

Distr.
GENERAL

UNEP/OzL.Pro.4/5
25 August 1992

ORIGINAL: ENGLISH

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

Copenhagen, 23-25 November 1992

REPORT OF THE EXECUTIVE DIRECTOR OF THE UNITED NATIONS
ENVIRONMENT PROGRAMME

Introduction

1. The present report, which covers the period from the conclusion of the Third Meeting of the Parties to the Montreal Protocol on 21 June 1991 to date, reviews the status of ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer and its Amendment, and actions that have been taken to implement the decisions adopted by the Third Meeting and proposes further action by the Fourth Meeting of the Parties to the Montreal Protocol.

A. Status of ratification of the Protocol and Amendment

2. At the time of the Third Meeting of the Parties, there were a total of 71 Parties to the Montreal Protocol and two Parties had ratified the Amendment to the Protocol. Since that time, an additional 12 states have ratified, accepted, or approved the Protocol while the Amendment has been ratified by 30 Parties, including the EEC (as at 31 July 1992). The Amendment entered into force on 10 August 1992. The status of ratification for both the Vienna Convention and the Montreal Protocol is circulated to all Governments every month in document UNEP/OzL.Rat.15 (15th issue, July 1992).

B. Decisions of the Third Meeting, action taken and suggestions for further action

Decision III/1. "Adjustments and Amendment"

- "(a) To bring to the attention of the Parties to the Montreal Protocol the fact that the Adjustments to the Protocol adopted at the Second Meeting of the Parties came into effect on 7 March 1991 and to urge them to adopt the necessary measures to comply with the adjusted control measures; and
- "(b) To note that only two States have so far ratified the Amendment, adopted at the Second Meeting of the Parties to the Protocol and to urge all States to ratify that Amendment in view of the fact that twenty instruments of ratification, approval or acceptance are required for it to come into force on 1 January 1992;".

Action taken

3. The adjusted control measures came into force on 7 March 1992 and the Parties to the Protocol have adopted the necessary measures to comply with the adjusted control measures.

4. The twentieth ratification of the Amendment was deposited on 12 May 1992 and the Amendment entered into force on 10 August 1992. The Amendment has been ratified, as at 31 July, by 29 out of the 82 Parties to the Protocol.

Proposed action by the Meeting

5. The Parties may wish to:

(a) Urge all Parties who have not ratified the Amendment so far to do so at the earliest opportunity;

(b) Urge all Parties to take the necessary action to comply with the control measures and the other provisions stipulated in the Amendment.

Decision III/2. "Non-compliance Procedure"

- "(a) To request the Ad Hoc Working Group of Legal Experts on the Non-compliance Procedure with the Montreal Protocol, when elaborating further the procedures on non-compliance, to:
- "(i) Identify possible situations of non-compliance with the Protocol;
 - "(ii) Develop an indicative list of advisory and conciliatory measures to encourage full compliance;
 - "(iii) Reflect the role of the Implementation Committee as an advisory and conciliatory body bearing in mind that the recommendation of the Implementation Committee on Non-compliance Procedure must always be referred to the meeting of the Parties for final decision;
 - "(iv) Reflect the possible need for legal interpretation of the provisions of the Protocol;
 - "(v) Draw up an indicative list of measures that might be taken by a meeting of the Parties in respect of Parties that are not in compliance with the Protocol, bearing in mind the need to provide all assistance possible to countries, particularly developing countries, to enable them to comply with the Protocol;
 - "(vi) Endorse the conclusion of the Ad Hoc Working Group of Legal Experts that the judicial and arbitral settlement of disputes provided for in Article 11 of the Vienna Convention and the Non-compliance Procedure pursuant to Article 8 of the Montreal Protocol were two distinct and separate procedures (UNEP/OzL.Pro/WG.3/2/3);
- "(b) To adopt the following timetable for finalization of the draft non-compliance procedures for consideration by the Fourth Meeting of the Parties to the Protocol:
- October 1991: Meeting of the Ad Hoc Working Group of Legal Experts to complete the draft procedures for endorsement by the Parties;
 - November 1991: Submission of draft non-compliance procedures to the Ozone Secretariat;
 - December 1991: Circulation of draft non-compliance procedures to the Parties;"

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Action taken

6. The Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol completed the consideration of the issues referred to it at its third meeting, held in Geneva from 5 to 8 November 1991.

7. The report of that meeting was circulated to all Governments in January 1992 as UNEP/OzL.Pro/WG.3/3/3. The draft non-compliance procedure recommended by the Working Group is contained in Annex I of that report. There has been unanimity in the Working Group on all but two of the points in the procedure. One concerned the Implementation Committee's maintaining an exchange of information with the Executive Committee of the Multilateral Fund. The other dealt with making non-confidential information, exchanged by or with the Committee, available to any Party on request.

8. The Working Group considered the identification of possible situations of non-compliance with the Protocol. Seven possible situations have been identified (Annex II, Section I of the Group's report). There has been agreement in the Working Group regarding five situations. No agreement has been reached on: (i) the failure to comply with the obligations in the decisions of the Parties to the Protocol; and (ii) non-payment of contributions to the Financial Mechanism.

9. The Working Group developed an indicative list of measures that might be taken by Parties in respect of Parties that are not in compliance with the Protocol (Annex II, Section II of the Group's report). The Working Group recommended that, when considering cases of non-compliance, flexibility should be ensured in selecting and administering appropriate response measures, on the understanding that situations of non-compliance differed in importance.

10. The Working Group developed an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol (Annex II, Section II of the Group's report).

11. Regarding the possible need for legal interpretation of the provisions of the Protocol and methods of providing the interpretation, many delegates noted that the responsibility for legal interpretations of the Protocol ultimately rested with the Parties themselves. However, there was no consensus on this issue.

12. The Working Group considered the issue of expediting the amendment procedure under Article 9 of the Vienna Convention but did not recommend any means of expediting the amendment procedure. The Working Group concluded that there would be many problems inherent in different procedural obligations for different Parties, if the Vienna Convention were to be amended. It also considered the present procedure to be satisfactory.

Proposed action by the Meeting

13. The Parties may wish to:

(a) Adopt the non-compliance procedure (Annex I of UNEP/OzL.Pro/WG.3/3/3) after deciding on issues not resolved by the ad hoc Group of Legal Experts on Non-compliance with the Montreal Protocol;

(b) Adopt the indicative list of possible situations of non-compliance with the Protocol, after deciding on issues not resolved (Annex II, Section I);

(c) Adopt the indicative list of measures that might be taken in respect of non-compliance (Annex II, Section II);

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(d) Accept the recommendation that there is no need to expedite the amendment procedure under Article 9 of the Vienna Convention; and

(e) Accept the view that the responsibility for legal interpretations of the Protocol ultimately rests with the Parties themselves.

Decision III/3. "Implementation Committee"

"(a) To note the progress made by the Implementation Committee and to urge strongly that the Parties that have not yet done so should submit without delay the data required by the Montreal Protocol;

"(b) That those States, not forming part of a regional economic integration organization, which had reported data jointly in the past should submit separate data in the future, and do so, if appropriate, in the context of Decision III/7 (a);

"(c) To note that the period for data reporting is 1 January to 31 December (Article 7, paragraph 2) and that the control period is 1 July to 30 June (Article 2, paragraph 1) and to request the Parties to report the data for both periods;

"(d) To endorse the recommendation on the categorization of the developing countries under paragraph 1 of Article 5:

"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 (e) of the report of the Ad hoc Group of Experts on the Reporting of Data (UNEP/OzL.Pro/WG.2/1/4), 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.";

"(e) To confirm the positions of Hungary, Japan, Norway, Trinidad and Tobago, and Uganda as members of the Implementation Committee for one further year, and to select Cameroon, Chile, Thailand, USA and USSR for a two year period;".

Action taken

14. Please refer to the Reports of the Secretariat on the Reporting of Data (UNEP/ImpCom/3/2 and UNEP/OzL.Pro.4/6) and the report of the Implementation Committee (UNEP/OzL.Pro/ImpCom/3/3). These reports are being considered by the Fourth Meeting under item 4 of the Provisional Agenda.

Proposed action by the Meeting

15. The term of office of the members of the Implementation Committee under the Non-Compliance Procedure approved by the Second Meeting of the Parties is two years. Cameroon, Chile, Thailand, USA and Russian Federation were selected by the Third Meeting of the Parties and will continue for another year. The term of office of the following members of the Implementation Committee - Hungary, Japan, Norway, Trinidad and Tobago and Uganda - is up to the Fourth Meeting of the Parties:

(a) The Meeting may wish to decide on replacement or re-selection of any of them;

(b) A member of the Implementation Committee may be selected as its Chairman.

Decision III/4. "Montreal Protocol Handbook"

"To welcome the efforts of the Secretariat in completing the *Montreal Protocol Handbook*, which was prepared by the Secretariat in accordance with Decision II/7 of the Second Meeting of the Parties, and to request the Secretariat after further editing, taking into account the comments made in paragraph 18 of the Report of the Preparatory Meeting for the Third Meeting of the Parties to the Montreal Protocol (UNEP/OzL.Pro.3/Prep/2), to distribute the *Handbook* to all the Parties to the Protocol and the Convention in the official languages of the United Nations as soon as possible;"

Action taken

16. The first edition of the *Montreal Protocol Handbook* was distributed in English to all the participants at the Second Conference of the Parties to the Vienna Convention and the Third Meeting of the Parties to the Montreal Protocol, held in Nairobi in June 1991. This *Handbook* has been revised on the basis of the suggestions made by the Third Meeting of the Parties. The revised edition was translated into all the official languages and distributed to all the Parties in September 1992.

Decision III/5. "Definition of developing countries"

- "(a) To consider the requests by States for classification as developing countries on an individual basis as and when they come;
- "(b) To accept the classification of Turkey as a developing country for the purposes of the Montreal Protocol, noting that Turkey is classified as a developing country by the World Bank, OECD and UNDP;
- "(c) To request the Open-Ended Working Group of the Parties to study and fully define the criteria which will be applied in the future in case of applications for classification as a developing country for the purpose of the Montreal Protocol, and to submit a report for consideration to the Fourth or Fifth Meeting of the Parties;"

Action taken

17. The Open-Ended Working Group of the Parties discussed the criteria to be applied in the future regarding applications for classification as a developing country for the purpose of the Protocol. The Working Group decided not to make a recommendation on the issue (UNEP/OzL.Pro/WG.1/7/4, paragraph 134). The Meeting of the Parties may wish to decide on this issue.

Decision III/6. "Participation of developing countries"

"To encourage the participation of representatives of developing countries in meetings of assessment panels, the Committee on Destruction Technologies, the Bureau and working groups and in any other meetings convened under the Montreal Protocol and to provide, as far as possible, financial assistance for such participation;"

Action taken

18. Financial assistance has been provided as follows, in accordance with the approved budget for the participation of developing countries in meetings of the assessment panels, working groups, committees, the Bureau and of the Parties:

Scientific Assessment Panel - 10 participants;

Technology and Economic Assessment Panel - 44;

Environmental Effects Panel - 12;

Technical Advisory Committee on Destruction Technologies - 14;

Ad hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol - 21;

Implementation Committee - 2;

Open-Ended Working Group of the Parties - 65 participants (partly funded from the remaining funds of the counter-part contributions made by Australia, Canada, Norway, Sweden and Switzerland for assisting developing countries);

Bureau of the Third Meeting of the Parties - 3 participants;

Informal Consultations with the Executive Director on further adjustments and amendment of the Montreal Protocol - 6 participants;

Preparatory Meeting to the Fourth Meeting and the Fourth Meeting of the Parties - 40 participants (proposed).

19. There are 48 developing countries which are Parties to the Protocol. Many of these Parties, as well as many developing countries which are not Parties, request financial assistance to their delegates to the meetings. It was not possible to respond positively to all requests, since the provision made in the approved budget is for assisting the participation of 15-20 participants from the developing countries in each meeting. Financial assistance has been provided on the basis of first come, first served, keeping in view the geographical balance.

