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

Geneva, 3-4 July 1998 and Cairo, 17-18 November 1998

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

INTRODUCTION

1. The Ad Hoc Working Group of Legal and Technical Experts, convened pursuant to decision IX/35 of the Ninth Meeting of the Parties to the Montreal Protocol, held two sessions, at the Geneva Executive Centre on 3 and 4 July 1998 and at the Cairo International Conference Centre on 17 November 1998, to review the non-compliance procedure under the Montreal Protocol and to develop appropriate conclusions and recommendations, for consideration by the Parties, on the need for the further elaboration and the strengthening of the procedure. As agreed by the Working Group, the present report summarizes the discussions at those two sessions.

I. ORGANIZATIONAL MATTERS

A. Attendance

2. The meetings of the Working Group were attended by legal and technical experts designated by the following Parties to the Montreal Protocol pursuant to decision IX/35: Argentina, Australia, Botswana, Canada, China, the European Community, Georgia (first session only), Morocco, the Russian Federation, Saint Lucia, Slovakia, Sri Lanka, Switzerland and the United Kingdom (see annex II below for the full list of participants).

B. Adoption of the agenda

3. The Working Group adopted the following agenda for its work:
  1. Opening of the meeting.
  2. Election of two Co-Chairs.
  3. Review of the non-compliance procedure.
  4. Closure of the meeting.

C. Election of two Co-Chairs

4. At its first session, the Working Group elected the following two Co-Chairs, representing countries operating under Article 5, and those not operating under Article 5 respectively: Mr. Bishnunarine Tulsie (Saint Lucia) and Mr Patrick Széll (United Kingdom).

II. REVIEW OF THE NON-COMPLIANCE PROCEDURE

5. The Working Group used as a starting point for its work documents UNEP/OzL.Pro/WG.4/1/1 (Note by the Secretariat), UNEP/OzL.Pro/WG.4/1/1/Add.1 and Corr.1 (Submission of Canada), UNEP/OzL.Pro/WG.4/1/1/Add.2 (Submission of Australia), together with proposals by the Russian Federation relating to amendments already proposed to the non-compliance procedure, and an informal consolidated text of the various proposals prepared by the Ozone Secretariat. The relevant documentation was introduced by the Secretariat at the first session of the Working Group.
6. At the first session, it was decided to consider the current text of the non-compliance procedure paragraph by paragraph, together with the corresponding submissions received by the Secretariat, bearing in mind that, in accordance with decision IX/35, the indicative list of measures that might be taken by a Meeting of the Parties in respect of non-compliance with the Protocol had been excluded from the mandate of the Working Group. On the basis of that discussion, a draft report was prepared and circulated to all members for comments and suggestions. At the second session, the Working Group focused on the revised draft report and a draft decision submitted by the Co-Chairs drawing on the main elements of the previous discussion, with a view to refining its conclusions and recommendations to the Tenth Meeting of the Parties. Introducing the draft decision, the Co-Chair stressed that the proposals to amend the wording of certain paragraphs represented an attempt to clarify their content rather than alter their substance.
7. Before the formal discussion began at the first session of the Working Group, one expert expressed his satisfaction with the operation of the current procedure, especially the underlying principle for handling non-compliance situations. He said that the fundamental purpose of the procedure should be to bring the non-compliant Party back to compliance, rather than to impose any sanctions or take punitive measures against that Party. He also pointed out that the causes for non-compliance should be examined and analysed comprehensively, in order to provide a fair basis for dealing with such cases. In addition, he noted that there was no need to recommend any fundamental change to the existing procedure, which was operating satisfactorily, in dealing with non-compliance.
8. The Working Group agreed that, in general, the non-compliance procedure adopted in 1992

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(UNEP/OzL.Pro/WG.4/1/1, annex II) functioned satisfactorily, but that further clarification was desirable and some additional practices should be developed to streamline the procedure. In reply to a query, the Secretariat said that the instances of non-compliance referred to in paragraph 12 of the note by the Secretariat (UNEP/OzL.Pro/WG.4/1/1) mainly related to non-reporting of consumption data.

#### Paragraph 1

9. The Working Group did not feel that a standard format for reporting incidents of non-compliance was needed and therefore recommended that paragraph 1 should remain unchanged.

#### Paragraph 2

10. In discussing the time limits set out in paragraph 2, attention was drawn to the importance of allowing Parties sufficient time to respond and of ascertaining whether they might be encountering difficulties in submitting information. It was suggested that a reminder be sent by the Secretariat to the effect that information was due within the specified time limits.

