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Implementation Committee under the Non-compliance Procedure for the Montreal Protocol

First meeting Nairobi, 10 and 11 December 1990

REPORT OF THE FIRST MEETING OF  
THE IMPLEMENTATION COMMITTEE UNDER  
THE NON-COMPLIANCE PROCEDURE FOR THE MONTREAL PROTOCOL

I. INTRODUCTION

1. At their second meeting, held in London from 27 to 29 June 1990 decision 11/5, the Parties to the Montreal Protocol adopted, on an interim basis, procedures and institutional mechanisms for determining non-compliance with the provisions of the Protocol and for treatment of parties found to be in non-compliance, as set out in annex III to the report of the second meeting (UNEP/6z.l.Pro.2/3). The Implementation Committee established under the non-compliance procedure held its first meeting at the headquarters of the United Nations Environment Programme on 10 and 11 December 1990.

II. ORGANIZATIONAL MATTERS

2. The Acting Co-ordinator of the Ozone Secretariat, Mrs. I. Rummel- Bulska, opened the meeting and welcomed the participants to Nairobi. She drew the attention of the members of the Committee to their mandate, as set out in annex III to the report of the Second Meeting of the Parties, and its decision 11/5 and described the work of the Ad Hoc Working Group of Legal Experts which had drawn up the non-compliance procedure. She said that it would be useful for the Implementation Committee to consider procedural issues in addition to substantive matters. She reported that Hungary and Trinidad and Tobago were unable to send representatives to the meeting but that despite the absence of those two members, the Committee had a quorum to proceed with its work. The rules of procedure of the meetings of the Parties would apply mutatis mutandis to the Committee.

3. The meeting was attended by representatives of Japan, Norway and Uganda.

4. The meeting elected the following officers.

Chairperson: Ms. Carola Bjorklund (Norway) Rapporteur: Mr. Henry Aryamanya-Mugisha (Uganda)

5. The meeting adopted the following agenda, as amended from the document UNEP/OzL.Pro/ImpCom/1/1:

1. Opening of the meeting

2. Organizational matters:

(a) Election of the Chairman;

(b) Adoption of the agenda.

3. Procedural issues.

4. Substantive matters:

(a) Report of the Secretariat on data:

(i) Status of reporting 1986 data;

(ii) Status of reporting 1989 data;

Report of the first meeting of the Ad Hoc Group of Experts on the Reporting of Data ;

(c) Status of reporting by the parties and its  
relevance in assessing non-compliance.

4. Other matters.

5. Adoption of the report.
6. Closure of the meeting.

### III. PROCEDURAL ISSUES

6. The Committee discussed in detail the non-compliance procedure that had been adopted by the Second Meeting of the Parties, with a view to the establishment of specific terms of reference for the Committee. A representative of the Secretariat described the non-compliance procedure, highlighting the events leading to its adoption by the Ad Hoc Working Group of Legal Experts in July 1989.

7. The following points emerged from the discussion:

(a) The Committee agreed that further consideration should be given to its relations and co-operation with the Ad Hoc working Group of Legal Experts with a view to further elaborating procedures to deal with non-compliance and the terms of reference of the Implementation Committee. The Implementation Committee suggested that its second meeting should be convened in conjunction with the second meeting of the Ad Hoc Working Group of Legal Experts

(b) In relation to paragraph 5 of the non-compliance procedure, the Committee suggested that it should be authorized to have direct contacts with the parties regarding matters of compliance. It agreed that further consideration should be given to its mandate to engage in direct correspondence with parties regarding issues of non-compliance. It was noted that it was the understanding of the Ad Hoc Working Group of Legal Experts at its meeting in July 1989 that the mandate allowed the Committee to approach the parties directly.

(c) Regarding paragraph 4 of the non-compliance procedure, it was suggested that the Committee should have at least two meetings annually – one in connection with the reporting of data by the parties in accordance with article 7 of the Protocol, and another prior to the annual meeting of the parties.

(d) While acknowledging that it was difficult to establish absolute procedural time-limits, the Committee agreed that the issue of time-limits should be further considered. The Committee recognized the importance of specifying time-limits specifically in relation to paragraph 2 of the procedure, which provided that parties should be given a "reasonable opportunity to reply" and that the Committee should "consider the matter as soon as practicable".

(e) In relation to paragraph 6 of the non-compliance procedure, the Committee agreed that special consideration should be given to amicable resolution on the basis of respect for the provisions of the Protocol.

