



UNION INTERNATIONALE POUR LA CONSERVATION DE LA NATURE ET DE SES RESSOURCES
INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES

Commission des politiques, du droit et de l'administration de l'environnement
Commission on Environmental Policy, Law and Administration

Dr. Iwona Rummel-Bulska
UNEP
Post Box 30552
Nairobi, Kenya

Bonn, 20 June 1983

Dear Dr. Rummel-Buska,

At the request of Dr. Wolfgang Burhenne, please find enclosed a copy of a letter dated April 6, 1983, from Professor N.A. Robinson, Sierra Club, to Mr. T. Wilson, U.S. Department of State and concerning the proposed Global Framework Convention for Protection of the Ozone Layer.

Dr. Burhenne thought that you may not have seen this letter and that, if that is the case, you would appreciate having a copy.

Yours sincerely,

Encl.

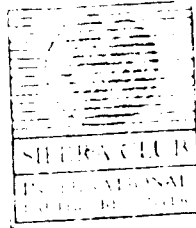
MRD/jk/CEPLA

Michael R. Demidecki
Assistant to Chairman

MAY 3 1983

REPLY TO:

Professor Nicholas S. Koblentz
Pace University School of Law
78 North Broadway
White Plains, NY 10603



April 6, 1983

Thomas Wilson
OES/ENH -- Room 7820
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State
Washington, DC 20520

Dear Mr. Wilson:

Thank you for affording the Sierra Club an opportunity to comment on the proposed Global Framework Convention for Protection of the Ozone Layer. We received your memo dated March 21, 1983 on March 28, 1983, and I received it for comment March 31, 1983; serious private sector comments cannot realistically be framed "before the end of March", as you request. We hope that we shall be given an opportunity to comment on your planned internal scope paper defining the U.S. position; we have not seen drafts of this text.

The Sierra Club has long advocated protective measures to avert any risk to the ozone layer. The U.S. domestic ban on chlorofluorocarbon production in the Clean Air Act has been a Club priority. The Club supports U.S. government initiatives to study stratospheric ozone and possible effects on the layer from worldwide agricultural use of nitrogen fertilizers.

Since only a handful of nations manufacture chlorofluorocarbons, a major goal of U.S. foreign policy should be to urge those nations' still producing the chlorofluorocarbons to suspend doing so. This may be done bilaterally as well as through the U.N. Environment Programme (UNEP) Working Group.

It would be inconsistent with established U.S. law and the underlying public policy to preserve the Ozone Layer, for the State Department to acquiesce in other nations' activities which could endanger the Ozone Layer. From the commercial vantage point, it is unfair for the U.S. to bar its own manufacturers from producing a substance which may endanger the Ozone, and not vigorously urge such a prohibition abroad; much of the volume of chlorofluorocarbon manufacture once in the U.S. has shifted to Europe. The State Department's duty is to further the goals of the Clean Air Act in banning chlorofluorocarbon production by negotiating similar bans abroad.

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In light of this legal and policy framework, the Sierra Club provides comments on UNEP's work toward a Global Framework Convention for the Protection of the Ozone Layer. The comments are arranged by Article:

Article 2 -- Alternative 1:

§1. Delete the last phrase ("using for this purpose. . ."). It should not be a defense for a nation to decline to protect the Ozone Layer because it "lacks" the means to do so. Established principles of international law (sic utere tuo; doit de voisinage) do not permit such exceptions.

§2. Draft one is preferred; the second version would be the same as the hortatory text of §3.

The "Alternative 2" formulation of Article 2 is weak and prospective only. It would not be consistent with U.S. environment law, and would therefore present questions as to whether or not the Sierra Club could support ratification of any such backsliding agreement.

Article 4

The first and fuller version of Article 4, §2, is preferred. It affords a clear standard by which to measure whether or not nations are in fact cooperating in the exchange of relevant information at once. To await the later negotiation of protocols, which may themselves also be conditioned or evince weaknesses, would be to excuse and delay the exchange of scientific information.

Article 6

§3 presents several useful provisions for implementing Article 2. In particular, we favor 3(c) and (d) in their first versions; 3(e) and (d) in the second text is too tentative and reduces the worth and effectiveness of the Conference as a multilateral agency. 3(e) should be merged with Article 10/12 (see infra).

In §3(1), the draft should include expressly resort to competent international non-governmental bodies such as the International Council of Scientific Unions (ICSU) or the International Union for the Protection of Nature and Natural Resources (IUCN).

§4 is appropriate; it could be strengthened by providing a procedure for NGO representation for groups like ICSU or IUCN comparable to "Consultative Status A" for ECOSOC.

Article 7

Given the technological process of Europe, and the ease of communicating and exchanging information in Europe, the UNEP Secretariat site should be specified as being in either Geneva or Vienna. We prefer Geneva where the WMO is located.

Article 8

Since the states party to the proposed convention would constitute the Conference under Article 6, it is redundant to also comprise the states parties as an Advisory Committee. This vehicle will dissipate attention away from the principal deliberative body of the Conference.

If less formal advice is felt to be needed, the Advisory Committee provisions could be rewritten to allow the states parties authority each to name a member of their national Academy of Science, or a professor in a university located in their nation, to serve as an independent (uninstructed) representative on an Advisory Committee.

Alternative 1 of Article 8 would be acceptable if so rewritten. It would serve a useful purpose. Alternative 2 is too weak as framed and is largely redundant with Article 6. If Alternative 2 is used, the entirety of Article 8 should be merged with Article 6.

Articles 9, 10, 11, and 12

We prefer the simpler forms for adopting and amending protocols and revising the Convention. We, therefore, recommend Alternative 2 over Alternative 1 in Article 10. Until the Conference has proven its effectiveness, action by majority vote, which could amend the solemn undertakings of Article 2, would be inappropriate.

Thomas Wilton
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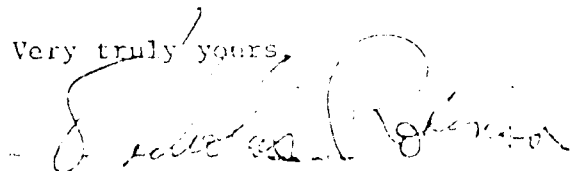
If scientific amendment of standards is desired, then special bodies such as those for establishing food standards such as the Codex Alimentarius Commission could be constituted.

The proliferation of annexes, protocols, and amendments is duplicative and likely to encourage delay, increase the possibility of misunderstanding, and delay or impair the substance of the Convention: to conserve and protect stratospheric Ozone by identifying remedial measures which states should take domestically.

These Articles should be collapsed into separate provisions for Protocols and amendments to the Convention or Protocols. Annex I and Annex II can be an initial Protocols on "Research and Monitoring" and on "Information"; if kept as a separate Annex, it may be included in the same terms of reference for amendment as would be the Convention itself.

Please consider these suggestions at your April 19 Interagency Meeting on the Ozone Layer Convention. Please also continue to include the Sierra Club on your consultative list of Private Sector/NGO bodies interested in the Convention.

Very truly yours,



Nicholas A. Robinson
International Vice President
Sierra Club

NAK/bn
cc: Patricia Sharlin
Sierra Club International Earthcare Center