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DEPARTMENT OF STATE

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United States Department of State

*Assistant Secretary of State for Oceans and
International Environmental and Scientific Affairs*

Washington, D.C. 20520

October 24, 1989

MEMORANDUM

TO: Dr. D. Allan Bromley, Assistant to the President
Chairman, Working Group on Global Change

FROM: OES - Frederick M. Bernthal *FB*

SUBJECT: Legal Issues Relevant to Climate Change Convention

The Response Strategies Working Group (RSWG) of the Intergovernmental Panel on Climate Change (IPCC) has a mandate to "examine existing legal and institutional mechanisms to determine how they might be used to implement options to limit or adapt to climate change" and to "consider new legal and institutional mechanisms that could be used to implement options to limit or adapt to climate change".

Although the U.S. was initially non-committal about whether the RSWG's consideration of new legal mechanisms should include discussion of a framework climate convention, President Bush announced last May that the U.S. would host a RSWG workshop in the fall to consider various mechanisms (e.g., economic, financial, legal) that might be used to implement responses to potential climate change and that this would include consideration of elements of a framework climate convention. He also indicated his expectation that the IPCC process would lead to formal negotiation of such a convention.

To prepare for this October workshop, all IPCC member states were asked to contribute their views to designated international topic coordinators. The attached paper was the U.S. contribution to the legal mechanisms discussion, and was cleared by all interested USG agencies at the policy level.

As you will see from section IV, the U.S. expressed the view that a framework climate convention should generally follow the model of the 1985 Vienna Convention for the Protection of the Ozone Layer. The Vienna Convention is a barebones agreement that contains general principles of

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cooperation and certain research and monitoring obligations, but no targets or timetables. Specific obligations are contained in subsequent protocols (to date, the Montreal Protocol); there is no obligation placed upon a party to the framework convention to join any protocol.

It should be noted that the RSWG workshop, which was held on October 2-6 in Geneva, revealed very broad consensus that:

"[A] framework convention on climate change ... should generally follow the format of the Vienna Convention for the Protection of the Ozone Layer, ... would lay down, at a minimum, general principles and obligations, and provide for a continuing assessment of the scientific aspects of climate change and its impacts, and for response strategies ... [and] should contain provision for separate annexes and protocols to be negotiated to deal with specific obligations, e.g., research and systematic observations, different greenhouse gases."

However, several industrialized countries (Netherlands, FRG, Norway, New Zealand) indicated a desire to go beyond the "minimum", and key developing countries (Brazil, China, India, Mexico) made it clear that their price for any such convention "with teeth" would be high.

I would appreciate your views on how State/Justice might now expand on this work, pursuant to the directive of the first meeting of the Working Group on Climate Change.

Attachment: As stated

cc: C. Boyden Gray, Counsel to the President

bcc: C - Mr. Zoellick

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International Agreements Potentially Relevant to
Climate Change

Climate

World Meteorological Organization, Convention, Oct. 11, 1947

Provides framework for cooperation on research and weather observation. Could assist in monitoring climate change. Open to U.N. members.

Various Bilaterals -- e.g., U.S.-U.S.S.R. Agreement on Cooperation in the Field of Environmental Protection, May 23, 1972

Specifies "influence of environmental changes on climate" as one of the areas for cooperation in solving problems. Contemplates exchange of experts, information and joint development of scientific programs.

Energy

International Energy Agency -- Agreement on an International Energy Program, Feb. 5, 1975

Provides framework to promote energy diversification, energy efficiency and conservation, and alternative energy sources. The IEA promotes R&D by sponsoring state-of-the-art reviews of promising energy technologies and by promoting collaborative projects between two or more member countries. The IEA has established an energy technology data exchange and a number of information centers dealing with specialized technology areas, including coal technology, heat pumps, air infiltration, biomass, and end-use technologies. Numerous implementing agreements cover wind, wave, biomass, solar, hydrogen, coal, and other energy sources, as well as conservation in specific industries. Twenty-one OECD countries are members; method for participation by other states not specified.

Solar Heating and Cooling Systems in Buildings -- Memorandum of Understanding, Oct. 4, 1974

Provides for research and information exchange to develop practical applications of solar power, a potential source of nonpolluting energy. Membership consists of mostly western countries.

International Atomic Energy Agency -- U.N. Statute, Oct. 26, 1956

Agency under the aegis of the U.N. to develop peaceful applications of atomic energy and to establish safeguards. Atomic energy does not produce greenhouse gases. Open to U.N. members and to states which are not U.N. members upon approval of IAEA General Conference.

Various Bilateral Energy Agreements

For example, the agreement between U.S. Department of Energy and its PRC counterpart has as its purpose "to explore the relationship of climate changes and atmospheric levels of CO₂".

Bilateral Atomic Energy Agreements -- e.g., U.S.-U.S.S.R. Agreement on Peaceful Uses of Atomic Energy, June 21, 1973

Agreement to develop energy sources from thermonuclear fusion and fast breeder reactors and to establish scientific workgroups and exchanges.

Pollution Control

Convention on Long-Range Transboundary Air Pollution (LRTAP Convention), Nov. 13, 1979

Establishes research and monitoring programs. Broad definition of "air pollution" could include greenhouse gases. Open to members of the U.N. Economic Commission for Europe.

Protocol to LRTAP Convention on Long-Term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP), September 28, 1984. Open to members of the U.N. Economic Commission for Europe.

Protocol to LRTAP Convention Concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes ("Sofia Protocol"), Oct. 31, 1988

Freezes emissions/transboundary fluxes of, and requires parties to utilize best available technologies economically feasible to reducing emissions of nitrogen oxides, which are greenhouse gases. Also requires parties to facilitate exchange of technology to reduce emissions of nitrogen oxides. Open to members of the ECE Economic Commission for Europe.

U.N. Convention on the Law of the Sea, Dec. 10, 1982. (not in force, but largely reflects customary international law)

Agreement to control pollution of the marine environment, includes measures to minimize "release of ... harmful or noxious substances through the atmosphere." (Art. 194) Potentially applicable to the extent that greenhouse gases and climate change are "harmful" to oceans.

Vienna Convention on the Protection of the Ozone Layer, March 22, 1985, and Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987

The chemicals (e.g., chlorofluorocarbons) that are regulated to protect the ozone layer are also greenhouse gases. Montreal Protocol, which provides for 50% reduction in production and consumption by 1999, is under review to accelerate reductions. Open to all states.

Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden, Feb. 19, 1974

Agreement is intended to protect and improve the environment through cooperation to ensure that activities under the jurisdiction of one State do not cause damage to the environment of other States.

Various Bilaterals -- e.g., United States-Mexico, Feb. 16, 1984

U.S.-Mexico agreement provides framework for Annexes on specific pollution reductions.

Natural Resources

Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, Oct. 12, 1940

Could be made applicable to protecting forests. Open to "American Governments".

Treaty for Amazonian Cooperation, July 3, 1978

Applies to Amazonian Basin and any other "closely connected" territory. Declares that right to use natural resources is inherent in each state's sovereignty. Promotes development consistent with "preservation of the environment". Parties are Bolivia, Brazil, Columbia, Ecuador, Guyana, Peru, Suriname and Venezuela.

Southeast Asia Agreement on the Conservation of Nature and Natural Resources, 1985

Adopts goals of sustainable development and maintaining ecological processes. Parties undertake, e.g., to manage forest resources and to control air pollution.

