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Ad Hoc Working Group of Legal and
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of a Global Framework Convention for
the Protection of the Ozone Layer

Second part of the second session
Geneva, 11-15 April 1983

REVISED DRAFT CONVENTION FOR THE PROTECTION OF THE
OZONE LAYER, WITH ADDITIONAL COMMENTARY

Text prepared by the UNEP secretariat

INTRODUCTION

1. The present text of the draft international convention for the protection of the ozone layer has been prepared in response to the recommendation of the Ad Hoc Working Group during the first part of its first session (UNEP/WG.78/8, para. 41 (a)).
2. As recommended by the Working Group, the revised text of the draft convention is accompanied where appropriate by commentaries designed to explain as briefly as possible the reasons for the wording used in the revised draft. As in the earlier version of the draft convention (UNEP/WG.78/2), brackets are used to indicate alternative wordings and proposals on which agreement was not reached. Except where there is specific indication to the contrary, the commentary which accompanied the earlier version remains generally valid in respect of the new text also. The present document should therefore be read in conjunction with that earlier version, as well as with the report of the Working Group on the first part of its second session (UNEP/WG.78/8).

Preamble

THE PARTIES TO THIS CONVENTION

- [AWARE of the potentially harmful impact of modification of the ozone layer which may be caused by the world-wide emission of chlorofluorocarbons and other compounds,]
- [AWARE of the potentially harmful impact on human health or the environment through human modification [of stratospheric ozone] [of the ozone layer] [likely to be caused by world-wide emission of chlorofluorocarbons and other compounds],]
- RECALLING the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21, [which provides that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,]
- [RECALLING further decisions 84 C (V) of 25 May 1977, 8/7 B of 29 April 1980, 9/13 B of 26 May 1981 and 10/17 of 31 May 1982 of the Governing Council of the United Nations Environment Programme,]
- MINDFUL of the work and studies proceeding within both international and national organizations [and], in particular [, of the World Plan of Action on the Ozone Layer of] the United Nations Environment Programme,

- [AWARE that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, [and should be based on clear scientific and technical considerations],]
- [AWARE also of the need for further research and monitoring to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modification,]
- [RECOGNIZING the co-ordinating and catalytic role of the United Nations Environment Programme, which provides an appropriate institutional framework for international co-operation on problems concerning the ozone layer,]
- DETERMINED to protect man and the environment from adverse effects of modifications of the ozone layer,

HAVE AGREED AS FOLLOWS:

Commentary

The first two preambular paragraphs are alternatives, and hence in brackets. The brackets in the second of them, as well as in the fifth and sixth paragraphs and around the fourth, sixth and eighth paragraphs, reflect views expressed during the first reading of the draft convention (UNEP/WG.78/8, paras. 13 and 14). The brackets in the third and around the seventh paragraphs reflect proposals made during the second reading to delete the quotation of principle 21 of the Declaration of the United Nations Conference on the Human Environment and to replace the sixth paragraph by the seventh paragraph.

Article 1

DEFINITIONS

For the purpose of this Convention:

1. "The ozone layer" means the total ozone above the earth's surface, most of which is found in the stratosphere.
2. "Adverse effects" means changes in the physical environment or biota, including changes in climate, which are, taken over-all, deleterious to human health or to the composition, resilience and productivity of natural and managed ecosystems.
- [3. "Monitoring" means a system of observations, collation of the results of these observations, and assessment and forecasting of change in the amount and vertical distribution of ozone and substances having a significant impact on the state of the ozone layer on the basis of factual data.]

Commentary

Paragraphs 1 and 2 remain unchanged as a result of the first and second readings. Of the additional definitions for which there was felt to be a need

/...

(UNEP/WG.78/8, para. 15), one on monitoring was submitted in writing by the Soviet Union, and is reproduced between brackets as paragraph 3.

Article 2

GENERAL OBLIGATIONS

Alternative 1

1. The Contracting Parties shall [take all appropriate measures to] limit, reduce and prevent activities under their jurisdiction or control that have or are likely to have adverse effects resulting from modifications of the ozone layer, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.
2. [[To this end they] [They] shall take all relevant legislative, administrative, technical and other measures, in particular as specified in this Convention [and protocols and/or annexes thereto].]

[The Contracting Parties shall co-operate in the formulation and adoption of protocols prescribing agreed measures, procedures and standards for the implementation of this Convention].
3. Within the framework of this Convention, the Contracting Parties shall co-operate, by means of monitoring, research, exchange of information and transfer of technology, in developing and harmonizing policies, strategies and measures for [minimizing] [limiting, reducing [and/or] preventing] [regulating] the release of substances which cause or are likely to cause [modifications of the ozone layer] [adverse effects on the ozone layer].

Alternative 2

1. The Contracting Parties shall [either individually or jointly], take all appropriate measures [to control activities under their jurisdiction that have or are likely to have] [in accordance with the provisions of this Convention] [and those protocols in force to which they are party] to [protect man and the environment against] [protect the ozone layer and to that end limit and [gradually] reduce and prevent activities under their jurisdiction and control that may have] adverse effects resulting from modifications of the ozone layer [using for this purpose the best practicable means at their disposal and in accordance with their capabilities].
2. To this end the Contracting Parties shall [within the framework of the Convention:]
 - [a] co-operate by means of monitoring, research and information exchange in order to better [understand [and assess]] the effects of human activities [on total column ozone and the vertical distribution of ozone and to better understand] [on the ozone layer and] the effects on human health and the environment from modifications of the ozone layer.