11. The lack of any definition of the words "such longer period as the circumstances of any particular case may require" was also underlined.

12. The Working Group recommended that the last sentence of paragraph 2 might be replaced by the following text:

"If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable."

#### Paragraph 3

13. Differing views were expressed in relation to the proposal to allow concerns regarding non-compliance to be brought to the attention of the Implementation Committee by the Secretariat of the Multilateral Fund, the implementing agencies or any other source. On the one hand, some experts felt that the Secretariat of the Fund, the implementing agencies and other sources were well placed to bring issues of potential non-compliance to the attention of the Implementation Committee, while, on the other, it was considered that those sources could only be requested to provide complementary information on potential non-compliance brought to the attention of the Implementation Committee by a Party or by the Secretariat as a result of information received when preparing the report. The Working Group subsequently agreed that the word "accordingly" at the end of the paragraph should be replaced by the words "which shall consider the matter as soon as practicable".

#### Paragraph 4

14. The Working Group considered a proposal to allow the Parties up to fifteen days before the Implementation Committee issues its recommendations to provide the Committee with additional information on new facts and agreed to recommend that paragraph 4 of the non-compliance procedure should remain unchanged. It was generally agreed that, since, *inter alia*, practice had shown that a Party

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could provide additional information up to the time of the decision on the matter in which it was involved, there was no need to include additional wording to the effect that Parties were entitled to submit additional information up to 15 days before the Implementation Committee issued its recommendation.

#### Paragraph 5

15. In considering paragraph 5 of the non-compliance procedure, the Working Group focused on the size of the Committee, the capacity in which its members would serve, and the requirements, if any, that should be specified in terms of expertise. It was agreed that the current size of the Committee was appropriate for its smooth functioning and that any enlargement would affect its efficiency. It was, however, recognized that there could be a need to return to the question in the light of the additional responsibilities and hence workload that the Committee might acquire over time. One suggestion was that, in the interest of spreading the workload and ensuring continuity, five alternate members might be elected for one year and replace the five outgoing full members at the end of that period.

16. With regard to whether members of the Committee should be elected as representatives of Parties or as experts serving in their personal capacity, it was recalled that there had been extensive discussion on the issue before the current formulation had been arrived at. While views varied on the matter, it was felt that there was little chance at the current time of the Meeting of the Parties agreeing to the election of individuals in their personal capacity. It was, however, proposed that, in the interest of promoting continuity in attendance at meetings, the Parties elected to the Committee could be requested to notify the Secretariat of the individual to represent them thereon and should be encouraged, possibly by means of a separate decision of the Meeting of the Parties, to ensure that the same individual represented them in the Committee for the duration of the term.

17. In response to a request for clarification from the Secretariat, the Working Group agreed that the third sentence of paragraph 5 which states that outgoing Parties may be re-elected for one immediate consecutive term, should be understood as meaning that, while a Party was not eligible for re-election for a third successive two-year term on the Committee, it was eligible for election again for further terms of up to four years after having been off the Committee for at least one year. Accordingly, the Working Group agreed to recommend to the Parties that the following text should be inserted after the third sentence of paragraph 5 of the non-compliance procedure:

"A Party that has completed a second consecutive two-year term as a Committee member shall be eligible for election again only after an absence of one year from the Committee."

18. Opinions varied on the need to specify in the non-compliance procedure any requirements in terms of the expertise that representatives in the Committee should have: while the view was expressed that it was essential to ensure that participants in Committee meetings were experts, it was also stated that, in the final analysis, each Party had the right to decide on the background of its representative.

19. Following discussion on a revised text of the paragraph prepared by a number of the experts, the Working Group agreed that the following text might be inserted after the second sentence: "The Secretariat shall request the elected Parties to nominate, within two months of their election, their representatives to serve on the Committee for the two-year period."

20. The Working Group subsequently decided to amend the above text to read:

"Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of the name of the individual who is to represent it and shall endeavour to ensure that the same individual remains its representative throughout the entire term of office."

21. With regard to a suggestion that the words "to serve as an advisory and conciliatory body" should be added at the end of the first sentence of the paragraph, the Working Group noted that the character of the procedure was reflected in Article 8 of the Protocol and throughout the non-compliance procedure text and agreed that the proposal did not need further consideration.

