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

Second session

Geneva, 11-13 April 1991

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

I. INTRODUCTION

1. The Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol, at its first meeting held on 10 and 11 December 1990 in Nairobi, suggested that its second meeting should be convened in conjunction with the second meeting of the Ad Hoc Working Group of Legal Experts. Accordingly the second meeting was held in Geneva on 11 and 12 April 1991 immediately following the second meeting of the Ad Hoc Working Group of Legal Experts, which was held from 8-10 April 1991.

II. ORGANIZATIONAL MATTERS

2. The Committee had before it for consideration the report of the second meeting of the Ad Hoc Working Group of Legal Experts (UNEP/OzL.Pro.WG.3/3) and the report of the Secretariat on the reporting of data by Parties in accordance with Article 7 of the Montreal Protocol (UNEP/OzL.Pro.ImpCom/2/2).

3. The meeting was attended by representatives of Hungary, Japan, Norway, Trinidad and Tobago and Uganda. The meeting agreed to continue with the Bureau elected at its first meeting. The Bureau was:

Chairperson: Ms C.B. Björklund (Norway)

Vice-Chairman/Rapporteur: Mr. Henry Aryamanya-Mugisha

4. The meeting adopted the following agenda contained in document UNEP/OzL.Pro/ImpCom/2/1:

1. Opening of the meeting
2. Adoption of the agenda
3. Substantive matters
 - (a) Outcome of the second meeting of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol (Geneva, 8-10 April 1991)
 - (b) The non-compliance procedure and terms of reference for the implementation committee
 - (c) Report of the Secretariat on data:

- (i) Status of reporting - 1986 data
 - (ii) Status of reporting - 1989 data
 - (d) 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

5. The Committee considered the concern expressed by some representatives at the Ad Hoc Meeting of the Group of Legal Experts over the classification of the report of the first meeting as a restricted document. They acknowledged the need to keep Parties to the Protocol fully informed of the Committee's deliberations and at the same time recognized the sensitive nature of the issues discussed by it and the confidentiality of some of the data placed before it. The Committee agreed that it would decide on the classification of its documents on the basis of the above considerations.

IV. SUBSTANTIVE MATTERS

A. Outcome of the second meeting of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol (Geneva. 8-10 April 1991)

6. With regard to the size and composition of the Committee it was felt that the present membership was adequate but that all measures should be taken to facilitate the participation of all members, including the timely despatch of invitations and of relevant documents by the Secretariat to the members. The Committee considered the proposal placed before the Working Group of Legal Experts relating to the replacement of a Party by a substitute Party from the same region where such Party was itself involved in a case of non-compliance. The Committee drew the Working Group's attention to the question of who was to decide whether a Party was involved in a case of non-compliance and how such a determination was to be made.
7. With regard to the various situations which comprise non-compliance, the Committee was of the view that it would be useful to determine precisely what was meant by non-compliance and to prepare an indicative list for the guidance of the Committee.
8. In regard to its functions set out in paragraph 5 of the non-compliance procedure, the Committee remained of the view that it should be authorized to have direct contacts with Parties regarding matters of compliance and to engage in direct correspondence with Parties regarding issues of non-compliance.
9. With regard to the discussions of the Working Group of Legal Experts concerning possible measures to be taken in response to non-compliance, the Committee supported the idea of listing the possible actions that could be taken when non-compliance was established. They were firmly of the view that if such a list were to

be established it should be balanced and indicative and merely serve as guidance and not be exhaustive in character.

10. With regard to the role of the Secretariat the Committee recognized the important preparatory work being done by it on an administrative basis to assist the Committee in its work. They emphasized the need for maintaining its non-partisan character and not to attach to it an accusative character. They, however, recognized its function to take such administrative measures as were necessary to provide the best and the most complete information to the Committee. The Secretariat's contacts with Parties would continue to be through diplomatic channels. They confirmed their reliance on the Secretariat for scientific expertise and kept open the possibility of obtaining external scientific expertise where needed.