[3]

- [b] [The Contracting Parties shall] co-operate in the formulation and adoption of protocols and annexes prescribing agreed measures, procedures and standards for the implementation of this Convention.

[4]

- [c] [The Contracting Parties further pledge themselves to] [The Contracting Parties shall] co-operate [in promoting further, within] with competent international bodies [programmes and measures concerning the protection of the ozone layer] [to implement effectively this Convention and those protocols to which they are a party].

[3][5] Within the framework of this Convention, the Contracting Parties shall co-operate, by means of monitoring, research, exchange of information and transfer of technology, in developing and harmonizing policies, strategies and measures for [minimizing] [limiting, reducing [and] [or] preventing] [regulating] the release of substances which cause or are likely to cause [modifications of the ozone layer] [adverse effects on the ozone layer].

Commentary

The exchange of views which took place during the first part of the Working Group's second session (UNEP/WG.78/8, paras. 16-19) made it possible to reduce the number of alternatives for this article from four to two.

Alternative 1 here, imposing more stringent obligations, is based primarily on the former alternative 1. It contains two alternative versions of paragraph 2.

Alternative 2 of the article, which is more flexible, is based on the former alternative 3; it would have either three or five paragraphs, depending on whether or not sub-paragraphs 2 [b] and [c] are made separate paragraphs.

In both alternatives for this article, the numerous amendments proposed during the first and second readings on which agreement was not reached are indicated by the use of brackets.

Article 3

RESEARCH AND MONITORING

1. The Contracting Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research generally on:

- (a) The physical, chemical, and dynamic processes that may affect the ozone layer;

/...

(b) The human health and other biological effects deriving from modifications of the ozone layer, particularly those resulting from changes in UV-B radiation;

(c) Climatic effects deriving from modifications of the ozone layer;

(d) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;

(e) Alternative substances and technologies;

(f) Related socio-economic matters;

as further elaborated in Annex I.

2. The Contracting Parties undertake to promote or establish as appropriate, directly or through competent international bodies and taking fully into account relevant on-going activities at both the national and international levels, joint or complementary programmes for monitoring the state of the ozone layer and other relevant parameters, and to provide the resulting data to world data centres in a regular and timely fashion, as elaborated in Annex I.

3. The Contracting Parties undertake to co-operate, directly or through international bodies, in ensuring the collection, availability and validation of observational data.

Commentary

The above text reflects a number of amendments submitted in writing and generally agreed to during the first part of the Working Group's second session. In view of the general agreement in principle that there should be an annex on research and monitoring, the references to such an annex in this article are not bracketed.

Article 4

SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION

1. The Contracting Parties undertake, taking fully into account the relevant on-going programmes at both the national and international levels, and that carried out under the World Plan of Action on the Ozone layer, to promote or establish, directly or through the competent international bodies, joint or complementary programmes for data analysis and interpretation concerning the state of the ozone layer and the [causes, extent, trends and] effects of its possible modification.

[2. The Contracting Parties shall facilitate and encourage the exchange of legal, scientific and technical information relevant to this Convention, particularly information related to:

(a) Activities undertaken or planned with a view to limiting and reducing activities and emissions of substances that modify or are likely to modify the ozone layer;

(b) Other activities under their jurisdiction or control that modify or are likely to modify, the ozone layer.

3. The Contracting Parties shall co-operate, in accordance with the provisions of annex II to this Convention, and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge in fields relating to reduction of emissions that modify, or are likely to modify, the ozone layer, particularly through:

(a) Facilitation of licensing and of sale of alternative technologies to other countries;

(b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;

(c) Exchange of necessary monitoring equipment and facilities needed to supplement existing monitoring systems;

(d) Appropriate training of scientific and technical personnel;

(e) Ensure intercalibration of observational means and methods with a view to generating comparable or standardized data called for in specialized protocols or annexes]

[2. The Contracting Parties shall facilitate and encourage the exchange of legal, scientific and technical information relevant to this Convention as specified in the annex or annexes thereto and protocols to which they are a party.]

Commentary

Paragraph 1 reflects the consensus reached on the second reading on all parts of its text except the four words in brackets.

The first variant of paragraph 2 remains unchanged from the former draft of the convention (UNEP/WG.78/2).

The second variant of paragraph 2 was proposed as a more flexible wording, intended to replace paragraphs 2 and 3, and avoiding the inclusion of an unqualified obligation to exchange information and transfer technology.

Paragraph 3 incorporates amendments to the earlier version agreed on during the first and second readings.

Article 5

TRANSMISSION OF INFORMATION

The Contracting Parties shall transmit through the Secretariat to the Conference on Contracting Parties information on the measures adopted by them in implementation of this Convention [and annexes and protocols thereto,] [and of protocols to which they are parties,] in such form and at such intervals as the Conference of Contracting Parties may determine.

Commentary

The above text reflects the compromise reached during the first reading (UNEP/WG.78/8, para. 22) based on Alternative 2 in document UNEP/WG.78/2, as well as amendments and a change of title agreed on during the second reading.

