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REPORT OF THE SECRETARIAT ON THE REPORTING OF DATA  
BY THE PARTIES IN ACCORDANCE WITH ARTICLE 7  
OF THE MONTREAL PROTOCOL

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INTRODUCTION

1. The present report on the information received pursuant to Article 7 of the Montreal Protocol is an updated version of the Addendum to the Report of the Executive Director of UNEP, "Revised report on data on production, imports, exports and consumption of substances listed in Annex A of the Montreal Protocol" (UNEP/OzL.Pro.2/2/Add.4/Rev.1), which was presented to the Second Meeting of the Parties in London (27-29 June 1990). The present report contains information received by the Secretariat as of 25 October 1990.

2. Article 7 of the Montreal Protocol states that:

"1 Each Party shall provide to the Secretariat within three months of becoming a Party, statistical data on its production, imports and exports of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available;

"2 Each Party shall provide statistical data to the Secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports and exports to Parties and non-parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of year to which the data relate."

3. The Second Meeting of the Parties to the Montreal Protocol adopted the adjustments and the Amendment to the Protocol as contained in the Report of the Second Meeting of the Parties (UNEP/OzL.Pro.2/3). The control measures provided for in Article 2 of the Protocol have been adjusted to phase-out in steps the production and consumption of each group of controlled substances in Annex A of the Protocol. The phase out schedule is based on the 1986 calculated levels of production and consumption of each group of such substances. The schedule for each group is as follows:

CFCs:                   50% reduction of 1986 level by 1995  
                           85% reduction by 1997  
                           Total phase-out by 2000.

Halons:                 Freeze at 1986 level by 1992  
                           50% reduction by 1995  
                           Total phase-out by 2000.

4. Under the Amendment to the Protocol, which is expected to enter into force on 1 January 1992, 10 other CFCs, methyl chloroform and carbon tetrachloride will also be phased out by the following phase-out schedule:

10 other CFCs:                 20% reduction of 1989 levels by 1993  
                                   85% reduction by 1997  
                                   Total phase-out by 2000

Carbon tetrachloride:         85% reduction of 1989 level by 1995  
                                   Total phase-out by 2000

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Methyl chloroform:            Freeze at 1989 level by 1993  
                                  30% reduction by 1995  
                                  70% reduction by 2000  
                                  Total phase-out by 2005

5. Article 3 describes the methods for determining the calculated levels for the purposes of Article 2 and also of Article 5. For each group of substances in Annex A of the Protocol, the calculated level of production by a Party is determined by:

(a) Multiplying its annual production of each controlled substance by the ozone-depleting potential (ODP) specified in respect of it in Annex A, "production" being defined under Article 1 of the Protocol as "the amount of controlled substances produced minus the amount destroyed by technologies to be determined by the Parties"; and

(b) Adding together, for each such group, the resulting figures.

Calculated levels of imports and exports, respectively, are also determined by following, mutatis mutandis, the procedure set out above, and calculated levels of consumption are determined by adding together the calculated level of production and imports and subtracting the calculated levels of exports. Article 3 also states that, from 1 January 1993, any export of controlled substances to non-parties shall not be subtracted in calculating the consumption level of the exporting Party.

6. It must be emphasized that without complete data on production, imports and export for each controlled substance, the calculated levels of consumption cannot be determined. Since the control measures are based on the calculated levels, it is crucial that the Parties report complete data.

7. In the 1987 Montreal Protocol there is a lack of correspondence between the reporting periods (every calendar year beginning in 1989) and some of the control measures (paragraphs 1, 3 and 4 of Article 2), which require the Parties to reduce the consumption and production of the controlled substances in periods starting in the middle of the year. The potential inconvenience has been recognized and the adjustments and the Amendment that include strengthened control measures include a reduction schedule that corresponds with the reporting period.

## I. DATA REPORTING

### A. Requests for 1986 data and the reporting status

#### 1. Requests for 1986 data

8. Since the entry into force of the Montreal Protocol on 1 January 1989, the Parties have been requested to report to the Secretariat for the Vienna Convention and its Montreal Protocol the 1986 data as required by Article 7, paragraph 1, of the Protocol. Four requests for data have been sent, on 30-31 January 1989, 20 September 1989, 9 November 1989 and 2 May 1990 to the Parties that had not reported complete data. The format to be used for the reporting was enclosed with each letter.

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## 2. Reporting status of the Parties

9. As of 25 October 1990, 64 States and the European Economic Community (EEC) were Parties to the Protocol. At their Second Meeting, the Parties decided that any data on the consumption of the controlled substances that are submitted to the Secretariat are not to be confidential (Decision II/9). The status of data-reporting by the Parties and the consumption of controlled substances reported by each Party is shown below in Table 1:

Table 1: Status of data reporting by the Parties and the consumption data reported by each Party.

<u>Country</u>	<u>Consumption (in tonnes)</u>			<u>% of*</u>	<u>Note</u>
	<u>CFCs</u>	<u>Halons</u>	<u>Total</u>	<u>W Con.</u>	
Australia	13 100	800	13 900	1.19	Reported incomplete data: clarification of data required.
Austria	7 800	200	8 000	0.68	Reported complete data.
Bahrain	98	10	108	0.01	Reported complete data.
Bangladesh	0	0	0	0	Reported that their use is insignificant.
Brazil	11 194	50	11 244	0.96	Reported incomplete data: aggregated data for Group II.
Burkina Faso	-	-	-	-	Reported no data available.
Byelorussian SSR	-	-	-	-	No data reported: UNEP informed that data are included in data for USSR.
Cameroon	-	-	-	-	No data reported: UNEP's estimate = 0.
Canada	20 670	501	21 171	1.81	Reported complete data.
Chile	733	8	741	0.06	Reported incomplete data: aggregated data for each Group.
Czechoslovakia	6 996	24	7 020	0.60	Reported complete data.
Ecuador	618	-	618	0.05	Reported incomplete data: aggregated consumption for Group I, including CFCs not controlled by Protocol.

\* Percentage of world consumption. The estimated total global consumption of the controlled substances is 1,171,884 tonnes. (See paragraph 13.)