11. With regard to the relationship between article 11 of the Vienna Convention and the Non-Compliance Procedure the Committee was of the view that treating the two procedures as distinct and separate and providing an option for their simultaneous application would be conducive to the efficient functioning of the implementation of the Non-Compliance Procedure. They supported the idea of having a chapeau inserted as a preambular paragraph to the non-compliance procedure.

B. The Non-Compliance Procedure and terms of reference for the Implementation Committee

12. The Committee supported the view of the Working Group of Legal Experts that the non-compliance procedure and the terms of reference of the Implementation Committee were two aspects of a single regime and need not be dealt with in separate sections of the non-compliance document. The Committee acknowledged the valuable contribution being made by the Ad Hoc Committee of the Working Group of Legal Experts on this issue and appreciated the consideration given by the Working Group to the recommendations of the first meeting of the Committee. They agreed to maintain close contacts with the Working Group in their consideration of the Non-Compliance Procedure.

C. Report of the Secretariat on data

13. (i) Status of reporting - 1986 data;
(ii) Status of reporting - 1989 data.

D. Status of reporting by the Parties and its relevance in assessing non-compliance

14. The Committee decided to consider these two items together. The Committee noted that several developing countries have either not submitted data or presented incomplete data. They reconfirmed their conviction that these Governments urgently required assistance in technical and other fields to enable them to comply with the provisions of the Protocol. It recommended that such assistance be given high priority by the Parties.

15. The Committee noted that with regard to the 1986 data 22 Parties have reported complete data and 8 EEC Member States have either reported complete data or fulfilled the reporting requirement; 17 Parties have reported

incomplete data; 11 Parties have reported that no data are available and/or requested assistance; 2 Parties reported that their data are included in the data of another Party; 11 Parties, including 4 Member States of the EEC have not reported data.

16. With regard to the 1989 data the Committee noted that of the 48 Parties required to report 1989 data only 20 Parties had complied up to March 1991.

17. The Secretariat was requested to up-date the data contained in the report (UNEP/Ozl.Pro/ImpCom/2/2) obtaining data from those Parties that have either sent no data or had sent incomplete data. The Committee asked the Secretariat to provide it with updated data to be presented at the meeting of Parties by the Chairperson of the Implementation Committee. The Secretariat was specifically requested to expedite the collection of data and the revision of the analysis of such data so that the report could be made available to the members of the Committee at least four weeks before the meeting of the members of the Committee and the Parties.

18. The Committee recommended that the structure of the report be changed to facilitate its consideration. Information should be provided under separate categories such as Parties presenting complete data, those presenting incomplete data, those providing no data, position of developed countries, position of developing countries, etc. The Committee also requested the Secretariat to present a brief introductory note identifying the specific issues relating to data reporting and non-compliance which the Committee's attention should be drawn to.

19. The Committee noted that groups of Parties have continued to provide aggregated data and asked the Secretariat to urgently request States concerned to report data on an individual basis.

20. Recognizing the importance of the confidentiality of **data, the Committee** noted the fact that the Parties at their second meeting had confirmed that any data on the consumption of controlled substances that were submitted to the Secretariat as required by article 7 of the Protocol would not be treated as confidential, but that data on production imports and exports will continue to be treated as confidential.

C. Other matters

21. The Committee decided that their present report should not be treated as restricted.

22. It was decided that the Chairperson would present the report of the Committee at the Meetings of Parties of the Vienna Convention and Montreal Protocol to be held in June 1991 and that the Vice-Chairman would, in her absence, present the report to the Preparatory Meeting.

23. The Committee decided that their next meeting should be held in late November/early December 1991 and requested the Secretariat to request Parties to submit the 1990 data in time for the preparation of its report for the consideration of the Committee.

D. Adoption of the Agenda

22. The Committee adopted this report.

E. Closure of the meeting

23. There being no other business the meeting was declared closed.