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PREPARATORY MEETING FOR THE  
THIRD MEETING OF THE PARTIES  
TO THE MONTREAL PROTOCOL

Nairobi, 12-14 June 1991

REPORT OF THE PREPARATORY MEETING FOR  
THE THIRD MEETING OF THE PARTIES  
TO THE MONTREAL PROTOCOL

INTRODUCTION

1. The Preparatory Meeting for the Third Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer was held at the headquarters of the United Nations Environment Programme, in Nairobi, from 12 to 14 June 1991.

I. OPENING OF THE MEETING BY THE REPRESENTATIVE OF THE  
EXECUTIVE DIRECTOR OF UNEP

2. In his statement, the Assistant Executive Director welcomed the events since last years' Meeting, most notably that the adjustments to the Montreal Protocol, 7 March 1991 covering the phase-out of CFCs and halons, had entered into force on. However, for the Amendment to the Protocol adopted in London to enter into force, ratification by 18 more Parties was necessary. Another milestone was erected this year with the establishment of the Interim Multilateral Fund, enabling every country to play its part in implementing the Protocol. The Assistant Executive Director reminded the Preparatory Meeting, that its task was to help the Parties take sound decisions on the details of implementation.

3. Furthermore, the Preparatory Meeting had to consider the recommendations of the Ad Hoc Working Group of Legal Experts on Non-Compliance and to draw up the Working Group's timetable. Likewise, the recommendations of the Group of Experts on Reporting of Data - a key to successful implementation of the Protocol - had to be considered. Other important items include the definition of developing countries and the difficulties some of these countries meet in purchasing adequate quantities of controlled substances. A list of products containing controlled substances had also been proposed to the meeting, which might be adopted as an Annex to the Montreal Protocol. Another matter requiring consideration was the proposal by the Group of Experts to add a paragraph 5 to Article 7 of the Protocol, aimed at clarifying the issue of trans-shipment of controlled substances. Many other important issues were to be placed before the Parties for their consideration. Like the Trust Fund for the Convention, the Trust Fund for the Protocol suffered from shortfalls due to delayed contributions. The Meeting had to devise solutions to the funding problem. The Assistant Executive Director concluded with the hope, that the spirit of co-operation, which had characterized past meetings, would continue to burn brightly.

II. ORGANIZATIONAL MATTERS

A. Attendance

4. The following 36 Parties to the Montreal Protocol were represented:

Argentina, Australia, Austria, Belgium, Brazil, Burkina Faso, Cameroon, Canada, Chile, Denmark, Egypt, Finland, France, Ghana, Italy, Japan, Kenya, Malaysia, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United Kingdom, USA, USSR, Venezuela, Yugoslavia, EEC.

5. The following 11 States not party to the Protocol were also represented:

Bhutan, Burundi, China, Colombia, Costa Rica, Guinea, India, Republic of Korea, Mozambique, Sao Tome & Principe Turkey.

6. Observers from the following United Nations bodies and specialized agencies were also present:

UNCED, WMO, World Bank.

7. The following other organizations were represented:

ABINEE (Brazilian Association of Electrical and Electronic Industries), CEFIC, Friends of the Earth, Greenpeace International, Halogenated Solvents Industry (HSIA), Harvard Global Environmental Policy Project, ICC, Industrial Technology Research Institute (ITRI), JICOP, Pharmaceutical Aerosol CFC Coalition (PACC).

B. Adoption of the agenda

8. The following agenda was adopted:

1. Opening of the Meeting by the representative of the Executive Director of UNEP.
2. Organizational matters:
  - (a) Adoption of the agenda;
  - (b) Organization of work.
3. Proposed amendments to the Rules of Procedure.
4. Consideration of the report of the Executive Director of UNEP to the Third Meeting of Parties to the Montreal Protocol.
  - (a) Implementation of the decisions of the Second Meeting of the Parties to the Montreal Protocol (London, 27-29 June 1990):
    - Adjustment and reduction;
    - Amendment;
    - Non-compliance;
    - Reporting of data;
    - Destruction technologies;
    - The second assessment process;

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- Data from developing countries;
- Control of trade with non-Parties;
- Interim Multilateral Fund.

(b) Status of the Interim Multilateral Fund.