Proposed action by the Meeting

20. The Parties may wish to decide on the appropriate financial assistance which needs to be allocated for the participation of developing countries in the meetings related to the Protocol when considering the 1993 and 1994 budgets under item 6 of the Provisional Agenda.

Decision III/7. "Data Reporting"

"(a) To note the report of the ad hoc Group of Experts on the Reporting of Data and the suggestions that it contains, especially the recommendation that developing countries should inform the Secretariat of any difficulties they face in reporting data, and to invite any Party experiencing such difficulties to inform the Secretariat, so that suitable measures can be taken to rectify the situation;

"(b) Developing countries with a per capita consumption figure which the Secretariat estimates at below 0.3 kilograms should be able to meet their obligation to report 1986 data by informing the Secretariat that they accept its estimate (UNEP/OzL.Pro/WG.2/1/4, paragraph 14 (e));".

Action taken

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21. Please refer to the reports of the Secretariat on the Reporting of Data (UNEP/ImpCom/3/2 and UNEP/OzL.Pro.4/6) and the report of the Implementation Committee (UNEP/OzL.Pro/ImpCom/3/3). These reports are being considered under item 4 of the Provisional Agenda.

Decision III/8. "Trade names of controlled substances"

- "(a) To request the Technology and Economic Assessment Panel (operating under Decision II/13 of the Second Meeting of the Parties to the Montreal Protocol) to compile a list of full and complete trade names, including any numerical designations of substances controlled by the Montreal Protocol and the amended Montreal Protocol, including mixtures containing controlled substances, and to submit the list to the Secretariat by the end of November 1991;
- "(b) To request the Secretariat to distribute, by the end of March 1992, the list called for in (a) above, to all the Parties to the Montreal Protocol;"

Action taken

22. The list of trade names of controlled substances has been annexed to the report by the Technology and Economic Assessment Panel in 1991. This report was distributed to all Governments in March 1992.

Decision III/9. "Formats for reporting data under the amended Protocol"

"To adopt the revised formats for reporting data under the amended Montreal Protocol, as contained in Annex V of the report of the Third Meeting of the Parties;"

Action taken

23. The adopted format was communicated to all the Parties in August 1991.

Decision III/10. "Destruction Technologies"

"To note the constitution of the ad hoc Technical Advisory Committee on Destruction Technologies, established by the Second Meeting of the Parties, and to request the Committee to submit a report to the Secretariat for presentation to the Fourth Meeting of the Parties, in 1992 at least four months before the date set for that meeting;"

Action taken

24. *Background:* Paragraph 5 of Article 1 of the Montreal Protocol states: "Production" means the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. The amount recycled and reused is not being considered as "production". The Second Meeting of the Parties, in London in June 1990, established an ad hoc Technical Advisory Committee on Destruction Technologies to analyse destruction technologies and assess their efficiency and environmental acceptability and develop approval criteria and measurements (Decision II/11). The Third Meeting of the Parties, in Nairobi in June 1991, requested the Committee to submit a report for presentation to the Fourth Meeting of the Parties in 1992, at least four months before the date set for that Meeting (Decision III/10).

25. *Findings of the Committee:* The Committee completed its report in English in May 1992. This report and an Executive Summary in the official languages of the United Nations were communicated to all the Governments in

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August 1992 (UNEP/OzL.Pro.4/4). Its significant findings and recommendations are:

(a) *Approval criteria for destruction technologies*

- The technology must be available on a commercial scale or demonstrated on a pilot scale with a maximum scale-up of 200 times. If the scale-up factor is greater than 200, separate approval must be obtained;
- The commercial or pilot-scale technology must be demonstrated as achieving a destruction efficiency of equal to or greater than 99.99 per cent;
- The technology must comply with national regulatory requirements for air emissions, liquid effluents and solid waste residues;

(b) *Recommended destruction technologies*

The six destruction technologies recommended for approval are within the thermal oxidation category. However, not all may be appropriate for all classes of ozone-depleting substances (ODS). The technologies are: liquid injection incinerators; reactor cracking; gaseous/fume oxidation; rotary kiln incinerators; cement kilns; and municipal solid waste incinerators (for foams only);

(c) *Environmental impact*

The use of efficient, well-operated destruction facilities that are equipped with modern pollution control systems and operated to achieve the "suggested minimum standards" developed by the Technical Advisory Committee should negate damage to the environment from ODS destruction. These "suggested minimum standards", given in Chapter 5 of the report of the Committee may be adopted by the countries that do not have, as yet, appropriate standards to apply;

(d) *The code of good-housekeeping procedures* described in Chapter 5 of the report of the Committee should be utilized by destruction facility operators to minimize environmental losses of ODS;

(e) *Approval of destruction facilities*

Destruction facilities that use approved technologies should submit to their national regulatory agency approved test data which demonstrate achievement of the Destruction Efficiency (DE) standard. National regulatory agencies should submit to the Secretariat a list of approved destruction facilities, along with annual reports of ODS quantities destroyed in accordance with Article 7 (3) of the amended Montreal Protocol. Parties who operate or plan to establish ODS destruction facilities in their countries should commit themselves to enforce compliance with the destruction efficiency and environmental standards defined in the report;

(f) *Procedure for approval of more technologies*

The Parties may be given up to 30 September 1994 to seek approval of any existing technology not included in the list recommended by the Committee. The Parties may seek approval for new technologies as and when the technologies satisfy the approval criteria. Any Party seeking approval must submit a complete description of the technology to the Secretariat, along with test results. These submissions will be evaluated by a technical group and recommendations prepared for a decision by a

Meeting of the Parties;

(g) *Clarification of Article 1, paragraph 5*

Any unconverted ODS from a feedstock process should be destroyed by an approved destruction technology for the amount of feedstock to be eligible for deduction from production according to Article 1, paragraph 5 of the Montreal Protocol;

(h) *A code of good-housekeeping procedures* should be used to minimize environmental losses of ODS from feedstock facilities;

(i) *Unintentional by-products of ODS* in chemical processes should be destroyed by an approved destruction technology;

(j) *Global destruction capacity*

Worldwide destruction capacity by approved technologies appears to be inadequate to meet demand. Because of uncertainties with available data, periodic reassessments of this capacity are necessary;

(k) *ODS destruction programmes*

Further acceleration in the phase-out of production and consumption of ODS is likely to accentuate the need for a global destruction programme. High priority should be given to the establishment of a UNEP-sanctioned ODS destruction programme under the Montreal Protocol;

(l) *UNEP Advisory Committee*

An Advisory Committee may be established to meet on a periodic basis to reassess ODS destruction capacities; evaluate emerging technology submissions; review report submissions; and prepare recommendations for an annual review by the Meeting of the Parties.

