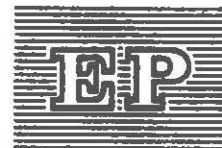




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UNEP Ad Hoc Working Group of Legal
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of a Global Framework Convention for the
Protection of the Ozon~~e~~ Layer

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EXTRACTS FROM THE REPORT OF THE AD HOC MEETING
OF SENIOR GOVERNMENT OFFICIALS EXPERT
IN ENVIRONMENTAL LAW

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PROTECTION OF THE STRATOSPHERIC OZONE LAYER

(submitted by the delegations of Fin-
land and Sweden)

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LEGAL ASPECTS AND ELEMENTS
OF A GLOBAL FRAMEWORK CONVENTION
FOR THE PROTECTION OF THE STRATOSPHERIC OZONE LAYER

(submitted by the delegations of
Finland, Sweden and Switzerland)

APPENDIX I

PROTECTION OF THE STRATOSPHERIC OZONE LAYER (Submitted by the delegation of Finland and Sweden)

1. Introduction

1. Protection of the ozone layer is a subject area identified in UNEP Governing Council decision 9/19 for consideration by the Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law.
2. The Governing Council recognized the need for world-wide co-operation in this field as early as 1977, in its decision 84 C (V) on the establishment of the Co-ordinating Committee on the Ozone Layer and on the World Plan of Action on the Ozone Layer.
3. At its ninth session, in May 1981, the Governing Council recognized
"... the desirability of initiating work aimed at the elaboration of a global framework convention which would cover monitoring, scientific research and the development of best available and economically feasible technologies to limit and gradually reduce emissions of ozone-depleting substances, as well as the development of appropriate strategies and policies..." (decision 9/13 B).

The Governing Council therefore decided "to initiate work aimed at the elaboration of a global framework convention for the protection of the ozone layer", and to that end further decided to establish "an ad hoc working group of legal and technical experts".

4. This paper attempts to identify principles and concepts in existing legal instruments and conventions, as well as basic principles of international law, which can assist in determining the content and format of a convention for the protection of the ozone layer.

2. Protection of the atmosphere

5. The protection of the atmospheric environment is the least developed link in the chain of protection measures now evolving in international environmental law. International co-operation for the protection of the marine environment is quite extensive, and co-operation in protection, inter alia, living resources, ecosystems and wildlife is of considerable importance. However, with respect to the atmosphere there is not much to report from the field of international law.
6. However, some trends can be identified. The Partial Nuclear Test Ban Treaty of 1963 prohibiting nuclear explosions in the atmosphere, is worthy of note. The 1974 Helsinki Convention (Convention on the Protection of the Marine Environment of the Baltic Sea Area) was the first document of its kind to include airborne pollution. Article 5

Imposes an obligation on the Contracting Parties "to counteract the introduction, whether airborne, water-borne or otherwise, into the Baltic Sea Area of hazardous substances...". The Nordic Convention on the Protection of the Environment concluded in Stockholm on 19 February 1974 between Denmark, Finland, Norway and Sweden embraces all kinds of pollution. