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SECOND MEETING OF THE PARTIES TO THE
MONTREAL PROTOCOL ON SUBSTANCES
THAT DEplete THE OZONE LAYER

London, 27-29 June 1990

REPORT OF THE EXECUTIVE DIRECTOR OF THE UNITED NATIONS
ENVIRONMENT PROGRAMME, SECRETARIAT FOR THE VIENNA
CONVENTION AND ITS MONTREAL PROTOCOL

Introduction

1. The present report, which covers the period up to 1 April 1990, reviews the status of implementation of the Montreal Protocol and the actions that have been taken to implement the 15 decisions adopted by the First Meeting of the Parties, which was held in Helsinki from 2 to 5 May 1989.*
2. On 26 and 27 April, a discussion on transfer of technology will be held between a representative sample of national environment offices and patent offices. On 7 May 1990, the Executive Director will hold further informal consultations on adjustments and amendments to the Montreal Protocol. Additionally, on 8 May, two sub-groups of the Open-Ended Working Group of the Parties will meet to consider items related to the development of a financial mechanism. On the same day, a meeting will be held between some CFC producer and user industries and a limited number of government representatives to discuss ways and means of facilitating the transfer of technology. From 9 to 11 May, there will be an additional session of the Open-Ended Working Group of the Parties on the development of a financial mechanism. Following the results of these meetings, the Executive Director will submit additional recommendations for the Parties' consideration as addendum 2 to the present report. Any additional activities during April, May and June may be the subject of an addendum 3, as necessary.

* The decisions adopted by the First Meeting of the Parties may be found in paragraph 86 of its report (UNEP/OzL.Pro.1/5), which comprises annex XIII to the present report.

I. GENERAL IMPLEMENTATION OF THE MONTREAL PROTOCOL

A. Status of ratification of the Protocol

3. At the time of the First Meeting of the Parties, there were a total of 36 Parties to the Montreal Protocol. Since that time, an additional 20 States have ratified, accepted, or approved the Protocol. The 56 Parties to the Protocol presently represent 89 per cent of 1986 estimated global consumption of the controlled substances. Details on the status of ratifications for both the Vienna Convention and the Montreal Protocol are presented in addendum 1 to this report.

B. Status of data submissions under Article 7 of the Protocol

4. Paragraph 1 of Article 7 of the Protocol requires each Party to "provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or best possible estimates of such data where actual data are not available". The data reported to the Secretariat is presented in addendum 4 to the present report.

5. The status of reporting required by Article 7 is as follows: of the 49 countries Parties of three or more months standing, which, as such, are required to submit these data, only 41 have responded to repeated requests from the Secretariat to do so. Further, out of those 41, only 18 Parties have submitted complete data, 15 having submitted incomplete data and 8 having reported that no data are available. The status of reporting by the Parties is presented in table 1. It should be noted that the 1986 data required by Article 7 is crucial to the implementation of the Protocol, as it is the basis for compliance with the reduction requirements contained in the Protocol. If the situation with regard to incomplete data submission persists, it could possibly be considered non-compliance. However, the Secretariat believes that there may be technical reasons why so many Parties have not been able to comply with this provision. In this regard, the Bureau of the Montreal Protocol has recommended that the Second Meeting of the Parties might consider the establishment of a standing advisory committee to look into this issue and determine how to proceed. The Parties may also wish to consider providing for technical assistance on data submissions in the proposed budgets.

Table 1

Status of reporting by the Parties

As of 1 April 1990, 55 States and the European Economic Community (EEC) are Parties to the Protocol. The status of data-reporting by the Parties is that:

(a) 19 Parties have reported complete data:

Austria, Canada, Denmark, Finland, German Democratic Republic, Hungary, Japan, Jordan, Luxembourg, Malaysia, Mexico, New Zealand, Norway, Singapore, Switzerland, Union of Soviet Socialist Republics, United States of America, Venezuela and European Economic Community;

(b) 15 Parties have reported incomplete data:

Australia, Belgium, Egypt, France, Guatemala, Kenya, Malta, Netherlands, Panama, Sri Lanka, Sweden, Syria, Thailand, Tunisia and United Arab Emirates;

(c) 8 Parties have reported that no data are available in the country:

Burkina Faso, Federal Republic of Germany, Ghana, Ireland, Liechtenstein, Maldives, Nigeria and Spain;

(d) 13 Parties have not reported at all:

Byelorussian SSR, Cameroon, Chile*, Fiji*, Greece, Iceland, Italy, Portugal, South Africa*, Trinidad and Tobago*, Uganda, Ukrainian SSR, United Kingdom and Zambia*.

