Theme II: The (Re)Design the Climate Regime Through 2005 and Beyond

The CMRA's second theme focuses on the longer-term on the evolution and redesign of the climate regime itself. The Kyoto Protocol sets the year 2005 as a point at which Annex I countries are to have achieved their emissions reduction targets. It is thus a useful landmark around which to build research efforts on questions about the adjustment of the climate change regime to both national experiences and changes in technology, scientific understanding, and global socioeconomic conditions. The CMRA will explore two important sets of institutional issues in this regard: (1) those issues pertaining to the evolution of compliance mechanisms and the long-term implementation of the regime; and (2) the processes of regime adjustment and learning to account for changes in knowledge and external conditions.

- CMRA Scoping Report

Session 4: Compliance and Long-Term Implementation

Session Chair:	Dr. Oran Young, Chairman, Institutional Dimensions of Global Environmental Change, Dartmouth College
Presenters:	Jan Linehan, Visiting Scholar, NYU School of Law
	Jan Bandsma, Joint Implementation Network, The Netherlands
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This set of issues focuses on the institutional challenges of treaty compliance and the means through which the climate regime can evolve to meet these challenges. Changes in social and economic systems of the scale required to meet the mandates of the FCCC and the KP take time to accomplish. While the FCCC has existed for seven years and the KP for two, mechanisms for managing the implementation of and ensuring compliance with the regime remain underdeveloped and poorly understood. Compliance issues that arise in the context of a global emissions trading regime, such as that of liability, are particularly important because of the private sector's unique role in this regime.

- CMRA Scoping Report

Compliance and the International Legal Perspective

Jan Linehan
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Thank you. What I want to talk about this afternoon is to think a little about whether there is such a thing as a legal perspective. I think it is useful to understand a little bit about how international lawyers approach issues of compliance, particularly if we are to engage in a broad-ranging, interdisciplinary research exercise. When I talk about the legal perspective, I am trying to set it up as something that will provide insight into a particular way of approaching issues. However, it is also a bit of a straw person, as international lawyers have developed an attachment to interdisciplinary work and are now recognizing the value of other perspectives, particularly those drawn from economics and international relations theory. So the first thing I want to do is explore whether there is such a thing as the legal perspective. I will then talk a little about what is happening in the negotiations and what might happen at COP 6. I also want to talk about compliance post-COP 6 in terms of ideas and institutions that might be examined, and finally I want to pose some questions for future research efforts.

Before I launch into this straw person of a legal perspective, let me say that I think that there might be some real points of commonality in a group such as this regarding the importance of compliance. Compliance matters. It matters in terms of achieving the overall objective of the Convention and Kyoto Protocol. It matters because the impacts of climate change are both very real in human terms and in terms of the cost of non-compliance. It also matters to the private sector, as the private sector will value carbon prices in accordance with its confidence in the compliance regime at the international level. These are some points of commonality among most international lawyers involved in thinking about the issue and involved in the negotiations process.

What is not revealed in this commonality is three or four issues in which there is quite a lot of scope for different views. For which aspects or elements of the climate regime does compliance matter? How much compliance is necessary? How do we assess compliance? How should be react in situations of non-compliance?

The legal perspective on these issues is not monolithic. There are different views among international legal scholars, as scholars come from different traditions and negotiators come from different countries. Nor is there is not a clear commonality of North-South perspectives on legal issues. It is important to factor in these different approaches to international law in trying to describe a legal perspective. It is the case that there is probably a set of assumptions obtained from general international and public law that have been modified for the situation of international environmental law. It is also the case that international law is not static. This means that the kinds of analysis or perspectives that I mention now will not necessarily pertain over the longer term. But it is useful to think about them because they inform the negotiations process and provide useful ways of approaching the issues of compliance over the longer term.

A Straw Person of the International Legal Perspective

International lawyers are concerned with why states comply. That might appear to be an odd thing to say, as international relation specialists are also concerned with why states

comply with international law. However, international lawyers have a particular discourse amongst themselves that reflects an anxiety about the role of law in a decentralized system where there is no natural enforcement mechanism. As Oran Young mentioned, part of the background noise to this discussion is that enforcement opportunities are limited and the environment is essentially enforcement poor. International lawyers have an underlying anxiety regarding whether international law will be obeyed, and this underlying anxiety suggests that international lawyers will be inclined towards enforcement models.