<u>Country</u>	<u>Consumption (in tonnes)</u>			<u>% of*</u>	<u>Note</u>
	<u>CFCs</u>	<u>Halons</u>	<u>Total</u>	<u>W Con.</u>	
Egypt	5 042	0	5 042	0.43	Reported incomplete data: some substances are aggregated.
Fiji	-	-	70	0.01	No data reported: UNEP's estimate stands.
Finland	3 395	85	3 480	0.30	Reported complete data.
Gambia	-	-	-	-	Reported no data available.
German Democratic Republic	15 515	223	15 738	1.34	Reported complete data.
Ghana	-	-	-	-	Reported, in 1988, no data available: in the process of collecting the data.
Guatemala	1 800	80	1 880	0.16	Reported incomplete data: aggregated data for each Group.
Hungary	3 061	2	3 063	0.26	Reported complete data.
Iceland	-	-	-	-	Reported information, but clarification required.
Iran	-	-	4 400	0.38	No data reported. UNEP's estimate stands.
Japan	130 551	1 769	132 320	11.29	Reported complete data.
Jordan	302	13	315	0.03	Reported complete data.
Kenya	136	1	137	0.01	Reported incomplete data; aggregated data for each Group. Requested assistance.
Liechtenstein	-	-	-	-	Included in data of Switzerland.
Libya	-	-	-	-	No data reported.
Malaysia	2 327	270	2 597	0.22	Reported complete data.
Maldives	-	-	-	-	Reported no data available. Requested assistance.
Malta	-	-	499	0.04	Reported incomplete data: aggregated data for Groups I and II.

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<u>Country</u>	<u>Consumption (in tonnes)</u>			<u>% of*</u>	<u>Note</u>
	<u>CFCs</u>	<u>Halons</u>	<u>Total</u>	<u>W Con.</u>	
Mexico	8 355	8	8 363	0.71	Reported complete data.
New Zealand	2 100	140	2 240	0.19	Reported complete data.
Nigeria	-	-	-		Reported no data available.
Norway	1 411	145	1 556	0.13	Reported complete data.
Panama	303	1	304	0.03	Reported complete data.
Poland	-	-	10 000	0.85	No data reported. UNEP's estimate stands.
Singapore	4 423	400	4 823	0.41	Reported complete data.
South Africa	12 500	695	13 195	1.13	Reported incomplete data: some substances are aggregated.
Sri Lanka	-	-	258	0.02	Reported incomplete data: aggregated data for Groups I and II together.
Sweden	5 140	201	5 341	0.46	Reported complete data.
Switzerland	8 300	175	8 475	0.72	Reported complete data.
Syrian Arab Republic	925	484	1 409	0.12	Reported incomplete data: aggregated data for each Group.
Thailand	2 500	20	2 520	0.22	Reported incomplete data: aggregated data for each Group.
Trinidad and Tobago	-	-	-		No data reported.
Tunisia	750	50	800	0.07	Reported incomplete data: aggregated data for each Group.
Uganda	-	-	-		Requested assistance.
Ukrainian SSR					Reported incomplete data: UNEP informed that data are included in data for USSR.
USSR	121 784	5 100	126 884	10.83	Reported complete data as 1990 data. Clarification is required.

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<u>Country</u>	<u>Consumption (in tonnes)</u>			<u>% of*</u>	<u>Note</u>
	<u>CFCs</u>	<u>Halons</u>	<u>Total</u>	<u>W Con.</u>	
United Arab Emirates	-	-	1 630	0.14	Reported incomplete data: aggregated data for Groups I and II together.
USA	322 552	7542	330 094	28.14	Reported complete data.
Venezuela	3 896	44	3 940	0.34	Reported complete data.
Zambia	-	-	-		No data reported.
EEC	311 072	6 818	317 890	27.13	Reported complete data.
<u>Member states of the EEC:</u>					
Belgium			16 402		Reporting requirement fulfilled.
Denmark	5 656	146	5 802		Reported complete data.
France					Reporting requirement fulfilled.
Germany, Federal Republic					No data reported.
Greece					No data reported.
Ireland					Reporting requirement fulfilled.
Italy					No data reported.
Luxembourg	170	4	174		Reported complete data.
Netherlands	8 675	445	9 120		Reporting requirement fulfilled.
Portugal					No data reported.
Spain	20415	600	20745		Reporting requirement fulfilled.
United Kingdom					No data reported.
<b>Total</b>	<b>1 029 349</b>	<b>25 859</b>	<b>1 072 065</b>	<b>91.48</b>	

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10. The Second Meeting of the Parties adopted, as a part of the Amendment to the Protocol, a provision under Article 7 regarding reporting of data by Parties that are member States of a regional economic integration organization operating under the provisions of paragraph 8 (a) of Article 2. This amendment states that, for the member States of the regional economic integration organization, the requirements for reporting the imports and exports data will be satisfied if the regional economic integration organization concerned provides data on imports and exports between the organization and States that are not members of that organization. Strictly speaking, until the Amendment enters into force, each Party, whether or not a member State of a regional economic integration organization, should report complete data in accordance with the provisions of the 1987 Montreal Protocol. However, since the Amendment has already been adopted by the Parties and with recognition of the difficulties of the member States of such organizations to report individually their imports and exports data, the Secretariat has requested only the production data from the member States of such organizations.

### 3. Reporting status of the non-parties

11. For the purpose of entry into force of the Protocol, it was necessary to estimate the 1986 world consumption of the controlled substances. All countries were requested to submit the best available data on the controlled substances. As a result, data were also submitted by countries that are not currently parties to the Protocol. For a number of countries that did not report any data, UNEP estimated the total consumption of the controlled substances based on available information. No objections to these estimates were raised by the countries concerned. The existing situation with respect to data for non-parties is that:

- (a) 1 country has reported complete data:

Kuwait

- (b) 17 countries have reported incomplete data:

Argentina, Cuba, Dominica, India, Indonesia, Israel, Jamaica, Madagascar, Peru, Philippines, Republic of Korea, Rwanda, Saudi Arabia, Togo, Turkey, Uruguay and Yugoslavia.

- (c) 14 countries have reported either zero or negligible consumption or that data are unavailable:

Botswana, Burundi, Central African Republic, Congo, Ethiopia, Guinea, Lao People's Democratic Republic, Monaco, Niger, Oman, Papua New Guinea, Sudan, Vanuatu and Yemen.

- (d) UNEP estimates stand for 20 countries:

Algeria, Belize, Bolivia, Bulgaria, China, Colombia, Côte d'Ivoire, Cyprus, Dominican Republic, El Salvador, Gabon, Honduras, Iraq, Morocco, Nicaragua, Pakistan, Paraguay, Romania, Senegal and Zimbabwe.

- (e) For the remaining non-parties, consumption is registered as zero.

B. Analysis of 1986 data

12. A data base has been set up to store the data reported by the Parties and to permit easy access to it, as well as analysis of this material. The following analysis is based on the information currently possessed by the Secretariat.

1. 1986 consumption of controlled substances

13. Estimated total world consumption. The estimated total world consumption for 1986 is approximately 1,172,000 tonnes, the exact figure being 1,171,884 tonnes. This figure includes the data reported by Parties and non-parties, as well as the estimates made by UNEP for a number of countries.

14. Comparison with total world consumption estimated for the purpose of entry into force of the Protocol. The estimated total world consumption figure for the purpose of entry into force of the Protocol was 1,140,000 tonnes, as reported in the Note by the Executive Director to the First Meeting of the Parties, Helsinki, 2-5 May 1989 (UNEP/OzL.Pro.1/2). The current estimated total consumption of the controlled substances is approximately 31,000 tonnes more than the estimated figure for the entry into force. This difference results from the fact that, since the entry into force of the Protocol, several UNEP estimates have been superseded by actual reported data.

15. Consumption of controlled substances by Parties and non-parties in 1986. Table 2 shows the breakdown of the 1986 estimated total world consumption (1,171,884 tonnes) into consumption of controlled substances by Parties and non-parties and by developed and developing countries. The figures include the UNEP estimates that have not been superseded by actual reported data.

Table 2. Consumption of controlled substances by Parties and non-parties (1986)

	Parties	Percentage of world consumption	Non-parties	Percentage of world consumption
Developed countries	1 020 367	87.1	9 766	0.8
Developing countries	51 698	4.4	90 053	7.7
TOTAL	1 072 065 <u>a/</u>	91.5	99 819 <u>b/</u>	8.5

a/ The total estimated consumption by the Parties of 1,072,065 tonnes consists of reported figures totalling 1,057,595 tonnes and UNEP estimated figures totalling 14,470 Tonnes.

b/ The total estimated consumption by non-parties of 99,819 tonnes consists of reported figures totalling 50,243 tonnes and UNEP estimated figures totalling 49,576 tonnes.

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16. Consumption of controlled substances reported by the Parties for 1986.  
Table 3 shows the 1986 consumption levels of the controlled substances as reported by a total of 36 Parties. Because of a number of cases of joint reporting, these 36 reports provide consumption data for a total of 50 States Parties to the Protocol.

Table 3. Consumption of controlled substances reported by the Parties (1986)

Substances	Actual consumption	ODP	ODP weighted consumption
<u>Group I</u>			
CFC-11:	348 488	1.0	348 488
CFC-12:	419 975	1.0	419 975
CFC-113:	209 929	0.8	167 943
CFC-114:	15 832	1.0	15 832
CFC-115:	10 121	0.6	6 073
AGG.GR.I:	25 004		*
<b>TOTAL</b>	<b>1 029 349</b>		<b>*</b>
<u>Group II</u>			
Halon-1211:	10 189	3.0	30 567
Halon-1301:	11 293	10.0	112 930
Halon-2402:	2 989	6.0	17 934
AGG.GR.II:	1 388		*
<b>TOTAL</b>	<b>25 859</b>		<b>*</b>
<b>AGG.GR.I &amp; II:</b>	<b>2 387</b>		<b>*</b>
<b>GRAND TOTAL:</b>	<b>1 057 595</b>		<b>*</b>

Key AGG.GR.I = Total of the figures from the Parties which, for Group I substances, reported only an aggregated consumption figure.

AGG.GR.II = Total of the figures from the Parties which, for Group II substances, reported only an aggregated consumption figure.

AGG.GR.I & II = Total of the figures from the Parties which reported only an aggregated consumption figure for Group I and II substances together.

\* = The figure can not be determined, since some Parties have not reported data on individual substances.

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17. Consumption of controlled substances by regional groups for 1986.  
Table 4 shows the breakdown of reported 1986 consumption of controlled substances by regional groups based on the data reported by the 36 Parties referred to in paragraph 16 above.

Table 4. Consumption of controlled substances by Parties according to regional groups (1986)\*

Substances	Africa	Asia and Pacific	Western Europe and others	Eastern Europe	Latin America	TOTAL
<u>Group I</u>						
CFC-11:	0	29 757	269 779	42 729	6 223	348 488
CFC-12:	0	41 553	283 849	78 637	15 936	419 975
CFC-113:	0	63 670	119 906	25 022	1 331	209 929
CFC-114:	0	2 244	12 722	713	153	15 832
CFC-115:	0	477	9 284	255	105	10 121
AGG.GR.I:	18 428	3 425	0	0	3 151	25 004
<b>TOTAL</b>	<b>18 428</b>	<b>141 126</b>	<b>695 540</b>	<b>147 356</b>	<b>26 898</b>	<b>1 029 349</b>
<u>Group II</u>						
Halon-1211:	0	479	8 590	1 104	16	10 189
Halon-1301:	0	1 948	7 737	1 572	36	11 293
Halon-2402:	0	35	280	2 673	1	2 989
AGG.GR.II:	746	504	0	0	138	1 388
<b>TOTAL</b>	<b>746</b>	<b>2 966</b>	<b>16 607</b>	<b>5 349</b>	<b>191</b>	<b>25 859</b>
AGG.GR.I & II:	0	1 888	499	0	0	2 387
<b>GRAND TOTAL</b>	<b>19 174</b>	<b>145 980</b>	<b>712 646</b>	<b>152 705</b>	<b>27 090</b>	<b>1 057 595</b>

Key

AGG.GR.I = Total of the figures from the Parties which, for Group I substances, reported only an aggregated consumption figure.

AGG.GR.II = Total of the figures from the Parties which, for Group II substances, reported only an aggregated consumption figure.

AGG.GR.I & II = Total of the figures from the Parties which reported only an aggregated consumption figure for Group I and II substances together.

\* The figures for the respective regions include the data from the following Parties:

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Africa: Egypt, Kenya, South Africa and Tunisia.

Asia and the Pacific: Bahrain, Japan, Malaysia, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, and Jordan.