Article 6

CONFERENCE OF THE CONTRACTING PARTIES

1. [A Conference of the Parties is hereby established.] The first meeting of the Conference of the Contracting Parties shall be convened by the [Executive Director] [secretariat] of the United Nations Environment Programme [Depositary] [not later than one year] after the entry into force of this Convention. Thereafter, [ordinary] meetings of the Conference of the Contracting Parties may be held [at regular intervals to be determined by the Conference. Extraordinary meetings of the Conference of the Contracting Parties may be held at such other times as may be deemed necessary by the Conference, or] at the written request of any Contracting Party, provided that such a request is supported by at least one third of the Contracting Parties.
2. At its first meeting, the Conference of the Contracting Parties shall agree upon and adopt rules of procedure [and financial rules] for itself and for [any] [its] subsidiary bodies established [under article 8] [by this article], as well as financial provisions governing the functioning of the secretariat established under article 7.
3. The Conference shall keep under continuous review the implementation of this Convention, and, in addition, shall:
 - (a) Consider [periodic reports] [information] submitted through the secretariat in accordance with article 5 as well as reports submitted by [[the scientific-technological advisory body/mechanisms] established under article 8 of this Convention and by the scientific, technical or legal working groups referred to in subparagraph (h) below;] [such mechanisms, groups, bodies, committees and organizations referred to in subparagraphs (f) and (g) below;]
 - (b) Review of the state of the [latest scientific information on] ozone layer;

(c) [Define common policies, strategies and measures, in accordance with the provisions of article 2, for minimizing the release of substances causing or likely to cause modification of the ozone layer, and make recommendations on any other measures relating to this Convention;]

(c) [Consider co-operative activities to be undertaken within the framework of the Convention and its protocols or annexes;]

(d) [Adopt programmes and measures, in accordance with the provisions of article 2, for minimizing the release of substances causing or likely to cause modification of the ozone layer, as well as programmes for research, monitoring, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge in accordance with the provisions of articles 3 and 4;]

(d) [Make recommendations regarding the adoption of protocols or amendments to this Convention or its protocols in accordance with article 10;]

[(e) [Consider and adopt amendments to this Convention [as well as to the protocols and/or annexes thereto] as laid down in article(s) 10 [and 12];]

[(f) Consider the need for new protocols.]

[(g) [Consider and] adopt [review and amend] annexes to this Convention as laid down in [in accordance with] article 12];]

[(h) Establish such [mechanisms] [scientific, technical or legal] [scientific, technical, socio-economic or legal] working groups as are deemed necessary for the implementation of this Convention;]

(i) Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Health Organization, [and] the World Meteorological Organization [and the Co-ordinating Committee on the Ozone Layer], in scientific research and monitoring and other activities pertinent to the objectives of this Convention, and make use as appropriate, of information from such bodies and committees;

(j) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention [and the protocols thereto].

4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Contracting Parties by observers who shall have the right to participate in the debate without the right to vote. Any body or agency, whether national or international, governmental or non-governmental, [technically] qualified in fields relating to the protection of the ozone layer, which has informed the secretariat of its wish to be represented at a meeting of the Conference as an observer, may be admitted unless [at least one third of] the Contracting Parties present

object. Once admitted, the observers of such bodies or agencies shall have the right to participate in the debate without the right to vote [at that meeting]. The participation of [a non-governmental body or agency] [an observer] may be limited to parts of the meeting that are considered to be directly relevant to its work.

Commentary

The above text reflects amendments proposed during the first and second reading. In addition to the proposals and views summarized in paragraph 23 of document UNEP/WG.78/8, it incorporates in brackets, along with the original version, a version of the paragraph submitted in writing by the United States of America. As a result, there are alternative versions of subparagraphs 3 (c) and (d), and subparagraphs 3 (e) and (h) now appear between brackets, since they were not included in the United States proposal.

Apart from the commentary appearing in document UNEP/WG.78/2 (pages 19-20), paragraphs 14-20 of document UNEP/WG.78/4 are also relevant to this article.

Article 7

SECRETARIAT

1. The Contracting Parties designate the United Nations Environment Programme as responsible for carrying out the following secretariat functions [taking into account the organizational and financial possibilities of UNEP] [until the first ordinary meeting of the Conference of the Parties held pursuant to article 6. These functions shall be]:

(a) To arrange for and service the meeting of the Contracting Parties as provided for in articles [6], [8], [9 and 10];

(b) To arrange for and service the meetings of [the advisory body established under article 8 and] [scientific, technical, socio-economic or legal] working groups established under article 6;

(c) To transmit the information received in accordance with article 5 as well as information derived from meetings of bodies established under articles [6 and 8];

[(d) To invite the attention of the Contracting Parties to any matter pertaining to the purposes of this Convention;]

[(e) To perform the functions assigned to the Secretariat by any protocols to this convention;]

(f) To prepare [administrative] reports on the activities carried out by the Secretariat in the implementation of this convention and present them to the conference of the Contracting Parties;

(g) To ensure the necessary co-ordination with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of the secretariat functions;

(h) To perform such other functions as may be determined by the Conference of the Contracting Parties.

[2. If the United Nations Environment Programme is no longer able to provide the Secretariat, the Conference of the Parties shall make alternative arrangements for the Secretariat.]