* Parties for which the period for reporting 1986 data had not elapsed as of 1 April 1990.

II. ACTIVITIES SINCE THE FIRST MEETING OF THE PARTIES TO
THE MONTREAL PROTOCOL AND STATUS OF IMPLEMENTATION
OF THE DECISIONS OF THE PARTIES

A. Bureau of the Montreal Protocol

6. By its decision 2, the First Meeting of the Parties decided:

"To establish its Bureau to be composed of the President, three Vice-Presidents, and Rapporteur, elected by each meeting of the Parties.

"The Bureau shall meet at least once between meetings of the Parties to review the work of any working groups established by the Parties during their meetings, to consider other topics on the Agenda of the next meeting of the Parties and to review the documents prepared by the Secretariat for meetings of the Parties to facilitate the work of these meetings."

7. At the time of writing, the Bureau had held two meetings and was scheduled to hold a third on 26 and 27 April. The reports of those meetings are to be presented in annexes I, II and III to the present report.

8. At its second meeting, the Bureau discussed the selection of new Bureau members (see paragraph 23 of the Bureau's report, contained in annex II to this document). In considering the selection of new Bureau members, the Meeting of the Parties may wish to consider the desirability of extending the tenure of some members of the present Bureau in order to maintain continuity. The Executive Director recommends that the Parties consider adopting by decision the procedure which has been used by the Governing Council of UNEP under which the offices of President and Rapporteur "shall be normally subject to rotation among the five groups of States referred to in section I, paragraph 1, of General Assembly resolution 2997 (XIVII)".* This procedure could become operational starting with the Third Meeting of the Parties.

* The five groups are: Asian and Pacific States; African States; Latin American and Caribbean States; Eastern European States; and Western Europe and other States.

B. Workplans required by Articles 9 and 10 of the Montreal Protocol

9. By its decision 5 (c), the First Meeting of the Parties established an Open-Ended Working Group, inter alia, "to develop the workplans referred to in decision 4", by which it had agreed:

"To consider the following elements as the first components for the workplans required by Articles 9 and 10 of the Protocol:

"(a) Dissemination of the reports of the panels for scientific, environmental, technical, and economic assessments, as well as the synthesis report, and their follow-up;

"(b) Regular updating of the panel reports, taking into account in particular the developments in the fields of production of environmentally sound substitutes or alternative technological solutions to the use of CFCs or halons;

"(c) Development of a programme, which will include workshops, demonstration projects, training courses, the exchange of experts and the provision of consultants on control options, taking into account the special needs of developing countries, for the consideration by the Parties at their second meeting;

"(d) Preparation of a study of retrofit technologies applicable to existing manufacturing facilities that produce controlled substances or products made with or containing such substances, to be presented to the Parties for their consideration at their second meeting;

"(e) Facilitation of the production and wide dissemination of material for public information;

"(f) Exploration of specific ways of promoting exchange and transfer of environmentally sound substitutes and alternative technologies;

"(g) Initiatives to support activities in programmes of international organizations and financing agencies that could contribute towards implementing the provisions of the Protocol, and defining means by which the Secretariat can initiate concrete contacts with the appropriate international organizations, programmes and financing agencies for this purpose."

10. The Working Group held one session on the development of workplans required by Articles 9 and 10 of the Montreal Protocol. The report on the work of that session is contained in annex V to the present report. Specific Working Group recommendations to the Second Meeting of the Parties on the items outlined in decision 4 are contained in section V of its report.