South Pacific Convention for Protection of the Natural Resources and Environment, Nov. 25, 1986

Contains agreement to reduce and control pollution from discharges into the atmosphere. Potentially applicable to measures to prevent climate change which harms oceans.

Africa Convention on Conservation of Nature and Natural Resources, Sept. 15, 1968

Parties agree to consider ecology and natural resources in development plans.

Water Resources Management

Convention Establishing a Permanent Inter-State Drought Control Committee for the Sahel, Sept. 12, 1973

Established committee to promote cooperation to combat consequences of drought. Open to any African country declared to be a disaster area as the result of ecological conditions of the Sudano-Sahelian region.

Various regional and bilateral water basin agreements -- e.g., U.S.-UK Treaty on Boundary Waters, Jan. 11, 1909

Approval of International Joint Commission required for obstructions or diversions from Great Lakes or other boundary waters between U.S. and Canada. Precedence for water uses specified.

Agriculture

U.N. Food and Agriculture Organization -- Constitution, as amended, Nov. 1959

Could assist adaptation to climate change by disseminating technical information and recommending action for agriculture and forestry. Subsidiary groups, like the International Rice Commission, could help with response strategies, for example, reducing methane emissions from rice paddies.

Various Regional Agreements -- e.g., Inter-American Institute for Cooperation on Agriculture, Convention, March 6, 1979

Possible frameworks for development of adaptation strategies or for limiting methane emissions from agriculture.

International Tropical Timber Agreement, Nov. 18, 1983

This agreement provides a framework for cooperation and consultation on, inter alia, improving reforestation and encouraging the development of national policies aimed at sustainable utilization and conservation of tropical forests.

Various Bilateral Agreements -- e.g., U.S.-USSR Agreement on Cooperation in the Field of Agriculture, June 19, 1973

Possible framework to formulate joint plans, exchange information.

Financial Institutions

World Bank--Articles of Agreement, Dec. 27, 1945, Articles of Agreement, Jan 26, 1960

Loans by the International Bank for Reconstruction and Development and concessional loans by the International Development Association fund projects that could be helpful to minimizing climate change (e.g., agroforestry) or harmful (e.g., highway construction leading to deforestation). Environmental policies being implemented by the Bank could be adjusted to support limitation or adaptation response options.

Regional Development Banks

Could give regional support for limitation or adaptation response options. Regional banks include: Inter-American, Indus Basin, African, Andean, Asian, Caribbean, Arab, Central American, European, OPEC, Nordic

Sectorial Funds -- e.g., International Fund for Agricultural Development, Agreement, June 13, 1976

Concessional loans to developing countries. Could adopt policies to assist limitation or adaptation response options.

Regional Economic Cooperation Organizations

Affect development strategies, address energy and environmental issues. May develop binding regulations or proposed agreements. Regional organizations include:

U.N. Regional Economic Commissions

European Economic Community (e.g., adopted resolution on energy policy with specific fuel use targets; adopted EC environmental assessment procedures)

Organization for Economic Cooperation and Development

Organization of American States

COMECON

Organization of African Unity

ASEAN

South Asia Regional Council

South Pacific Forum

Andean Common Market

Caribbean Community

Economic Community of West African States

International Institutions
Potentially Relevant to Climate Change

Climate

-- World Meteorological Organization (WMO): To coordinate, standardize, and improve world meteorological activities and to encourage an efficient exchange of meteorological information between countries. More specifically, WMO is charged with: 1) facilitating worldwide cooperation in the establishment of networks of stations to provide meteorological, hydrological, and other geophysical services and observations; 2) promoting the establishment and maintenance of systems for the rapid exchange of meteorological and related weather information; 3) promoting standardization of meteorological and related observations and to ensure the uniform publication of observations and statistics; and 4) assisting in coordinating the international aspects of research and training in meteorology. In addition, WMO manages the World Climate Program, which consists of applications, data, impact studies, and research, and is administered in coordination with UNEP and ICSU.

-- Intergovernmental Panel on Climate Change (IPCC): An ad hoc working group jointly established by WMO and UNEP, the IPCC is to assess available scientific information on climate change; assess available environmental and socio-economic impacts of climate change; and formulate response strategies. The IPCC is to submit an interim report on these topics in the fall of 1990.

Science

-- International Council of Scientific Unions (ICSU): To encourage international scientific activity by coordinating interdisciplinary and worldwide scientific projects and by working with appropriate nongovernmental and intergovernmental agencies in their implementation.

-- International Geosphere-Biosphere Programme (IGBP): Interdisciplinary body under ICSU within which the international scientific community seeks to identify and understand the basic global processes, including the basic forces driving environmental change.

-- UN Educational, Scientific and Cultural Organization (UNESCO): To contribute to peace and security by promoting international collaboration through, inter alia, science.

-- Intergovernmental Committee for Science and Technology for Development: The General Assembly, following 1979 UN Conference on S&T for Development, established this committee to assist it in issues related to science and technology policy and coordination, including initiating arrangements for the early identification and assessment of new S&T developments that may have potential importance for strengthening the S&T capacity of developing countries. Reports to General Assembly through ECOSOC.

General

-- United Nations General Assembly (UNGA): The UNGA may discuss any questions or matters within the scope of the UN Charter or relating to the powers or functions of any organ provided for in the Charter. It may make recommendations to UN members or to the Security Council on any such questions or matters except on disputes or situations in respect of which the Security Council is currently exercising its functions.

-- United Nations Security Council: The Security Council has primary responsibility for the maintenance of international peace and security. The functions of the council fall mainly into two topics: pacific settlement of disputes; and action with respect to threats to the peace, breaches of the peace, and acts of aggression.

-- Economic and Social Council (ECOSOC): ECOSOC makes or initiates studies and reports with respect to international economic, social, cultural, educational, and health matters. It makes recommendations on such matters to the UNGA, to UN members, and to specialized agencies. It prepares draft conventions for submission to the UNGA on matters within its competence and calls for international conferences on such matters.

-- General Agreement on Tariffs and Trade (GATT): The GATT is the basic multilateral instrument that sets out agreed rules for international trade. Obligations of GATT members would apply to transactions in the area of global climate change.

Population

-- UN Population Commission: This Commission was established by ECOSOC to study and advise ECOSOC on population changes and their effect on economic and social conditions and other demographic questions.

-- UN Population Fund (UNFPA): Established under UNDP to promote awareness of the social, economic, and environmental implications of national and international population problems, as well as possible strategies to deal with them, and to provide sustained assistance to developing countries to deal with population problems.

Funding/Technical Assistance

-- UN Capital Development Fund (UNCDF): To assist developing countries through grants and loans, particularly long-term loans made free of interest or at low interest rates. Assistance is directed toward achieving accelerated and self-sustained growth of the economies of the poorest developing countries and is oriented toward the diversification of their economies, with due regard to the need for industrial development and using light capital technologies as a basis for economic and social progress.

-- Advisory Committee on Science and Technology for Development: This is the advisory body to the Intergovernmental Committee for Science and Technology for Development.

-- Intergovernmental Oceanographic Commission (IOC): A subsidiary, semi-autonomous body of UNESCO, the IOC coordinates international marine science and ocean monitoring activities, including global sea-level observation and global climate research. It could be called upon to accelerate the limited activities now underway for collecting and exchanging data required for assessing climate change.

Environment

-- UN Environment Programme (UNEP): To promote and coordinate international cooperation in the field of the human environment and to provide general policy guidance for the direction and coordination of environmental programs within the UN. UNEP is also responsible for keeping under review the world environmental situation to ensure that international environmental problems receive appropriate consideration by governments.