5. Consideration of the report of the Executive Committee to the Third Meeting of Parties on the progress made with regard to the establishment and operation of the Interim Multilateral Fund:

- (a) Revised 1991 budget for the Fund Secretariat;
- (b) The three-year programme budget for the Fund;
- (c) Criteria for project eligibility and guidelines for the implementation of activities supported by the Fund;
- (d) Criteria for considering bilateral and, in particular cases, regional co-operation as a contribution to the Fund;
- (e) Operational policies, guidelines and administrative arrangements;
- (f) Rules of Procedure for the Executive Committee;
- (g) Tripartite agreement among the World Bank, UNDP and UNEP;
- (h) Specific agreements between the Executive Committee and the implementing agencies;
- (i) Initial work programmes of the implementing agencies.

6. Proposed annex to the Montreal Protocol: List of products containing the controlled substances.

7. Information reported by Parties in accordance with Articles 7 and 9 of the Montreal Protocol: Secretariat's reports pursuant to Article 12 (c).

8. Revised budget for the Trust Fund for the Montreal Protocol for 1991 and the proposed budget for the biennium 1992-1993, including the cost of the participation of developing countries.

9. Accession by Turkey to the Montreal Protocol.

10. Date and venue for the Fourth Meeting of the Parties.

11. Other matters.

12. Adoption of the report.

13. Closure of the Meeting.

### C. Organization of work

### III. SUBSTANTIVE MATTERS

9. The meeting considered the agenda items along with the draft decisions (UNEP/OzL.Pro.3/L.1 and UNEP/OzL.Pro.3/L.1/Add.1) submitted by the Secretariat.

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10. The Secretariat introduced the proposed amendments to Rules 23 and 24 of Rules of Procedure which were agreed upon without objection.

11. With regard to Decision III/1, dealing with the 1990 adjustments and amendments, one delegation pointed out that his country had in fact ratified the Amendment to the Protocol. The decision was accordingly adopted subject to replacement of the words "only two States" in the second part of the decision by "only three States" subject to verification from the Depository of the Montreal Protocol. Some delegations reported the ratification procedure to be in its final stages and a member State of a regional economic integration organization reported that all of its member States were about to ratify the Amendment. Other delegations expressed confidence, that the necessary ratifications will be effected so that the Amendment will enter into force on 1 January 1992.

12. After discussion of the timetable of meetings included in Decision III/2 on the Non-compliance Procedure, it was agreed to defer the meeting of the Ad Hoc Working Group of Legal Experts until October 1991, with consequent amendment of the date of submission of the draft Non-compliance Procedure until November 1991. One delegation suggested UNEP Headquarters, Nairobi as the venue for the meeting. Some delegations advocated the elaboration of indicative measures that might be taken in cases of non-compliance, the emphasis being placed on measures to enable non-compliers to achieve compliance, although others held that this might narrow the mandate of the Group of Experts unnecessarily. In any case it was agreed that the issue of a specific field of competence for the Group should be referred to a small sub-group for examination.

13. The sub-group submitted a revised draft Decision which identified four additional points. In response to a question from one delegation, it was explained that the measures referred to in subparagraph (b) related to the Implementation Committee, while the measures referred to in (e) related to measures by the Meeting of the Parties. One delegate suggested that the scope of the work of the Implementation Committee should include not merely compliance with Articles 2 and 5 but also compliance with the other provisions of the Protocol including the provisions in the Amendment adopted in London.

14. Two delegations proposed that sub-paragraph (b) of draft Decision III/3 (Implementation Committee) be amended to reflect the relationship with the issues covered in revised draft Decision III/7 (Data reporting). In consequence, an appropriate amendment was made to draft Decision III/7 sub-paragraph (a). After some discussion the meeting accepted those proposals, noting that Decision III/7 would subsequently be reviewed as a whole.

