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AD HOC WORKING GROUP OF LEGAL AND TECHNICAL  
EXPERTS ON NON-COMPLIANCE WITH THE  
MONTREAL PROTOCOL

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REVIEW OF THE NON-COMPLIANCE PROCEDURE OF THE  
MONTREAL PROTOCOL PURSUANT TO DECISION IX/35  
OF THE NINTH MEETING OF THE PARTIES

Note by the Secretariat

INTRODUCTION

1. In paragraph 1 of its decision IX/35, the Ninth Meeting of the Parties to the Montreal Protocol, held in Montreal in September 1997, established an Ad Hoc Working Group of Legal and Technical Experts on Non-Compliance composed of fourteen members, to review the non-compliance procedure of the Montreal Protocol and to develop appropriate conclusions and recommendations for consideration by the Parties, on the need and modalities for the further elaboration and strengthening of the existing procedure.
2. In paragraph 5 of the same decision, the Ad Hoc Working Group was requested to consider any proposals presented by Parties for strengthening the non-compliance procedure as well as proposals for improving the effectiveness of the functioning of the Implementation Committee.

I. PRESENT POSITION

3. The current non-compliance procedure was adopted in 1992 by the Fourth Meeting of the Parties to the Montreal Protocol to succeed the interim non-compliance procedure that had been adopted by Second Meeting of the Parties, held in 1990.

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4. The First Meeting of the Parties to the Montreal Protocol, held in 1989, established, in its decision I/8, an open-ended Ad Hoc Working Group of Legal Experts to develop appropriate proposals for consideration and approval by the Second Meeting of the Parties 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. In the same decision, Parties were invited to submit comments and proposals they wished to see reflected in the working documents of the Ad Hoc Working Group.

5. Following the report of the Ad Hoc Working Group, the Second Meeting of the Parties, held in 1990, adopted on an interim basis, in its decision II/5, the procedure and institutional mechanisms for determining non-compliance with the provisions of the Protocol. Those procedures and mechanisms (hereinafter referred to as the "interim non-compliance procedure") are reproduced in annex I below. In the same decision, the Parties also extended the mandate of the open-ended Ad Hoc Working Group to elaborate further procedures in non-compliance and terms of reference for the Implementation Committee and to present the results for review by the preparatory meeting for the Fourth Meeting of the Parties with a view to their consideration by the Fourth Meeting.

6. In paragraph (a) of its decision III/2, the Third Meeting of the Parties to the Montreal Protocol, held in 1991, made further specific requests to the Ad Hoc Working Group, namely that, when elaborating further the procedures on non-compliance, it should:

- (a) Identify possible situations of non-compliance with the Protocol;
- (b) Develop an indicative list of advisory and conciliatory measures to encourage full compliance;
- (c) Reflect the role of the Implementation Committee as an advisory and conciliatory body bearing in mind that the recommendation of the Implementation Committee on Non-Compliance Procedure must always be referred to the meeting of the Parties for final decision;
- (d) Reflect the possible need for legal interpretation of the provisions of the Protocol;
- (e) Draw up an indicative list of measures that might be taken by a meeting of the Parties in respect of Parties that are not in compliance with the Protocol, bearing in mind the need to provide all assistance possible to countries, particularly developing countries, to enable them to comply with the Protocol.

7. Most of these elements were elaborated in the final version of the 1992 non-compliance procedure adopted by the Fourth Meeting of the Parties in its decision IV/5 and reproduced in annex II below.

8. The Third Meeting of the Parties also endorsed in its decision III/2 the conclusion of the Ad Hoc Working Group of Legal Experts that the judicial and arbitral settlement of disputes provided for in Article 11 of the Vienna Convention for the Protection of the Ozone Layer and the non-compliance procedure pursuant to Article 8 of the Montreal Protocol were two distinct

and separate procedures.

## II. DISPUTE-SETTLEMENT PROCEDURE UNDER ARTICLE 11 OF THE VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER

9. The dispute settlement procedure under Article 11 of the Vienna Convention for the Protection of the Ozone Layer, which is also applicable to the Montreal Protocol, is deemed adequate for settling disputes in the event of a dispute between Parties concerning the interpretation or application of the Convention and the Protocol. It provides for Parties concerned to seek solution by negotiation and, if they cannot reach agreement by this means, they may jointly seek the good offices or request mediation by a third party.