There are different ways that international lawyers look at compliance that do not involve an enforcement approach. Many international lawyers would say that there is a normative compliance pool in international law regardless of enforcement or the absence of enforcement. Various student would say that law is internalized at the domestic level and that it is internalized by transnational actors. Constructivists would say that law plays a role in constructing identities. Outside of this theoretical framework, most lawyers believe that, as a matter of culture, almost all states comply with almost all international law almost all of the time. This is Louis Henkin's formula for compliance. This "why" question has an almost intuitive feeling about it, which is part of the theoretical debate that goes on among international lawyers.

International lawyers also focus on the "do" question. Do states in fact comply with international law? The testing of the description by Louis Henkin has been a preoccupation of international lawyers for the past twenty years, with differing results. A lot of international environmental lawyers would say that compliance is fairly patchy. Peter Sand has said in a different context that compliance is almost non-existent. Lawyers do think that the "do" question encourages study, and they raise their own internal discourse about the methodological problems associated with compliance. So they focus on the "why" and the "do", and there is a programmatic tendency amongst international lawyers that has them working towards the questions of how we can get states to comply more.

It is probably the case that lawyers focus too much on hard law and bindingness rather than soft law. This means that many international lawyers will attempt to prioritize norms. As a result, they also focus too much on technical rules related to breach and how states can react to that situation. It is also probably the case that lawyers tend to focus more on disputes and how one can resolve disputes. They have anxieties about whether those disputes will in fact be resolved in a world where there is limited adjudication as well as limited enforcement. Furthermore, international lawyers tend to focus on states as actors rather than on private actors, resulting in an exclusion of civil society.

This is my straw person of the international legal perspective. You might, if you like, say that international lawyers fall very much on the enforcement side of the compliance issue rather than on the management side. They do so both because it uses techniques with which they are comfortable from the domestic setting and it satisfies these underlying anxieties. The reality is that most international lawyers are operating in an environment where they know many states do comply with international law without an enforcement approach. The reason that I am belaboring this point is that it becomes very relevant in terms of the development of the compliance mechanism under the Kyoto Protocol.

Moving from this straw person of the legal perspective, which I think has some use or utility as a research approach, to the perspectives of international lawyers working in the international environmental law, it is probably the case that most have internalized the managerial approach. While they may have underlying anxieties about enforcement, their

experiences both in the regimes that have been developed to date and the work of people like Abraham and Antonio Chayes have suggested that the managerial approach is in fact quite a viable approach in dealing with compliance issues. Many international environmental lawyers have internalized the lessons of the New Institutionalism, which means that their perspective is not nearly as norm-bound as I suggested earlier. Most international lawyers are also very aware of the interactions of law and economics, which means, for example, that they find the choice of the liability rule in relation to the mechanisms is just as important as the choice of a particular compliance vehicle under the Kyoto Protocol. It is also probably the case that the statist focus of international norms is overstated and will move away from this over time. Many international lawyers are concerned with the need to have greater participation by civil society both in its own terms and for legitimacy reasons, and they are also very well aware of the importance of addressing multinational corporations both in the environment and in other social contexts. There is a lot of work being done in this area. So these particular focuses are much broader than the straw person or paradigm that I have set up.

Compliance In The Context of the Kyoto Mechanisms

I would like to mention a little bit about where things are going with the development of a compliance regime for the Kyoto Protocol. This is not because I do not think that compliance with the FCCC is important, and I do not want to prioritize the discussion. But the compliance mechanism for the Protocol is the issue that is being discussed now, and it is the place where this dialogue is currently being worked out. It is expected that at this round of subsidiary body meetings the shape of the compliance regime will become much clearer. Most of my friends who are natural pessimists still maintain that there will be an agreement on a compliance regime at COP 6. The first thing that I want to say is that compliance is obviously much broader than the work that is being undertaken in the joint working group. In terms of the negotiations, there is work being done in the context of the development of the mechanisms that is integral to compliance. There is work being done on Articles 5, 7, and 8, which are reporting, monitoring, and the work of expert group review teams. At some point one hopes that someone with the wisdom of Solomon is going to bring all of these elements together with a set of COP decisions that will form a holistic compliance regime.