#### Paragraph 6

22. The Working Group considered the proposal to provide for meetings of the Committee at the request of any interested Party and agreed that the current procedure was satisfactory. It was noted that the expression "unless it decides otherwise" contained in paragraph 6 already gave the Committee the necessary discretion. The Working Group therefore recommended that paragraph 6 should remain unchanged.

#### Paragraph 7

23. After considering a proposal to give the Implementation Committee the additional function of initiating reports and recommendations for consideration by the Meeting of the Parties, the Working Group concluded that the system had not shown any lacunae that warranted giving such authority to the Committee. Consequently, it decided not to pursue the proposal.

24. The proposal to amend subparagraph 7 (e) to include exchange of information with the GEF Council, the implementing agencies of the Multilateral Fund and the Technology and Economic Assessment Panel, as well as the Secretariat of the Multilateral Fund, was supported by some experts as a reflection of what already happened in practice. There was, however, opposition by some experts to the inclusion of certain of those bodies. Regarding this latter point, it was noted that adding the names of just some of the bodies would be limitative and that subparagraph 7 (c) covered information-gathering in a non-limitative manner. The proposal was consequently not accepted by the Group.

25. It was subsequently proposed that the Implementation Committee could seek information from the Implementing Agencies, other intergovernmental organizations and the Executive Committee. Concerns were, however, expressed about the problems that might arise if the information provided conflicted with that supplied, through the Secretariat, from formal sources. One expert raised the question of how information from non-governmental sources could be verified, and by whom, and whether there would be any provision for governmental inspection of the information. Consequently, the proposal was not accepted.

26. Regarding subparagraph 7 (c), it was suggested that the Committee should be empowered to request information directly rather than necessarily having to go through the Secretariat. There was, however, opposition to that suggestion. Following a discussion, the Working Group agreed not to pursue the matter.

27. The Working Group considered a proposal to give the Implementation Committee authority to determine non-compliance and to monitor cases of non-compliance. After it was emphasized that determination of non-compliance was a matter for the Parties, the Group noted that the report and data

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provided to the Meeting of the Parties by the Implementation Committee constituted a de facto determination of non-compliance. On the question of the need to develop criteria for making an objective judgement on whether a case of non-compliance was a wilful breach or a result of factors beyond the control of the Party concerned, the view was expressed that such criteria would be developed over time and that there was no need to develop a formal list right away. There was, however, general agreement that the determination of the causes of non-compliance was a necessary element in arriving at appropriate recommendations. It was therefore proposed that the following new subparagraph could be added after subparagraph 7 (c) as subparagraph 7 (d), with the subsequent subparagraphs renumbered accordingly:

"To determine the facts and possible causes relating to non-compliance and make appropriate recommendations to the Meeting of the Parties;"

28. One expert, however, reserved his position on this text, noting that paragraph 14 of the procedure made it clear that the purpose of the Implementation Committee was to make recommendations relating to non-compliance to the Meeting of the Parties, which were explicitly based on the gathering of relevant information, and analysis of possible causes. It was for the Meeting of the Parties to determine the facts on the basis of the information gathered.

29. Subsequently, after some discussion on the possible misinterpretation of the meaning of the word "determine", it was agreed that it should be changed to "identify". With that amendment, and the substitution of the words "individual cases of non-compliance referred to the Committee" for the word "non-compliance", the Working Group agreed to recommend the text for inclusion in paragraph 7 of the non-compliance procedure.

30. The Working Group also considered a proposal on the acquisition of additional data for verification purposes from other sources, including non-governmental organizations or private individuals. It was felt that the issue was already sufficiently covered in paragraph 3 of the non-compliance procedure, although there were differing views on the need for a formal decision of the Meeting of the Parties interpreting paragraphs 3 and 7 (c) to that effect. Some experts pointed out that the Committee should seek information primarily from the concerned party and other formal sources, such as the Ozone Secretariat, lest conflicting information from different informal sources might make it difficult for the Implementation Committee to make recommendations. There was even a possibility that such relevant recommendations by the Committee might be rejected by the concerned party if based on information which that Party found unacceptable.

#### Paragraph 8

31. The Working Group recommended that this paragraph remain unchanged.

#### Paragraph 9

32. The Working Group considered proposals that Parties found to be in non-compliance should report to the Meeting of the Parties, through the Secretariat, on the remedial action they had taken and that review of outstanding cases should be included in the agenda of each Meeting of the Parties.