15. With reference to sub-paragraph (d) of draft Decision III/3 (Implementation Committee), the Secretariat explained that Article 5 paragraph 1 applied to developing countries whose annual calculated level of consumption of the controlled substances in Annex A was less than 0.3 kilograms per capita. Since the countries listed in sub-paragraph (d) of Decision III/3 had, on the basis of interim data, levels higher than 0.3, those countries should be temporarily categorized as not operating under Article 5 paragraph 1. As complete data became available, further consideration would be given their categorization by the Implementation Committee and the Secretariat. Thus, updated data received indicated that Singapore should now be permanently categorized as not operating under Article 5, paragraph 1. Further clarifications are being sought from Jordan before it can be categorized.

16. Several delegations expressed concern at the serious implications for compliance by developing countries whose category had been changed,

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particularly when they only just exceeded the consumption limit of 0.3 kilograms per capita, and that those implications should be addressed by the Meeting. Several delegations felt that there should be a consultation process with countries whose category was to be changed.

17. One delegate proposed that, wherever possible, reported data presented in Secretariat documents should be expressed in ODP-weighted tonnes as well as, or instead of, actual tonnages. The general view was that the Secretariat should have the flexibility to present data in the most appropriate manner but that, where meaningful, calculated values should also be given. An amended text of draft Decision III/3 (Implementation Committee) was approved for recommendation to the Parties.

18. In discussing draft Decision III/4 (Montreal Protocol Handbook) a number of delegates expressed concern that the Montreal Protocol Handbook was available only in English and had not been circulated in advance of the Meeting. One delegate stressed that every effort should be made in future to comply with Rule 10 of the Rules of Procedure for Meetings of the Parties to the Montreal Protocol which stated that documents should be distributed at least two months before the opening of the Meeting. The following suggestions were made in regard to the Handbook:

Add Relevant decisions relating to the Vienna Convention; a list of relevant publications, such as the reports of the Assessment Panels; non-confidential data regarding controlled substances; a list of other halons; a list of the Parties to the Protocol, criteria for projects under the Multilateral Fund; decisions of the Third Meeting of the Parties to the Montreal Protocol; and names and addresses of the Chairmen and Co-chairmen of the Assessment Panels.

Delete Sub-paragraphs (a), (c), (d) and (e) of enclosure 2, sub-paragraphs (d), (e) and (f) of enclosure 3, and sub-paragraphs (e) and (f) of enclosure 4.

After further discussion, including the suggestion that the final version should be in a loose leaf format, a revised text of draft Decision III/4 was approved for recommendation to the Parties.

19. It was decided not to recommend a decision on contributions in kind since the matter would be considered by the Executive Committee at its forthcoming meeting and an appropriate decision submitted to the Parties to the Protocol for adoption.

20. With reference to the application by Turkey to be included in the list of developing countries (revised draft Decision III/5 on Definition of developing countries), a note by the Secretariat, prepared in response to a decision by the Bureau, was discussed. The classifications of countries used by UNDP, World Bank, UNCTAD and OECD were explained. Turkey pointed out a wide range of criteria, which justified its inclusion in the developing country category, and that its consumption of controlled substances is less than 0.3 kilograms per capita per annum. One delegation supported Turkey's request and suggested that future requests be considered on a case-by-case basis. Some delegations expressed sympathy with Turkey's request but were concerned about the effect on the ozone layer. Some countries expressed the view that, if the list were to be re-opened, there would certainly be a number of other countries which would apply, and that very precise criteria would

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have to be laid down. After discussion, it was decided not to take a decision in the Preparatory meeting, as some delegations are awaiting instructions from their capitals.

21. After a brief discussion, revised draft Decision III/6 (Participation of developing countries) was approved for recommendation to the Parties.

22. With regard to the Interim Multilateral Fund Secretariat was not discussed, as it was for the Executive Committee to consider prior to presentation to the Meeting of the Parties.

23. During the discussions on allowable increase in production under Article 2, one delegation raised a query regarding the increase permitted in production to meet the demands of Parties operating under Article 5 paragraph 1 for the period from 1 July 1991 to 31 December 1992 and regarding the method of verification of the basic domestic needs of those countries before producer countries exported to them. In reply, the Secretariat confirmed that, for the period 1 July 1991 to 31 December 1992, no additional production quotas were allowed for under Article 2A of the Montreal Protocol and that, since no amendment would be possible before the expiry of that period, no further action could be taken. Regarding the difficulty experienced by producers in ensuring that exports would indeed be used by importers to meet their basic needs, one delegation suggested that all importers should insist on a certification of country of origin. It was agreed that any violations would need to be investigated on a case-by-case basis by the Implementation Committee under the Non-Compliance Procedure.

24. The meeting agreed that since the draft Decision on allowable increases in production under Article 2 merely repeated issues covered by the Protocol and that draft Decision III/3 (Implementation Committee) clearly indicated which countries were or were not categorized as operating under Article 5, paragraph 1, this draft Decision could be deleted.

25. After extensive discussion of (sub-paragraphs (a) and (b)) of former draft Decision III/10 on data reporting, a shortened text merging the two sub-paragraphs was approved as revised draft Decision III/7 for recommendation to the Parties.

26. After some discussion, an amended revised draft Decision III/8 (Trade names of controlled substances) was approved for recommendation to the Parties.

27. In discussing a draft Decision on formats for reporting data under the amended Protocol, a number of delegations made suggestions for improving the formats for reporting data. These suggestions will be examined and incorporated in the formats, as appropriate. Draft Decision III/9 was approved for recommendation to the Parties.

28. It was agreed that a former draft Decision III/13 on data of developing countries should be deleted, as there was no need to repeat earlier decisions. The Technology and Economics Assessment Panel is already dealing with the issue of the quantities of controlled substances required by developing countries.

29. Since the issues covered in former draft Decision III/14 (Data of countries with economies in transition) were covered by the amended text of revised draft Decision III/7 (Data reporting), it was agreed that the former could be deleted.

30. With regard to revised draft Decision III/15 (Destruction technologies), the Secretariat said that in accordance with Decision II/5 of

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the Second Meeting of the Parties, a Chairman had been appointed, who had selected the nine members of the Committee from the 30 nominated. Selection was on the basis of equitable geographical distribution and their expertise in destruction technologies. The Chairman is from Canada and the experts selected from Australia, China, Germany, Japan, Singapore, Sweden, USA, USSR and Zaire. It was noted that there was no participation from Latin America. A number of delegates suggested that the large body of expertise available should be better utilized and the participation of other experts should be ensured in some capacity, perhaps as observers. Canada agreed to take this up with the Chairman. It was agreed that the Secretariat would collaborate with the Chairman to that end. The Meeting approved, with minor amendments, revised draft Decision III/10 for recommendation to the Parties.

31. Many delegations felt that the wording of former draft Decision III/16 on the Open-Ended Working Group of the Parties prejudged the findings of the Assessment Panels. It would be preferable to invite the Open-Ended Working Group to consider those findings and then report to the Parties in 1992. One delegation drew the attention of the Meeting to the lack of progress in implementing Decision II/15 of the London Meeting, particularly on topics relating to the modalities on transfer of technology and the elaboration of the remaining details of the financial mechanism, all of which are essential to assist developing countries in fulfilling their obligations under the Protocol. Some delegations expressed their concerns that the work carried out so far by the Working Group was seriously and inequitably biased towards further adjustments and amendments of the Protocol, while neglecting the specific mandate of Decision II/15. Many other delegations were, however, seriously concerned that failure to adopt a decision would delay action on adjustments or amendments of the Protocol, as warranted by recent findings on the depletion of the ozone layer. The view was expressed that it was necessary to reiterate the linkage between the compliance by developing countries and the provision of financial resources and technology transfer as recognized by the Montreal Protocol as amended. A revised draft Decision III/11 (Open-Ended Working Group of the Parties) was approved for recommendation to the Parties.

32. A group of delegations made a proposal for a new decision which would extend the mandate of the Technical and Economic Assessment Panel to include the consideration of the implications of possibilities for earlier phase-out of controlled substances and the identification of specific areas where transitional substances are required to facilitate the earliest possible phase-out of controlled substances. A number of amendments were suggested. In reply to a concern raised by some delegations at the inclusion of a specific year, 1997, for phase-out, the consensus was that it was not a statement of intent by the Parties but rather that the Technical and Economic Assessment Panel would examine the implications of a phase-out by that year. One delegate drew attention to the importance of circulating the Panel's report ten months prior to the meeting of the Parties in 1992 in order to allow adequate time for study prior to the six-month deadline for submission of proposals on adjustments and/or amendments to the Fourth Meeting of the Parties. As no consensus was reached, the proposal (listed in square brackets as draft Decision III/12) was referred to the Meeting of the Parties for further consideration.