I think it is impossible to speak of compliance in the context of the negotiations without undergoing the task of trying to relate the different elements. It is a complex task given that there are so many options on the table and there is so much disagreement among the parties about very fundamental issues. It is also not a very transparent process, as most of you all know. However, I think if we are to make any judgments about the compliance regime for Kyoto, we have to try to do so. Having said that, I will take you to the work of the lawyers, which is usually the unfavorable description given to the group of people who attend the joint working group discussions.

If you look at the note from the Chairman of the Joint Working Group on Compliance, you will see that there is a range of options for setting up different kinds of institutions. I do not want to go through the options in any detail, but make an observation that the options that are most likely to find favor at the moment reflect experience with other conventions and suggest a more managerial approach rather than an enforcement model. Having said that, some of options being considered are clearly consistent with the managerial model in that they treat compliance as basically a problem of capacity and systemic uncertainty rather than one of volition. There are also among the options some very serious sanctions, ranging from loss of access to the mechanisms to subtractions of

tons of carbon equivalents from future commitment periods. Thinking about where states will be at the end of the first commitment period will give you a context in which to put this range of consequences, as not all consequences will be relevant to situations of non-compliance during the commitment period. So you see in these options the soft approach, which I think has been internalized at a procedural level, and then the harder approach in terms of reactions to non-compliance.

I am not going to hazard a guess as to which of these is likely to end up being a consequence under the regime that is developed. I would note that, historically, ideas like these have been on the table throughout the climate change negotiations and have not been accepted for a range of reasons. Some of these reasons are concerned with sovereignty, dislike of heavy responses, and recognition that hard sanctions may not be appropriate because this is an on-going process with large degrees of uncertainty. However, it seems to me that there is a very strong possibility that some of these harder reactions to non-compliance will be included given the fact that hard targets are involved in the Kyoto Protocol. States will have a range of imperatives, including, for example, trade competitiveness, which would suggest the need for a harder law if you want to guarantee that the other players will, in fact, go along with the commitments.

One other thing to think about in the development of the compliance regime is also the extent to which particular decision-making models are going to work. Some of you know that there are problems with the consensus model in the context of compliance, and I think it is useful to think about whether the particular decision-making models or modalities are likely to be viable in the longer term.

Future Research

There are a whole bundle of issues that I have touched on here that are worth thinking about for future research efforts. The compliance regime may be settled this year and adopted reasonably soon after, and some of you may be aware that there are legal problems with trying to have binding consequences that will make the process very messy. This could complicate the development or finalization of the package of measures. But over the longer term, we should look at this as a first cut at a compliance regime. This is the regime that will apply for the first commitment period, and the experience of this compliance regime will be critical in developing the rules for the next and successive commitment periods. Of course, there are some difficulties here, as many of these issues will not have been worked through when we are to start negotiating the next commitment period in 2005. So I am really taking a very long-term view when I say that experience here will be relevant in the future.

One thing to think about is whether a more elaborated dispute resolution body or bodies will be required at some stage. The experience within the WTO, for example, was to move towards a more legal dispute resolution body. It will be interesting to see whether the experience under the Law of the Sea Convention, which provides for binding arbitration in relation to a number of issues, will also inform ideas about the long-term compliance problems and compliance institutions. It may be useful to look hard at the experience and conclusions we draw from other multilateral environmental agreements and see whether those observations are true in a climate context, recognizing that the climate context is much bigger, much more complex, and much more uncertain than most of the regimes we are looking at.

The other major set of issues is the interaction of the international and the domestic systems. Whether we have heavy compliance or light compliance, there will be some

form of compliance system at the national level that will come into play in the compliance regime. The interaction of private contract law is also something we should think about, as is the regulation of multinational corporations as major actors in the climate context. A lot of work is being done on this issue in terms of more general environment concerns and human rights concerns, and it would be useful to think about whether these approaches can be translated to the climate context. It would also be useful to think about the extent to which both international law and national law provide ways of controlling multinational corporations. It is a dispiriting exercise to go through the history of efforts to regulate multinational corporations, but I think we may be at a time when there is a greater will to see greater regulation of the activities of multinational corporations.

Finally, I think it would be very useful to look at participation by non-state actors, both in the compliance process and more generally in the negotiations. By this, I mean civil society as well as multinational corporations. There is a debate in the WTO, for instance, about the involvement of NGOs and interest groups in the dispute resolution process. I think there will be a move in the not too distant future towards much greater participation by civil society not just in the COP decision-making process but in the compliance mechanism as well.

Implementation Issues: Lessons from the AIJ pilot phase of the Netherlands and the USA

Jan Bandsma
Joint Implementation Network
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My name is Jan Bandsma. I am from the Joint Implementation Network. We are mostly known for our magazine, Joint Implementation Quarterly. We are also a research and documentation center about the Kyoto Mechanisms. I have been asked to say something about implementation issues. I want to do this on the basis of the AIJ Pilot Phase by looking at the way that the Dutch and American governments implemented their AIJ projects and seeing what implementation issues are raised by their experience. First, I will say something about the AIJ pilot phase. Next, I will talk about the organizational structure of the AIJ pilot phase in both countries and take a look at the roles of both the private sector and the government. Then I will talk about the implication of those roles and the implementation issues that they raise. Finally, I will talk about a new JI program being created by the Netherlands, the Eru-PT program, and how they incorporated their experiences into this new regime.

The AIJ Pilot Phase

The purpose of the AIJ Pilot Phase was to learn about the problems that might arise with the implementation of this sort of project-based program. As we all know, JI and the CDM have a lot of technical and institutional issues and problems that need to be examined closely. A pilot phase provides an opportunity for doing so. A successful AIJ Pilot Phase should closely resemble the final program so that valid comparisons can be made between the two. There should also be a diversity of projects so that all the aspects of these different projects can be examined. Finally, the number of projects in the pilot phase should be sufficiently large that there is strong basis for evaluating the effort and examine the problems that arose. A successful pilot phase will make the implementation of the full effort much easier. Significant problems with the pilot phase might also suggest that the JI and CDM mechanisms may have too many problems to be implemented successfully, but I do not think this is the case.

Organizational Structures of the AIJ Programs

The Dutch Ministry of Environment provided overall coordination of the Dutch AIJ program. Article 6, or JI-type, projects, which are projects in central and eastern Europe, are handled by the Ministry of Economic Affairs through an agency called Senter. The CDM-type projects are run by the Department of Development Cooperation in the Ministry of Foreign Affairs. This distinction was made because the Ministry of Economic Affairs has a great deal of experience in setting up projects in central and eastern Europe, so they could simply incorporate the AIJ projects into their normal program. Similarly, the Ministry of Foreign Affairs has an existing program that sets up projects in developing countries, making the incorporation of the CDM-type projects into their normal program relatively easy. One thing that needed to be done was the establishment of an organization that registered, verified, and certified the emissions reductions. This was done by an agency called the Joint Implementation Registration Center (JIRC) that was run by Senter and another organization known as KEMA.

The AIJ program in the United States, the US Initiative on Joint Implementation (USIJI), is coordinated by an interagency Working Group chaired by the Department of State. An Evaluation Panel, established jointly by the Environmental Protection Agency (EPA) and the Department of Energy (DOE), approved IJI projects, and an IJI Secretariat handled registration and the day-to-day operation of the program. The Secretariat is run jointly by the EPA, DOE, the U.S. Agency for International Development (AID), and the Department of Commerce (DOC). It is important to note that the EPA and DOE are also involved in the registration and approval of the projects.

AIJ Program Characteristics

The Dutch program was large, with a budget of $42 million in 1999. The government set up most of the projects, but hired the private sector to implement them. The projects themselves were owned by the government, however. It could do this because it had a very large budget. Most of the projects are taking place in central and eastern Europe because of the shorter pipelines for getting projects started. EU aid rules also required that the Dutch government provide one hundred percent of the financing for projects in eastern and central Europe. This made it very easy to set up projects.

The U.S. program was much smaller, with a budget of only $1.5 million in 1999. They did have cooperative agreements with some private organizations, which made this budget a little bigger. The main difference, however, is that the private sector owns the projects. They develop project proposals that are submitted to the government for approval. The government then decides if they should be approved as part of the US IJI program. The private sector then implements the project. Most USIJI projects are in South and Central America, as the private sector in the United States has good contacts with their counterparts in these areas, more so than central Europe. Most projects that are done in Europe are done in Russia, as the Americans has an agency there that provides their private sector with good contacts. So the contacts issue is very important.