[2. The Contracting Parties shall, at the first ordinary meeting of the Conference of the Parties, make arrangements for a permanent secretariat.]

Commentary

The above text incorporates amendments submitted in writing during the first and second readings. The most significant among these is the Canadian proposal, reflected in the second bracketed passage at the beginning of paragraph 1 and second version of paragraph 2, whereby the assignment of secretariat functions to UNEP would be for a limited period, it being left to the Contracting Parties to make arrangements for a permanent secretariat. In addition, paragraphs 1 (d) and (e) remain in brackets, since their inclusion was opposed during the first part of the second session. The inclusion of the word "administrative" in brackets in paragraph 1 (f) reflects the view of some delegations that the functions of the secretariat should be purely administrative.

Apart from the commentary in document UNEP/WG.78/2, (pages 21-22), paragraphs 4-12 of document UNEP/WG.78/4 are also relevant to this article.

Article 8

ADVISORY BODY

Alternative 1

1. An Advisory Committee is hereby established consisting of [x of] the representatives of the Contracting Parties to this Convention. The selection of members, their terms of office, admission of observers, and approval of the procedures of the Committee will be provided for in the rules of procedure established under article 6.

2. The functions of the Committee shall be:

(a) To formulate recommendations for consideration by the Conference of the Parties;

(b) To facilitate the exchange of relevant legal, scientific and technical and socio-economic information related to actions that increase, limit, or reduce activities and emissions of substances that modify or are likely to modify the ozone layer;

[(c) To facilitate the development and transfer of technology and knowledge relating to the reduction of such emissions in implementation of article 4, paragraph 3;]

(d) To review and analyse the information and reports submitted in accordance with articles 4 and 5, and to request under the authority of the Conference of the Parties such additional information from the Contracting Parties as may be deemed necessary by the Committee to meet the responsibilities assigned to it by this Convention and the Conference of the Parties;

(e) To advise the Conference on the state of the ozone layer, the extent and trends of its modifications and possible resultant effects;

(f) To perform such other functions as may be deemed necessary by the Conference of the Parties.

3. The Committee shall seek as appropriate from the Co-ordinating Committee on the Ozone Layer [and other bodies] scientific, socio-economic and technological advice, as well as assessments of the state of the ozone layer, the extent and trends of its modification, and possible resultant effects.

4. The Committee shall utilize [ad hoc] [standing] working groups of experts on scientific, legal and socio-economic aspects of the protection of the ozone layer [and on the transfer of technology], and shall arrange for or undertake, in accordance with the financial rules, special scientific, legal and technical studies, as required to meet the responsibilities given to it by this Convention [and any protocol in force] and by the Conference of the Parties.

Alternative 2

[1. The Conference of the Parties shall, under its rules of procedure and financial rules, provide for the necessary mechanisms to carry out its responsibilities under article 6 of this Convention.]

[1. The Conference of the Contracting Parties shall establish a committee consisting of representatives of the Contracting Parties and having the function of advising the Conference on all matters of relevance to the implementation of the Convention. The selection of members, admission of observers, and approval of the procedures of the Committee shall be provided for in the rules of procedure established under article 6.]

2. In addition to [such mechanisms] [that Committee], the Conference of the Parties shall request from the Co-ordinating Committee on the Ozone Layer [and other bodies] scientific, socio-economic and technological advice as well as assessment of the state of the ozone layer, the extent and trends of its modification, and possible resultant effects.

Commentary

The new title of this article was agreed on at the first part of the Working Group's second session. Alternative 1 is identical to alternative 1

in document UNEP/WG.78/2, except for the addition of the words "and socio-economic" in paragraph 2 (b) and the deletion of the word "scientific" in the bracketed phrase in paragraph 3.

Alternative 2 has two alternatives for paragraph 1; the first of these is identical to alternative 2, paragraph 1 in document UNEP/WG.78/2, while the second is more specific. Paragraph 2 is identical to the UNEP/WG.78/2 text, except for brackets in the first line to accommodate either version of paragraph 1 and the deletion of the word "scientific" as in alternative 1 for the article.

[Article 9

ADOPTION OF PROTOCOLS

1. The Contracting Parties may adopt, at a diplomatic conference, [additional] protocols to this Convention pursuant to the provision of article 2, paragraph [2] [3].

2. A diplomatic conference for the purpose of adopting protocols shall be convened by the secretariat at the written request of any Contracting Party, provided that within six months from the date of communication by the secretariat to the Contracting Parties of the fact of such a request, it is supported by at least one third of the Contracting Parties.

[3. Pending the entry into force of this Convention, the Executive Director of United Nations Environment Programme may, with the agreement of majority of the signatories to this Convention, convene a diplomatic conference for the purpose of adopting protocols.]]

Commentary

This article is unchanged from the text in document UNEP/WG.78/2, except for the addition of square brackets around the word "additional" in paragraph 1, in response to a suggestion by Canada, and around paragraph 3 to reflect the opposition to it on grounds expressed during the first part of the first session.

Document UNEP/WG.78/3 provides additional commentary relevant to this article.