11. Specifically, recommendation 3 of the Working Group in section V of its report was that the Secretariat should co-ordinate public awareness workshops before the Second Meeting of the Parties. The first such workshop was held from 20 to 24 February 1990 in Penang, Malaysia. The second workshop will be held from 31 May to 5 June 1990 in Mexico City. An additional workshop will be held in Africa after the Second Meeting of the Parties. Additionally, the Working Group recommended that the Secretariat of the Protocol be augmented by

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technical staff to allow it to engage in collecting, verifying and distributing technical information (recommendation 4). The Contracting Parties may wish to consider augmenting the Secretariat by the addition of two members - a chemical engineer and an economist. Finally, the Working Group identified the additional financial requirements of the Secretariat to hold these workshops and to cover other requested items necessary to fulfil the requirements of decision 4 before the Second Meeting of the Parties. The budget developed by the Working Group is presented on the final page of annex V to the present report. After reviewing the budget prepared at this session of the Working Group, the Bureau of the Montreal Protocol, at its first meeting, felt that the list of essential activities and their estimated costs were reasonable and justified, and requested the Secretariat to solicit voluntary contributions from the Contracting Parties to meet the expenditures listed in that budget (see paragraphs 12-14 of the report of the first meeting of the Bureau, which comprises annex I to the present report). To date only five Parties have contributed to this budget.

C. Adoption of the synthesis report and development of proposed adjustments and amendments to the Montreal Protocol

12. By subparagraphs (a) and (b) of its decision 5, the First Meeting of the Parties agreed that the Open-Ended Working Group should also:

"(a) Review the reports of the four panels referred to in decision 3 ... [scientific assessment, environmental assessment, technical assessment, and economic assessment] and integrate them into one synthesis report;

"(b) Based on (a) above, and taking into account the views expressed at the First Meeting of the Parties to the Montreal Protocol, prepare draft proposals for any amendments to the Protocol which would be needed. Such proposals are to be circulated to the Parties in accordance with Article 9 of the Vienna Convention for the Protection of the Ozone Layer."

13. In accordance with that decision, the Open-Ended Working Group met three times on these issues. It integrated the report of the four assessment panels into one synthesis report and adopted it in its final form (see annex VIII to the present report) at the first session of its second meeting, which was held in Geneva from 13 to 17 November 1989.

14. The Open-Ended Working Group also prepared draft proposals for amendments or adjustments to the Protocol on the basis of the reports of the assessment panels. In its second session on this issue, held in Geneva from 13 to 17 November 1989, the Working Group produced a set of proposed amendments and adjustments to the Protocol for dissemination to the Parties. (See annex VII A to the present report). This document, together with a companion report by the Mechanical Working Group (see annex VII B), which outlined the potential need for consequential amendments, were communicated to the Parties on 14 December 1989 in compliance with Article 2 of the Montreal Protocol and Articles 9 and 10 of the Vienna Convention. In its third session on this issue, held at Geneva from 8 to 14 March 1990, the Working Group reviewed the above noted documents in an effort to negotiate away some of its numerous options. This session of the Working Group produced a composite negotiating text containing all of the remaining options for adjustments and amendments, (see annex X to the present report).

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D. Financial mechanisms

15. By its decision 13, entitled "Assistance to developing countries", the First Meeting of the Parties agreed:

"(a) To recognize the urgent need to establish international financial and other mechanisms to implement Article 5, paragraphs 2 and 3, in conjunction with Articles 9 and 10 of the Montreal Protocol and to enable developing countries to meet the requirements of the present and a future strengthened Protocol, thereby addressing the ozone depletion and related problems.

"(b) To establish an open-ended working group of the Contracting Parties to develop modalities for such mechanisms, including adequate international funding mechanisms which do not exclude the possibility of an international Fund and to report the results of their deliberations to the Conference of the Parties at its second meeting in 1990."

16. By subparagraph (d) of its decision 5, the First Meeting of the Parties agreed that the Open-Ended Working Group should also "work out the modalities required by decision 13".