Implications

These different characteristics have a number of implications. For the Dutch program, it meant that many projects became operational. This provided the Dutch government with a great deal of experience. Because most of the projects were in central and eastern Europe, however, it did not get much experience in working with developing countries. Another problem was the requirement that the Dutch government provide all of the financing, as a JI program would involve a great deal of financing by the private sector. It is also questionable whether the government had an impartial role, as Senter not only owned and operated the project, but was involved in the certification and verification of the project. This created a conflict of interest.

The U.S. program did not have as many operational projects. Only about one third of all proposed projects became operational, primarily because of funding issues. Funding was not a requirement for project approval, and many project owners had difficulties raising the necessary funds. The government provide little or no funding for the projects. This caused a problem because the owners had to show that the project was not economically feasible, that is, it had to show a negative rate of return, in order to qualify for the US IJI program. This was done in order to meet the criteria of additionality. If the project had a positive rate of return, it could be argued that it would have occurred anyway. A good thing about the U.S. program was that the government had a very impartial role in its operation. Even though the EPA and DOE had roles in both the evaluation and

registration of projects, they were not involved in the development and operation of the projects themselves.

Implementation Issues

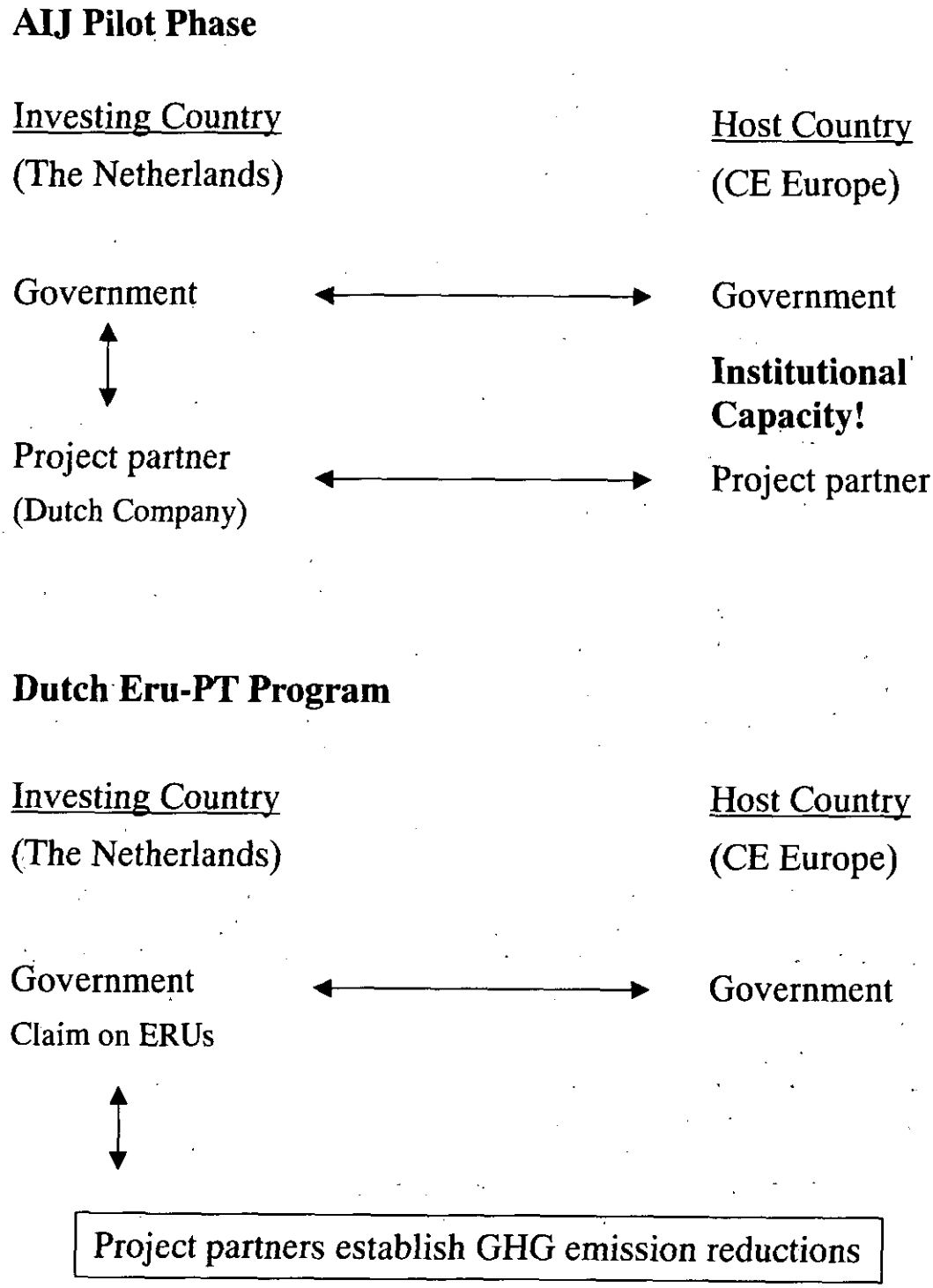
The experiences of the U.S. and the Dutch AIJ programs raise a number of implementation issues. The United States and the Netherlands both had to develop a pilot phase, but they did so in completely different ways. One big difference was culture. The role of the government in the Netherlands has always been more dominant, so it was natural for the government to develop and implement the projects. There has also always been close cooperation between the government and private sector in the Netherlands, whereas in the United States the government just sets the rules and the private sector is more or less free to move within those boundaries. The Netherlands also has a large history of development cooperation and in setting up projects, so it was natural for it to set of the AIJ pilot phase in this way. The EU state aid rules also meant that the Dutch projects had to either receive full funding from the government or nothing at all. This was a big difference between U.S. and Dutch projects carried out in eastern Europe. The capacity of the host country was also an important issue. This included not just institutional and technical capacity, but also knowledge about AIJ, JI and the CDM. This was often an obstacle for implementing projects.