Proposed action by the Meeting

26. The Parties may wish to:

(a) Adopt the approval criteria for destruction technologies, as set out in paragraph 25 (a) above;

(b) Endorse the six destruction technologies recommended in paragraph 25 (b) above;

(c) Urge the Parties that do not have, as yet, regulatory standards for destruction facilities to adopt the suggested minimum standards given in Chapter 5 of the report of the Committee and enforce the good-housekeeping procedures suggested in the same Chapter (paragraphs 25 (c) and (d) above);

(d) Adopt the procedure for approval of destruction facilities outlined in paragraph 25 (e) above;

(e) Adopt the procedure for approval of more technologies as given in paragraph 25 (f) above;

(f) Approve the clarification to Article 1, paragraph 5, as contained in paragraph 25 (g) above;

(g) Urge the Parties to follow the recommendation contained in

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paragraphs 25 (h) and 25 (i) above;

(h) Request the ad hoc Technical Advisory Committee on Destruction Technologies to:

- reassess ODS destruction capacities;
- evaluate emerging technology submissions;
- review report submissions; and
- submit their recommendations by 31 March 1994.

Decision III/11. "Open-Ended Working Group of the Parties"

- "(a) To recall Article 5, paragraphs 5 and 6 of the Amendment to the Montreal Protocol adopted by Decision II/2 of the Parties at its Second Meeting and reiterate the mandate of the Open-ended Working Group of the Parties in accordance with Decision II/15 and request that this work be intensified;
- "(b) Should the results obtained by the assessment panels suggest the need to adjust or amend the Protocol, the Working Group would make recommendations in time for consideration by the next meeting of the Parties;
- "(c) To endorse the selection of Mexico and the United Kingdom as co-Chairmen of the Open-Ended Working Group;"

Action taken

27. The Open-ended Working Group met twice and made its recommendations on the issues referred to it by the Third Meeting of the Parties to the Montreal Protocol (UNEP/OzL.Pro/WG.1/6/5 and UNEP/OzL.Pro/WG.1/7/4).

Proposed action by the Meeting

28. The proposed action by the Meeting of the Parties is discussed in paragraphs 17, 34, 35, 44 and 53 of the present Report and in document UNEP/OzL.Pro.4/10.

Decision III/12. "Assessment Panels"

- "(a) To request the Assessment Panels and in particular the Technology and Economic Assessment Panel to evaluate, without prejudice to Article 5 of the Montreal Protocol, the implications, in particular for developing countries, of the possibilities and difficulties of an earlier phase-out of the controlled substances, for example of the implications of a 1997 phase-out;
- "(b) Taking into account the London Resolution on transitional substances (Annex VII to the report of the Second Meeting of the Parties to the Montreal Protocol), to identify the specific areas where transitional substances are required to facilitate the earliest possible phase-out of controlled substances, taking into account environmental, technological and economic factors, where no other more environmentally suitable alternatives are available. The quantities likely to be needed for those areas and for those areas of application currently served by transitional substances shall both be assessed;
- "(c) To request the assessment panels to identify the transitional substances with the lowest potential for ozone depletion

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required for those areas and suggest, if possible, a technically and economically feasible timetable, indicating associated costs, for the elimination of transitional substances;

"(d) To request the assessment panels to submit their reports in time for their consideration by the Open-Ended Working Group with a view to their submission for consideration by the Fourth Meeting of the Parties;

"(e) To endorse Decision II/2, paragraph 2, of the Second Meeting of the Conference of the Parties to the Vienna Convention."

Action taken

29. The Scientific Panel finalized its report in October 1991. The main findings were: global ozone decreases greater than those predicted had been observed; significant decreases had taken place during spring and summer in both the hemispheres at middle and high latitudes, as well as during the southern hemisphere winter, losses being larger in the 1980s than during the 1970s; methyl bromide was identified as a significant ozone-depleting substance; the greenhouse role of CFCs remains uncertain; further tightening of the Montreal Protocol could minimize the adverse impacts.

30. The Environmental Effects Panel finalized its report in November 1991. The findings confirmed the conclusions of their 1989 report. The main conclusions were: clear-cut increases of UV-B were observed in the Antarctic, such increases in other areas may have been masked by pollution; a sustained 10 per cent loss of ozone would lead to an increase in the incidence of non-melanoma skin cancers by 26 per cent; an 11 per cent decrease of ozone, other things being equal, would lead to 100,000-150,000 additional cases of cataract-induced blindness; UV-B radiation had a profound influence on the immune system; there was reason for concern regarding an increase of infectious diseases, as well as adverse influence on the world food supply and other impacts on air quality, plastics, etc.

31. The Technology and Economic Assessment Panel completed its work in November 1991. Its main conclusions were: consumption by developed countries had already dropped by 40 per cent, well ahead of the present phase-out schedule; technologies to eliminate the controlled substances were now available for virtually every application; the developed countries could virtually phase out the use of controlled substances by 1995-1997, the developing countries doing likewise in another 5-8 years; the costs of a phase-out were falling. The 6 options committees of the Panel have prepared reports on technical options for refrigeration, air conditioning and heat pumps, aerosol products, sterilants, miscellaneous uses and carbon tetrachloride, halons, flexible and rigid foams and solvents, coatings and adhesives and on economic options.

32. The co-chairmen of the Assessment Panels prepared a synthesis of the key findings of the three panel reports. The synthesis recommended that significant reductions in peak chlorine and bromine loading can be reached through an acceleration of the phase-out of CFCs, halons, carbon tetrachloride, and methyl chloroform, limited use of CFCs and a reduction in the ten-year lag for developing countries to five years. In addition, further reductions in bromine levels may be possible if there are significant anthropogenic emissions of methyl bromide that can be controlled. Adoption of these measures would reduce the *integral*, a measure of ozone depletion and the chronic effects of enhanced UV-B effects, by about 50 per cent.