Western Europe and Other States: EEC (includes the 12 Member States: Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, UK. The underlined States have reported data separately, but only the EEC data are added in the total figures to avoid double counting.), Austria, Finland, Malta, Norway, Sweden, Switzerland (includes Liechtenstein.), Australia, New Zealand, USA and Canada.

Eastern Europe: USSR (includes Byelorussian SSR and Ukrainian SSR) German Democratic Republic, Czechoslovakia, and Hungary.

Latin America and the Caribbean: Brazil, Chile, Ecuador, Guatemala, Mexico, Panama and Venezuela.

2. 1986 production of controlled substances in 1986

18. Total world production of controlled substances. The total world production of the controlled substances for 1986 reported to date is 1,148,543 tonnes, or approximately, 1,149,000 tonnes. This figure includes the production figures reported by the Parties and the non-parties. In theory, the total production should equal total consumption. However, since not all producers have reported their figures, the total 1986 production currently reported by Parties and non-parties is 23,341 tonnes less than the world estimated total consumption.

19. Production of controlled substances reported by the Parties. The total of the 1986 production figures reported to date by Parties is 1,137,966 tonnes, or approximately, 1,138,000 tonnes. This constitutes 99 per cent of the reported global production. The following 12 Parties have reported that they are producers of the controlled substances and have provided production figures:

Australia, Brazil, Canada, Czechoslovakia, German Democratic Republic, Japan, Mexico, South Africa, USSR, United States, Venezuela and EEC (France, Netherlands and Spain which are member States of EEC, have separately reported their own production figures).

20. Table 5 shows the production of each controlled substance as reported by these 12 Parties and, taking into account the joint reporting by some Parties covering 25 States Parties to the Protocol.

Table 5. Production of controlled substances reported by Parties (1986)

Substances		Production (tonnes)
<u>Group I</u>	CFC-11:	385 260
	CFC-12:	464 124
	CFC-113:	220 730
	CFC-114:	17 241
	CFC-115:	11 110
AGG.G.I		10 800
<b>TOTAL</b>		<b>1 109 255</b>
<u>Group II</u>	Halon-1211:	13 378
	Halon-1301:	11 599
	Halon-2402:	3 724
<b>TOTAL</b>		<b>28 701</b>
<b>GRAND TOTAL</b>		<b>1 137 966</b>

21. Production of controlled substances by the non-parties. The total 1986 production reported by the non-parties is 10,577 tonnes, or approximately 11,000 tonnes. This constitutes 1 per cent of the estimated global production. The figure includes the production data reported by three non-parties: Argentina, India and Republic of Korea. None of these three non-parties has reported complete production data on each controlled substance.

### 3. Population data

22. The population data necessary for determining per capita consumption for each Party for the year 1986 are taken from the Demographic Yearbook for that year published by the United Nations Statistical Office, Department of International Economic and Social Affairs. This publication provides estimates of mid-year population for all countries in the world for 1986. The Secretariat intends to use the Yearbook for the population data necessary for determining the per capita consumption from 1989 onwards.

#### C. Problems faced by the Parties in reporting

23. In the UNEP letters requesting data (see paragraph 8 above), each Party was asked to inform the Secretariat of the problems, if any, that it had in providing the required data.

24. Four Parties have reported the difficulties and some of them asked for technical assistance:

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- Kenya Has no record on the individual chemicals, therefore cannot report on the individual chemicals as required. However, country specific case study (under the financial mechanism) is being conducted
- Maldives Lacks the expertise to fulfil the obligations under Article 7, therefore asks for provision of an appropriate expert to assist in this regard. The terms of reference for the expert have been received by the Secretariat
- South Africa Cannot break down the data into individual chemicals. The imported chemicals were classified under the same customs tariff until recently
- Uganda Has already undertaken preliminary study on the substances but the work is not progressing due to lack of technical expertise, logistics and inadequate financing. Requests a consultant and financial and logistical support.

25. From the data reports submitted, the Secretariat has observed the following:

(a) A number of developing countries have reported that no data are available in their countries. Some have indicated that they are in the process of gathering the required data;

(b) Several countries have managed to report only aggregated total consumption figures for each of the two groups of the controlled substances or in some cases, a single total figure for all the controlled substances;

(c) Some dependent territories of States members of a regional economic integration organization have reported data. It is not clear to the Secretariat whether these data are included in the data reported by the organization. These data submitted by dependent territories have not been included in the present report.

26. The modification of the Harmonized System should help the Parties that are member administrations to collect the required data on imports and exports of the individual controlled substance (see section on Harmonized Commodity Systems).

27. Some Parties reported the required data jointly, in one case because of a customs treaty between two Parties and in another case because two Parties are integral parts of another. These Parties have been asked by the Secretariat to inform the Secretariat, in accordance with Article 8 (b) of the Protocol, if their intention is to operate as regional economic integration organizations that could fulfil the reporting obligations jointly.

28. The mandate of this Working Group is to consider the reasons leading to difficulties faced by some countries in reporting the required data and to recommend possible solutions to the Parties concerned. The Working Group should report on its progress to the Third Meeting of the Parties in 1991.

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29. The Parties that do not report the required data could be in non-compliance with Protocol. The issue of the status of data submissions and its relevance in assessing non-compliance will be discussed by the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol. The first meeting of the Committee will take place from 10-11 December 1990 following this Working Group. The report of this Working Group will be presented to the Committee.

#### D. Reporting of 1989 data

30. In accordance with Article 7, paragraph 2, of the Protocol the Parties for which the Protocol entered into force during 1989 are required to report the 1989 data (1 January to 30 December 1989). The letters requesting these data were dispatched on 11 September 1990. As indicated in paragraph 10 above, the member states of regional economic integration organization, EEC, have been requested to report on the production data only.

31. Article 7, paragraph 2, requires the Parties to divide the export figures into two parts: (i) export to Parties; and (ii) export to non-parties from the year that they become a Party and each year thereafter. The Parties have been requested to report the divide export data for 1989.

32. Of the 48 Parties that are required to report the 1989 data, only 4 Parties have reported the 1989 data. The status of reporting of these data by those Parties is as follows:

German Dem. Rep.	Reported complete data.
Maldives	Reported negligible imports of the controlled substances. Also reported difficulties in reporting the required data (see paragraph 24 above).
New Zealand	Reported complete data.
Thailand	Reported incomplete data: aggregated imports data for each group of the controlled substances.