10. Article 11 of the Convention also provides for arbitration or submission of the dispute to the International Court of Justice, should the concerned Parties fail to resolve their dispute by mediation. The Article further provides that, if Parties cannot accept the mediation, arbitration or submitting the dispute to the International Court of Justice, a conciliation commission composed of a number of members appointed by each Party concerned and a Chairman appointed jointly shall be created upon the request of one of the Parties to the dispute. The Commission shall render a final and recommendatory award, which the Parties shall consider in good faith. To date, the dispute-settlement procedure under Article 11 of the Protocol has not been used to resolve any issues under either the Convention or the Protocol.

## III. WORK OF THE IMPLEMENTATION COMMITTEE

11. The Implementation Committee has been reviewing data and information reported by Parties under Article 7 of the Protocol on production and consumption of ozone-depleting substances, information reported under Article 9, as well as under various decisions of the Parties, and has been making recommendations to the Meeting of the Parties on the basis of its review.

12. The Committee has evaluated issues concerning non-compliance with the Protocol submitted by the countries with economies in transition (Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, the Republic of Moldova, and the Russian Federation), in some cases holding extensive discussions with the Parties concerned and seeking additional clarificatory information from them before recommending financial and technical assistance to enable those countries to phase out ozone-depleting substances. The Implementation Committee has discharged this function by also conducting consultations with the representatives of the Implementing Agencies of the Multilateral Fund for the Implementation of the Montreal Protocol (the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), the United Nations Industrial Development Organization (UNIDO) and the World Bank), the Multilateral Fund Secretariat, and the representatives of the Technology and Economic Assessment Panel and the Global Environment Facility (GEF) on possible assistance to the affected countries.

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#### IV. SUGGESTIONS MADE BY PARTIES PURSUANT TO DECISION IX/35

13. Pursuant to paragraph 4 (b) of decision IX/35, the Secretariat requested all Parties to submit to it any proposals and comments they wished to see considered in the work of the Ad Hoc Working Group. Only three Parties – Hungary, Russian Federation and Peru – submitted such proposals and comments.

14. Hungary stated that:

"Appropriate and broader professional background should be ensured for membership in the Implementation Committee to enable proper consideration of the reports on non-compliance. The information and data submitted by the Parties to the Committee should be investigated not only from the legal point of view but also technical aspects.

"The source of illegal trade of ozone-depleting substances is its production. In the case of non-compliance, measures to determine non-compliance should be more specific in identifying causes of such non-compliance."

15. Peru stated that:

"Revising the time-frames for all stages of the procedure, on the basis of experience acquired in working with Parties; defining those time-frames that have not yet been specified, such as, for example, the deadline for the Implementation Committee to release the results of its considerations, so as to give greater legal security to Parties initiating the procedure. It would also be useful to define on the basis of previous work, the maximum duration of the entire procedure.

"With regard to paragraphs 2 and 3 of the procedure, it would be useful to specify the type of circumstances that might justify periods longer than three months for the submission of the information related to the possible non-compliance.

"Paragraph 3 should lay down that 'where the Secretariat becomes aware of possible non-compliance by a Party with its obligations, it may, in addition to requesting the relevant information from the Party concerned, seek additional information from other concerned Parties or from the Implementing Agencies'.

"Another item that should be specified is what follows after the report of the Implementation Committee and the ruling of the Meeting of the Parties. That is to say, has the submission of appeals been considered? If so, whom should the appeal against the decision of the Parties be directed and within what time-limits?

"Study the possibility of adding after paragraph 4 a paragraph establishing that the Party that is apparently in non-compliance with its obligations or any other interested Party, may provide the Implementation Committee with additional information on new facts that have arisen subsequent to the communications transmitted to the Secretariat, up to fifteen days before the Committee issues its findings.

"Assess the possibility of introducing the following addition to paragraph 6:

'The Implementation Committee shall, unless it decides otherwise, or at the request of any interested Party, meet twice a year. The Secretariat shall arrange for and service its meetings.'

"It would be useful if the Implementation Committee took on a more active and permanent role in order to give more force to actions in response to non-compliance. To that end, it could be given the additional function of monitoring compliance with obligations under the Protocol, so that the committee could, on its own initiative, transmit reports and recommendations to the Secretariat, which in turn would submit them for the consideration of the Parties.

"Paragraph 9 states that, after receiving the report of the Implementation Committee, the Parties may take a decision on it. Is this optional? What happens if no decision is taken? What then would be the point of triggering the entire non-compliance procedure? Is it necessary to wait until the next meeting of Parties? In what cases is it necessary to adopt a measure included in the list of indicative measures? In this connection, it should be stated that the Parties shall decide upon. Obviously, this decision could be to defer a final ruling until the next meeting, to call for a more in-depth study, or to take one of the measures included in the indicative list.