17. The Open-Ended Working Group has held two sessions on this subject. At its first such session, held in Nairobi from 21 to 25 August 1989, the report of which comprises annex IV to this document, the Working Group identified the need to gather more information on how a financial mechanism might be administered, and the cost to developing countries of complying with the Montreal Protocol. To address this latter issue, they requested the Secretariat to arrange for studies that estimated the total cost to developing countries of complying with the Montreal Protocol. They also suggested the need to have country-specific studies that estimated the total cost of compliance in individual countries (paragraph 15 of the report of the Working Group, annex IV to the present report). As a result, UNEP contacted 16 countries, 9 of which have initiated studies, the results of most of them are expected to be available before the Second Meeting of the Parties. At its second session on this issue, held in Geneva from 26 February to 5 March 1990, - the report of which comprises annex IX to this document, the Working Group reviewed the initial results of the studies on total cost, and administration of a financial mechanism. It also refined the list of incremental cost which might be covered from a financial mechanism (see paragraphs 19-22 of the Working Group's report in annex IX to the present report) and estimated the funds which might be necessary to carry out identified activities for the first three years (see paragraph 58 of the report of the Working Group). Finally, it worked toward agreement on elements that might underlie the creation of a financial mechanism.

E. Non-compliance

18. By its decision 8, the First Meeting of the Parties agreed, inter alia:

"(a) To establish an open-ended ad hoc working group of legal experts to develop and submit to the Secretariat by 1 November 1989, appropriate proposals for consideration and approval by the Parties at their Second Meeting, on procedures and institutional mechanisms for determining non compliance with the provisions of the Montreal Protocol and for the treatment of Parties that fail to comply with its terms." /...

19. This Ad Hoc Working Group of Legal Experts met in Geneva from 11 to 14 July 1989 and produced a draft non-compliance procedure for consideration by the Parties, which is contained in annex XII to the present report. It should be noted that if this procedure is accepted, in accordance with its terms, the Parties would have to elect an implementation committee. In conformity with the recommendation of the Bureau of the Parties to the Montreal Protocol (see annex I, paragraph 15, of the present report), this procedure was communicated to the Parties six months before the Second Meeting of the Parties as a proposal for an annex to the Montreal Protocol. The Parties should also note that a proposal to adopt the non-compliance procedure as a decision is contained in the composite negotiating text (annex X to the present report).

F. Financial arrangements

20. By its decision 14, the First Meeting of the Parties agreed:

"(a) To establish a United Nations Trust Fund ...

"...

"(d) To adopt the terms of reference of the Trust Fund in annex II of this report;

"(f) The Meeting calls on all Parties to pay their contributions to the Trust Fund in advance of the period to which they relate;

"...".

21. In accordance with paragraph 3 of the terms of reference of the Trust Fund, the Trust Fund became operational on 1 October 1989. A report on financial matters, which includes a proposed new budget, together with a report on the status of contributions to the present Protocol budget, is being distributed as addendum 5 to the present report. At present, seven Parties have contributed to the Trust Fund as follows: Denmark has paid its pledge of \$7,077; Finland has paid its pledge of \$5,231; Federal Republic of Germany has paid its pledge of \$82,875; Hungary has paid its pledge of \$2,154; Ireland has paid its pledge of \$1,846; Norway has paid its pledge of \$5,641; and the United States has paid \$70,750 toward its pledge of \$220,875. The rest of the Parties have not yet contributed to the Trust Fund. The Executive Director wishes to bring to the attention of the Parties that UNEP has already contributed approximately \$640,000 toward the cost of the Secretariat and its activities, and has made the sum of \$934,000 available to the Fund on a loan basis. The UNEP Environment Fund cannot be expected to make available any further resources. In light of the above, the Parties may wish to reiterate their decision 14 (f) of their First Meeting, and insist on the timely payment of the contributions in accordance with that decision.

22. Regarding future Protocol budgets, the Parties may wish to consider adopting a rolling budget. In considering budget issues, the Bureau, at its first meeting, discussed the need for the Secretariat to have a contingency fund "of an appropriate magnitude to meet the unforeseen needs of the Parties" (see paragraph 14 of the report of the Bureau on its first meeting (annex I to the present report)). At its second meeting, the Bureau recommended that the treatment of the contributions of new Parties be brought to the attention of the Parties. This issue is addressed in paragraph 21 of the report of the Bureau on its second meeting (annex II to the present report).