33. With regard to the issue of destruction technologies, the Parties at their Second Meeting, established Decision II/11, an ad hoc technical advisory committee on destruction technologies to analyse such technologies and to assess their efficiency and environmental acceptability in order to develop approval criteria and measurements. Pursuant to this decision, the Parties appointed Canada as the Chair of the Committee. The nine members of the Committee will be selected on the basis of nominations by the Parties and with due consideration of equitable geographical distribution. Separate data on amounts of controlled substances destroyed by technologies approved by the Parties will be requested once such approval criteria are established.

## II. HARMONIZED COMMODITY SYSTEMS

34. At their First Meeting, the Parties to the Montreal Protocol adopted a proposal for a modification of the Harmonized Commodity Description and Coding System in order to facilitate reporting on imports and exports of controlled substances (see Annex VII to the Report of the First Meeting of the Parties, (UNEP/OzL.Pro.1/5). The Secretariat communicated the proposal to the Customs Co-operation Council in Belgium, requesting their consideration of the proposal.

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35. On 12 April 1990, the Harmonized System Committee of the Customs Co-operation Council adopted, with some amendment, the proposal advanced by the Parties at their First Meeting. However, in conformity with Customs Co-operation Council procedure, the Harmonized System may not be formally amended to take into account this and other pending amendments until 1996. In recognition of the urgency of this issue, the Harmonized System Committee not only adopted a formal amendment to the Harmonized System, but also a recommendation that all member administrations take action to reflect the adopted subheadings in their national statistical nomenclature as soon as possible. Furthermore, the Customs Co-operation Council stated that, "if the Parties to the Montreal Protocol (1) determine that additional subheadings for individual chemicals controlled by the Protocol would be useful in their efforts to protect the ozone layer, and (2) request the assistance of the Customs Co-operation Council in that regard, the Committee will consider such a request as expeditiously as possible."

36. In light of the difficulties encountered thus far by some Parties in reporting data on individual chemicals and the potential usefulness of the Harmonized Systems in facilitating the collection of such data, the Parties at their Second Meeting, having determined that additional subheadings for individual chemicals controlled by the Montreal Protocol would be useful in their efforts to protect the ozone layer, decided to request the assistance of the Council in this regard through the Executive Director (Decision II/12). In accordance with this decision, the Executive Director has contacted the Council to request their assistance.

### III. CONFIDENTIALITY OF DATA

37. In light of the future necessity that would arise to release the consumption data to ensure and prove that the Parties were in compliance with the control measures of the Protocol, as well as the potential usefulness of such data, the Parties at their Second Meeting confirmed that any data on consumption of the controlled substances that were submitted to the Secretariat as required by Article 7 of the Protocol would not be confidential.

38. The production, imports and exports data are still treated as confidential. In order to ensure that these data are kept confidential, the Secretariat is storing the data reports in a safe; access to the data base containing the reported data can be obtained only through the use of a confidential password.

39. The Working Group may wish to discuss whether it is necessary to keep the production, imports and exports data confidential.

### IV. ARTICLE 5: PARAGRAPH 1 - COUNTRIES

40. Article 5, paragraph 1, of the Montreal Protocol states:

" Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilogrammes per capita on the date of entry into force of the Protocol for it, or at any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet its basic domestic needs, be entitled to delay its compliance with the

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control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilogrammes per capita. Any such Party shall be entitled to use either the average of its calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilogrammes per capita, whichever is the lower, as the basis for its compliance with the control measures."

41. Hence, for a country to be accorded Article 5, paragraph 1, status, it must:

(a) Be a developing country (see paragraph 42 below); and

(b) Have a calculated level of less than 0.3 kilogrammes per capita at the time of entry into force of the Protocol or at any time until 1 January 1999.

The Secretariat assumes that all Parties that fulfill both these conditions would want to be an "Article 5 country". Should a developing country not wish to make use of the entitlement under Article 5, the Secretariat should be informed accordingly.

42. By its decision 12 E, the Parties at their First Meeting decided that the following 130 countries shall be considered developing countries for the purpose of the Montreal Protocol. The 32 States whose names are underlined are currently Parties to the Protocol:

Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Democratic Yemen, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Republic of Korea, Romania, Rwanda, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

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43. In accordance with the methodology specified in Article 3 of the Protocol (see paragraph 5 above), calculated per capita consumption can only be determined for Parties that have reported complete data for each controlled substance. To date, the data of the time of entry into force of the Protocol for each country have not been reported. However, calculated per capita consumption has been determined based on the available 1986 data. As of 25 October 1990, only eight Parties that are developing countries - Bahrain, Bangladesh, Jordan, Malaysia, Mexico, Singapore and Venezuela - had reported complete data for 1986. Those eight countries are categorized as follows until the data at the time of entry into force of each county are reported:

(a) Developing countries operating under paragraph 1 of Article 5:

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Bangladesh	0.00	0.00
Jordan	0.09	0.10
Malaysia	0.16	0.24
Mexico	0.11	0.11
Panama	0.14	0.14
Venezuela	0.22	0.24

(b) Developing countries not operating under paragraph 1 of Article 5:

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Bahrain	0.26	0.31
Singapore	1.87	2.51

44. The other Parties that are developing countries have been temporarily categorized under countries operating under paragraph 1 of Article 5 and countries not so operating based on the incomplete data received from them and on the UNEP estimates that stand for a number of those countries:

Temporary categorization

(a) Developing countries operating under paragraph 1 of Article 5:

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Brazil	0.08	-
Burkina Faso	-	- (no data reported)
Cameroon	-	- (no data reported)
Chile	0.06	-
Equador	0.06	-
Egypt	0.10	-
Fiji	0.10	-
Gambia	-	- (no data reported)
Ghana	-	- (no data reported)
Guatemala	0.23	-
Iran	0.10	-

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Kenya	0.01	-
Libya	-	- (no data reported)
Maldives	-	- (no data reported)
Nigeria	-	- (no data reported)
Sri Lanka	0.02	-
Syrian Arab Rep	0.13	-
Thailand	0.05	-
Trinidad & Tobago	-	- (no data reported)
Tunisia	0.11	-
Uganda	-	- (no data reported)
Zambia	-	- (no data reported)

(b) Developing countries not operating under paragraph 1 of Article 5:

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Malta	1.30	-
United Arab Emi.	1.18	-