Article 10

AMENDMENT OF THE CONVENTION [OR PROTOCOLS]

Alternative 1

1. Any Contracting Party to this Convention may propose amendments to this Convention [or any Protocol thereto]. Such amendments shall take due account of relevant scientific and technical considerations. The secretariat shall circulate such proposals to all Contracting Parties. Amendments shall be

adopted by a meeting of [the Conference of the Contracting Parties] [a diplomatic conference] which shall be convened by the Executive Director of the United Nations Environment Programme at the request of two-thirds of the Contracting Parties.

2. Amendments to this Convention [or any protocol] shall be adopted by [consensus] [a two-thirds majority vote] of the Contracting Parties to the Convention [or to such protocol] [present and voting at the meeting] and shall be submitted by the Depositary for acceptance by all Contracting Parties to the Convention [or to such protocol]. [For these purposes "Contracting Parties present and voting" means Contracting Parties present and casting an affirmative or negative vote.]

3. Acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 2 of this Article shall enter into force [between Contracting Parties having accepted such amendments] on the [sixtieth day] [ninetieth day] following the receipt by the Depositary of notification of their acceptance by [all Contracting Parties] [at least three fourths of the Contracting Parties] to this Convention [or to the protocol concerned]. Thereafter the amendments shall enter into force for any other Party thirty days after that Party deposits its instrument of acceptance of the amendments.

4. Following the entry into force of an amendment to this Convention [or to any protocol], any new Contracting Party to this Convention [or such protocol] shall become a Contracting Party to the instrument as amended.

[5. Apart from the procedures set out above, the amendments may be adopted by the simplified procedure provided for in article 13.]

Alternative 2

1. Any Contracting Party to this Convention may propose amendments to this Convention. Amendments shall be adopted by a diplomatic conference which shall be convened by the Secretariat at the request of the Contracting Parties. Such amendments shall take into account all relevant scientific, technical and other considerations.

2. Any Contracting Party to this Convention may propose amendments to a protocol to this Convention. Amendments shall be adopted by a diplomatic conference which shall be convened by the Secretariat at the request of the Contracting Parties. Such amendments shall take into account all relevant scientific, technical and other considerations.

3. The text of any proposed amendment shall be communicated by the Secretariat ... days before such a diplomatic conference.

Commentary

Alternative 1 of this article is identical to the text contained in document UNEP/WG.78/2. Alternative 2, proposed by the United States of America, is less detailed and provides for the adoption of amendments, both to the convention itself and to protocols, only by a diplomatic conference.

[Article 11

STATUS, AMENDMENT AND ADOPTION OF ANNEXES

1. Annexes to this Convention shall form an integral part of it.
2. An annex may provide for a simplified amendment procedure or for adoption of amendments by qualified majority vote; in any other case the procedure for amendment shall be the one referred to in article 10 of this Convention.
3. Adoption and entry into force of new annexes shall be subject to the procedure referred to in article 10.]

[Article 11

STATUS OF ANNEXES

The annexes to this Convention [or to any protocol] shall form an integral part of this Convention [or such protocol, as the case may be].]

[Article 12

ADOPTION AND AMENDMENT OF ANNEXES

1. Any Contracting Party may propose amendments to the annexes to this Convention [or to any protocol] at the meeting referred to in article 6. [Such amendments should take due account [, inter alia,] of relevant scientific and technical considerations.]
2. Such amendments shall be adopted by [consensus] [a two-thirds majority vote] of the Contracting Parties [present and voting on the instrument in question]. The Depositary shall without delay communicate the amendments so adopted to all Contracting Parties.
- [3. Any Contracting Party that is unable to approve an amendment to the annexes to this Convention [or to any protocol] shall so notify the Depositary, in writing, within six months from the date of the circulation of the communication by the Depositary. The Depositary shall without delay notify all Contracting Parties of any notification received.] [A Contracting Party may at any time substitute an acceptance for a previous declaration of objection and the amendment shall there upon enter into force for that Party.]
- [4. On the expiry of six months from the date of the circulation of the communication by the Depositary, the amendment to the annex shall become effective for all Contracting Parties to this Convention [or to any protocol concerned] which have not submitted a notification in accordance with the provision of paragraph 3 above.]
5. The adoption and entry into force of a new annex to this Convention [or to any protocol] shall be subject to the same procedure as for the adoption and entry into force of amendments to the Convention [or to any protocol],

provide that, if any amendment to the Convention [or to the protocol concerned] is involved, the new annex shall not enter into force until such time as the amendment to the Convention [or the protocol concerned] enters into force.

[6. Apart from the procedures set out above, the amendments may be adopted by the simplified procedures referred to in article 13.]

Commentary

The first version of article 11, as its title indicates, is intended to replace articles 11 and 12, and would precede the present article 9. The second version of article 11 is identical to that contained in document UNEP/WG.78/2.

Article 12 is also identical in wording to article 12 in the former draft, except for the addition in paragraph 1, between brackets, of a sentence referring to scientific and technical considerations.