33. The reports of the Assessment Panels were communicated to all the Governments in January and February 1992 in English, the language in which they were prepared by the Panels. The synthesis report was communicated to

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all the Governments in March 1992 in the official United Nations languages as document UNEP/OzL.Pro/WG.1/6/3. The reports and the synthesis were presented by the co-chairmen of the panels to the Sixth Meeting of the Open-ended Working Group of the Parties to the Protocol in April 1992.

Decision III/13. "Further adjustments to and amendments of the Montreal Protocol"

"To request the Open-Ended Working Group of the Parties, to consider the following proposals which are aimed at possibly amending the Montreal Protocol and to submit a report on these proposals to the Fourth Meeting of the Parties:

"(a) Article 7, paragraph 5 (of the amended Protocol):

"In cases of trans-shipment of controlled substances through a third country (as opposed to imports and subsequent re-exports), the country of origin of the controlled substances shall be regarded as the exporter and the country of final destination shall be regarded as the importer. In such cases, the responsibility for reporting data shall lie with the country of origin as the exporter and the country of final destination as the importer. Cases of import and re-export should be treated as two separate transactions; the country of origin would report shipment to the country of intermediate destination, which would subsequently report the import from the country of origin and export to the country of final destination, while the country of final destination would report the import.";

"(b) To review all relevant articles of the Montreal Protocol in order to consider the possible consequences of a country which is operating under Article 5, paragraph 1 of the Protocol, exceeding the consumption ceiling of 0.3 kilograms per capita specified in that Article;

"(c) To discuss measures including possible amendments to the Protocol to clarify the situations of such a Party with respect to the Article 2 control measures and in particular to specify:

- The base year which should apply to such a Party for the purpose of the reduction schedule;
- The stage of the reduction schedule with which it should be in compliance;
- What (if any) period should be allowed to the Party to enable it to comply fully with the control measures;

"(d) To consider the possible implications of a Party losing its Article 5 (1) status if it is at the time a member of the Executive Committee of the Interim Multilateral Fund;".

Action taken

34. The Open-ended Working Group considered the issue in part (a) of the Decision III/13 and recommended that the matter be dealt with through a decision by the Fourth Meeting of the Parties. The Working Group recommended the following decision:

"In cases of trans-shipment of controlled substances through a third country (as opposed to imports and subsequent re-exports), the country of origin of the controlled substances shall be regarded as the exporter and the country of final destination shall be regarded as the importer. In such cases, the responsibility for reporting data shall

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lie with the country of origin as the exporter and the country of final destination as the importer. Cases of import and re-export

should be treated as two separate transactions; the country of origin would report shipment to the country of intermediate destination, which would subsequently report the import from the country of origin and export to the country of final destination, while the country of final destination would report the import."

35. The Working Group recommended the following clarifying decision to the Fourth Meeting of the Parties with respect to parts (b), (c) and (d) of Decision III/13:

"With regard to the question addressed by the Meeting of the Parties concerning the situation where a developing country that operated under Article 5, paragraph 1, of the Protocol exceeded the maximum level of consumption of controlled substances in Annex A of 0.3 kg per capita, those situations were best considered on a case-by-case basis and the Montreal Protocol already had the necessary structures to deal with them.

"The draft procedures on non-compliance and terms of reference for the Implementation Committee, as proposed by the Ad-Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol to the Fourth Meeting of the Parties (UNEP/OzL.Pro/Wg.3/3/3), would enable the Implementation Committee to address such a situation, with a view to securing an amicable solution, and make recommendations to the Meeting of the Parties as appropriate regarding *inter alia* such measures as reduction schedules and technical and financial assistance."

Proposed action by the Meeting

36. The Parties may wish to adopt the decisions recommended by the Open-ended Working Group as provided in paragraphs 34 and 35 of the present report.

Decision III/14. "Amendment of the Rules of Procedure"

"To amend the Rules of Procedure as follows:

- (a) Rule 23 - delete paragraph 2;
- (b) Rule 24 - delete the words "other than the President", and substitute the words "of the Bureau."

Action taken

37. The amended Rules of Procedure were printed in November 1991 and were distributed to the participants in the meetings related to the Montreal Protocol.

Decision III/15. "Annex to the Montreal Protocol"

- "(a) To adopt as an Annex D to the Montreal Protocol, in accordance with the procedure laid down in Article 10 of the Vienna Convention, the list of products containing controlled substances. The annex is contained in Annex V of the report of the Third Meeting of the Parties;
- "(b) To request the Secretariat to identify the Customs Code Numbers for the items on the list from the Customs Co-operation Council. The Customs Code Numbers will be submitted for acceptance by the Fourth Meeting of the Parties;"

Action taken

38. The list of products in Annex D to the Protocol was provided to all the Parties by the Depositary on 27 November 1991. The Annex became effective for all Parties to the Montreal Protocol, except Singapore, on the expiry of six months from the date of the communication by the Depositary of the text of Annex D on 27 May 1992. On that date, Singapore notified the Depositary that it could only approve the intention to ban import with respect to products classified under item 2 (except domestic refrigerators and freezers) and under item 3 of Annex D. The Annex therefore became effective for Singapore with respect to products classified under item 2 (except domestic refrigerators and freezers) and under item 3.

39. The Secretariat consulted the Customs Co-operation Council (CCC) regarding the Customs Code Numbers for items in the list. The Customs Co-operation Council stated that, while a few of the Annex D products can be identified using the existing Harmonized System (HS) code numbers, it is impossible to do so for other products without specifying their actual composition and presentation. After further discussions, a note has been prepared by the Secretariat, in consultation with CCC, to facilitate compliance by the Parties with Article 4, paragraph 3 of the Protocol, according to which the Parties that have not objected to the annex shall ban, within one year of the annex having become effective, i.e. within one year from 27 May 1992, the import of these products listed in Annex D, from any State not Party to the Protocol. This note regarding the Harmonized System code numbers for the Annex D products was circulated to all Parties as document UNEP/OzL.Pro.4/3 in August 1992. The Harmonized System code numbers given are for particular products, which may or may not contain controlled substances. The numbers given should be used as a guide and further verification is needed to establish whether or not the products contain controlled substances.