45. The 1986 per capita and the calculated per capita consumption data of the developed countries are listed below for information:

<u>Country</u>	<u>Per capita consumption</u>	<u>Calculated per capita consumption</u>
Australia	0.87	1.04
Austria	1.06	1.24
Canada	0.83	0.90
Czechoslovakia	0.45	0.46
Finland	0.71	0.79
German Dem. Rep.	0.95	1.02
Hungary	0.29	0.29
Iceland	-	- (no data reported)
Japan	1.09	1.11
New Zealand	0.69	0.79
Norway:	0.37	0.65
Poland:	0.27	-
South Africa:	0.40	-
Sweden:	0.64	0.81
Switzerland:	1.30	1.39 (includes data for Liechtenstein)
USSR	0.45	0.54 (includes data for Byelorussian SSR and Ukrainian SSR)
USA	1.37	1.47
EEC	0.99	1.06 (data for the twelve member states)

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46. By Decision II/10 of the Parties, at their Second Meeting the Parties requested the Secretariat to determine from the data available to it the exact quantities of the controlled substances required by the developing countries operating under paragraph 1 of Article 5 and the possible sources of supply to assist developed countries to authorize their companies to produce the additional amounts needed within the percentages authorized by Article 2 and Articles 2A to 2E of the Protocol. The Secretariat requests advice from the Working Group on how this could be determined.

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Ad Hoc Working Group of Legal Experts on  
Non-compliance with the Montreal Protocol

Third meeting  
Geneva, 5-8 November 1991

REPORT OF THE THIRD MEETING OF THE AD HOC WORKING GROUP OF  
LEGAL EXPERTS ON NON-COMPLIANCE WITH THE MONTREAL PROTOCOL

I. INTRODUCTION

1. The Third Meeting of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol was held at Geneva from 5 to 8 November 1991.
2. The Meeting was attended by representatives of the following countries and regional economic integration organizations: Argentina, Australia, Austria, Bolivia, Burkina Faso, Cameroon, Canada, Chile, China, Costa Rica, Denmark, Egypt, the European Community, Fiji, France, Greece, India, Indonesia, Japan, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Republic of Korea, Saudi Arabia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United States of America and Venezuela.
3. The Meeting was also attended by representatives of the following United Nations bodies: UNCHS (Habitat) and the United Nations Conference on Environment and Development (UNCED).
4. The Meeting was also attended by representatives of the following intergovernmental organizations: General Agreement on Tariffs and Trade (GATT) and the Inter-American Development Bank (INTAMBANK).
5. The Meeting was also attended by representatives of the following non-governmental organizations: Industrial Technology Research Institute (ITRI) and the International Union for the Conservation of Nature (IUCN).

II. ORGANIZATIONAL MATTERS

A. Opening of the Meeting

6. The Meeting was opened by Mr. K. Madhava Sarma, Coordinator, the Secretariat for the Vienna Convention and Montreal Protocol, who welcomed the participants on behalf of Dr. M.K. Tolba, Executive Director of UNEP. He summarized those decisions relevant to the Ad Hoc Working Group of Legal Experts taken at the Second and Third Meetings of the Parties to the Protocol. The Parties had extended the mandate of the Working Group to elaborate further procedures on non-compliance and terms of reference for the Implementation

Committee, to be submitted to the Parties at their Fourth Meeting. The Parties had also decided to request the Ad Hoc Working Group of Legal Experts to consider procedures for expediting the amendment procedure under Article 9 of the Vienna Convention.

7. The note by the Secretariat (UNEP/OzL.Pro/WG.3/3/2) contained a summary of the recommendations of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol, possible situations of non-compliance, an indicative list of advisory and conciliatory measures to encourage full compliance and an indicative list of measures that might be taken in respect of Parties that were not in compliance with the Protocol.

#### B. Adoption of the Agenda

8. The following agenda, as contained in document UNEP/OzL.Pro/WG.3/3/1, was adopted by consensus:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Election of officers.
4. Substantive matters:
  - (a) Further elaboration of the procedure of non-compliance, including the terms of reference for the Implementation Committee;
  - (b) Identification of possible situations of non-compliance with the Protocol;
  - (c) Developing an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol;
  - (d) The possible need for legal interpretation of the provisions of the Protocol and methods of providing the interpretation;
  - (e) Developing 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;
  - (f) Procedures for expediting the amendment procedure under Article 9 of the Vienna Convention;
5. Other matters.
6. Adoption of the Report.
7. Closure of the meeting.

#### C. Election of Officers

9. The Meeting agreed to continue with the Bureau elected at its First and Second Meetings. The composition of the Bureau was as follows:

Chairman:	Mr. Patrick Szell (United Kingdom)
Vice-Chairmen:	Mr. Gao Feng (China) Ms. Imeria Odreman (Venezuela)
Rapporteur:	Mr. Maurice Hartenbach (Switzerland)

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10. In his introductory statement, the Chairman said that the Working Group's mandate was to develop further the provisional non-compliance procedure and not to replace it. Some paragraphs might be acceptable as they stood. Texts which had been finalized at the Working Group's previous meetings should not be reopened. At its Second Meeting the Working Group had been considering one paragraph and its first task would be to complete that paragraph. Once that paragraph had been approved, it would then revert to the text of the provisional non-compliance procedure to consider its remaining paragraphs.

11. The Chairman reminded the Meeting that the European Community had submitted a formal proposal, the text of which was annexed to the report of the Working Group's Second Meeting. When it had completed its work on the non-compliance regime, the Working Group would have to propose a way to have the non-compliance regime adopted by the Parties.

12. Finally, the Working Group would have to address the matter of procedures for expediting the amendment procedures under Article 9 of the Vienna Convention.

### III. SUBSTANTIVE MATTERS

(a) Further elaboration of the procedure on non-compliance, including the terms of reference for the Implementation Committee

13. One representative asked whether the Parties' request that the Working Group should reflect on the possible need for legal interpretation of the provisions of the Protocol did not constitute an expansion of its mandate.

14. The Chairman replied that the heading of the decision in question clearly indicated that the legal interpretation in question related solely to the non-compliance procedure and that, therefore, the request remained within the existing mandate of the Working Group. He then invited the Working Group to consider the paragraph, which had been left unfinished at its Second Meeting.