-- Committee on Natural Resources: This Committee is under ECOSOC. It is to assist ECOSOC in the planning, implementation, and coordination activities in the UN system for the development of natural resources, as well as in selecting and following up priority questions of long-term problems and trends of worldwide significance in the field of natural resources.

-- Organization for Economic Cooperation and Development (OECD): The OECD's environment work is supervised by the Environment Committee (ENVCOM). The ENVCOM has two groups working on climate change studies -- the Group on Energy and the Environment and the Group of Energy Experts. These groups have been assigned projects on energy options for addressing climate change and on socioeconomic implications of climate change, respectively. Both of these projects will produce draft reports in 1989. The OECD generally promotes policies designed to achieve the highest sustainable economic growth and a rising standard of living in member countries, to contribute to sound economic expansion in non-member countries, and to contribute to the expansion of world trade on a multilateral, nondiscriminatory basis.

-- The OECD Development Assistance Committee (DAC) provides a forum for coordinating donor efforts to address environmental problems in developing countries. Initial DAC efforts developed recommendations for environmental assessments of all development projects. Subsequently, DAC's efforts have been expanded, and a special working has been set up on the environment (which will have its first meeting later this fall). The group's preliminary work plan gives high priority to helping developing countries participate in and/or implement provisions of major international agreements, including those on climate change, ozone depletion, hazardous wastes, and biological diversity.

-- UN Development Program (UNDP): To provide systematic and sustained assistance in fields essential to technical, economic, and social development of the developing countries. One of the trust funds under UNDP is the UN Fund for Science and Technology for Development.

-- IAEA Technical Assistance Fund: To support technical cooperation activities in developing countries related to the use of nuclear energy for peaceful purposes.

-- International Fund for Agricultural Development (IFAD): To mobilize financial resources and make them available on concessional terms for agricultural development in developing countries, particularly for projects specifically designed to improve food production systems in the poorest food deficient regions. Jointly funded by OPEC and OECD members.

-- UN Industrial Development Organization (UNIDO): To promote and accelerate industrialization in the developing countries. UNIDO works with the private sector and encourages investment as a means of fostering industrialization.

-- Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific: To assist in the economic development of Asia and the Pacific through exchanges of views on problems of technical assistance, collection of information on technical assistance programs undertaken by its members on a bilateral basis, and the encouragement of developing members to become donors of capital and technical cooperation assistance to other members.

-- Consultative Group on International Agricultural Research (CGIAR): To provide and coordinate funding for a network of international agricultural research institutes, e.g., the International Rice Research Institute (Philippines), the International Institute for Tropical Agriculture (Nigeria), the International Center for Tropical Agriculture (Colombia).

-- International Bank for Reconstruction and Development (World Bank): Although originally created to assist in financing the rebuilding of nations devastated by World War II, the Bank's main objective now is to lend for productive projects that will lead to economic growth in less developed member countries.

-- International Development Association: To promote economic development by providing financing to less developed countries on much more concessionary terms than those of conventional loans. It is designed especially to finance projects in countries that are not able to service loans from the World Bank.

-- Regional Development Banks: These include Inter-American, Indus Basin, African, Andean, Asian, Caribbean, Arab, Central American, European, OPEC, and Nordic.

-- International Finance Corporation (IFC): The IFC invests in productive private or partly governmental enterprises in association with private investors, with the aim of promoting the growth of the private sector and assisting productive private enterprises in developing countries.

Human Settlements

-- UN Centre for Human Settlements (Habitat): Promotes international cooperation in the field of human settlements in order to enhance countries' efforts to solve their problems and to increase resources available to developing countries. The Centre has three operating divisions: Research and Development (research on innovative ideas for human settlements developments); Technical Cooperation (project-based technical assistance to developing countries); and Information, Audio Visual and Documentation, (information collection and exchange channel).

-- Commission on Human Settlements: This Commission is under ECOSOC. It is to assist regions in increasing and improving their own efforts to solve human settlements problems, to promote greater international cooperation to increase the resources of developing countries.

Agriculture

-- Food and Agricultural Organization (FAO): To raise level of nutrition and standards of living, to secure improvements in the efficiency of production and distribution of all food and agricultural products, and to better the condition of rural populations (e.g., through dissemination of information and furnishing of technical assistance to governments).

-- Inter-American Institute for Cooperation on Agriculture: Member states promote and support agricultural development in their countries, including education, research, planning, science, and technology.

-- International Tropical Timber Organization (ITTO): To provide an effective framework for cooperation and consultation between tropical timber producing and consuming countries, with a view to promoting the expansion of trade. Seeks to promote research and development aimed at improving forest management; to encourage reforestation; and to encourage national policies aimed at sustainable utilization and conservation of tropical forests and at maintaining the ecological balance in the regions concerned.

Energy

-- International Atomic Energy Agency (IAEA): To seek to accelerate and enlarge the contribution of nuclear energy to peace, health, and prosperity throughout the world.

-- International Energy Agency (IEA): This international organization has programs designed to promote reduced dependence on oil imports and enhanced energy security through energy diversification, energy conservation and efficiency, and promotion of alternative energy fuels. Programs include annual reviews of member country energy policies, technical analyses and information exchange, and collaborative R&D programs on various energy technologies.

-- Nuclear Energy Agency (NEA): The NEA, a semi-autonomous agency under the OECD, is primarily responsible for developing technical policy guidance in the field of civilian nuclear power. Specific activities include: the coordination of R&D projects among national government agencies, technical information exchanges, and the preparation and dissemination of related nuclear studies and publications. The subjects of primary interest include nuclear safety, waste management, and radiation protection.

Judicial

-- International Court of Justice (ICJ): The ICJ is the principal judicial organ of the UN. Its principal function is to decide, in accordance with international law, such cases as are submitted to it by member nations.

Regional Economic Cooperation Organizations

-- These include:

U.N. Regional Economic Commissions

Economic Commission for Africa (ECA)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Western Asia (ESCWA)

European Economic Community
Organization for Economic Cooperation and Development
Organization of American States
COMECON
Andean Common Market
Caribbean Community
Economic Community of West African States
Organization of African Unity
ASEAN
South Asia Regional Council
South Pacific Forum

Domestic Legal Mechanisms
Potentially Relevant to Climate Change

-- It would be useful for the RSWG to compile an inventory of types of legal mechanisms that could be used at the domestic level to implement responses to climate change.

-- An inventory would include not only those legal mechanisms explicitly directed at the climate change issue (if any), but also those that are related to the issue but based on other grounds (such as those directed at energy efficiency) and those that could be made relevant, such as air pollution controls.