"Although the point is not to revise the indicative list, it should be clarified whether, in view of the purely referential nature of the list and paragraph 9 of the non-compliance procedure, the Parties may adopt measures other than those indicated. They should also specify the cases in which this may be done and the time-limits for the application of such measures. It would also be appropriate to undertake an in-depth study to establish a concordance and proportionality between the possible faults committed and the measures to be applied.

"The possibility should be established for a Party to request that a member of the Implementation Committee should abstain from participating in the review of its case, on the grounds that this would be contrary to its interests for the country that is represented to become acquainted with certain confidential information.

"Finally, it would be desirable to define the relationship between this procedure and other possible liability actions that can be initiated in other international forums or tribunals."

16. The Russian Federation stated that:

"In order to develop recommendations on whether and in which way the existing non-compliance procedure should be improved, it would be extremely useful for the members of the Ad Hoc Working Group to have an idea of the experience acquired in this area by other international agreements and conventions, which will facilitate the development of optimal and economical decisions in conformity with the Montreal Protocol. In particular, when developing procedures and mechanisms for the identification of cases of non-compliance with the Montreal Protocol, it is important to present clearly those financial and material or technical consequences that may arise as a result of the need to create some kind of international inspection or other structures within the Montreal Protocol regime for the collection, exposure and objective verification of information on cases of non-compliance with the Protocol. It is currently not feasible for the Secretariat staff and the Implementation Committee to undertake such work alone.

"In considering possible procedures and mechanism for exerting influence on Parties to the Montreal Protocol that are not complying with its requirements, the Ad Hoc Working Group should focus on the development of criteria to enable an objective judgement to be made on whether a case of non-compliance by a Party is a wilful breach on its part of the requirements of the Protocol or the result of objective factors of various types (political, economic, social, etc.) that are preventing the Party concerned from complying with the Protocol and which the Party will not be able to overcome without external assistance from the international community. It is on this work that the future direction of the whole Montreal Protocol process will, to a large extent, depend: incentives towards active cooperation or estrangement through the use of a 'punitive' response.

"Going by the example of the group of countries with economies in transition, which includes the Russian Federation, several of which have already experienced or are still experiencing largely similar difficulties in fulfilling their obligations under the Montreal Protocol, difficulties that are unique to those countries, there is an urgent need to develop and establish a flexible mechanism for the provision of urgent assistance of various types, the main feature of which will be the absence of a multiple-stage and relatively bureaucratic system for each agreement on the receipt of international assistance and the existence of effective controls over its utilization."

#### V. OTHER COMMENTS ON THE NON-COMPLIANCE PROCEDURE

17. The Ad Hoc Working Group may also wish to take into account the following comments, some of which are from the Secretariat and based on its experience in administering the non-compliance procedure, while others were received from former members of the Implementation Committee and experts from other international organizations:

(a) Paragraph 1. The term "reservations" could be clarified by requiring Parties to expressly specify alleged instances of non-compliance. A standard form for such reports, to be developed by the Implementation Committee, may be helpful in ensuring consistency;

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(b) Paragraph 2. In the last sentence, a specific time-limit may be inserted after the words "as soon as practicable" (e.g., "in any event no later than three months from the date on which the matter was so referred");

(c)Paragraph 3 can be improved in several aspects:

- (i) The mandate of the Secretariat to receive information from any source, for transmission to the Implementation Committee, should be clarified. Several other international bodies have the power to receive information from individuals and associations for transmission to the relevant committee. Examples include the European Commission and the Standing Committee of the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats;
- (ii) In order to ensure that a report of the Secretariat triggers the non-compliance procedure, the following sentence may be added at the end of the paragraph: "The Implementation Committee shall consider the matter as soon as possible". An outside time-limit for this may also be helpful;
- (iii) An expedited procedure for allowing the Secretariat to trigger action by the Implementation Committee would be desirable. The current arrangement, whereby the Implementation Committee can only act on the basis of a formal Secretariat report, is constrained by the fact that this report is often based on information that is 12-18 months out of date;

(d)Paragraph 5. The number of members of the Implementation Committee (ten) has in the past turned out to be a little low, given the large number of new Parties to the Montreal Protocol since 1992. A slightly higher number could also increase the visibility of the Implementation Committee. An increase to 15 members (three from each regional group) could be considered. At the same time, the Implementation Committee has suffered from a certain lack of continuity in the individuals participating in its work. It would therefore be preferable if Parties to be represented on the Implementation Committee would in future nominate individual representatives who would serve in the Implementation Committee consistently, as representatives of that Party for the entire duration of its membership;