(f) In relation to paragraph 7 of the non-compliance procedure, the Committee considered its role to be not only to report to the meetings of the parties but also to provide them with recommendations. It was suggested that the three actions by the parties referred to in paragraph 7, namely deciding upon steps, calling for steps and assisting Compliance should be reflected in paragraph 6 of the procedure, under which it fell within the competence of the Committee to consider the submissions by parties. The Committee recommended that paragraph 6 should be further elaborated by the Ad Hoc Working Group of Legal Experts at its second meeting.

(g) Regarding paragraph 8 of the non-compliance procedure, the Committee agreed that special consideration should be given as appropriate to the link between the work of the Committee and the arbitration procedure outlined in article 11 of the Vienna Convention for the protection of the Ozone Layer. It was suggested that that problem and the identification of links between the two procedures should be brought to the attention of the Conference of the Parties to the Vienna Convention and the Ad Hoc Group of Legal Experts. Further consideration of that link was particularly emphasized in the light of the fact that in some cases procedures regarding non-compliance could be in practical terms the first step of the arbitration procedure. In relation to paragraph 8 of the non-compliance procedure, it was emphasized that both the Meeting of the Parties and the Implementation Committee had to be informed of the results of cases dealt with under article 11 of the Convention, and implementation any decisions taken by the parties under paragraph 7\* of the non-compliance procedure.

(h) The Committee understood its mandate to include providing the Meetings of the Parties with recommendations which could allow the contracting parties to take the decisions. The Committee highlighted the need to establish a link between the Committee and the Meeting of the Parties; that could be done by the Committee's Chairperson presenting its report to the Meeting of the Parties.

### IV. SUBSTANTIVE MATTERS

The Secretariat presented its reports on the data reported to it by parties in accordance with article 7 of the Protocol. The Committee examined in detail the 1996 data reported to the Secretariat and made the following specific comments. The Committee was encouraged by the fact that only 2 parties had not responded at all to the Secretariat's requests for data, and requested the Secretariat to approach those countries again to ensure reporting prior to the next meeting of the Committee and to offer them any necessary assistance. The Committee expressed some concern that several parties had not reported accurate data for 1986, and requested the Secretariat to approach them with a view to obtaining, at least, best estimates of data before the Committee's next meeting, bearing in mind that several countries had requested or received assistance in that regard. The Secretariat was further requested to provide the necessary assistance to developing countries to obtain such best

estimates, bearing in mind the recommendations made by the Ad Hoc Group of Experts on the reporting of data at its first meeting.

9. The Secretariat also presented the data reported to it for 1989. The Committee noted that the control measures in the Protocol required the parties to freeze consumption of CFCs from 1 July 1989, whereas the reports on data submitted by the parties covered the calendar year 1989. Hence it was not yet possible for the Committee to judge whether the Parties were complying...with the control measures. The Committee expressed its concern that only 18 parties had reported 1989 data, but was satisfied with the improving quality of the data reports. It requested the Secretariat to strongly urge parties to report their 1989 data without delay but recognized the relatively late dispatch (on 11 September 1990) of the letters requesting data.

10. The Committee also reviewed the data reported in light of the control measures set out in article 2. It was satisfied with the fact that all but one party had reported 1989 data that were lower than 1986. Hence the Committee saw no need to seek additional verification from the parties of their compliance with the provision of the Protocol requiring them to freeze their production and/or consumption between 1 July 1989 and 30 June 1990, even if the data had been reported for the calendar year 1989. The Secretariat was, however, asked to request the one country that showed a slight increase from 1986 to confirm to the Secretariat with relevant data that it had a calculated level of production and consumption of not more than its 1986 level for the period 1 July 1989 to 30 June 1990.

11. In the light of the figures contained in the report on data (UNEP/OzL-Pro/WG.2/1/3 and Add.1) the recommendation contained in paragraph 14 of the report of the Ad Hoc Group of Experts on the Reporting of Data (e) of (UNEP/OzL.Pro./WG.1-1/4), the Committee determined that the following developing countries should be temporarily categorized as not operating under article 5, paragraph 1: Bahrain, Malta, Singapore and United Arab Emirates. All other developing countries were considered to be operating under article 5, paragraph 1.

III The Committee requested the Secretariat to approach countries that, while not constituting a regional economic integration organization, had reported data jointly, and inform them that while the Committee recognized the organizational and institutional problems they faced, it also emphasized the need for reporting by each individual party in the future.

#### IV. ADOPTION OF THE REPORT AND CLOSURE OF THE MEETING

13. The Committee adopted the present report, on the basis of the draft report contained in document UNEP/Imp.Com/1/L.1, on 11 December 1990.

14. After the customary exchange of courtesies, the Chairperson declared the meeting closed at 1 p.m. on Tuesday, 11 December 1990.