-- A preliminary outline of potentially relevant mechanisms might include:

I. General

- A. Environmental assessment requirements
- B. Government information dissemination programs

II. Emission Reduction

A. Environmental Regulation

1. Control of air emissions (stationary sources, mobile sources, consumer products)

- a. national ambient air quality standards
- b. level of air emissions requirements
- c. best available technology requirements
- d. operating standards
- e. labeling requirements

2. Control of chemicals and toxics

B. Energy Regulation

- 1. Industrial efficiency standards
- 2. Vehicle and other product efficiency standards
- 3. Alternative energy sources (hydro, solar, geothermal, wind, nuclear)
- 4. Economic incentives to reduce consumption of fossil fuels

- 5. Building codes
- 6. Standards for government-financed construction
- 7. Consumer rebates for efficient appliances
- C. Transportation regulation
 - 1. Highway construction
 - 2. Mass transit
 - 3. Transportation planning
- D. Agriculture regulation (methane emissions)
- E. Human Settlement Planning
- F. Population Planning
- G. Government Information Dissemination Programs

II. Affecting Sinks

- A. Forestry (e.g., logging restrictions, reforestation requirements)
- B. Land use planning (cluster developments, greenbelts, parks)
- C. Acquisition/management of public lands

III. Adaptation

- A. Coastal zones
 - 1. Setback laws
 - 2. Land acquisition/open space dedication/purchase of development rights
 - 3. Building codes
 - 4. Insurance (limits in vulnerable areas, requirements on relocation/rebuilding)
 - 5. Incorporation of potential sea-level rise into governmental and private infrastructure planning and development
 - 6. Filling coastal lands

B. Water resource management

1. Allocate water resources to their highest economic uses through greater use of market pricing
2. Develop alternative water sources
3. Restrictions on withdrawal of water from coastal aquifers (to slow salinization)
4. Desalinization processes for industrial use and human consumption

C. Agriculture

1. Technical assistance to farmers
2. Encouraging shifts to different crops

IV. Tax burdens, tax incentives, price supports, investment guarantees, grants as they relate to any of the above**V. Other mechanisms (or aspects of above) that relate to climate change abroad****A. Debt-for-nature swaps****B. Environmental assessment requirements for actions having effects abroad****C. Development assistance programs**

Elements of a Framework Convention on Global Climate Change

General Principles

1. A framework convention on global climate change should be drafted to be amenable to adherence by a significant majority of the world's countries, including those comprising a significant majority of the world's population and those whose actions are significantly influencing atmospheric concentrations of CO₂, methane, and other greenhouse gases. As such, the negotiating process to develop the convention should have as an explicit objective the broadest possible participation.

2. The framework convention should generally follow the model of the 1985 Vienna Convention for the Protection of the Ozone Layer (the "Vienna Convention").

3. The convention should provide an institutional framework for ongoing assessment of global climate change and discussion of possible responses. It should also provide a legal framework under which future specific response measures could be subsequently developed and agreed.

4. The convention's twin goals should be to provide a framework for: 1) increasing our understanding of the scientific aspects of global climate change and its potential impacts; and 2) protecting social, environmental, and economic well-being from adverse impacts likely to result from climate change.

5. The framework convention should provide for cooperation with competent international bodies to implement effectively its objectives.

6. The framework convention should take into account the need to involve, as well as assist, developing countries in addressing global climate change issues.

Convention Elements Implementing General Principles

-- The framework convention will most likely gain the adherence of the largest number and widest array of countries if it contains broad principles of cooperation rather than complex or potentially contentious provisions (such as provisions on liability, establishment of a trust fund, or enforcement measures), and if it contains provisions to deal with the special position of developing countries, as discussed below.

-- The convention should track the Vienna Convention in that it should be a framework convention (i.e., one that includes general principles of cooperation but does not itself set forth emissions targets and timetables) and should generally contain the same kinds of elements (e.g., general obligations, cooperation in research and monitoring, exchange of information, conference of the parties, secretariat, provision for adoption of protocols).

-- The convention should provide an institutional framework for cooperation by establishing a Conference of the Parties and a Secretariat, along the lines of the Vienna Convention. It should serve as a legal framework for future agreed measures by providing for the adoption of protocols and/or the use of other legal and institutional mechanisms. The use or amendment of existing legal or institutional arrangements might be particularly appropriate in the case of region-specific responses.

-- The terminology of the framework convention should reflect its twin goals and should not, as is sometimes suggested, refer to "protecting the climate". Protecting the climate per se is not our objective; rather, our objective is to protect social, environmental, and economic well-being from the adverse effects likely to result from global climate change. Further, adaptation measures (as opposed to limitation measures) are not aimed at "protecting the climate".

-- The framework convention should implement its twin goals by generally adopting the conceptual approach taken by the IPCC. Thus, the convention should focus on cooperation in 1) assessing the relevant scientific information related to global climate change; 2) assessing potential impacts of global climate change and their likelihoods; and 3) formulating and evaluating appropriate response measures, on the basis of such assessments as well as social, economic, and environmental factors and cost effectiveness.

-- With respect to the assessment of information and impacts, the framework convention should provide for the exchange of data, including, inter alia, data related to atmospheric chemistry, climate, sea level and river flow, energy supply (coal, oil, gas, nuclear power, biomass, solar, wind), energy end use (automobile production, residential/commercial appliance data), agriculture (rice production, fertilizer production, cattle, sheep goats), and forest acreage (acreage cleared/reforested/trees planted). There should be open access to such data. The parties should also draw upon the expertise of existing international organizations.

-- In addition, the framework convention should go beyond assessment of information (to which the IPCC's work is limited) by calling for enhanced cooperation in producing information. In the particular case of scientific information, the convention should provide for coordinated monitoring of evolving phenomena and coordinated research to improve knowledge about the origins, mechanisms, and effects of global climate change. Cooperation in monitoring should involve the planning, standardization, collection, analysis, and dissemination of appropriate information, utilizing as far as possible existing national and international activities. The results of the IPCC's inventory of current monitoring systems should be the basis for developing provisions on monitoring.

-- Because enhanced cooperation in monitoring is vital to the process of scientific assessment, such cooperation should begin immediately upon entry into force of the convention rather than wait for elaboration in a subsequent protocol or other legal arrangement. (It could, for example, be the subject of an original annex to the convention.)

-- The framework convention should provide for the establishment of expert panels (either ad hoc or standing) to collect, analyze, and report to the parties on relevant scientific, technical, environmental, social and economic information referred to above. In the case of scientific information, periodic updates approximately every three years would probably be appropriate.

-- On the basis of such information, the parties will be in a position to develop and evaluate possible response measures. Measures that are agreed to may be implemented through various means. They may be contained in protocols to the convention (although the convention would not impose any obligation on the parties to join any protocol). Alternatively, as noted above, agreed measures may also be implemented by amending existing legal arrangements, using existing institutional arrangements, or creating new legal or institutional arrangements. Agreed measures with respect to the production and consumption of CFCs should be implemented within the framework of the Vienna Convention and its Montreal Protocol.

-- Financial issues are too complex to be dealt with in the framework convention. However, the convention might establish a working group on financial implementation measures that could be charged with preparing a report as expeditiously as possible for the Conference of the Parties to consider.

-- In terms of taking into account the special position of the developing countries, the framework convention should go beyond the IPCC's work in another important respect, namely it should provide for cooperation in the development and transfer of technologies to limit or adapt to climate change. The development and transfer of technologies to limit emissions of greenhouse gases, such as energy end-use and supply techniques, CFC substitutes, and agricultural and forestry practices, will be critical to the implementation of limitation response strategies. Similarly, the development and transfer of technologies to adapt to global climate change, such as structural and non-structural coastal management techniques and practices, will be critical to the implementation of adaptation strategies. (The principles and specific procedures might be elaborated in an original annex to the convention. Further, a special working group on technology transfer might be established.)

-- Finally, it is currently premature to consider the subject of possible protocols and other agreed response measures, the order in which they might be taken up, and whether there will be linkage between various agreed measures. The IPCC has yet to complete its interim report (due in November 1990); in addition, the parties to the framework convention will continue to consider the appropriateness and timing of various response measures.