(e)It might also be clarified whether a Party member of the Implementation Committee already elected to serve for one immediate consecutive term may be elected once again to serve in the Committee after a specified period of non-membership;

(f)Paragraph 7. The operational links between the Implementation Committee with the Implementing Agencies, the Technology and Economic Assessment Panel (TEAP), the Executive Committee and the Secretariat of the Multilateral Fund and GEF have proved to be useful. It might be helpful to refer to such links in a more substantial wayby amending paragraph 7 (e) as follows: "... an exchange of information with the Implementing Agencies, the TEAP and the Secretariats of the Executive Committee of the Multilateral Fund and the GEF Council ...";

(g) Paragraph 9 can be improved in several respects:

- (i) Since non-compliance under the Montreal Protocol will virtually always be a question of fact, rather than law, this paragraph could be modified so as to expressly allow the Implementation Committee to determine non-compliance, including the frequency of non-compliance and whether there is a persistent pattern of non-compliance;
- (ii) By the same token, the Implementation Committee might be given the mandate to determine whether a Party has returned to a state of compliance in order to allow the Meeting of the Parties to decide to end the action taken in respect of non-compliance;
- (iii) The Implementation Committee may be permitted to determine the reasons for non-compliance, as this may be relevant to designing the appropriate response action recommended to the Meeting of the Parties;

(h) Paragraph 16 may be amended in order to provide for the reports to be made available to the general public, subject to the removal of confidential information.

18. In addition, consideration might be given to the strengthening of decision VI/5 of the Sixth Meeting of the Parties, which concerns, *inter alia*, the requirement for each Party to report base-year data within one year of the approval of its country programme by the Executive Committee of the Multilateral Fund. Under that decision, countries that do not report base-year data within that time-period could lose their Article 5 status (and thus access to multilateral funding). At present, the decision applies rigorously only to base-year data. However, both base-year and annual data are needed in order to determine compliance. In many cases, annual data have been reported late or incompletely. More timely data-reporting would help the Parties (and the Implementation Committee, the Secretariat and the Executive Committee of the Multilateral Fund) spot potential non-compliance situations. It would be entirely in concert with the principle of multilateral funding for country programmes to extend decision VI/5 to include loss of Article 5 status for countries that do not report annual data after a specific period.

19. Effective compliance control is hardly feasible on the basis of State party reports alone. There is no verification mechanism to determine compliance which at present depends to a considerable extent on the initial reports of the parties. International organs must be able to obtain additional data from other sources, and possibly evaluate the veracity of other reports obtained from other sources, e.g., information from other States parties; information from non-governmental organizations or private individuals and information obtained by way of on-site inspections. Also, problems that have triggered the non-compliance procedure have relied on Parties reporting on their own non-compliance. In essence, the Parties have accused themselves of failing to comply. In the future, the non-compliance procedure may also play a vital role in the Protocol when Parties fail to comply but do not report the data needed to detect and address the problem at hand.

## VI. EXAMPLES OF VERIFICATION IN OTHER CONVENTIONS

20. Article 11 of the 1992 Convention for the Protection of Marine Environment of the North-East Atlantic, provides that "the Commission may by unanimous vote of the contracting Parties, decide to admit as an observer ... any international, governmental or any non-governmental organisation, the activities of which are related to the Convention". The Commission looks after implementation. Similar provisions are found in Article IX, paragraph 7 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). However, participation of NGOs in such activities is limited to providing information alone. There is no provision for interested observers to attend meetings of the Implementation Committee of the Montreal Protocol.

21. With respect to on-site inspections, only CITES, under Article XIII, paragraph 2, refers to an inquiry but which is only permissible with the consent of the State party in question. The 1971 Convention on Wetlands of International Importance Especially as Waterfowl Habitat also provides for a monitoring procedure in cases where, due to human influence, changes in the ecological character of certain areas included in the "List of Wetlands of International Importance" are threatened or have actually occurred.