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G. Other decisions of the First Meeting of the Parties
and other matters

23. By its decision 9, the First Meeting of the Parties agreed:

"To accept the value for the Ozone Depleting Potential (ODP) for halon 2402, as 6.0, and to request the Secretariat to inform the Depository that the Parties agreed to accept this figure by consensus at their first meeting and that accordingly, the Depository should insert this figure to replace the words "to be determined" in annex A to the Protocol."

The Secretariat informed the Depository accordingly.

24. By its decision 11, the First Meeting of the Parties agreed, inter alia:

"(a) That each Party is required to report its annual production, imports and exports of individual controlled substances."

In this regard, it has become apparent that the Parties may need to make an even more definitive statement of their intent with regard to joint reporting. This is especially important in determining the obligations of States that are part of a recognized regional economic integration organization, as many States participating in such organizations have notified the Secretariat of their belief that their data-reporting obligations are fulfilled by the data report of the entire organization. Additionally, joint submissions have been received from other Parties.

25. By its decision 12 F (b), which concerned the definition of "destruction", the First Meeting of the Parties agreed:

"To request the Panel for Technical Assessment to address this subject for the Parties to return to at its second meeting and subsequent meetings with a view to determining whether it would be necessary to have a standing Technical Committee to review and recommend for approval by the Parties methods for transformation or decomposition and to determine the amount of controlled substances that are transformed or decomposed by each method."

This issue was considered by the Technical Assessment Panel, and the Open-Ended Working Group, which recommended "that the Parties create a small and balanced technical advisory committee with responsibility for recommending such approvals to the Parties. This small Group should be provided with the flexibility to utilize specialized technical expertise, including consultants as required." (See paragraph 17 of the report of the first session of the second meeting of the Working Group (annex VI to the present report)). Draft terms of reference for this committee are being developed for consideration by the Second Meeting of the Parties, and will be distributed as addendum 6 to the present report. In light of the Working Group's recommendation, the Executive Director proposes that a group of experts be selected to meet at the request of the Secretariat, as requests for technology approval/efficiency assessment are received by the Secretariat.

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26. Rule 4, paragraph 2, of the rules of procedure adopted by the Parties in Helsinki states that:

"At each ordinary meeting, the Parties shall fix the opening date and duration of the next ordinary meeting."

In this regard, the Parties may wish to consider scheduling the next meeting for 24-26 June 1991. The next ordinary meeting of the Parties will be preceded by a preparatory session or a final meeting of the Working Group from 17-21 June 1991. It has to be recalled that the next meeting of the Parties to the Montreal Protocol will have to be convened in conjunction with the ordinary meeting of the Conference of the Parties to the Vienna Convention which is now proposed for 12-14 June 1991.

27. As noted in paragraph 81 and annex VII of the report of the First Meeting of the Parties (annex XIII to the present report) the Meeting decided to adopt a proposed modification to the Harmonized Commodity Description and Coding System to facilitate accurate reporting of imports and exports of controlled substances. In this regard, the Working Group requested the Executive Director to bring this proposal to the attention of the Customs Co-operation Council for their consideration. While amendment to the Harmonized System nomenclature normally takes three years, in recognition of the global importance of protecting the ozone layer, the Customs Co-operation Council and its member States will, in mid-April, consider a recommendation encouraging all member administrations to subdivide their national statistical nomenclatures as soon as possible to enumerate the controlled substances in question.

III. ISSUES FOR CONSIDERATION BY THE CONTRACTING PARTIES

28. The Executive Director recommends that the Parties consider:

1. Establishing a standing advisory committee or appointing a small group of experts to look into the problems leading to the inability of some countries to report data required by Article 7 and recommend solutions;
2. Expanding the mandate of the technical assistance clearing-house to assist countries in establishing mechanisms for accurate reporting of data;
3. Extending the tenure of one or more members of the Bureau to help ensure continuity, and by decision, adopting a procedure for rotation of the offices of President and Rapporteur among regions to ensure equitable distribution of offices;
4. Adopting the recommendations to the Second Meeting of the Parties adopted by the Open-Ended Working Group at the third session of its first meeting. These recommendations are contained in annex V to the present report.
5. Adopting the budget contained in addendum 5 to this document, which includes the creation of a contingency fund as recommended by the Bureau, and two additional technical posts for the Secretariat as recommended by the Working Group session on workplans (a chemical engineer and an economist);

