information, since it received the ERTs' reports, and refer cases to the compliance body as a consequence of its initial check of Parties' reports in the review process. ARGENTINA said non-Annex I Parties should be able to refer a case of non-compliance with Article 3.1 (quantified emission limitation and reduction commitments). AUSTRALIA said ERTs had a technical assessment function and, accordingly, an essential referral function. She opposed a possible screening role by the COP/MOP and said it was difficult to distinguish between a COP/MOP committee, as suggested by BRAZIL and SAUDI ARABIA, and a COP/MOP-established compliance body. NEW ZEALAND opposed a possible screening by the COP/MOP or a COP/MOP subsidiary body since the compliance process was to be independent and of a quasi-judicial nature. Co-Chair Dovland explained that the ERTs' reports would automatically be referred to a screening body. This body would apply agreed criteria to determine whether the issue would go to a facilitative or an enforcement process. This way, ERTs would keep their technical function.

PROCEDURE OF TREATMENT OF CASES

Co-Chair Slade proposed a staged approach unless the issue related to the mechanisms during the commitment period or to Article 3.1 at the end of the commitment period. AUSTRALIA said a staged approach should apply to every issue and that there could be a three-month time limit for the facilitation process relating to eligibility in order to ensure timeliness. The US said the staged approach would not be applicable in all cases since the screening process may directly lead to an enforcement process. Supported by the UK, he added that only eligibility issues would go to an enforcement process, not any issue related to the mechanisms.The WORLD WILDLIFE FUND explained that other issues relating to the mechanisms were a liability system, the existence of a ceiling as well as a post-verification approach. The UK said there could be a close liaison between the two EU-proposed branches of the compliance body, including the possibility of referral from one branch to the other, and that any conclusions resulting from a compliance procedure would be in the name of the compliance body. NEW ZEALAND said the absence of a formal separation between the two branches questioned the very existence of a separation between a facilitation and an enforcement process.

PROCEDURE FOR THE KYOTO MECHANISMS

On the procedure for the Kyoto Mechanisms, Co-Chair Dovland identified the main questions: what would be the main elements of an expedited procedure for the mechanisms; should this procedure also consider whether non-compliance problems are corrected and the Party in question can return to use the mechanisms; should a Party be given a chance to appeal the conclusion of the expedited body and, if so, who to; and what are the timelines for each stage of the procedure and for the procedure as a whole.

SAMOA asked that participants also consider the status of Parties in the period between the raising of a question of compliance and its resolution. The US said that there should be no change in status until there is a determination by a competent body that non-compliance exists. The UNITED ARAB EMIRATES added that the presumption of good faith and innocence would require that no action be taken until there is a determination of non-compliance. In response to this position, SAMOA suggested that Parties should then consider retroactive liability rules for trades that have already occurred. Following a question by the UNITED ARAB EMIRATES, SAMOA clarified that the rule that would be applied, namely the eligibility rule, would already be in place so it would not actually be a case of retroactive application of law. JAPAN highlighted the difference between cases under Article 6.4 (question of implementation raised in the case of JI) and other cases, and added that in the case of retroactive penalties, the concern voiced by SOUTH AFRICA about the effect on innocent Parties would be relevant.

Co-Chair Dovland asked Parties to consider whether in the case of an expedited procedure there should be an appeal. JAPAN and SAMOA referred to their respective proposals for a compliance system and said that such an appeal would be available. NEW ZEALAND also favored an appeal from the expedited procedure.

PROCEDURES OF THE COMPLIANCE BODY/IES

Co-Chair Dovland presented the different elements of the procedures of the compliance body/ies: decision making, due process, procedures for appeal, sources of information, frequency of meetings, report on activities to each session of the COP/MOP, and rules of procedure. NEW ZEALAND said the appeal process should be a self-contained system divorced from political considerations and established through Article 19 (dispute settlement). The US, with JAPAN, stressed the importance of due process in the enforcement procedure. He said due process included: the right of the Party concerned to rebut evidence submitted against it; two rounds of written submissions; and a public hearing of some sort. He identified a need for an initial screening stage during which the compliance body could narrow down the issues submitted. With AUSTRALIA, he added there should be a wide variety of sources of information that the compliance body could use, as appropriate. The EU said the rules of procedure would determine which sources of information were available to the compliance body. AUSTRALIA, supported by BRAZIL and the UK, said the appeal procedure should be part of the compliance system and that Article 19 only applied to bilateral disputes. On the relationship of the compliance system with the COP/MOP, she suggested that the outcome of the compliance body and the appeal be submitted to the COP/MOP that would note it by applying the negative consensus rule. On appeal, JAPAN said the Party concerned could ask the COP/MOP to take a decision on the need to re-examine the outcome of the compliance body. The issue would then go back to the compliance body for reexamination. Following a question by CANADA, she said the COP/MOP itself could decide that a case needed to be reexamined. SAMOA said that due process must be balanced with the interest of the community to have issues settled. He added that an appeal would only be possible at the end of the commitment period. Moreover, since one of the purposes of an appeal process was to examine whether the compliance body had applied the law correctly, the appeal body needed to be a separate body from the compliance body. The UK expressed concern over the possibility that a Party could take advantage of an internal appeal process to expand the compliance process. NEW ZEALAND responded that the Article 19 right of appeal could not be limited.