[Article 13

AMENDMENT BY SIMPLIFIED PROCEDURE

1. A Contracting Party may, by written communication addressed to the secretariat, propose an amendment to annexes to this Convention [or to the Convention and protocols thereto] to be adopted by a simplified procedure pursuant to the provisions of this article.
2. The secretariat shall circulate such communications to all Contracting Parties.
3. If, at any time within a period of six months thereafter, [one third of the Contracting Parties] [a Contracting Party] object[s] to the proposed amendment or to the proposal for its adoption by simplified procedure, the amendment or the proposal shall be considered rejected. The secretariat shall notify all Contracting Parties accordingly. If on the expiry of six months no Contracting Party has objected to the proposed amendment or to the proposal for its adoption by simplified procedure, it shall be considered adopted. The secretariat shall notify all Contracting Parties accordingly.]

Commentary

Since at the first part of the Working Group's second session many delegations were opposed to the inclusion of this article, it remains between brackets, as do article 10, paragraph 5 and article 12, paragraph 6.

Article 14

SETTLEMENT OF DISPUTES

Alternative 1

The Contracting Parties to this Convention shall settle any dispute between them concerning the interpretation or application of this Convention

/...

[and any protocol thereto] by peaceful means in accordance with Article 2, paragraph 3 of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1 of the Charter.

Alternative 2

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention [and any protocol thereto], the Parties concerned shall seek a solution by negotiation. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Contracting Party, a qualified international organization or a qualified person.
2. Where the Parties concerned are unable to resolve their dispute through negotiation, or to agree on the measures as described above, the dispute shall, by common agreement, be referred to an ad hoc tribunal, to a permanent arbitration tribunal or to the International Court of Justice.

Alternative 3

In the event of a dispute arising between two or more Contracting Parties to this Convention [and any protocol thereto] concerning the interpretation or application of the Convention, the Parties to the dispute shall seek a solution by negotiation or by any other method of dispute settlement acceptable to them.

Commentary

At the first part of the Working Group's second session, no consensus was reached (UNEP/WG.78/8, para. 31), and all three alternatives are retained in the present text.

Article 15

Signature

Alternative 1

1. This Convention shall be open for signature at _____ from _____ to _____ by any States [and by regional economic integration organizations, constituted by sovereign States, which have competence in respect to the negotiation, conclusion and application of international agreements in matters covered by this Convention.
2. In matters within their competence, such regional economic integration organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to their member States. In such cases, the member States of these organizations shall not be entitled to exercise such rights individually.]

Alternative 2

This Convention shall be open for signature at _____ from _____ to _____ by any State. It shall also be open for signature between the same dates by any regional economic integration organization exercising competence in the fields covered by this Convention and if a majority of its member States are signatory to this Convention.

Commentary

Alternative 1 of this article is identical to the text contained in document UNEP/WG.78/2.

Alternative 2, reflecting the view expressed at the first part of the Working Group's second session (UNEP/WG.78/8, para. 32) that a majority of States within a region should become signatories to the convention before the regional economic organization became a party to the Convention, was proposed by the United States of America.

Article 16

RATIFICATION, ACCEPTANCE [OR] APPROVAL [OR ACCESSION]

1. This Convention [and any protocol thereto] shall be subject to ratification, acceptance [or] approval [or accession] [by States] [and by the regional economic integration organizations referred to in article 15]. Instruments of ratification, acceptance [or] approval [or accession] shall be deposited with [the Secretary-General of the United Nations] [the Government of ...] [who will act as depositary.]
2. This Convention and any protocol thereto shall also be subject to ratification, acceptance or approval by the organizations referred to in article 12 if a majority of its member States are a party to the Convention. In their instruments of ratification, acceptance or approval, such organizations shall declare the extent of their competence with respect to the matters governed by the Convention and the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. In matters within their competence, such organizations shall exercise the rights, and fulfil the obligations under the Convention on behalf of their member States. In such cases, the member States of the organization shall not be entitled to exercise such rights individually. The participation by such organizations shall in no case entail an increase in the representation of their members which are Contracting Parties to the Convention.]

[Article 17

ACCESSION

As from ... this Convention shall be open for accession by any States [and by the regional economic integration organizations referred to in article 15]. The instruments of accession shall be deposited with the [Secretary-General of the United Nations]. [Government of ...] [who will act as depositary]]

Commentary

At the first part of the Working Group's second session, it was proposed (UNEP/WG.78/8, para. 33) that articles 16 and 17 be merged. Paragraph 1 of article 16 therefore contains between brackets wording which would have this effect, as well as the words "who will act as depositary" proposed as an addition to article 7. It also incorporated the suggested amendment to article 17, enabling a State to act as depositary.

Paragraphs 2 and 3 were proposed by the United States of America.

In view of the proposal to merge it with article 16, the whole of article 17 is now between brackets.

Article 18

ENTRY INTO FORCE OF THE CONVENTION

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the instrument of ratification, acceptance, approval or accession.
2. For each Contracting Party which ratifies, accepts, approves this Convention or accedes thereto after the deposit of the instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession, subject to paragraph 1.

Commentary

The text of this article remains as in document UNEP/WG.78/2.

[Article 19

RESERVATIONS

No reservations or exceptions may be made to this Convention [or of any annex or protocol thereto] unless expressly permitted by this Convention.]

Commentary

The whole article is between brackets to reflect the proposal of Japan that it be deleted. The addition of the bracketed phrase concerning annexes and protocols was proposed during the first reading (UNEP/WG.78/8, para. 36).