33. It was noted that, in practice, reports on remedial action and outstanding cases were already regularly considered by the Parties at their Meetings. The Working Group therefore concluded that the proposed amendments were not necessary but noted that the practice could be reflected in commentaries on the procedure.

34. The proposals recommending that the Parties be required to take decisions on non-compliance and on return to compliance were examined by the Working Group. It was noted that experience had shown that the Meeting of the Parties had always taken appropriate action on such matters and it was also felt that it would not be advisable for the non-compliance procedure to make such a prescription to the Meeting of the Parties. The Working Group did not consider that any change to the present text was needed.
35. With regard to the proposal that the Implementation Committee be empowered to make a formal declaration of non-compliance, the Working Group felt that it was adequately covered by the proposed new subparagraph 7 (d).
36. The Working Group considered a proposal to set a time-limit for the submission of the findings of the Implementation Committee to the Meeting of the Parties and agreed that, as there was no evidence that there had been delays in circulating the Committee's reports, an amendment was not required.
37. After studying the proposals relating to determination of a return to compliance by the Implementation Committee, the Working Group concluded that this was an important element of the regime but that, taking into consideration that, if a Party could show good cause, it could always request an emergency meeting of the Implementation Committee, it was now adequately covered by the proposed new subparagraph 7 (d).
38. The proposal to make a reference to a specified majority vote in the revised procedure was withdrawn as the rules of procedure dealt satisfactorily with the decision-making rules for adoption of recommendations.
39. Although a proposal to revise the indicative list of measures had been received, the Working Group agreed that it was not in a position to consider it, as revision of the indicative list had been specifically excluded from its mandate by the Meeting of the Parties.
40. A proposal that guidance be given to assist the Implementation Committee in matching responses to particular types of non-compliance was examined by the Working Group. It was noted that, in practice, the Implementation Committee and the Meeting of the Parties were given some indications, but that they had the discretion to adapt their response to the particular case. Consequently, the Working Group agreed that no change to the present text was required.
41. A lengthy exchange of views was held on the proposal to have a procedure whereby the Meeting of the Parties could declare a Party to be "a State not Party to the Protocol" in cases where it was determined that there was a persistent pattern of non-compliance. On the one hand, the view was expressed that the proposal related to the indicative list and should not therefore be considered, while, on the other, it was emphasized that suspension of rights was already a measure available to the Meeting of the Parties so no revision of the indicative list was involved. Some experts felt that it was an interesting proposal and should be pursued further, but others stressed the need to bear in mind the ultimate objective of helping Parties to achieve compliance rather than imposing sanctions and that, in any event, persistent non-compliance should not be addressed by the Group since the concept of non-compliance was not referred to in the text of the Protocol or in the non-compliance procedure.
42. The Working Group recognized that the proposal addressed a complex and sensitive issue. It therefore welcomed the offer by the sponsor of the amendment to reconsider its proposal and submit revised suggestions. The need to ensure that the proposal did not relate to the indicative list was emphasized, and

some experts suggested that, rather than amending the text of the non-compliance procedure itself, the issue of persistent non-compliance could be addressed in the form of guidance or a commentary on how the third sentence of paragraph 9 could be interpreted. The Group also noted that once a Party was in non-compliance, it might well remain so for several years before a return to compliance. That was, however, not the same as wilful, persistent non-compliance.

43. The sponsor of the original proposal subsequently introduced a text by which the Meeting of the Parties would agree that, where there had been a persistent pattern of non-compliance with one or more of the key provisions of the Protocol, namely Articles 2, 4 and 7, the Implementation Committee should report and make appropriate recommendations to the Meeting of the Parties reflecting the seriousness with which the Meeting of the Parties viewed disregard by a Party for the terms of its decisions, taking into account the circumstances surrounding the Party's persistent pattern of non-compliance and with a view to ensuring the integrity of the Montreal Protocol. In response, one expert stated that the new proposal lacked balance and did not take sufficient account of the factors leading to non-compliance, which might include, for example, delays in the transfer of technology for the implementation of phase-out projects. Other concerns were raised as to the definition of the term "persistent pattern of non-compliance", with one expert suggesting that the Implementation Committee might develop a set of criteria on the subject or that a new group could be set up to consider and refine the concept. Another expert suggested that the Implementation Committee could consider the term on a case-by-case basis so that, over time, some definitive criteria could be developed.