ROLE OF THE COP/MOP

On the question of how the COP/MOP would treat the report/conclusions of the compliance body, Co-Chair Dovland presented various options. It could, *inter alia*: provide general policy guidance to the compliance body/ies; receive reports from the compliance body/ies; consider the conclusions of the compliance body/ies; request the compliance body/ies to reexamine a matter; and/or accept the report of the compliance body/ies unless the COP/MOP decides by consensus not to adopt the report. JAPAN drew attention to the fact that although the COP/MOP plays a role as a general assembly and has a legitimizing function with respect to final decisions of the compliance body, due to the nature of COP/MOP it is practically difficult for it to consider all the relevant issues. NEW ZEALAND opposed a "hands on" role for the COP/MOP and, with the EU, suggested that the COP/MOP merely provide policy "background" to the compliance bodies. CANADA opposed the suggestion that the COP/MOP be entitled to ask the compliance body to re-examine a matter. On the COP/MOP's decision to accept the report of the compliance body, he suggested that, for it to be as non-political as possible, a simple majority be applied. On the decision of the COP/MOP to reject a report of the compliance body, he supported a double-majority rule of both Annex I and non-Annex I Parties. The CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW suggested the application of a negative super majority instead of a negative consensus rule.

SAUDI ARABIA drew attention to Article 8. 5 (COP/MOP to consider information and questions of implementation with the assistance of the subsidiary bodies). He suggested that issues of implementation that could be faced by several Parties be dealt with by the SBI and methodological issues that could be faced by several Parties be dealt with by the SBSTA.

POSSIBLE OUTCOMES OR CONSEQUENCES

Co-Chair Dovland proposed three categories of possible outcomes or consequences. The facilitative-oriented outcome would include advice, assistance, publication of non-compliance or possible non-compliance, issuing of cautions, and recommendation of policies and measures. The outcomes or consequences related to the mechanisms could include the suspension of the right to use mechanisms. Finally, the outcomes or consequences related to Article 3.1 could include a financial penalty or the subtraction from a subsequent commitment period with a penalty rate. He added that Parties had also raised the possibility of a menu approach as well as a possible combination of outcomes or consequences.

JAPAN, the US and others questioned the proposed three categories of outcomes or consequences. JAPAN said facilitative consequences would also apply to compliance issues related to the mechanisms and that there should be a staged approach in the case of non-compliance with Article 3.1. First, there would be publication of non-compliance, then issuing of cautions and finally recommendations of policies and measures. The US said a distinction between the outcomes or consequences should be based on their mandatory or non-mandatory nature.

AUSTRALIA favored a menu approach whereby a Party not complying with Article 3.1 could choose from a predetermined set of roughly equivalent consequences. SAMOA asked whether the "equivalence" of possible consequences a Party could choose from would be in terms of their impact on the environment. SAUDI ARABIA expressed concern over the possibility of a small body such as the compliance body recommending policies and measures, and said the impact of such policies and measures on non-Annex I countries should be taken into account. JAPAN said the policies and measures that could be recommended by the compliance body would depend on the future work of the SBI and SBSTA on policies and measures, in particular in relation to best practices.

The UK said an exhaustive list of facilitative outcomes or consequences would not be desirable since it would limit the ability of the compliance body to adopt a tailored approach. He added that a "compliance action plan" could be a useful tough-soft consequence whereby a non-complying Party would voluntarily submit steps on how it intends to comply. That Party would then be under greater pressure to comply. The EU said that such a "compliance action plan" would be one way to overcome his reservations about subtraction from future commitment periods. SAMOA said that since Article 7 (communication of information) already requested Parties to communicate what they intended to do in order to comply with its commitments, a "compliance action plan" should go further.