Article 20

WITHDRAWAL

1. At any time after [three] [five] years from the date on which this Convention has entered into force with respect to a Contracting Party, that Contracting Party may withdraw from the convention by giving written notification to the Depository.

[2. Except as may be provided in any protocol to this Convention, at any time after [three] [five] years from the date on which such protocol has entered into force with respect to a Contracting Party, that Contracting Party may withdraw from the protocol by giving written notification to the Depository.]

3. Any such withdrawal shall take effect upon expiry of [six months] [one year] after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.

[4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is a party.]

Commentary

The text of this article remains as in document UNEP/WG.78/2, with the addition of brackets to reflect a WHO proposal submitted in writing during the first part of the second session that paragraphs 2 and 4 be omitted.

[Article 20 bis

In order to take account of advances in scientific knowledge regarding the ozone layer, the Contracting Parties shall consider at a meeting of the Conference of Parties the need to review the Convention.]

Commentary

The addition of this article was proposed by France during the first part of the second session.

Article 21

DEPOSITARY

1. [The Secretary-General of the United Nations] [The Government of ...] shall assume the functions of Depository of this Convention [and its protocols] and amendments thereto.

2. The Depository shall inform the Contracting Parties in particular:

(a) Of the signature of this Convention [and of any protocol thereto], and of the deposit of instruments of ratification, acceptance, approval or accession in accordance with the provision of articles 16 and 18;

(b) Of the date on which the Convention [and any protocol thereto] will come into force in accordance with the provisions of article 18;

(c) Of notification of withdrawal made in accordance with the provisions of article 20;

(d) Of amendments adopted with respect to the Convention [and any protocol], their acceptance by the Contracting Parties and their date of entry into force in accordance with the provisions of article 10;

(e) Of the adoption of new annexes and of the amendment of any annex in accordance with the provisions of article 12.

Commentary

The text of this article remains as in document UNEP/WG.78/2, except for the addition between brackets of wording whereby a State would act as depository, as proposed in connexion with article 17.

Article 22

The original of this Convention, of which the [Arabic, Chinese, English, French, Russian and Spanish] texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at, this

[ANNEX I: RESEARCH AND MONITORING

1. Recognizing the importance of research and monitoring to the protection of the ozone layer, and of international scientific assessments to the development of international scientific consensus, the Contracting Parties agree to support, individually and collectively, research, monitoring and scientific assessments appropriate to their expertise, geography, and available resources.

2. The Contracting Parties shall co-operate in:

(a) Conducting research and publishing in peer-reviewed literature information developed on understanding the physics and chemistry of the earth's upper atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and on environmental and climatic effects which would result from changes in either the total column content or the vertical distribution of ozone;

(b) The assessment of research results and the development of recommendations for future research;

(c) The sharing of information on planned and on-going research, both government and private, to facilitate the co-ordination of research programmes so as to make the most effective use of available national and international resources;

(d) The development and implementation of multi-national satellite and ground-based global measurement systems.

3. Areas of research and monitoring that the Contracting Parties recognize as important include:

(a) Research in the physics and chemistry of the atmosphere

(i) Comprehensive theoretical models: the continued development of multidimensional interactive models of radiative, chemical and dynamical processes; studies of the simultaneous effects of various species, e.g. CFCs, chlorocarbons, CO₂, N₂O, NO_x and CH₄, upon atmospheric ozone; interpretation of satellite and non-satellite field measurement data sets; studies of the radiative effect of ozone and other minor species which affect ozone photochemistry and atmospheric dynamics, potentially resulting in climatic impact; the evaluation of trends in atmospheric and geophysical parameters, in particular relating to ozone, temperature and precipitation data, and the development of methods for attributing changes in ozone data to specific causes;

(ii) Laboratory studies of: rate coefficients, absorption cross-sections, quantum yields, and reaction mechanisms of tropospheric and stratospheric chemical and photochemical

processes over the relevant pressure and temperature ranges, including the search for additional reactions which may affect atmospheric chemistry; line positions, line widths, broadening coefficients, line strengths and line identification to support field measurements in the ultra-violet, visible, infra-red and microwave spectral regions;

- (iii) Field measurements: simultaneous measurements of the concentrations of photochemically related compounds of the various families using in situ and remote sensing instrumentation from ground, aircraft, balloon, rocket-borne, and satellite platforms; emphasis should be placed on extending the measurements of radical species down to the tropopause; the intercomparison of different sensors; obtaining 3-D fields of key trace constituents, solar flux, and meteorological parameters in the stratosphere using satellites; co-ordinated correlative measurements for satellite instrumentation; atmospheric dynamics studies using aircraft and ground-based radar;
 - (iv) Instrument development, including: reliable operational satellite sensors for accurate measurements of the vertical distributions of ozone, water vapour and temperature over the complete altitude range of the stratosphere; reliable operational satellite sensors for the total column content of ozone and solar flux (wavelength-resolved) including the continued development of in-flight calibrations; improved ground-based, balloon- and rocket-borne sensors for integration into a Global Ozone Observing System and for performing correlative measurements for satellite ozone measurements (column content and vertical distribution); in situ or remote sensors for key constituents for which instrumentation currently does not exist;
- (b) Research in health and biological effects
- (i) The relationship between human exposure to solar ultra-violet radiation and the development of non-melanoma skin cancer, and the possible relationship between sunlight and melanoma skin cancer, including social and environmental conditions;
 - (ii) Biological effects of UV-B, including the wavelength dependence, upon agricultural crops, forests and other ecosystems, in different geographical locations and under local growing conditions;
 - (iii) Aquatic effects studies extended to the natural water environment to gain knowledge of the effect of enhanced solar UV-B, including the wavelength dependence, on aquatic food productivity;