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Washington, D.C. 20520

October 24, 1989

MEMORANDUM

TO: Dr. D. Allan Bromley, Assistant to the President
Chairman, Working Group on Global Change

FROM: OES - Frederick M. Bernthal *FB*

SUBJECT: Legal Issues Relevant to Climate Change Convention

The Response Strategies Working Group (RSWG) of the Intergovernmental Panel on Climate Change (IPCC) has a mandate to "examine existing legal and institutional mechanisms to determine how they might be used to implement options to limit or adapt to climate change" and to "consider new legal and institutional mechanisms that could be used to implement options to limit or adapt to climate change".

Although the U.S. was initially non-committal about whether the RSWG's consideration of new legal mechanisms should include discussion of a framework climate convention, President Bush announced last May that the U.S. would host a RSWG workshop in the fall to consider various mechanisms (e.g., economic, financial, legal) that might be used to implement responses to potential climate change and that this would include consideration of elements of a framework climate convention. He also indicated his expectation that the IPCC process would lead to formal negotiation of such a convention.

To prepare for this October workshop, all IPCC member states were asked to contribute their views to designated international topic coordinators. The attached paper was the U.S. contribution to the legal mechanisms discussion, and was cleared by all interested USG agencies at the policy level.

As you will see from section IV, the U.S. expressed the view that a framework climate convention should generally follow the model of the 1985 Vienna Convention for the Protection of the Ozone Layer. The Vienna Convention is a barebones agreement that contains general principles of

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cooperation and certain research and monitoring obligations, but no targets or timetables. Specific obligations are contained in subsequent protocols (to date, the Montreal Protocol); there is no obligation placed upon a party to the framework convention to join any protocol.

It should be noted that the RSWG workshop, which was held on October 2-6 in Geneva, revealed very broad consensus that:

"[A] framework convention on climate change ... should generally follow the format of the Vienna Convention for the Protection of the Ozone Layer, ... would lay down, at a minimum, general principles and obligations, and provide for a continuing assessment of the scientific aspects of climate change and its impacts, and for response strategies ... [and] should contain provision for separate annexes and protocols to be negotiated to deal with specific obligations, e.g., research and systematic observations, different greenhouse gases."

However, several industrialized countries (Netherlands, FRG, Norway, New Zealand) indicated a desire to go beyond the "minimum", and key developing countries (Brazil, China, India, Mexico) made it clear that their price for any such convention "with teeth" would be high.

I would appreciate your views on how State/Justice might now expand on this work, pursuant to the directive of the first meeting of the Working Group on Climate Change.

Attachment: As stated

cc: C. Boyden Gray, Counsel to the President

bcc: C - Mr. Zoellick

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International Agreements Potentially Relevant to
Climate Change

Climate

World Meteorological Organization, Convention, Oct. 11, 1947

Provides framework for cooperation on research and weather observation. Could assist in monitoring climate change. Open to U.N. members.

Various Bilaterals -- e.g., U.S.-U.S.S.R. Agreement on Cooperation in the Field of Environmental Protection, May 23, 1972

Specifies "influence of environmental changes on climate" as one of the areas for cooperation in solving problems. Contemplates exchange of experts, information and joint development of scientific programs.

Energy

International Energy Agency -- Agreement on an International Energy Program, Feb. 5, 1975

Provides framework to promote energy diversification, energy efficiency and conservation, and alternative energy sources. The IEA promotes R&D by sponsoring state-of-the-art reviews of promising energy technologies and by promoting collaborative projects between two or more member countries. The IEA has established an energy technology data exchange and a number of information centers dealing with specialized technology areas, including coal technology, heat pumps, air infiltration, biomass, and end-use technologies. Numerous implementing agreements cover wind, wave, biomass, solar, hydrogen, coal, and other energy sources, as well as conservation in specific industries. Twenty-one OECD countries are members; method for participation by other states not specified.

Solar Heating and Cooling Systems in Buildings -- Memorandum of Understanding, Oct. 4, 1974

Provides for research and information exchange to develop practical applications of solar power, a potential source of nonpolluting energy. Membership consists of mostly western countries.

International Atomic Energy Agency -- U.N. Statute, Oct. 26, 1956

Agency under the aegis of the U.N. to develop peaceful applications of atomic energy and to establish safeguards. Atomic energy does not produce greenhouse gases. Open to U.N. members and to states which are not U.N. members upon approval of IAEA General Conference.

Various Bilateral Energy Agreements

For example, the agreement between U.S. Department of Energy and its PRC counterpart has as its purpose "to explore the relationship of climate changes and atmospheric levels of CO₂".

Bilateral Atomic Energy Agreements -- e.g., U.S.-U.S.S.R. Agreement on Peaceful Uses of Atomic Energy, June 21, 1973

Agreement to develop energy sources from thermonuclear fusion and fast breeder reactors and to establish scientific workgroups and exchanges.

Pollution Control

Convention on Long-Range Transboundary Air Pollution (LRTAP Convention), Nov. 13, 1979

Establishes research and monitoring programs. Broad definition of "air pollution" could include greenhouse gases. Open to members of the U.N. Economic Commission for Europe.

Protocol to LRTAP Convention on Long-Term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP), September 28, 1984. Open to members of the U.N. Economic Commission for Europe.

Protocol to LRTAP Convention Concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes ("Sofia Protocol"), Oct. 31, 1988

Freezes emissions/transboundary fluxes of, and requires parties to utilize best available technologies economically feasible to reducing emissions of nitrogen oxides, which are greenhouse gases. Also requires parties to facilitate exchange of technology to reduce emissions of nitrogen oxides. Open to members of the ECE Economic Commission for Europe.

U.N. Convention on the Law of the Sea, Dec. 10, 1982. (not in force, but largely reflects customary international law)

Agreement to control pollution of the marine environment, includes measures to minimize "release of ... harmful or noxious substances through the atmosphere." (Art. 194) Potentially applicable to the extent that greenhouse gases and climate change are "harmful" to oceans.

Vienna Convention on the Protection of the Ozone Layer, March 22, 1985, and Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987

The chemicals (e.g., chlorofluorocarbons) that are regulated to protect the ozone layer are also greenhouse gases. Montreal Protocol, which provides for 50% reduction in production and consumption by 1999, is under review to accelerate reductions. Open to all states.

Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden, Feb. 19, 1974

Agreement is intended to protect and improve the environment through cooperation to ensure that activities under the jurisdiction of one State do not cause damage to the environment of other States.

Various Bilaterals -- e.g., United States-Mexico, Feb. 16, 1984

U.S.-Mexico agreement provides framework for Annexes on specific pollution reductions.

Natural Resources

Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, Oct. 12, 1940

Could be made applicable to protecting forests. Open to "American Governments".

Treaty for Amazonian Cooperation, July 3, 1978

Applies to Amazonian Basin and any other "closely connected" territory. Declares that right to use natural resources is inherent in each state's sovereignty. Promotes development consistent with "preservation of the environment". Parties are Bolivia, Brazil, Columbia, Ecuador, Guyana, Peru, Suriname and Venezuela.

Southeast Asia Agreement on the Conservation of Nature and Natural Resources, 1985

Adopts goals of sustainable development and maintaining ecological processes. Parties undertake, e.g., to manage forest resources and to control air pollution.

South Pacific Convention for Protection of the Natural Resources and Environment, Nov. 25, 1986

Contains agreement to reduce and control pollution from discharges into the atmosphere. Potentially applicable to measures to prevent climate change which harms oceans.