Beyond AIJ: The Dutch Eru-PT Program

The Netherlands government is now initiating an Emissions Reduction Unit Procurement Tender (Eru-PT) Program. This program, which is only for central and eastern Europe, is being carried out by the Ministry of Economic Affairs, and has a budget of $150 million through the year 2003. While the government is not providing full funding for projects, it is an open tender program in that any private company within the EU can submit a project proposal. It thus complies with EU state aid rules. There is also validation by independent organizations, and the Joint Implementation Registration Center is no longer operational.

Because the Kyoto Protocol does not state that private entities can own ERUs, the transfer of ERUs has to be done from one government to another. In the AIJ pilot phase, the project partners received the emissions reductions and the credits went from the host country to the investing country. In the new program, the project partners only implement the projects, while the credits that are generated from the project are transferred to the government through claims on the emissions reduction units. The actual ERUs are transferred from the host country governments to that of the investing country government. This bypasses the problem of institutional capacity, as the relationship between the host country governments and their private sector is often very poor. Memoranda of Understanding have been established with Romania, Bulgaria, and Slovakia for the transfer of ERUs from those countries to the Netherlands. Latvia and Poland may be coming soon. The first tender of $20 million was from May 25 to July 15, 2000. So the Dutch government learned a lot from its AIJ program, and used this knowledge to set up a new program that looks very promising.

Figure 1. A Comparison of the Dutch AIJ Pilot Phase and Eru-PT Progams



Reconciling the Design of CDM with the Inborn Paradox of the Additionality Concept

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Thank you very much. As time is limited, I will not go into the details of the paper that has been distributed. I just want to mention that the compliance issue is closely related to scientific uncertainty and the subjectiveness of rules. In the case of the CDM, there seems to be a paradox from the beginning of the design. The CDM was established to promote the most cost-effective projects to reduce GHG emissions. However, the most "cost-effective" projects may be the least "additional," and strict project additionality could give perverse policy incentives. If everyone agrees that a project is additional, it means that the project is not cost-effective. On the other hand, if people do not agree that the project is additional, then it might possibly be cost-effective. This is one example of the prevailing subjectiveness and scientific uncertainty that makes designing such institutions difficult. This relates to the compliance system because if you have scientific uncertainties and if you have subjectiveness, how should the compliance system be designed? One solution that I suggest here is to turn the subjectiveness and scientific uncertainty to some positive use by providing some discretionary elements or flexibility in the design of CDM projects. This corresponds to the management school of compliance that I discussed earlier. With this management approach, subjectiveness and scientific uncertainty can be incorporated into flexibility for the Parties, and the Parties can use this flexibility to enhance cooperation on reducing GHG emissions.