- (iv) The mechanisms by which UV-B radiation acts on biological species and ecosystems including: the relationship between dose, dose rate, and response; photorepair, adaptation, and protection;
 - (v) Studies of biological action spectra and the spectral response using polychromatic radiation in order to include possible interactions of the various wavelength regions;
 - (vi) The influence of existing and enhanced UV-B radiation on: the sensitivity and activities of insects important to the biospheric balance (animal food chain, plant cross-fertilization, etc.); micro-organisms, such as those causing plant and animal diseases; primary processes such as photosynthesis, biosynthesis, etc.; the photodegradation of herbicides, pesticides, fertilizers and similar agricultural chemicals;
- (c) Monitoring
- (i) The status of the ozone layer (i.e. the spatial and temporal variability of the total column content and vertical distribution) by making the Global Ozone Observing System, based on the integration of satellite and ground-based systems, fully operational. This requires a significant improvement in the quality and quantity of vertical distribution measurements, and an upgrading and calibration of Dobson and M-83 type instruments;
 - (ii) The tropospheric and stratospheric concentrations of source gases for the HO_x, NO_x, and ClO_x, families including H₂O, CH₄, N₂O, CFCl₃, CF₂Cl₂, CCl₄, CH₃Cl, CH₃CCl₃, CHF₂Cl and other chlorinated compounds. In addition, similar measurements of CO₂, and CO are required;
 - (iii) The temperature from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (iv) Wavelength-resolved solar flux entering the earth's atmosphere, utilizing satellite measurements;
 - (v) Wavelength-resolved solar flux reaching the earth's surface in the ultra-violet range with biological effects (UV-B), in conjunction with total ozone measurements;
 - (vi) Aerosol concentrations from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (vii) Improved methods for analysing global monitoring data on trace species, temperatures, solar flux, and aerosols.]

[ANNEX II: INFORMATION EXCHANGE

1. The Contracting Parties recognize that the sharing of information is an important means of implementing the objectives of the Convention and of assuring that any actions taken are appropriate and equitable. In developing annexes and protocols under the Convention, the Contracting Parties shall draw upon the following Guidelines for information exchange.

1. INFORMATION TO BE EXCHANGED

2. The Contracting Parties recognize that they will need to consider the following types of information in taking actions under the Convention: scientific, technical, business/commercial, legal and socio-economic.

(a) Scientific information

3. This includes information on the nature, status, and results of work described in annex I, as well as information regarding emissions due to human activities or natural events which may affect the ozone layer. Types of information to be exchanged include:

(a) Reports and literature on the ozone depletion theory and the effects of ozone depletion on health and the environment;

(b) Studies which are under way or planned for purposes of co-ordinating world testing programmes;

(c) Assessments of results and recommendations for future work performed by national or international bodies;

(d) Information on the emissions of various substances, as well as production and use data needed in modelling;

(e) Model results;

(f) Raw data, especially from field measurements, as well as their archiving, as feasible and appropriate.

(b) Technical information

4. This includes information on:

(a) The availability and cost of substitute and new technologies;

(b) Research, planned and on-going, on technologies for reducing modification of the ozone layer;

(c) Business/commercial information

5. This include information regarding the production, use, and emission data needed for modelling and monitoring studies and for the assessment of economic effects of contemplated actions.

(d) Legal information

6. This includes information regarding:

- (a) Licensing and patent protection;
- (b) National laws or administrative measures concerning production, work practices or emissions;
- (c) Laws giving administrative bodies the authority to regulate production, work practices or emissions;
- (d) International agreements, including bilateral agreements, concerning production, work practices, or emission controls, especially those involving imports or exports.

(e) Socio-economic information

7. This includes information regarding:

- (a) The risks and benefits of human activities which may modify the ozone layer;
- (b) The socio-economic effects of possible ozone depletion;
- (c) The consequences of regulatory actions taken;
- (d) Import/export and international marketing information.

2. CO-OPERATION IN THE EXCHANGE OF INFORMATION

8. The Contracting Parties recognize that when they decide to limit particular emissions, it is to their mutual benefit to share knowledge as to the availability of certain techniques, equipment, or substitutes. The Contracting Parties agree to co-operate by:

- (a) Facilitating the licensing and sale of alternative technologies among countries;
- (b) Providing information on alternative technologies and equipment, including supplying manuals and guides;
- (c) Stationing necessary monitoring equipment and facilities;
- (d) Providing appropriate training of scientific and technical personnel.

9. The Contracting Parties recognize that co-operation under this annex will be subject to national laws regarding patents, trade secrets, and protection of confidential information.

10. In deciding what information is to be collected, the Contracting Parties shall take into account the usefulness of information and the costs of obtaining it.]

Commentary

These two annexes were submitted during the first part of the Working Group's second session by the United States of America.

Document UNEP/WG.78/3 also discusses the question of annexes.