Africa Convention on Conservation of Nature and Natural Resources, Sept. 15, 1968

Parties agree to consider ecology and natural resources in development plans.

Water Resources Management

Convention Establishing a Permanent Inter-State Drought Control Committee for the Sahel, Sept. 12, 1973

Established committee to promote cooperation to combat consequences of drought. Open to any African country declared to be a disaster area as the result of ecological conditions of the Sudano-Sahelian region.

Various regional and bilateral water basin agreements -- e.g., U.S.-UK Treaty on Boundary Waters, Jan. 11, 1909

Approval of International Joint Commission required for obstructions or diversions from Great Lakes or other boundary waters between U.S. and Canada. Precedence for water uses specified.

Agriculture

U.N. Food and Agriculture Organization -- Constitution, as amended, Nov. 1959

Could assist adaptation to climate change by disseminating technical information and recommending action for agriculture and forestry. Subsidiary groups, like the International Rice Commission, could help with response strategies, for example, reducing methane emissions from rice paddies.

Various Regional Agreements -- e.g., Inter-American Institute for Cooperation on Agriculture, Convention, March 6, 1979

Possible frameworks for development of adaptation strategies or for limiting methane emissions from agriculture.

International Tropical Timber Agreement, Nov. 18, 1983

This agreement provides a framework for cooperation and consultation on, inter alia, improving reforestation and encouraging the development of national policies aimed at sustainable utilization and conservation of tropical forests.

Various Bilateral Agreements -- e.g., U.S.-USSR Agreement on Cooperation in the Field of Agriculture, June 19, 1973

Possible framework to formulate joint plans, exchange information.

Financial Institutions

World Bank--Articles of Agreement, Dec. 27, 1945, Articles of Agreement, Jan 26, 1960

Loans by the International Bank for Reconstruction and Development and concessional loans by the International Development Association fund projects that could be helpful to minimizing climate change (e.g., agroforestry) or harmful (e.g., highway construction leading to deforestation). Environmental policies being implemented by the Bank could be adjusted to support limitation or adaptation response options.

Regional Development Banks

Could give regional support for limitation or adaptation response options. Regional banks include: Inter-American, Indus Basin, African, Andean, Asian, Caribbean, Arab, Central American, European, OPEC, Nordic

Sectorial Funds -- e.g., International Fund for Agricultural Development, Agreement, June 13, 1976

Concessional loans to developing countries. Could adopt policies to assist limitation or adaptation response options.

Regional Economic Cooperation Organizations

Affect development strategies, address energy and environmental issues. May develop binding regulations or proposed agreements. Regional organizations include:

U.N. Regional Economic Commissions

European Economic Community (e.g., adopted resolution on energy policy with specific fuel use targets; adopted EC environmental assessment procedures)

Organization for Economic Cooperation and Development

Organization of American States

COMECON

Organization of African Unity

ASEAN

South Asia Regional Council

South Pacific Forum

Andean Common Market

Caribbean Community

Economic Community of West African States

International Institutions
Potentially Relevant to Climate Change

Climate

-- World Meteorological Organization (WMO): To coordinate, standardize, and improve world meteorological activities and to encourage an efficient exchange of meteorological information between countries. More specifically, WMO is charged with: 1) facilitating worldwide cooperation in the establishment of networks of stations to provide meteorological, hydrological, and other geophysical services and observations; 2) promoting the establishment and maintenance of systems for the rapid exchange of meteorological and related weather information; 3) promoting standardization of meteorological and related observations and to ensure the uniform publication of observations and statistics; and 4) assisting in coordinating the international aspects of research and training in meteorology. In addition, WMO manages the World Climate Program, which consists of applications, data, impact studies, and research, and is administered in coordination with UNEP and ICSU.

-- Intergovernmental Panel on Climate Change (IPCC): An ad hoc working group jointly established by WMO and UNEP, the IPCC is to assess available scientific information on climate change; assess available environmental and socio-economic impacts of climate change; and formulate response strategies. The IPCC is to submit an interim report on these topics in the fall of 1990.

Science

-- International Council of Scientific Unions (ICSU): To encourage international scientific activity by coordinating interdisciplinary and worldwide scientific projects and by working with appropriate nongovernmental and intergovernmental agencies in their implementation.

-- International Geosphere-Biosphere Programme (IGBP): Interdisciplinary body under ICSU within which the international scientific community seeks to identify and understand the basic global processes, including the basic forces driving environmental change.

-- UN Educational, Scientific and Cultural Organization (UNESCO): To contribute to peace and security by promoting international collaboration through, inter alia, science.

-- Intergovernmental Committee for Science and Technology for Development: The General Assembly, following 1979 UN Conference on S&T for Development, established this committee to assist it in issues related to science and technology policy and coordination, including initiating arrangements for the early identification and assessment of new S&T developments that may have potential importance for strengthening the S&T capacity of developing countries. Reports to General Assembly through ECOSOC.

General

-- United Nations General Assembly (UNGA): The UNGA may discuss any questions or matters within the scope of the UN Charter or relating to the powers or functions of any organ provided for in the Charter. It may make recommendations to UN members or to the Security Council on any such questions or matters except on disputes or situations in respect of which the Security Council is currently exercising its functions.

-- United Nations Security Council: The Security Council has primary responsibility for the maintenance of international peace and security. The functions of the council fall mainly into two topics: pacific settlement of disputes; and action with respect to threats to the peace, breaches of the peace, and acts of aggression.

-- Economic and Social Council (ECOSOC): ECOSOC makes or initiates studies and reports with respect to international economic, social, cultural, educational, and health matters. It makes recommendations on such matters to the UNGA, to UN members, and to specialized agencies. It prepares draft conventions for submission to the UNGA on matters within its competence and calls for international conferences on such matters.

-- General Agreement on Tariffs and Trade (GATT): The GATT is the basic multilateral instrument that sets out agreed rules for international trade. Obligations of GATT members would apply to transactions in the area of global climate change.

Population

-- UN Population Commission: This Commission was established by ECOSOC to study and advise ECOSOC on population changes and their effect on economic and social conditions and other demographic questions.

-- UN Population Fund (UNFPA): Established under UNDP to promote awareness of the social, economic, and environmental implications of national and international population problems, as well as possible strategies to deal with them, and to provide sustained assistance to developing countries to deal with population problems.

Funding/Technical Assistance

-- UN Capital Development Fund (UNCDF): To assist developing countries through grants and loans, particularly long-term loans made free of interest or at low interest rates. Assistance is directed toward achieving accelerated and self-sustained growth of the economies of the poorest developing countries and is oriented toward the diversification of their economies, with due regard to the need for industrial development and using light capital technologies as a basis for economic and social progress.

-- Advisory Committee on Science and Technology for Development: This is the advisory body to the Intergovernmental Committee for Science and Technology for Development.

-- Intergovernmental Oceanographic Commission (IOC): A subsidiary, semi-autonomous body of UNESCO, the IOC coordinates international marine science and ocean monitoring activities, including global sea-level observation and global climate research. It could be called upon to accelerate the limited activities now underway for collecting and exchanging data required for assessing climate change.

Environment

-- UN Environment Programme (UNEP): To promote and coordinate international cooperation in the field of the human environment and to provide general policy guidance for the direction and coordination of environmental programs within the UN. UNEP is also responsible for keeping under review the world environmental situation to ensure that international environmental problems receive appropriate consideration by governments.