## VII. ACTIONS TAKEN IN CASE OF NON-COMPLIANCE IN OTHER CONVENTIONS

22. Provisions of existing treaties range from general stipulations to detailed responses. The 1992 Convention for the Protection of Marine Environment of the North-East Atlantic provides, under Article 10, paragraph 1, for the Commission to evaluate the reports submitted to it by States parties and from other sources and decide on the measures to be taken while Article 23 of the same Convention provides that the Commission when appropriate, can decide upon and call for steps to bring about full compliance with the Convention, and decisions adopted thereunder and promote the implementation of recommendations, including measures to assist a contracting party to carry out its obligations. Article XIII of CITES specifies that the Conference of the Parties may make whatever recommendations it deems appropriate.

23. The provisions cited above in response to non-compliance suggests a trend of a flexible process which attaches greater importance to reaching a consensual solution by the parties rather than an authoritative decision by an international organ like a Meeting of the Parties.

## VIII. COMPLIANCE PROVISIONS IN OTHER INTERNATIONAL ENVIRONMENTAL AGREEMENTS

24. The non-compliance procedure of the Montreal Protocol is often referred as a model for future multilateral environmental agreements. There is probably no similar compliance procedure at present among environmental agreements which has worked in the manner the Montreal Protocol's procedure does. As such, there may be very limited experience to learn from other environmental agreements although some of them have similar compliance provisions as the Montreal Protocol within those agreements.

25. Paragraph 8 of chapter 39 of Agenda 21, on international legal instruments and mechanisms, provides for the States parties to international agreements to consider procedures and mechanisms to promote and review their effective, full and prompt implementation. However, it does not recommend specific models other than proposing that States establish efficient and practical reporting systems on implementation of international legal instruments.

## IX. CONCLUSION

26. The Ad Hoc Working Group may wish to consider the comments and proposals pointed out in the present note in addition to its own proposals and make appropriate recommendations to the Meeting of the Parties.

Annex I

INTERIM NON-COMPLIANCE PROCEDURE (1990) APPLICABLE UNTIL 1992

1. If one or more Parties have reservations regarding another Party's implementation of its obligations under the Protocol, those concerns may be addressed in writing to the Secretariat. Such a submission shall be supported by corroborating information.
2. The Party whose implementation is at issue is to be given the submission and a reasonable opportunity to reply. Such reply and information in support thereof is to be submitted to the Secretariat and to the Parties involved. The Secretariat shall then transmit the submission, the reply and the information provided by the Parties, to the Implementation Committee referred to in paragraph 3, which shall consider the matter as soon as practicable.
3. An Implementation Committee is hereby established. It shall consist of five Parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution. Outgoing Parties may also be re-elected for one immediate consecutive term. At the first election, two Parties shall be elected for a one-year term.
4. The Committee shall meet as necessary to perform its functions.
5. The functions of the Committee shall be to receive, consider and report on:
  - (a) Any submission made by one or more Parties in accordance with paragraphs 1 and 2;
  - (b) Any information or observations forwarded by the Secretariat in connection with the preparation of the report referred to in Article 12 (c) of the Protocol.
6. The Committee shall consider the submissions, information and observations referred to in paragraph 5 with a view to securing an amicable resolution of the matter on the basis of respect for the provisions of the Protocol.
7. The Committee shall report to the Meeting of the Parties. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the case, decide upon and call for steps to bring about full compliance with the protocol, including measures to assist the Party's compliance with the Protocol, and to further the Protocol's objectives.
8. The Parties involved in a matter referred to in paragraph 5 shall inform, through the Secretariat, the Meeting of the Parties of the results of proceedings taken under Article 11 of the Convention regarding possible non-compliance, about implementation of those results and about implementation of any decision of the Parties pursuant to paragraph 7.

9. The Meeting of the Parties may, pending completion of proceedings initiated under Article 11 of the Convention, issue an interim call and/or recommendations.
10. The Meeting of the Parties may request the Committee to make recommendations to assist the Meeting's consideration of cases of possible non-compliance.
11. The members of the Committee and any Party involved in its deliberations shall protect the confidentiality of information they receive in confidence.

Annex II

NON-COMPLIANCE PROCEDURE (1992)

The following procedure has been formulated pursuant to Article 8 of the Montreal Protocol. It shall apply without prejudice to the operation of the settlement of disputes procedure laid down in Article 11 of the Vienna Convention.