33. With regard to the issue of further adjustments and amendment of the Montreal Protocol, one delegation raised the case of the consequences for a Party operating under Article 5, paragraph 1 of the Montreal Protocol, whose consumption of controlled substances exceeded 0.3 kilograms per capita per annum. A Party in that situation might be faced with a need to make a substantial reduction within an unreasonably short period. It would in addition be necessary to determine the base year which should apply to such a

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Party for determining the reduction schedule. After some discussion, an additional paragraph was proposed for former draft Decision III/17 which was then approved as revised draft Decision III/13 for recommendation to the Parties.

34. Revised draft Decision III/14 on the amendments to the Rules of Procedure was approved for recommendation to the Parties.

35. In discussing a draft decision on the proposed annex to the Montreal Protocol, a number of amendments to the short list of products contained in the proposed annex were suggested with a view to expanding the list and clarifying the interpretation of the terminology used. A sub-group, in which the Chairman of the Refrigeration and Air-Conditioning Technical Options Panel participated, recommended a revised list which was approved. Draft Decision III/15 (Annex to the Montreal Protocol) was then approved for recommendation to the Parties. It was agreed that Customs Tariff Numbers should be included in the list.

36. It was confirmed that former draft Decision III/20 (now revised draft Decision III/16 on trade issues) imposed no legal obligation on Parties but that such a decision would be useful to encourage the exchange of information. With minor amendments, revised draft Decision III/16 was approved for recommendation to the Parties.

37. Former draft Decision III/21, now draft Decision III/17 revised in the light of draft Decision II/3 approved by the Preparatory Meeting for the Second Meeting of the Conference of the Parties to the Vienna Convention, was approved for recommendation to the Parties to the Montreal Protocol.

38. The Assistant Executive Director, introducing former draft Decision III/22 on budgets for the Trust Fund for the Montreal Protocol, outlined the position with regard to the budget for 1990, 1991, 1992 and 1993. There is still a substantial shortfall in respect of contributions received for 1990 and 1991. Advances received in 1990 from the Environment Fund and the Finnish Ozone Trust Fund have not been repaid. Consultations were continuing with the latter to clarify the status of its contributions. The revised budget for 1991 showed no change in total. He explained various other points contained in document UNEP/OzL.Pro.3/10 which had been circulated. The President then constituted a sub-group to consider the budget in detail and report to the Parties. The Secretariat requested the sub-group to take into account the cost of implementing the various decisions taken by the Parties and physical and financial contingencies. Former draft Decision III/22 was therefore deleted.

39. Former draft Decision III/23 on Global Ozone Observing Stations was deleted.

40. The delegation of Denmark indicated its intention to make a formal announcement at the Third Meeting of the Parties that the Government of Denmark wishes to host the Fourth Meeting of the Parties to the Montreal Protocol in 1992 and would welcome sufficient flexibility to allow it to make appropriate arrangements for the meeting. Accordingly, revised draft Decision III/18, which proposed that the Fourth Meeting of the Parties be convened in September or October 1992, was approved for recommendation to the Parties.

41. Draft decision III/19 on the Membership of the Executive Committee was approved, subject to appropriate nominations, for recommendation to the Parties.

42. A group of delegations proposed a new draft Decision III/20 on financial mechanisms with the purpose of extending the mandate of the

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Open-Ended Working Group of the Parties to include consideration of the development of an indicative list of the categories of incremental costs required by paragraph 1 of Article 10 of the Montreal Protocol, as amended by the Second Meeting of the Parties which could then be placed before the Parties at their Fourth Meeting. After some discussion, an amended text was approved for recommendation to the Parties.

43. Draft Decision III/21 (Composition of the Implementation Committee) was proposed by several delegations but listed in square brackets since no consensus was reached.

44. Several delegations presented under "Other Matters" a draft resolution which could not be discussed in view of the shortage of time. The authors indicated that they would be presenting the draft resolution to the Meeting of the Parties.

45. After the usual exchange of courtesies, the President declared the Meeting closed at 11 p.m.

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