44. Following further discussions and informal consultations, it was agreed to recommend to the Tenth Meeting of the Parties that it should agree that, in situations where there had been a persistent pattern of non-compliance by a Party, the Implementation Committee should report and make appropriate recommendations to the Meeting of the Parties with a view to ensuring the integrity of the Montreal Protocol, taking into account the circumstances surrounding the Party's persistent pattern of non-compliance. In that connection, it was agreed to recommend that consideration should be given to progress made by a Party towards achieving compliance and measures taken to help the non-compliant Party to return to a state of compliance.

45. One expert suggested that, in order to highlight the role of the Committee in assisting Parties to achieve compliance with the Protocol, the word "including" in the penultimate line of the paragraph should be changed to "primarily".

#### Paragraph 10

46. The Working Group was of the view that no change was required to paragraph 10.

#### Paragraph 11

47. The Working Group considered a proposal on paragraph 11 concerning the need to prevent members of the Committee participating in the review of matters in which they were involved but concluded that the point was already covered in the existing text.

#### Paragraph 12

48. The Working Group then considered a proposal concerning the need to define the relationship between the non-compliance procedure and other liability actions initiated in other international forums or tribunals. Noting the difficulties involved in determining precedence between different international

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administrative and judicial proceedings, the Working Group decided that no action should be taken on the proposal.

Paragraph 13

49. The Working Group was of the view that no change was required to paragraph 13.

Paragraph 14

50. The Working Group was of the view that no change was required to paragraph 14.

Paragraph 15

51. The Working Group was of the view that no change was required to paragraph 15.

Paragraph 16

52. The Working Group took up a proposal regarding paragraph 16 to provide for the reports of the Committee to be made available to the general public, subject to the removal of confidential information. The Working Group concluded that the substance of the amendment was already sufficiently covered in the paragraph.

Proposals not directed at existing paragraphs

53. The Working Group also addressed three proposals received by the Secretariat that were not directed at existing paragraphs, namely:

(a) Reporting of data: strengthening of decision VI/5 (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), to extend it to include loss of Article 5 status by countries that do not report annual data within a specific period;

(b) Automatic review of non-compliance: automatic examination of the effectiveness of the non-compliance procedure every four years and the recommendation of improvements, as appropriate;

(c) Appeals: appropriate provision should be made for appeals against decisions of the Meeting of the Parties.

54. With regard to the proposal on reporting of data, the Working Group noted that failure to report data not only represented non-compliance with the Montreal Protocol but also made it impossible to determine whether the Party concerned still fulfilled the conditions for Article 5 status. It was, however, of the view that, since loss of Article 5 status was already implicitly covered in the indicative list of measures in respect of non-compliance, it would not be appropriate for it to make proposals on this matter.

55. With regard to automatic review on non-compliance, there was general support for a further review in principle but views differed on whether it should be undertaken only if difficulties emerged in the operation of the current procedure. It was suggested that the Working Group might recommend that a review be undertaken by no later than a specified date (e.g., end of 2002), without prejudging a decision on subsequent reviews. The Group agreed that a final decision on consideration of that suggestion should be

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deferred until a later stage in its deliberations.

56. A compromise proposal was subsequently submitted, by which the Meeting of the Parties would decide to conduct a review of the non-compliance procedure in 2002, but would not make any specific provision for regular reviews after that date. It was stated that the year 2002 had been chosen because, by that time, it would be possible to gauge the adequacy of the procedure in the light of the freeze in Article 5 countries. It was, however, pointed out that any Party could request a review of the procedure at any time. The question was also raised as to what procedure would be applied to a Party whose case was already under consideration at the time the amended procedure was adopted. The issue of the undesirability of continually revisiting the procedure was also raised. One expert suggested that the Implementation Committee could always approach the Meeting of the Parties if it believed that the non-compliance procedure was not functioning adequately and was in need of review. Following some discussion, the Working Group agreed to recommend to the Meeting of the Parties that it should consider the operation of the non-compliance procedure again no later than the end of 2002.

57. With regard to appeals against decisions of the Meeting of the Parties, no support was expressed for creating such a mechanism, although some experts expressed the view that, while the proposal was premature, it should not be discarded out of hand.

### III. FINAL REPORT ON THE WORK OF THE WORKING GROUP

58. Following the first session of the Working Group, a draft interim report was circulated to all members of the Working Group for their comments and suggestions, which were subsequently incorporated into a revised version of the draft.