1. If one or more Parties have reservations regarding another Party's implementation of its obligations under the Protocol, those concerns may be addressed in writing to the Secretariat. Such a submission shall be supported by corroborating information.
2. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose implementation of a particular provision of the Protocol is at issue. Any reply and information in support thereof are to be submitted to the Secretariat and to the Parties involved within three months of the date of the despatch or such longer period as the circumstances of any particular case may require. The Secretariat shall then transmit the submission, the reply and the information provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable.
3. Where the Secretariat, during the course of preparing its report, becomes aware of possible non-compliance by any Party with its obligations under the Protocol, it may request the Party concerned to furnish necessary information about the matter. If there is no response from the Party concerned within three months or such longer period as the circumstances of the matter may require or the matter is not resolved through administrative action or through diplomatic contacts, the Secretariat shall include the matter in its report to the Meeting of the Parties pursuant to Article 12 (c) of the Protocol and inform the Implementation Committee accordingly.
4. Where a Party concludes that, despite having made its best, bona fide efforts, it is unable to comply fully with its obligations under the Protocol, it may address to the Secretariat a submission in writing, explaining, in particular, the specific circumstances that it considers to be the cause of its non-compliance. The Secretariat shall transmit such submission to the implementation Committee which shall consider it as soon as practicable.
5. An Implementation Committee is hereby established. It shall consist of 10 Parties elected by the meeting of the Parties for two years, based on equitable geographical distribution. Outgoing Parties may be re-elected for one immediate consecutive term. The Committee shall elect its own President and Vice-President. Each shall serve for one year at a time. The Vice-President shall, in addition, serve as the rapporteur of the Committee.
6. The Implementation Committee shall, unless it decides otherwise, meet twice a year. The Secretariat shall arrange for and service its meetings.

7. The functions of the Implementation Committee shall be:

(a) To receive, consider and report on any submission in accordance with paragraphs 1, 2 and 4;

(b) To receive, consider and report on any information or observations forwarded by the Secretariat in connection with the preparation of the reports referred to in Article 12 (c) of the Protocol and on any other information received and forwarded by the Secretariat concerning compliance with the provisions of the Protocol.

(c) To request, where it considers necessary, through the Secretariat, further information on matters under its consideration;

(d) To undertake, upon the invitation of the Party concerned, information-gathering in the territory of that Party for fulfilling the functions of the Committee;

(e) To maintain, in particular for the purposes of drawing up its recommendations, an exchange of information with the Executive Committee of the Multilateral Fund related to the provision of financial and technical cooperation, including the transfer of technologies to Parties operating under Article 5, paragraph 1, of the Protocol.

8. The Implementation Committee shall consider the submissions, information and observations referred to in paragraph 7 with a view to securing an amicable solution of the matter on the basis of respect for the provisions of the Protocol.

9. The Implementation Committee shall report to the Meeting of the Parties, including any recommendations it considers appropriate. The report shall be made available to the Parties not later than six weeks before their meeting. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the matter, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Parties' compliance with the Protocol, and to further the Protocol's objectives.

10. Where a Party that is not a member of the Implementation Committee is identified in a submission under paragraph 1, or itself makes such a submission, it shall be entitled to participate in the consideration by the Committee of that submission.

11. No Party, whether or not a member of the Implementation Committee, involved in a matter under consideration by the Implementation Committee, shall take part in the elaboration and adoption of recommendations on that matter to be included in the report of the Committee.

12. The Parties involved in a matter referred to in paragraphs 1, 3 or 4 shall inform, through the Secretariat, the Meeting of the Parties of the results of proceedings taken under Article 11 of the Convention regarding possible non-compliance, about implementation of those results and about implementation of any decision of the Parties pursuant to paragraph 9.

13. The Meeting of the Parties may, pending completion of proceedings initiated under

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Article 11 of the Convention, issue an interim call and/or recommendations.

14. The Meeting of the Parties may request the Implementation Committee to make recommendations to assist the Meeting's consideration of matters of possible non-compliance.

15. The members of the Implementation Committee and any Party involved in its deliberations shall protect the confidentiality of information they receive in confidence.

16. The report, which shall not contain any information received in confidence, shall be made available to any person upon request. All information exchanged by or with the Committee that is related to any recommendation by the Committee to the Meeting of the Parties shall be made available by the Secretariat to any Party upon its request; that Party shall ensure the confidentiality of the information it has received in confidence.

Annex III

INDICATIVE LIST OF MEASURES THAT MIGHT BE TAKEN  
BY A MEETING OF THE PARTIES IN RESPECT  
OF NON-COMPLIANCE WITH THE PROTOCOL

- A. Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training.
- B. Issuing cautions.
- C. Suspension, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, of specific rights and privileges under the Protocol, whether or not subject to time limits, including those concerned with industrial rationalization, production, consumption, trade, transfer of technology, financial mechanism and institutional arrangements.

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