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First Meeting of the Ad Hoc Working Group
of Legal Experts on non-compliance
with the Montreal Protocol

Geneva, 11-14 July 1989

Note on procedures and institutional mechanisms for
determining non-compliance with the Montreal Protocol
on Substances that Deplete the Ozone Layer
(prepared by the Secretariat)

1. According to the Montreal Protocol, article 8, the Parties, at their first meeting, should consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.
2. At their first meeting, held in Helsinki from 2-5 May 1989, a legal working group on non-compliance with the Montreal Protocol was convened, chaired by Mr. Patrick Szell of the United Kingdom.
3. The legal working group discussed the possible ways of fulfilling the requirements of article 8 of the Protocol based on the proposals submitted by Finland and the United States and on the possibility of adjusting the adopted arbitration procedure to become a conciliation procedure.
4. Because of the complexity of the issues, the working group was not in a position to conclude its work. However, its members considered the revised proposal submitted to the group by the United States as a conference room paper a good basis for further discussion. Moreover, they expressed the belief that a conciliation procedure based on the Vienna Convention on the Law of Treaties could be prepared.
5. The Parties decided to convene an ad hoc working group of legal experts to discuss the issues further at a meeting in July and to report to the Secretariat by 1 November 1989.
6. The mandate of this ad hoc working group, as reflected in Decision 8 of the report of the First Meeting of the Parties to the Montreal Protocol,

(UNEP/OzL.Pro.1/5) is to develop and submit to the Secretariat by 1 November 1989 appropriate proposals for consideration and approval by the Parties at their Second Meeting on procedures and institutional mechanisms for determining non-compliance with the provisions of the Montreal Protocol and for the treatment of Parties that fail to comply with its terms.

7. With regard to settlement of disputes, the Secretariat would like to draw attention to the adoption of the Arbitration Procedure under the Vienna Convention, Article 11, attached to the report of the First Meeting of the Conference of the Parties to the Vienna Convention, held in Helsinki, 26-28 April 1989 (UNEP/OzL.Conv.1/5, Annex II).

8. To facilitate the work of this ad hoc working group, the Parties further decided to invite Parties and signatories to submit to the Secretariat no later than 22 May 1989 any comments or proposals they wish to see reflected in the working documents of the ad hoc working group.

9. The Secretariat has received comments from Senegal and Spain and a proposal for a conciliation procedure from Finland. The proposal presented by Finland is attached as Annex I.

10. The revised proposal by the United States on non-compliance procedures, which was not formally discussed in Helsinki, is also attached to this note as Annex II.

11. The comments received from Senegal and Spain indicate that:

(a) a procedure on non-compliance should be closely linked to, or based upon the procedures outlined in article 11 of the Vienna Convention for the Protection of the Ozone Layer;

(b) the procedure should reflect the special situation of developing countries and emphasis should be given to training programmes, workshops, exchange of information and transfer of technology to enable the developing countries to comply with the Protocol.

12. The ad hoc working group may wish to consider further a discussion of a variety of situations that may indicate or constitute non-compliance with the Protocol, such as reporting of data showing non-compliance or not reporting data, with a view to determining the role of the Secretariat in these situations.

13. The role of the Secretariat should be further specified. In the case of a report indicating non-compliance, it is clear that the Secretariat should approach the country for a clarification of the issue and the causes of the non-compliance. This should eventually be reflected in a report to the Parties at one of their yearly meetings.

14. However, the question of non-compliance would not always be linked to the reporting of data and other information to the Secretariat. This should be taken into account when considering procedures and institutional mechanisms on non-compliance.

Annex I

CONCILIATION PROCEDURE PROPOSED BY FINLAND

UNDER ARTICLE 11, PARAGRAPH 4 OF THE VIENNA CONVENTION
FOR THE PROTECTION OF THE OZONE LAYER

Article 1

In accordance with article 11, paragraph 4 of the Vienna Convention for the Protection of the Ozone Layer, if the Parties have not accepted the same or any procedure referred to in article 11, paragraph 3 of the said Convention, the dispute shall be submitted to conciliation unless the Parties otherwise agree. The conciliation procedure shall be conducted in accordance with articles 2 to 9 below unless the Parties to a dispute otherwise agree.

Article 2

In disputes between the Parties, a conciliation commission shall be created upon the request of one of the Parties to the dispute after the Parties have failed to reach agreement in the procedures specified in article 11, paragraph 3 of the Vienna Convention.

Article 3

The commission shall be composed of an equal number of members appointed by each Party concerned and a chairman chosen jointly by the conciliators appointed by each Party. If the Parties fail to agree on the composition, the members of the commission shall be appointed by the Secretary-General of the United Nations within a period of three months in consultation with the States in dispute.

Article 4

Unless the Parties to the dispute otherwise agree, the commission shall determine its own procedure, assuring that each Party has a full opportunity to be heard and to present its case.

Article 5

The Parties and the conciliators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the commission.

Article 6

The costs of the commission shall be borne by the Parties to the dispute in equal shares.

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Article 7

Decisions both on procedure and substance of the commission shall be taken by a majority vote of its members.

Article 8

1. The commission shall render a final and recommendatory award within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the commission shall be deposited with the Secretary-General and transmitted to the Parties to the dispute.

3. The recommendatory award is submitted for the consideration of the Parties in order to facilitate an amicable settlement of the dispute.

4. The Parties to the dispute shall consider the award in good faith.

Article 9

Unless the Parties have agreed before, during or after the conciliation procedure that the award of the conciliators shall be binding, the award shall become binding by acceptance by the Parties. An award which has been accepted by Parties to a dispute shall be binding as between those Parties only.

Annex II

UNITED STATES PROPOSAL ON NON-COMPLIANCE WITH THE
MONTREAL PROTOCOL

Non-compliance Procedures

1. If, upon information available to it, a Party considers that another Party is not in compliance with its obligations under Articles 2, 4 or 7 of the Protocol, it may submit a written complaint to the Secretariat. Such a complaint must be supported by evidence known to the complainant Party which corroborates the allegation of non-compliance.
2. The Party complained of is to be afforded a reasonable opportunity to reply to the complaint. Such reply and evidence in support thereof is to be submitted by the Party complained of to the Secretariat. The Secretariat will then transmit to all Parties the complaint, the reply and the evidence provided by the complainant Party and the Party complained of.
3. If the allegation of non-compliance is disputed by the Party complained of, the procedures set forth in Article 11 of the Convention is to be the means for determining the Party's compliance.
4. Upon conclusion of any proceedings initiated under Article 11, the Parties will consider at their next meeting whether further measures may be appropriate in light of the findings and decision of the arbitral tribunal, the International Court of Justice or the conciliation commission. Such measures shall not conflict with the final decision of the arbitral tribunal or the International Court of Justice or the award of the conciliation commission.
5. Depending upon the circumstances of the case, the Parties may recommend that the Party complained of reduce its production or consumption to the levels set forth in the Protocol or below the levels set forth in the Protocol by a multiple of the amount exceeded or such other measures as they consider appropriate, including measures to assist a Party's compliance with the Protocol.
6. If the Party complained of fails to comply with the Parties' recommendation within a reasonable period of time, the Parties shall decide what further recommendatory measures should be taken.