Another important point is that the compliance system cannot be separated from other elements of the Kyoto Protocol. This includes the Kyoto Mechanisms, sinks, and other elements. I am not sure that it is productive to consider the compliance system is considered in only a narrow sense. If you talk about the compliance system, you have to talk about all the elements of the Kyoto Mechanisms. Thank you.

Session 4 Discussion Summary: Research Questions Concerning the Institutional Dimensions of Compliance and Implementation

The core research question described in the CMRA Scoping Report is: *what are the essential factors shaping compliance with and long-term implementation of the evolving climate change regime?*

Much of the discussion during Session 4 focused on issues of variance in the context of compliance and implementation. The major research questions that participants brought up during this discussion include:

- **Given the uncertainties associated with Kyoto Mechanisms and the role of the private sector in their effective operation, can a compliance mechanism be created that is effective in targeting the cause of the non-compliance?** It may prove difficult to hold a State responsible for non-compliance if it has acted in good faith to meet its obligations but failures on the part of the private sector are responsible for the non-compliance. Similarly, a scenario can be envisioned in which a Party that sells ERUs to others under an emissions trading regime is found to be in non-compliance at the end of the first compliance period. Is that Party alone to be held responsible? Should other Parties be held responsible as well even if they bought the ERUs in good faith? Do we need to look at a range of mechanisms to address non-compliance? If a company is in breach, can normal contract provisions be used to promote compliance? This may become a particularly important issue as the Kyoto Mechanisms become operational.

- **What are the implications of cultural and North-South differences for compliance and compliance mechanisms?** The predominantly Western orientation of international law may cause difficulties when applied in many non-Western settings. For example, while European nations accept international arbitration as an accepted approach to dispute resolution, there is a dislike for this approach among many developing nations, as they are seen as a Westphalian or European mechanism. This has not been an issue thus far because targets and timetables have only been established for industrialized countries. However, disputes involving developing countries will undoubtedly arise in the future as the regime matures and the Kyoto Mechanisms become operational. As we have seen in the case of AIJ, one approach for the compliance mechanism may not fit all Annex 1 countries, and it certainly will not fit all Annex 1 and non-Annex 1 countries. It is not clear that we understand how differences among countries in terms of culture, legal systems, or other factors could affect operation of the compliance mechanism, or which of these factors are most important in doing so.

- **What is the relationship between the compliance mechanism for the Kyoto Protocol and compliance under the Framework Convention?** Because it is not yet clear if and when the Kyoto Protocol will enter into force, the Framework Convention is the only agreement at the present time with which states must comply. The FCCC does have some very real mandates with which states much comply. What might be the implications for compliance under the FCCC if the Kyoto Protocol does not enter into force?

- **How can we learn from dispute settlement processes in other areas to shed light on the compliance issue given the tremendous differences between the climate and other regimes?** For example, trade disputes tend to focus on resolving

differences among Parties rather than achieving certain goals. The overall emphasis of dispute settlement under the GATT and WTO is not to achieve compliance as such but to make some sort of adjustment among parties so that the process could continue. There is also the existence of injured parties in the trade disputes, as industries can be identified that are clearly affected by rule violations. In the case of global warming, however, the damage is very diffuse such that there are no clear-cut injured parties. Given this, it is worth thinking about how to resolve disputes that arise in the climate regime, as disputes among parties will arise as the regime is implemented. It may be the case that the compliance process that we establish now may not have the legitimacy or pull to resolve these disputes.

- **Can incentives be created that might be effective in bringing about compliance?** In the Law of the Sea Convention, new approaches are being considered that bring different communities into the process in order to get around the dilemma that national sovereignty raises for compliance. It may be useful to look specifically at combined economic/environmental regimes such as the Law of the Sea to see what alternative approaches might be used to promote compliance.
- **What are the institutional implications for an effective verification regime or system? What is the relationship between the verification system and the compliance mechanism?** It is impossible to judge the success of an emissions trading or joint implementation program until we have an agreement on the baseline and verification issues. Verification in particular is something that can only be done over time, however. How can we create an effective verification system that operates over time but is also linked to the compliance mechanism?