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6. Adopting as an annex to the Protocol the non-compliance procedure developed by the Ad Hoc Working Group of Legal Experts called for by the Parties, and establishing an implementation committee as required by that proposed procedure;

7. Authorizing the Executive Director to convene small representative groups of each of the four assessment panels established by decision 3 of the First Meeting of the Parties (scientific, environmental, technical and economic) to review the results of new studies and consider the need to include new findings in an updated report. When the need is established, the small groups would go ahead with the updating of the reports;

8. Establishing a small technical advisory committee to review requests for destruction technology approval/efficiency assessment;

9. Setting the dates for the next ordinary Meeting of the Parties to the Montreal Protocol as 24-26 June 1991. This Meeting would be preceded by a preparatory session or final meeting of the Working Group from 17 to 21 June 1991. As the next meeting of the Parties to the Montreal Protocol is to be held in conjunction with the meeting of the Conference of the Parties to the Vienna Convention, it is proposed that the dates for the latter meeting be 10-14 June 1991.

IV. ADDENDA AND ANNEXES TO THE PRESENT REPORT

29. The following documents will be before the Second Meeting of the Parties as addenda or annexes to the present report:

- Addendum 1 Status of ratifications of the Vienna Convention and Montreal Protocol (UNEP/OzL.Pro.2/2/Add.1).
- Addendum 2 Recommendations of the Executive Director (UNEP/OzL.Pro.2/2/Add.2).
- Addendum 3 April-June update of activities (UNEP/OzL.Pro.2/2/Add.3).
- Addendum 4 Report on data submitted to the Secretariat (UNEP/OzL.Pro.2/2/Add.4).
- Addendum 5 Secretariat report on financial implications and arrangements, including the adoption of a revised budget (UNEP/OzL.Pro.2/2/Add.5).
- Addendum 6 Terms of reference for a transformation/decomposition committee (UNEP/OzL.Pro.2/2/Add.6).
- Annex I Report of the first meeting of the Bureau of the Montreal Protocol (originally issued as UNEP/OzL.Pro.Bur.1/2).
- Annex II Report of the second meeting of the Bureau of the Montreal Protocol (originally issued as UNEP/OzL.Pro.Bur.2/2).
- Annex III Report of the third meeting of the Bureau of the Montreal Protocol (originally issued as UNEP/OzL.Pro.Bur.3/2).

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- Annex IV Report of the first session of the first meeting of the Open-Ended Working Group (on financial mechanism) (originally issued as UNEP/OzL.Pro.WG.I(1)/3).
- Annex V Report of the third session of the first meeting of the Open-Ended Working Group (on workplans required by Articles 9 and 10) (originally issued as UNEP/OzL.Pro.WG.I(3)/3).
- Annex VI Report of the first session of the second meeting of the Open-Ended Working Group (on adjustments and amendments) (originally issued as UNEP/OzL.Pro.WG.II(1)/7).
- Annex VII A. Report of the Legal Drafting Group (originally issued as UNEP/OzL.Pro.WG.II(1)/5);
B. Report of the Mechanical Working Group (originally issued as UNEP/OzL.Pro.WG.II(1)/6).
- Annex VIII Synthesis report (originally issued as UNEP/OzL.Pro.WG.II(1)/4).
- Annex IX Report of the second session of the second meeting of the Open-Ended Working Group (on financial mechanisms) (originally issued as UNEP/OzL.Pro.WG.II(2)/7).
- Annex X Report of the first session of the third meeting of the Open-Ended Working Group (on adjustments and amendments) (originally issued as UNEP/OzL.Pro.WG.III(1)/3).
- Annex XI Report of the second session of the third meeting of the Open-Ended Working Group (on financial mechanisms) (to be held on 9-11 May 1990).
- Annex XII Report of the Ad Hoc Working Group of Legal Experts (on non-compliance) (originally issued as UNEP/OzL.Pro.LG.1/3).
- Annex XIII Report of the First Meeting of the Parties to the Montreal Protocol (originally issued as UNEP/OzL.Pro.1/5).