15. The President of the Implementation Committee informed the Meeting about the decision III/2 of the Third Meeting of the Parties with regard to the increase in the size of the Committee from 5 to 10 members. The increase was considered to give a more equitable geographical distribution and a better balance between developed and developing countries.

16. The President of the Implementation Committee suggested that the Committee should hold at least two meetings a year. The reference to a "two-year" term for its members was not very clear and she raised the question whether the term would be considered to begin in the month of June 1990 when the Second Meeting of the Parties established the Committee, or whether the term should be regarded in terms of numbers of the Meetings of the Parties.

17. Some participants felt that the wording in the text of the provisional non-compliance procedure regarding the balance between developed and developing countries in the composition of the Implementation Committee ought to be retained.

18. The Chairman of the Working Group said that the imprecision regarding "the two-year term" could be overcome with the reasonable interpretation that the members would continue to serve until they were replaced by the Meeting of the Parties in the second year after their election. Since the Parties had only recently deleted the words "and a balance between developed and developing countries" from paragraph 3 of the provisional non-compliance procedure, the Working Group had to accept their decision.

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19. After some discussion, paragraph 3 of the provisional non-compliance procedure was approved, with certain amendments, as paragraph 5 of the new text in Annex I.

20. The proposal by the European Community that, when a Party that was a member of the Implementation Committee was itself involved in a case of non-compliance, it should not participate in the proceedings on that case was then discussed. There was general agreement that both the Parties making a submission regarding the possibility of non-compliance and the Parties that were the subject of such a submission should be able to present their case to the Implementation Committee. Some representatives felt that that end could be achieved by according ad hoc membership of the Committee to the non-member Parties involved. Some argued that the Working Group had no mandate to add to or subtract from the membership of the Committee.

21. After the matter had been considered in a drafting group, the Working Group approved the provision in the form of two paragraphs, now 10 and 11 of the new text in Annex I.

22. With respect to paragraph 4 of the provisional non-compliance procedure the Working Group decided that the paragraph should read as in paragraph 6 of the new text in Annex I.

23. The Working Group then considered a European Community proposal on the functions of the Implementation Committee. There was broad agreement on the functions relating to the submissions and the report of, and information forwarded by, the Secretariat. On the remaining elements of the proposal, i.e. considering possible irregularities, obtaining further information and undertaking examinations, opinions were divided. Some representatives considered that the Committee needed such powers if it were to function effectively. Others, however, felt that those elements were inconsistent with the advisory and conciliatory role of the Committee. A number of them objected to consideration by the Committee of any information from non-governmental sources, such as industry, the mass media, non-governmental organizations or individuals. However, others took the view that information from such sources was important for the effective implementation of the Protocol. After consideration of the matter by a drafting group, a compromise text was approved by the Working Group as paragraph 7 of the new text in Annex I.

24. After a discussion, the Working Group decided to retain and amend slightly paragraph 6 of the provisional non-compliance procedure and place it as paragraph 8 of the new text in Annex I.

25. One representative submitted a proposal in writing for a new paragraph on the subject of a Party reporting its own inability to comply fully with its obligations under the Protocol. After a discussion, the Working Group approved a slightly amended version of the paragraph and placed it as paragraph 4 of the new text in Annex I. The meeting was of the view that self-reporting was not intended to introduce additional flexibilities into the non-compliance procedure or as a means of circumventing Protocol obligations.

26. One representative proposed an addition, regarding exchange of information with the Executive Committee of the Multilateral Fund, to the paragraph on the functions of the Committee of the new text in Annex I. A second representative then proposed an amendment whereby a phrase would be inserted. Whereas there appeared to be broad agreement in the Working Group that the original proposal was acceptable, strong differences of opinion were expressed concerning the proposed phrase. The Working Group finally decided to place the entire proposal in paragraph 7 of the new text in Annex I within square brackets and to place further square brackets around the proposed phrase.

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27. The Chairman invited the Working Group to consider original paragraph 7 of the provisional non-compliance procedure, together with the amendments to that paragraph proposed by the European Community. In the discussion that followed, one representative stressed, in connection with the possible content of the Implementation Committee's report to the Meeting of the Parties, that, in addition to recommendations, the Committee should be encouraged to report on other matters that it considered appropriate, such as general observations on the efficacy of the non-compliance procedures and any obstacles to performing its functions. After several proposals for amendments had been considered, the Working Group approved the paragraph and placed it as paragraph 9 of the new text in Annex I.

28. After brief discussion, paragraphs 8 and 9 of the provisional non-compliance procedure were approved and placed as paragraphs 12 and 13 of the new text in Annex I.

29. Paragraph 10 of the provisional non-compliance procedure was approved, with a slight amendment, and placed as paragraph 14 of the new text in Annex I.

30. There was a lengthy discussion concerning the two proposals on the transparency of the Implementation Committee's work and on the relationship of these proposals to the existing sentence in paragraph 11 of the provisional non-compliance procedure. A drafting group formulated two further sentences on those matters for inclusion in the text. Since no consensus could be reached on those additional sentences, the Working Group decided to retain the original sentence of paragraph 11 unchanged. The two additional sentences were then placed between square brackets, in a new paragraph 16 of the new text in Annex I.

31. The revised non-compliance procedure, as approved by the Working Group, is attached to the report as Annex I.

(b) Identification of possible situations of non-compliance with the Protocol

32. The Working Group then turned to its tasks under Decision III/2, paragraphs (i), (ii) and (v), of the Parties. It decided to base its work on the lists suggested in paragraph 6 of the Note by the Secretariat.

33. With regard to the Secretariat's list of possible situations of non-compliance with the Protocol, the Working Group discussed possible situations (i) and (ii) and approved them with some amendments. The texts are to be found in Annex II, section I, to this report.

34. A delegation proposed a new paragraph to address a possible situation under Article 5 but, after discussion, the proposal was withdrawn. The Working Group noted, however, that there were two possible interpretations of the provision concerning failure to maintain specified consumption levels.

35. One representative noted that, in identifying possible situations of non-compliance, there was a possibility that, in the event of a Party operating under Article 5, paragraph 1, exceeding the allowable consumption limits permitted under that Article, issues concerning its compliance with Article 2 must be resolved. That issue was raised in Decision III/13 and would be addressed by the Open-Ended Working Group of the Parties.