-- Committee on Natural Resources: This Committee is under ECOSOC. It is to assist ECOSOC in the planning, implementation, and coordination activities in the UN system for the development of natural resources, as well as in selecting and following up priority questions of long-term problems and trends of worldwide significance in the field of natural resources.

-- Organization for Economic Cooperation and Development (OECD): The OECD's environment work is supervised by the Environment Committee (ENVCOM). The ENVCOM has two groups working on climate change studies -- the Group on Energy and the Environment and the Group of Energy Experts. These groups have been assigned projects on energy options for addressing climate change and on socioeconomic implications of climate change, respectively. Both of these projects will produce draft reports in 1989. The OECD generally promotes policies designed to achieve the highest sustainable economic growth and a rising standard of living in member countries, to contribute to sound economic expansion in non-member countries, and to contribute to the expansion of world trade on a multilateral, nondiscriminatory basis.

-- The OECD Development Assistance Committee (DAC) provides a forum for coordinating donor efforts to address environmental problems in developing countries. Initial DAC efforts developed recommendations for environmental assessments of all development projects. Subsequently, DAC's efforts have been expanded, and a special working has been set up on the environment (which will have its first meeting later this fall). The group's preliminary work plan gives high priority to helping developing countries participate in and/or implement provisions of major international agreements, including those on climate change, ozone depletion, hazardous wastes, and biological diversity.

-- UN Development Program (UNDP): To provide systematic and sustained assistance in fields essential to technical, economic, and social development of the developing countries. One of the trust funds under UNDP is the UN Fund for Science and Technology for Development.

-- IAEA Technical Assistance Fund: To support technical cooperation activities in developing countries related to the use of nuclear energy for peaceful purposes.

-- International Fund for Agricultural Development (IFAD): To mobilize financial resources and make them available on concessional terms for agricultural development in developing countries, particularly for projects specifically designed to improve food production systems in the poorest food deficient regions. Jointly funded by OPEC and OECD members.

-- UN Industrial Development Organization (UNIDO): To promote and accelerate industrialization in the developing countries. UNIDO works with the private sector and encourages investment as a means of fostering industrialization.

-- Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific: To assist in the economic development of Asia and the Pacific through exchanges of views on problems of technical assistance, collection of information on technical assistance programs undertaken by its members on a bilateral basis, and the encouragement of developing members to become donors of capital and technical cooperation assistance to other members.

-- Consultative Group on International Agricultural Research (CGIAR): To provide and coordinate funding for a network of international agricultural research institutes, e.g., the International Rice Research Institute (Philippines), the International Institute for Tropical Agriculture (Nigeria), the International Center for Tropical Agriculture (Colombia).

-- International Bank for Reconstruction and Development (World Bank): Although originally created to assist in financing the rebuilding of nations devastated by World War II, the Bank's main objective now is to lend for productive projects that will lead to economic growth in less developed member countries.

-- International Development Association: To promote economic development by providing financing to less developed countries on much more concessionary terms than those of conventional loans. It is designed especially to finance projects in countries that are not able to service loans from the World Bank.

-- Regional Development Banks: These include Inter-American, Indus Basin, African, Andean, Asian, Caribbean, Arab, Central American, European, OPEC, and Nordic.

-- International Finance Corporation (IFC): The IFC invests in productive private or partly governmental enterprises in association with private investors, with the aim of promoting the growth of the private sector and assisting productive private enterprises in developing countries.

Human Settlements

-- UN Centre for Human Settlements (Habitat): Promotes international cooperation in the field of human settlements in order to enhance countries' efforts to solve their problems and to increase resources available to developing countries. The Centre has three operating divisions: Research and Development (research on innovative ideas for human settlements developments); Technical Cooperation (project-based technical assistance to developing countries); and Information, Audio Visual and Documentation, (information collection and exchange channel).

-- Commission on Human Settlements: This Commission is under ECOSOC. It is to assist regions in increasing and improving their own efforts to solve human settlements problems, to promote greater international cooperation to increase the resources of developing countries.

Agriculture

-- Food and Agricultural Organization (FAO): To raise level of nutrition and standards of living, to secure improvements in the efficiency of production and distribution of all food and agricultural products, and to better the condition of rural populations (e.g., through dissemination of information and furnishing of technical assistance to governments).

-- Inter-American Institute for Cooperation on Agriculture: Member states promote and support agricultural development in their countries, including education, research, planning, science, and technology.

-- International Tropical Timber Organization (ITTO): To provide an effective framework for cooperation and consultation between tropical timber producing and consuming countries, with a view to promoting the expansion of trade. Seeks to promote research and development aimed at improving forest management; to encourage reforestation; and to encourage national policies aimed at sustainable utilization and conservation of tropical forests and at maintaining the ecological balance in the regions concerned.

Energy

-- International Atomic Energy Agency (IAEA): To seek to accelerate and enlarge the contribution of nuclear energy to peace, health, and prosperity throughout the world.

-- International Energy Agency (IEA): This international organization has programs designed to promote reduced dependence on oil imports and enhanced energy security through energy diversification, energy conservation and efficiency, and promotion of alternative energy fuels. Programs include annual reviews of member country energy policies, technical analyses and information exchange, and collaborative R&D programs on various energy technologies.

-- Nuclear Energy Agency (NEA): The NEA, a semi-autonomous agency under the OECD, is primarily responsible for developing technical policy guidance in the field of civilian nuclear power. Specific activities include: the coordination of R&D projects among national government agencies, technical information exchanges, and the preparation and dissemination of related nuclear studies and publications. The subjects of primary interest include nuclear safety, waste management, and radiation protection.

Judicial

-- International Court of Justice (ICJ): The ICJ is the principal judicial organ of the UN. Its principal function is to decide, in accordance with international law, such cases as are submitted to it by member nations.

Regional Economic Cooperation Organizations

-- These include:

U.N. Regional Economic Commissions

Economic Commission for Africa (ECA)
Economic and Social Commission for Asia and the Pacific (ESCAP)
Economic Commission for Europe (ECE)
Economic Commission for Latin America and the Caribbean (ECLAC)
Economic and Social Commission for Western Asia (ESCWA))

European Economic Community

Organization for Economic Cooperation and Development

Organization of American States

COMECON

Andean Common Market

Caribbean Community

Economic Community of West African States

Organization of African Unity

ASEAN

South Asia Regional Council

South Pacific Forum

Domestic Legal Mechanisms
Potentially Relevant to Climate Change

-- It would be useful for the RSWG to compile an inventory of types of legal mechanisms that could be used at the domestic level to implement responses to climate change.

-- An inventory would include not only those legal mechanisms explicitly directed at the climate change issue (if any), but also those that are related to the issue but based on other grounds (such as those directed at energy efficiency) and those that could be made relevant, such as air pollution controls.