SOUTH AFRICA, opposed by SAUDI ARABIA, identified a need for automatic sanctions. CANADA made a distinction between automaticity and predetermination of consequences. He added that automaticity meant that the cause, type, degree and frequency of non-compliance could not be taken into account, as required by Article 18 (non-compliance). The US said automaticity of sanctions meant that the consequence of a particular case of non-compliance would be predetermined and applied automatically. ENVIRONMENTAL DEFENSE added that automaticity would ensure predictability and consistency of consequences. NEW ZEALAND supported automaticity since it would ensure predictability for the effective functioning

of the market. He objected to financial penalties and to punitive consequences in general. Supported by AUSTRALIA, he opposed the loss of access to mechanisms as a result of a failure to meet the obligations under Article 3.1. He said that such failure should only result in the loss of ability to sell, not buy, AAUs. He said that the proposal entailing loss of ability to transfer AAUs until a Party had demonstrated that "it will have a surplus" was unclear. AOSIS and the EU supported the retention of both proposed consequences limiting the access to mechanisms.

The US said that in cases where Parties had agreed to fulfill their commitments under Article 3 jointly and that there was a case of non-compliance with Articles 5 (methodological issues) and 7, the result set forth in Article 4.5 (individual responsibility to meet levels of emissions in the agreement) should apply. The CENTER FOR CLEAN AIR POLICY suggested that other consequences of non-compliance could include imposition of a compliance reserve as well as buyer liability. INDIA cautioned against the use of terms that are not contained in the Protocol, such as "AAUs," and said the JWG should not prejudge the outcome of the work undertaken by the contact group on mechanisms.

GENERAL PROVISIONS (OBJECTIVE, NATURE AND PRINCIPLES)

Co-Chair Dovland drew attention to the objectives, outlined in the Co-Chairs' working paper, which include:

- to foster and promote compliance with commitments under the Protocol;
- to provide advice and facilitate assistance in overcoming difficulties;
- to prevent non-compliance with commitments under the Protocol; and
- to address cases of non-compliance.

SAUDI ARABIA suggested that the compliance system be concerned with ensuring compliance rather than preventing non-compliance. With the UK, NEW ZEALAND and SOUTH AFRICA, he suggested changing the language on the last proposed objective to read: "to determine" and address non-compliance. He stressed the need for principles to stand alone rather than be lumped together under general provisions. The UK, with NEW ZEALAND, suggested that since a procedure could not guarantee compliance, the objective "to prevent non-compliance with commitments under the Protocol" be deleted. He suggested that the objective "to provide advice and facilitate assistance in overcoming difficulties" should be elaborated to specify the difficulties. With SAMOA, he commented that there was overlap between the objectives and functions sections and these two would have to be fully consistent with each other.

SOUTH AFRICA suggested that the compliance system specifically take on board the precautionary approach. The UK proposed that, since the precautionary approach is a means to an end rather than an end in itself, it should be part of the principles rather than the objectives section. SOUTH AFRICA expressed concern that since some Parties did not wish to include a principles section, placing the precautionary approach there might result in its eventual exclusion. JAPAN questioned the utility of including the precautionary principle since it is a general principle that does not direct concrete action in non-compliance cases. AUSTRALIA asked how the precautionary principle could assist Parties in achieving compliance. SAMOA explained that the process of inventories adjustment illustrated a precautionary approach to compliance. With SOUTH AFRICA and the UNITED ARAB EMIRATES, he stressed the need to include the objective of "making the climate whole." INDIA, with CHINA, stressed the importance of including the notion of common but differentiated responsibilities in the principles section. CANADA, with AUSTRALIA and the US, opposed the express inclusion of principles in the elements of a compliance framework as he said, the compliance process should ensure the implementation of the Protocol provisions rather than add new rules and principles. The US, the EU and AUSTRALIA added that the Protocol principles should be reflected in the design of the compliance system itself.

SCOPE OF APPLICATION

On the scope of application of the compliance system, the Co-Chairs' working paper reads: "apply to all commitments in or under the Protocol; distinct treatment may be applied to some specific commitments." The UNITED ARAB EMIRATES sought clarification on the purpose of using the term, "in or under the Protocol." Co-Chair Dovland responded that the term referred to the relevant rules and guidelines adopted by the COP/MOP. The UNITED ARAB EMIRATES said that these would be part of the Protocol. Co-Chair Dovland responded that the issue was disputed. SAUDI ARABIA said that all the obligations under the Protocol, not just commitments under Article 3.1, should be covered. He added that a distinction should be made between the rules and guidelines adopted by the COP/MOP and the provisions of the Protocol itself. He highlighted the fact that some Parties' commitments are contingent on other Parties' fulfillment of their commitments. He suggested that the scope of application of the compliance system reflect that non-Annex I countries are not subject to "enforcement." AUSTRALIA stressed that Article 3.1 targets should constitute the core of the compliance system.