36. The texts of possible situations (iii) and (iv) were approved with some amendments.

37. No agreement could be reached on the inclusion in the list of possible situations of non-compliance with the Protocol of a failure to comply with the provisions concerning the operation of the financial mechanism and the payment

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of contributions to the financial mechanism, because certain delegations expressed the view that Article 10 (after entry into force) provided for voluntary rather than mandatory contributions to the financial mechanism.

38. Because of lack of time and the apparent political implications of the question concerned, it was decided not to pursue the discussion on that question further and to refer it to the Meeting of the Parties for its consideration. A number of delegations expressed surprise at and serious concern with the view that Article 10 (after entry into force) did not contain an obligation to contribute to the financial mechanism. One delegation expressed surprise at that expression of surprise and concern.

39. After a prolonged discussion, during which it was agreed that the words "Multilateral Fund" should be replaced by the words "financial mechanism" and an alternative text was proposed by one representative, it was decided that, since agreement could not be reached, both alternatives should be included in the list between square brackets.

40. The text of possible situation (vi) was approved, although one representative expressed some misgivings about the drafting style.

41. In connection with possible situation (vii), a number of representatives pointed out that decisions of the Parties did not have the same legal status as Articles of the Protocol. Some representatives stated that not all such decisions were binding on the Parties. Some other representatives maintained that they were always legally binding if they related to matters of substance. One delegation entered a reservation. The Working Group therefore decided that that text should, after amendment, be placed between square brackets.

42. One delegation stated that, when considering cases of non-compliance, account should be taken of implementation measures adopted by the Meeting of the Parties and of the fact that the various obligations formed a balanced whole and could not be considered in an entirely separate way.

43. The final list, as approved, is to be found in Annex II, section I. The note at the bottom of the list was intended to clarify that, in determining non-compliance with any provision of the Protocol, due account should be taken of its context in the Protocol and the relationship of that provision to the other provisions of the Protocol.

(e) Developing an indicative list of measures that might be taken by the Parties in respect of Parties that are not in compliance with the Protocol

44. The meeting adopted the indicative list of measures in Annex II, section II. In so doing, the Working Group took the view that, when considering cases of non-compliance, flexibility should be ensured in selecting and administering appropriate response measures, understanding that all situations of non-compliance were not of equal importance. Response measures contemplated should be commensurate with the nature and degree of and reason behind non-compliance, as well as with the importance of the provision itself. All possible assistance measures encouraging Parties to comply with the Protocol should be exhausted before stronger measures were considered.

(c) Developing an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol

45. Some representatives thought that the Working Group did not have adequate time to address the task in question. However, other representatives took the view that the measures included in Annex II, section II, (i), already approved, went a long way towards carrying out the Working Group's mandate under Decision III/2, paragraph (ii).

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(d) The possible need for legal interpretation of the provisions of the Protocol and methods of providing the interpretation

46. Many delegates noted that, in its work, the Implementation Committee would need to make legal interpretations of the provisions of the Protocol and that, first and foremost, responsibility for legal interpretation of the Protocol rested with the Parties themselves. One delegation, however, felt that there was not enough time in the Meeting to discuss that issue and that there was a need to provide legal interpretation of the provisions of the Protocol. Another delegation said that that mainly concerned the Amendment that had not yet come into force.

(f) Procedures for expediting the amendment procedure under Article 9 of the Vienna Convention

47. The Working Group did not recommend any means of expediting the amendment procedure. There would be many problems inherent in different procedural obligations for different Parties, if such an amendment was proceeded with. Moreover, considering the need for acceptance of the substance of any amendment to the Protocol by a large number of Parties for its effective implementation, the existing procedure was satisfactory. In addition, the Parties had successfully adopted an amendment in London, using the existing procedure. It was felt that measures such as reducing the period for tabling an amendment were not feasible in the current state of communications.

Recommendations by the Working Group

48. The Working Group made the following recommendations:

1. That the report of the Meeting be brought to the notice of the fourth Meeting of the Parties to the Montreal Protocol in November 1992;
2. That the Meeting be invited to adopt by means of a decision the Non-Compliance Procedure set out in Annex I to that report, subject to resolution of any outstanding matters;
3. That that Meeting be invited to take action, as appropriate, with regard to the indicative lists set out in Annex II to the report; and
4. That that Meeting be invited to take note of the Working Group's advice on the question of expediting the amendment procedure under Article 9 of the Vienna Convention, set out in paragraph 47 of the report.

V. OTHER MATTERS

49. There were no other matters.

VI. ADOPTION OF THE REPORT

50. During consideration of the report, one representative expressed his utter dismay at the language used by certain delegations to reflect their positions concerning Article 10 of the Protocol.

51. The meeting adopted its report.

VII. CLOSURE OF THE MEETING

52. The Chairman declared the Meeting closed on 8 November 1991 at 9.30 p.m.

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ANNEX I

Non-Compliance Procedure

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;

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(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 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.]

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ANNEX II

Indicative lists

I. Indicative list of possible situations of non-compliance with the Protocol

- (i) Article 2 - Non-compliance with provisions relating to control measures, including those covering consumption and production, industrial rationalization, exports to countries operating under Article 5, paragraph 1, and relating to essential uses of Halons;
- (ii) Article 4 - Non-compliance with provisions relating to control of trade with non-Parties, including the banning of import/export of controlled substances, the undertaking to discourage export of technology and refraining from providing subsidies, aid, credits, guarantees or insurance programmes;
- (iii) Article 7 - Non-compliance with time schedules and non-reporting of specified data;
- (iv) Article 9 - Failure to cooperate in, and to report a summary of, the activities under this Article;
- [(v) Article 10 (after entry into force of the Amendment) - Non-payment of contributions to the financial mechanism]
- [(v) Article 10 (after entry into force of the Amendment) - "Non-provision of the contributions referred to in Article 10, paragraph 1, for the purpose of financing on a grant or concessional basis the incremental costs agreed upon in its paragraph 3, as well as what is provided for in Article 10A concerning substitute substances and the transfer of technology.]
- (vi) Article 10A (after entry into force of the Amendment) - failure to take "every practicable step" consistent with the programmes supported by the financial mechanism, for transfer of technology;
- [(vii) Non-compliance with the obligations in decisions of the Parties to the Protocol.]

Note The above list is without prejudice to the generally accepted rules of international law related to the interpretation and application of treaties.

II. Indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol

- (i) Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training;
- (ii) Issuing cautions;

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- (iii) 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 mechanisms and institutional arrangements.

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