Proposed action by the Meeting

40. The Parties may wish to approve the note regarding the Harmonized System code numbers and take further steps to comply with Article 4, paragraph 3.

Decision III/16. "Trade issues"

"To encourage the Parties to inform the Secretariat of the implementation of Article 4 of the Protocol;"

Action taken

41. Please refer to item 4 of the Provisional Agenda.

Decision III/17. "Amendment of the Vienna Convention"

"To request the Ad Hoc Working Group of Legal Experts on Non-compliance with the Montreal Protocol to consider procedures for expediting the amendment procedure under Article 9 of the Vienna Convention;"

Action taken

42. See paragraph 12 above.

Decision III/18. "Fourth Meeting of the Parties to the Montreal Protocol"

"To convene the Fourth Meeting of the Parties to the Montreal Protocol in September or October 1992 in Denmark;"

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Action taken

43. The Fourth Meeting of the Parties will be held in Copenhagen on 23-25 November 1992, preceded by the Preparatory Meeting on 17-20 November 1992.

Decision III/19. "Financial Mechanism"

"To request the Open-Ended Working Group of the Parties to review the indicative list of the categories of incremental costs adopted by the Parties in Decision II/8 and, taking into account the experience gained by the Executive Committee, to develop an indicative list of categories of incremental costs required by paragraph 1 of Article 10 of the Montreal Protocol as amended by the Second Meeting of the Parties. The list so developed should be submitted for consideration by the Fourth Meeting of the Parties;"

Action taken

44. The Open-Ended Working Group considered favourably the list of categories of incremental costs as approved by the Second Meeting of the Parties. Two delegations suggested further additions to the list. The conclusions of the Working Group may be seen in paragraphs 124, 125 and 130 of its report of the seventh meeting, document UNEP/OzL.Pro/WG.1/7/4.

Proposed action by the Meeting

45. The Parties may wish to decide on the recommendations of the Working Group and the Executive Committee of the Interim Multilateral Fund regarding the indicative list of the categories of incremental costs.

Decision III/20. "Composition of the Implementation Committee"

"To change paragraph 3 of Non-compliance Procedure as in Annex III to the report of the Second Meeting of the Parties to the Montreal Protocol:

"3. An Implementation Committee is hereby established. It shall consist of ten Parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution. Outgoing Parties may also be re-elected for one immediate consecutive term.";

Action taken

46. This has been incorporated into the Non-compliance Procedure set out for approval by the Fourth Meeting of the Parties to the Protocol (please refer to paragraph 7 above).

Decision III/21. "Budgets and Financial Matters"

- "(a) To request the Secretariat to submit as soon as possible to all Parties certified and audited accounts of the Montreal Protocol Trust Fund for the expenditures under the Fund for the 1990 financial year;
- "(b) To request the Secretariat to submit to the Parties the certified and audited accounts for 1989 of the Interim Ozone Secretariat;
- "(c) To request the Secretariat to submit certified and audited accounts for subsequent years prior to regular meetings of the Parties;

- "(d) To emphasize that expenditures incurred due to recommendations by the Bureau should only be met either within the budget adopted by the Parties for that year or by other additional contributions made towards these expenditures;
- "(e) To emphasize that it is essential to avoid increases in already adopted budgets in the years to which they relate;
- "(f) To urge all Parties to pay their outstanding contributions promptly and to also pay their future contributions promptly and in full in accordance with the terms of reference and the formula for contributions as attached to as Annex II to the report of the Third Meeting of the Parties;
- "(g) To adopt the final budget for 1992 of US\$2,278,645, and for 1993 of US\$2,398,990, as set out in Annex I to the report of the Third Meeting of the Parties;".

Action taken

47. This will be discussed under item 6 of the Provisional Agenda.

Decision III/22. "Executive Committee of the Multilateral Fund"

- "(a) To adopt the revised 1991 budget for the Fund Secretariat as contained in Annex VII to the report of the Third Meeting of the Parties;
- "(b) To endorse the Rules of Procedure as contained in Annex VI to the report of the Third Meeting of the Parties;
- "(c) To adopt the budget for 1992, included in the three-year budget for the Fund Secretariat as contained in Annex VIII to the report of the Third Meeting of the Parties;
- "(d) To endorse the proposal to raise the total amount of the Interim Multilateral Fund by US\$40 million to US\$200 million over the three-year period 1991-1993;
- "(e) Adopt a revised scale of contributions set out in Annex X to the report of the Third Meeting of the Parties;
- "(f) To endorse the selection of Mexico to act as Chairman and of the United States of America to act as Vice-Chairman for the second year of the Executive Committee;".

Action taken

48. Please refer to the report of the Executive Committee under item 5 of the Provisional Agenda.

C. Bureau of the Montreal Protocol

49. The Bureau of the Third Meeting of the Parties to the Montreal Protocol held its first meeting in Geneva on 7 July 1992 to review the implementation of decisions and other matters arising from the decisions of the Third Meeting of the Parties. The Bureau also received and considered the following reports:

- (a) Budget review;
- (b) Report of the Third Meeting of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol;

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- (c) Reports of the Assessment Panels and the Synthesis Report;
- (d) Report of the Sixth Meeting of the Open-Ended Working Group, including the proposed adjustments and amendment;
- (e) Report of the Interim Multilateral Fund;
- (f) Report of the Implementation Committee; and
- (g) Report of the Technical Advisory Committee on Destruction Technologies.

50. The meeting's attention was drawn to a letter from the Government of Hungary addressed to the Executive Director of UNEP requesting temporary relief from financial contributions to the Interim Multilateral Fund. The Bureau decided to place this issue before the Fourth Meeting of the Parties.

51. The report of the meeting of the Bureau, document UNEP/OzL.Pro.3/Bur/1/3, was communicated to Parties in August 1992.

Proposed action by the Meeting

52. The Meeting may wish to: (a) note the report of the meeting of the Bureau; (b) consider the request for temporary relief from the Government of Hungary. The Executive Director recommends that this problem be resolved by a decision of the Parties, based on an agreement by the Parties not operating under Article 5 to assume the financial obligation of Hungary if they so decide. Hungary paid in full the assessed contribution of US\$131,806 for 1991 but has not paid its pledge of \$177,494 for 1992. Its share of the contribution for 1992 is 0.24%.

D. The establishment of a financial mechanism under Article 10 of the Protocol

53. Following the entry into force of the Amendment to the Montreal Protocol on 10 August 1992, Parties have to establish a Financial Mechanism as provided for under Article 10 of the Protocol. The Mechanism, which includes financial and technical cooperation and the establishment of a Multilateral Fund, was considered by the seventh meeting of the Open-Ended Working Group on the basis of the Note prepared by the Secretariat (UNEP/OzL.Pro/WG.1/7/2/Rev.1). After extensive discussion, the Open-ended Working Group adopted the following decision to be presented to the Fourth Meeting of the Parties:

"1. The Open-ended Working Group calls upon the Parties to reaffirm, at their Fourth Meeting, their commitments made at their Second Meeting held in London in June 1990 and recommends that the following decisions be taken at their Fourth Meeting with regard to the Financial Mechanism under Article 10 of the amended Montreal Protocol:

- "(a) To establish the Multilateral Fund provided for in Article 10 of the amended Montreal Protocol;
- "(b) To adopt the terms of reference for the Multilateral Fund and Executive Committee, as recommended by the Executive Committee of the Interim Multilateral Fund at its seventh meeting (Document UNEP/OzL.Pro/ExCom.7/30);
- "(c) To locate the Multilateral Fund Secretariat at Montreal, Canada.

"2. Further, the Open-ended Working Group recommends that, with a

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view to ensuring continued and effective operation of the Financial Mechanism under the Montreal Protocol, the Parties should review, by

1995 at the latest, the operation of the Financial Mechanism and the conditions necessary for its continued and most effective functioning consistent with the provisions of Article 10 of the amended Montreal Protocol.

"3. Recognizing that the Fourth Meeting of the Parties has to decide upon the size of the Multilateral Fund, the Open-ended Working Group takes note of the figures presented in document UNEP/OzL.Pro/WG.1/7/2/Rev.1 and recommends that the Parties should decide upon this question in the light of these figures and other available information."

Proposed action by the Meeting

54. The Meeting of the Parties may wish to:

(a) Accept the terms of reference as recommended by the Working Group for the Multilateral Fund and its Executive Committee (annexed to this report);

(b) Locate the Fund Secretariat at Montreal, Canada; and

(c) Decide on the size of the Fund.

55. The recommendations of the Executive Director regarding the size of the Fund are contained in document UNEP/OzL.Pro/WG.1/7/2 Rev.1 paragraphs 6 and 7, that is US\$113.34 million for 1993 and US\$500 million for 1994-96.

E. Implementation of paragraph 4 of Article 4 of the Protocol

56. *Background:* Paragraph 4 of Article 4 reads as follows:

"By 1 January 1994, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex A. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol."

Proposed action by the Meeting

57. The Meeting of the Parties may wish to request the Technology and Economic Assessment Panel to study and report, through the Secretariat, by the end of May 1993, on the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex A.

Annex I

TERMS OF REFERENCE OF THE EXECUTIVE COMMITTEE

1. The Executive Committee of the Parties is established to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund under the Financial Mechanism.

2. The Executive Committee shall consist of seven Parties from the group of Parties operating under paragraph 1 of Article 5 of the Protocol and seven Parties from the group of Parties not so operating. Each group shall select its Executive Committee members. The members of the Executive Committee shall be formally endorsed by the Meeting of the Parties.

3. The Chairman and Vice-Chairman shall be selected from the fourteen Executive Committee members. The office of Chairman is subject to rotation, on an annual basis, between the Parties operating under paragraph 1 of Article 5 and the Parties not so operating. The group of Parties entitled to the chairmanship shall select the Chairman from among their members of the Executive Committee. The Vice-Chairman shall be selected by the other group from within their number.

4. Decisions by the Executive Committee shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be taken by a two-thirds majority of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 and a majority of the Parties not so operating present and voting.

5. The meetings of the Executive Committee shall be conducted in those official languages of the United Nations required by members of the Executive Committee. Nevertheless, the Executive Committee may agree to conduct its business in one of the United Nations official languages.

6. Costs of Executive Committee meetings, including travel and subsistence of Committee participants from Parties operating under paragraph 1 of Article 5, shall be disbursed from the Multilateral Fund as necessary.

7. The Executive Committee shall ensure that the expertise required to perform its functions is available to it.

8. The Executive Committee shall meet at least twice a year.

9. The Executive Committee shall adopt other rules of procedure on a provisional basis and in accordance with paragraphs 1 to 8 of the present terms of reference. Such provisional rules of procedure shall be submitted to the next annual meeting of the Parties for endorsement. This procedure shall also be followed when such rules of procedure are amended.

10. The functions of the Executive Committee shall include:

(a) To develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources;

(b) To develop the three-year plan and budget for the Multilateral Fund, including allocation of Multilateral Fund resources among the agencies identified in Paragraph 5 of Article 10 of the Amended Protocol;

(c) To supervise and guide the administration of the Multilateral Fund;

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(d) To develop the criteria for project eligibility and guidelines for the implementation of activities supported by the Multilateral Fund;

(e) To review regularly the performance reports on the implementation of activities supported by the Multilateral Fund;

(f) To monitor and evaluate expenditure incurred under the Multilateral Fund;

(g) To consider and, where appropriate, approve country programmes for compliance with the Protocol and, in the context of those country programmes, assess and, where applicable, approve all project proposals or groups of project proposals where the agreed incremental costs exceed \$500,000;

(h) To review any disagreement by a Party operating under paragraph 1 of Article 5 with any decision taken with regard to a request for financing by that Party of a project or projects where the agreed incremental costs are less than \$500,000;

(i) To assess annually whether the contributions through bilateral cooperation, including particular regional cases, comply with the criteria set out by the Parties for consideration as part of the contributions to the Multilateral Fund;

(j) To report annually to the meeting of the Parties on the activities exercised under the functions outlined above, and to make recommendations as appropriate;

(k) To nominate, for appointment by the Executive Director of UNEP, the Chief Officer of the Fund Secretariat, who shall work under the Executive Committee and report to it; and

(l) To perform such other functions as may be assigned to it by the Meeting of the Parties.