-- A preliminary outline of potentially relevant mechanisms might include:

I. General

- A. Environmental assessment requirements
- B. Government information dissemination programs

II. Emission Reduction

A. Environmental Regulation

1. Control of air emissions (stationary sources, mobile sources, consumer products)

- a. national ambient air quality standards
- b. level of air emissions requirements
- c. best available technology requirements
- d. operating standards
- e. labeling requirements

2. Control of chemicals and toxics

B. Energy Regulation

1. Industrial efficiency standards

2. Vehicle and other product efficiency standards

3. Alternative energy sources (hydro, solar, geothermal, wind, nuclear)

4. Economic incentives to reduce consumption of fossil fuels

- 5. Building codes
- 6. Standards for government-financed construction
- 7. Consumer rebates for efficient appliances
- C. Transportation regulation
 - 1. Highway construction
 - 2. Mass transit
 - 3. Transportation planning
- D. Agriculture regulation (methane emissions)
- E. Human Settlement Planning
- F. Population Planning
- G. Government Information Dissemination Programs

II. Affecting Sinks

- A. Forestry (e.g., logging restrictions, reforestation requirements)
- B. Land use planning (cluster developments, greenbelts, parks)
- C. Acquisition/management of public lands

III. Adaptation

- A. Coastal zones
 - 1. Setback laws
 - 2. Land acquisition/open space dedication/purchase of development rights
 - 3. Building codes
 - 4. Insurance (limits in vulnerable areas, requirements on relocation/rebuilding)
 - 5. Incorporation of potential sea-level rise into governmental and private infrastructure planning and development
 - 6. Filling coastal lands

B. Water resource management

1. Allocate water resources to their highest economic uses through greater use of market pricing
2. Develop alternative water sources
3. Restrictions on withdrawal of water from coastal aquifers (to slow salinization)
4. Desalinization processes for industrial use and human consumption

C. Agriculture

1. Technical assistance to farmers
2. Encouraging shifts to different crops

IV. Tax burdens, tax incentives, price supports, investment guarantees, grants as they relate to any of the above

V. Other mechanisms (or aspects of above) that relate to climate change abroad

A. Debt-for-nature swaps

B. Environmental assessment requirements for actions having effects abroad

C. Development assistance programs

Elements of a Framework Convention on Global Climate Change

General Principles

1. A framework convention on global climate change should be drafted to be amenable to adherence by a significant majority of the world's countries, including those comprising a significant majority of the world's population and those whose actions are significantly influencing atmospheric concentrations of CO₂, methane, and other greenhouse gases. As such, the negotiating process to develop the convention should have as an explicit objective the broadest possible participation.

2. The framework convention should generally follow the model of the 1985 Vienna Convention for the Protection of the Ozone Layer (the "Vienna Convention").

3. The convention should provide an institutional framework for ongoing assessment of global climate change and discussion of possible responses. It should also provide a legal framework under which future specific response measures could be subsequently developed and agreed.

4. The convention's twin goals should be to provide a framework for: 1) increasing our understanding of the scientific aspects of global climate change and its potential impacts; and 2) protecting social, environmental, and economic well-being from adverse impacts likely to result from climate change.

5. The framework convention should provide for cooperation with competent international bodies to implement effectively its objectives.

6. The framework convention should take into account the need to involve, as well as assist, developing countries in addressing global climate change issues.

Convention Elements Implementing General Principles

-- The framework convention will most likely gain the adherence of the largest number and widest array of countries if it contains broad principles of cooperation rather than complex or potentially contentious provisions (such as provisions on liability, establishment of a trust fund, or enforcement measures), and if it contains provisions to deal with the special position of developing countries, as discussed below.

-- The convention should track the Vienna Convention in that it should be a framework convention (i.e., one that includes general principles of cooperation but does not itself set forth emissions targets and timetables) and should generally contain the same kinds of elements (e.g., general obligations, cooperation in research and monitoring, exchange of information, conference of the parties, secretariat, provision for adoption of protocols).

-- The convention should provide an institutional framework for cooperation by establishing a Conference of the Parties and a Secretariat, along the lines of the Vienna Convention. It should serve as a legal framework for future agreed measures by providing for the adoption of protocols and/or the use of other legal and institutional mechanisms. The use or amendment of existing legal or institutional arrangements might be particularly appropriate in the case of region-specific responses.

-- The terminology of the framework convention should reflect its twin goals and should not, as is sometimes suggested, refer to "protecting the climate". Protecting the climate per se is not our objective; rather, our objective is to protect social, environmental, and economic well-being from the adverse effects likely to result from global climate change. Further, adaptation measures (as opposed to limitation measures) are not aimed at "protecting the climate".

-- The framework convention should implement its twin goals by generally adopting the conceptual approach taken by the IPCC. Thus, the convention should focus on cooperation in 1) assessing the relevant scientific information related to global climate change; 2) assessing potential impacts of global climate change and their likelihoods; and 3) formulating and evaluating appropriate response measures, on the basis of such assessments as well as social, economic, and environmental factors and cost effectiveness.

-- With respect to the assessment of information and impacts, the framework convention should provide for the exchange of data, including, inter alia, data related to atmospheric chemistry, climate, sea level and river flow, energy supply (coal, oil, gas, nuclear power, biomass, solar, wind), energy end use (automobile production, residential/commercial appliance data), agriculture (rice production, fertilizer production, cattle, sheep goats), and forest acreage (acreage cleared/reforested/trees planted). There should be open access to such data. The parties should also draw upon the expertise of existing international organizations.

-- In addition, the framework convention should go beyond assessment of information (to which the IPCC's work is limited) by calling for enhanced cooperation in producing information. In the particular case of scientific information, the convention should provide for coordinated monitoring of evolving phenomena and coordinated research to improve knowledge about the origins, mechanisms, and effects of global climate change. Cooperation in monitoring should involve the planning, standardization, collection, analysis, and dissemination of appropriate information, utilizing as far as possible existing national and international activities. The results of the IPCC's inventory of current monitoring systems should be the basis for developing provisions on monitoring.

-- Because enhanced cooperation in monitoring is vital to the process of scientific assessment, such cooperation should begin immediately upon entry into force of the convention rather than wait for elaboration in a subsequent protocol or other legal arrangement. (It could, for example, be the subject of an original annex to the convention.)

-- The framework convention should provide for the establishment of expert panels (either ad hoc or standing) to collect, analyze, and report to the parties on relevant scientific, technical, environmental, social and economic information referred to above. In the case of scientific information, periodic updates approximately every three years would probably be appropriate.

-- On the basis of such information, the parties will be in a position to develop and evaluate possible response measures. Measures that are agreed to may be implemented through various means. They may be contained in protocols to the convention (although the convention would not impose any obligation on the parties to join any protocol). Alternatively, as noted above, agreed measures may also be implemented by amending existing legal arrangements, using existing institutional arrangements, or creating new legal or institutional arrangements. Agreed measures with respect to the production and consumption of CFCs should be implemented within the framework of the Vienna Convention and its Montreal Protocol.

-- Financial issues are too complex to be dealt with in the framework convention. However, the convention might establish a working group on financial implementation measures that could be charged with preparing a report as expeditiously as possible for the Conference of the Parties to consider.

-- In terms of taking into account the special position of the developing countries, the framework convention should go beyond the IPCC's work in another important respect, namely it should provide for cooperation in the development and transfer of technologies to limit or adapt to climate change. The development and transfer of technologies to limit emissions of greenhouse gases, such as energy end-use and supply techniques, CFC substitutes, and agricultural and forestry practices, will be critical to the implementation of limitation response strategies. Similarly, the development and transfer of technologies to adapt to global climate change, such as structural and non-structural coastal management techniques and practices, will be critical to the implementation of adaptation strategies. (The principles and specific procedures might be elaborated in an original annex to the convention. Further, a special working group on technology transfer might be established.)

-- Finally, it is currently premature to consider the subject of possible protocols and other agreed response measures, the order in which they might be taken up, and whether there will be linkage between various agreed measures. The IPCC has yet to complete its interim report (due in November 1990); in addition, the parties to the framework convention will continue to consider the appropriateness and timing of various response measures.