CLOSING SESSION

In the closing session, Co-Chair Slade introduced the proposed main subject headings of a paper that the Co-Chairs will prepare on the elements of a compliance system under the Protocol. He went through the different headings, highlighting the outcome of the workshop discussions.

On general provisions, he said the objective of determining non-compliance as well as the precautionary-approach nature of the compliance system would be mentioned. He added that "principles" would form a stand-alone provision. He highlighted the possibility of having a general reference to the principles contained in the FCCC. On the scope of application, he said more work was needed. On the establishment of the Compliance Institution, he said it was up to the Parties to decide whether there would be a single institution with an expedited procedure for eligibility issues or with two branches. On the functions of the Compliance Institution he noted a consensus on the four functions outlined in the Co-Chairs' working paper and said that the reference to eligibility requirements regarding mechanisms needed to be made more precise. He said the structure of the Compliance Institution needed to be further discussed.

On referral, he took note of the possible role of the COP/MOP. He said discussions on screening had highlighted a possible role for the Compliance Institution, the COP/MOP or a special committee of the COP/MOP. On the procedure for treatment of cases, he said concerns had been expressed over the flow of cases and that discussions had referred to a staged approach and the identification of criteria for assignment to a facilitative or an enforcement process. On procedures for the Kyoto mechanisms, he highlighted views expressed over the process and procedure for appeal, including whether there would a new body or the COP/MOP would be used. He noted general agreement on the need for a true-up period and that a reference to a voluntary fund would be made. On the outcomes or consequences of non-compliance or potential non-compliance, he said the proposed consequence that would entail loss of ability to transfer AAUs until a Party has demonstrated that it will have a surplus would be elaborated. On the COP/MOP, he said it would preserve its policy role. He added the Secretariat would essentially channel information and service meetings of the Compliance Institution. He said the headings on the rela-

tionship with Articles 16 (MCP) and 19 (dispute settlement) would be maintained and that the linkages with the work undertaken in other contact groups needed to be kept in mind.

SAUDI ARABIA said there was no consensus on the fact that mechanisms were an issue to be dealt with at this stage. On the outcomes of non-compliance, he suggested that a reference to Article 18 (non-compliance) be included in a footnote. He added that the policy guidance role of the COP/MOP needed to be highlighted and that the role of the subsidiary bodies had to be clarified. INDIA said that Parties should adhere to the language in the Protocol and keep in mind work undertaken in other contact groups. NEW ZEALAND stressed the importance of including the concept of appeal. He requested that the discussion over the loss of ability to transfer AAUs until a Party has demonstrated that it will have a surplus should be reflected, in particular on whether having a surplus meant being in compliance. The US requested that the distinctive nature of the facilitative and enforcement components be clearly reflected. SAMOA suggested incorporating a reference to environmental integrity in the general provisions and, with regard to the NEW ZEALAND proposal, said the post-verification approach, listed as a potential consequence of non-compliance, needed to remain intact and not be mixed with borrowing. The EU sought a reference to variations of a compliance fund both under the true-up period and the outcomes.

On future work, Co-Chair Slade said the Co-Chairs would prepare by April a paper based on the proposed headings, the discussions during the workshop as well as their working paper resulting from the Montreux consultations. He explained that the compliance group would intensify its work during the week preceding SB-12, including through a session on crosscutting issues. He added that the Co-Chairs would endeavor to prepare by June a developed text that could form the basis for negotiations during SB-12. SAUDI ARABIA requested clarification over the relationship between the work undertaken on the different elements of the BAPA. Co-Chair Dovland said that although it was difficult to guarantee an equal development within the different groups, it seemed that the processes were making similar progress. FCCC Executive Secretary Michael Zammit-Cutajar welcomed the fact that the group was addressing inter-linkages between issues and took note of the concerns over a balanced implementation of the BAPA. He said the COP Bureau was discussing ways of ensuring forward movement on all fronts. Co-Chair Slade brought the meeting to a close at 12:00 noon on Friday, 3 March.