59. At its second session, the Working Group agreed that its final report should be completed by the Co-Chairs, in consultation with the Secretariat, for presentation to the Tenth Meeting of the Parties. The present report was prepared in accordance with that procedure and was adopted by the Working Group at its final meeting, on Wednesday, 18 November 1998.

60. The Working Group also agreed on a draft decision reflecting those conclusions for submissions to the Tenth Meeting of the Parties. The text of that draft decision is contained in annex I to the present report. It was also decided that the text of the non-compliance procedure with the proposed amendments highlighted should be circulated to the Tenth Meeting of the Parties as an appendix to the draft decision (see page 13 below).

### IV. CLOSURE OF THE MEETING

61. The first session of the Working Group was closed at 12.45 p.m. on Saturday, 4 July 1998, while the second session was closed at 3.40 p.m. on Wednesday, 18 November 1998.

Annex I

The Tenth Meeting of the Parties decides:

Recalling decision IV/5 on a non-compliance procedure of the Montreal Protocol adopted by the Fourth Meeting of the Parties,

Recalling also decision IX/35 on review of the non-compliance procedure adopted by the Ninth Meeting of the Parties,

Noting the report of the Ad Hoc Working Group of Legal and Technical Experts on Non-compliance established by decision IX/35 (UNEP/OzL.Pro/WG.4/1/3) and, in particular, its conclusion that in general the non-compliance procedure has functioned satisfactorily but that further clarification was desirable and that some additional practices should be developed to streamline the procedure,

1. To express appreciation to the Ad Hoc Working Group for its report reviewing the non-compliance procedure;
2. To agree on the following amendments with a view to clarifying particular paragraphs of the non-compliance procedure:
  - (a) In paragraph 2, the following should be substituted for the last sentence:

If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, provided by the Parties to the Implementation Committee referred to in paragraph 5, which shall consider the matter as soon as practicable.

- (b) In paragraph 3, the following should be substituted for the word accordingly at the end of the paragraph:

, which shall consider the matter as soon as practicable.

- (c) In paragraph 5:

- (i) The following should be inserted after the second sentence:

Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of the name of the individual who is to represent it and shall endeavour to ensure that the same individual remains its representative throughout the entire term of office.

(ii) The following should be inserted after the third sentence:

A Party that has completed a second consecutive two-year term as a Committee member shall be eligible for election again only after an absence of one year from the Committee.

(d) In paragraph 7, the following subparagraph should be inserted after subparagraph (c):

(d) To identify the facts and possible causes relating to individual cases of non-compliance referred to the Committee and make appropriate recommendations to the Meeting of the Parties;

and the subsequent subparagraphs should be renumbered accordingly;

3. To agree that in situations where there has been a persistent pattern of non-compliance by a Party, the Implementation Committee should report and make appropriate recommendations to the Meeting of the Parties with the view to ensuring the integrity of the Montreal Protocol, taking into account the circumstances surrounding the Party's persistent pattern of non-compliance. In this connection, consideration should be given to progress made by a Party towards achieving compliance and measures taken to help the non-compliant Party return to compliance;
4. To draw the attention of Parties to the amended non-compliance procedure as set out in annex [ ] to the report of the Tenth Meeting of the Parties;\*
5. To consider the operation of the non-compliance procedure again no later than the end of 2002.

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\* See the appendix to the present decision.

Appendix

NON-COMPLIANCE PROCEDURE (1998)

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. **If the Secretariat has not received a reply from the Party three months after sending it the original submission, the Secretariat shall send a reminder to the Party that it has yet to provide its reply. The Secretariat shall, as soon as the reply and information from the Party are available, but not later than six months after receiving the submission, transmit the submission, the reply and the information, if any, 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 not response from the Party concerned within three months of such longer period as the circumstances of the matter may require or if 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, **which shall consider the matter as soon as practicable.**
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. **Each Party so elected to the Committee shall be requested to notify the Secretariat, within two months of its election, of the name of the individual who is to represent it and shall endeavour to ensure that the same individual remains its representative throughout the entire term of office.** Outgoing Parties may be re-elected for one immediate consecutive term. **A Party that has completed a second consecutive two-year term as a Committee member**

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**shall be eligible for election again only after an absence of one year from the Committee.** 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 identify the facts and possible causes relating to individual cases of non-compliance referred to the Committee and make appropriate recommendations to the Meeting of the Parties;**

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

(f) 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 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 II

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