Annex II

TERMS OF REFERENCE FOR THE MULTILATERAL FUND

A. Establishment

1. A Multilateral Fund shall be established.

B. Roles of the implementing agencies

2. Under the overall guidance and supervision of the Executive Committee in the discharge of its policy-making functions:

(a) Implementing agencies shall be requested by the Executive Committee, in the context of country programmes developed to facilitate compliance with the Protocol, to cooperate with and assist the Parties within their respective areas of expertise; and

(b) Implementing agencies shall be invited by the Executive Committee to develop an inter-agency agreement and specific agreements with the Executive Committee acting on behalf of the Parties.

3. Implementing agencies shall apply only those considerations relevant to effective and economically efficient programmes and projects which are consistent with any criteria adopted by the Parties.

4. Specifically:

(a) The United Nations Environment Programme shall be invited by the Executive Committee to cooperate and assist in political promotion of the objectives of the Protocol, as well as in research, data gathering and the clearing-house functions;

(b) The United Nations Development Programme and such other agencies which, within their areas of expertise, may be able to assist shall be invited by the Executive Committee to cooperate and assist in feasibility and pre-investment studies and in other technical assistance measures;

(c) The World Bank shall be invited by the Executive Committee to cooperate and assist in administering and managing the programme to finance the agreed incremental costs;

(d) Other agencies, in particular regional development banks, shall also be invited by the Executive Committee to cooperate with and assist it in carrying out its functions.

5. The Executive Committee shall draw up reporting criteria and shall invite the implementing agencies to report regularly to it in accordance with those criteria.

6. The Executive Committee shall invite the implementing agencies, in fulfilling their responsibilities in respect of the Multilateral Fund, to consult each other regularly. It shall also invite the heads of the agencies or their representatives to meet at least once a year to report on their activities and consult on cooperative arrangements.

7. The implementing agencies shall be entitled to receive support costs for the activities they undertake, having reached specific agreements with the Executive Committee.

C. Budget and contributions

8. The Multilateral Fund shall be financed in accordance with Paragraph 6 of Article 10 of the amended Protocol. In addition, contributions may be made by countries not Party to the Protocol, and by other governmental, intergovernmental, non-governmental and other sources.

9. The contributions referred to in paragraph 6 of Article 10 of the amended Protocol are to be based on the scale of contributions decided by the annual Meeting of the Parties. Bilateral and, in particular cases, regional cooperation by a country not operating under paragraph 1 of Article 5 may, according to criteria adopted by the Parties, be considered as a contribution to the Multilateral Fund up to a total of twenty per cent of the total contribution by that Party as decided by the annual Meetings of the Parties.

10. All contributions other than the value of bilateral and agreed regional cooperation referred to in paragraph 9 above shall be in convertible currency or, in certain circumstances, in kind and/or in national currency.

11. Contributions from States that become Parties not operating under paragraph 1 of Article 5 after the beginning of the financial period of the mechanism shall be calculated on a *pro rata* basis for the balance of the financial period.

12. Contributions not immediately required for the purposes of the Multilateral Fund shall be invested under the authority of the Executive Committee and any interest so earned shall be credited to the Multilateral Fund.

13. Budget estimates, setting out the income and expenditure of the Multilateral Fund prepared in United States dollars, shall be drawn up by the Executive Committee and submitted to the regular meetings of the Parties to the Protocol.

14. The proposed budget estimates shall be dispatched by the Fund Secretariat to all Parties to the Protocol at least sixty days before the date fixed for the opening of the regular meeting of the Parties to the Protocol at which they are to be considered.

15. Resources remaining in the Interim Multilateral Fund shall be transferred to the Multilateral Fund established under the financial mechanism.

D. Administration

16. The World Bank shall be invited by the Executive Committee to cooperate with and assist it in administering and managing the programme to finance the agreed incremental costs of Parties operating under paragraph 1 of Article 5. Should the World Bank accept this invitation, in the context of an agreement with the Executive Committee, the President of the World Bank shall be the Administrator of this programme, which shall operate under the authority of the Executive Committee.

17. The Executive Committee shall encourage the involvement of other agencies, in particular the regional development banks, in carrying out its functions effectively in relation to the programme to finance the agreed incremental costs.

18. The Fund Secretariat operating under the Chief Officer, co-located with the United Nations Environment Programme (UNEP) at Montreal, Canada, shall assist the Executive Committee in the discharge of its functions. The Multilateral Fund shall cover Secretariat costs, based on regular

budgets to be submitted for decision by the Executive Committee.

19. In the event that the Chief Officer of the Fund Secretariat anticipates that there may be a shortfall in resources over the financial period as whole, he shall have discretion to adjust the budget approved by the Parties so that expenditures are at all times fully covered by contributions received.

20. No commitments shall be made in advance of the receipt of contributions, but income not spent in a budget year and unimplemented activities may be carried forward from one year to the next within the financial period.

21. At the end of each calendar year, the Chief Officer of the Fund Secretariat shall submit to the Parties accounts for the year. The Chief Officer shall also, as soon as practicable, submit the audited accounts for each period so as to coincide with the accounting procedures of the implementing agencies.

22. The Fund Secretariat and the implementing agencies shall cooperate with the Parties to provide information on funding available for relevant projects, to secure the necessary contacts and to coordinate, when requested by the interested Party, projects financed from other sources with activities financed under the Protocol.

23. The financing of activities or other costs, including resources channelled to third party beneficiaries, shall require the concurrence of the recipient Governments concerned. Recipient Governments shall, where appropriate, be associated with the planning of projects and programmes.

24. Nothing shall preclude a beneficiary Party operating under paragraph 1 of Article 5 from applying for its requirements for agreed incremental costs solely from the resources available to the Multilateral Fund.