THINGS TO LOOK FOR BEFORE COP-6

FCCC WORKSHOPS: A workshop on "Initial actions relating to the adverse effects of climate change, in accordance with Articles 4.8 and 4.9 of the Convention" will be held from 9-11 March 2000 in Bonn. A workshop on "Methodological approaches and actions necessary under the FCCC and relating to the impact of the implementation of response measures in accordance with Article 4.8 and 4.9 of the Convention and in the light of matters related to Article 3.14 of the Kyoto Protocol" will be held from 13-15 March 2000 in Bonn. A workshop on "Issues related to Articles 5, 7 & 8 of the Kyoto Protocol" will be held from 14-16 March 2000 in Bonn. A workshop on "Technology transfer for the Latin America & the Caribbean region" will be held from 29-31 March 2000 in El Salvador. A workshop on "Best practices in policies and measures" will be held from 11-13 April 2000 in Copenhagen. A workshop on "Non-Annex I communications for Latin America & the Caribbean region" will be held from 1-5 May 2000 in Mexico City. For more information, contact: the FCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.de; Internet: http://www.unfccc.de/sessions/workhops.html

SEATTLE SUMMIT ON PROTECTING THE WORLD'S CLIMATE: This meeting will be held from 3-5 April 2000 in Seattle, USA. The summit is being organized by the Climate Institute in partnership with Climate Solutions. It aims to bring together key individuals, including leaders in the information and telecommunications revolutions of the last two decades. For more information, contact: the Climate Institute; tel: +1-202-547-0104; fax: +1-202-547-0111; Internet: http://www.climate.org/seattlesummit

PACIFIC ISLANDS CONFERENCE ON CLIMATE CHANGE, CLIMATE VARIABILITY AND SEA LEVEL CHANGE: This meeting will be held from 3-7 April 2000 in Rarotonga, Cook Islands. The meeting is being organized by the South Pacific Regional Environment Programme (SPREP), in partnership with the National Tidal Facility, UNDP and GEF through the Pacific Islands Climate Change Assistance Programme. For more information, contact: SPREP; fax: +685-202-31; e-mail: kaluwin@sprep.org.ws; Internet: http://www.sprep.org.ws

CLIMATE POLICY WORKSHOP: FROM KYOTO TO THE HAGUE - EUROPEAN PERSPECTIVES ON MAKING THE KYOTO PROTOCOL WORK: This workshop will take place from 18-19 April 2000 in Amsterdam, and is being organized by the European Forum on Integrated Environmental Assessment. The workshop will review scientific information relevant for the EU and its member States in preparing for FCCC COP-6 and will aim to enhance the policy relevance of climate-related research in Europe. For more information, contact: Albert Faber, RIVM; tel:+31-30-274-3683/3728; fax: +31-30-274-4435; e-mail: albert.faber@rivm.nl; Internet: http://www.vu.nl/english/o_o/instituten/IVM/research/efiea/announce.htm

CONFERENCE ON INNOVATIVE POLICY SOLUTIONS TO GLOBAL CLIMATE CHANGE: This Conference will be held from 25-26 April 2000 in Washington DC. It is being co-hosted by the Pew Center on Global Climate Change and the Royal Institute of International Affairs. The meeting will consider innovative policies currently being implemented by industrialized country governments and the private sector to address climate change. For more information, contact Michelle Pilliod; tel: +1-202-544-7900; fax: +1-202-544-7922; e-mail: pilliodmp@aol.com; Internet: http://www.pewclimate.org/forms/innov_conf.html

11TH GLOBAL WARMING INTERNATIONAL CONFERENCE AND EXPO: This meeting, entitled "Kyoto Compliance Review - Year 2000 Conference," will be held from 25-28 April 2000 in Boston. It is being sponsored by the Global Warming International Program Committee and the Global Warming International Center. For more information, contact: Sinyan Shen; tel: +1-630-910-1551; fax: +1-630-910-1561; e-mail: syshen@megsinet.net; Internet: http://globalwarming.net/gw11.html

12TH SESSION OF THE FCCC SUBSIDIARY BODIES: SB-12 will be held from 12-16 June 2000 in Bonn. It will be preceded by one week of informal meetings, including workshops. For more information, contact: the FCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.de; Internet: http://www.unfccc.de/sessions/sessions.html

FCCC 13TH SESSION OF THE SUBSIDIARY BODIES: SB-13 will be held from 11-15 September 2000 in Bonn. It will be preceded by one week of informal meetings, including workshops. For more information, contact: the FCCC Secretariat.

FCCC SIXTH CONFERENCE OF THE PARTIES: COP-6 will be held from 13-24 November 2000 in The Hague, the Netherlands. For more information, contact: the FCCC Secretariat.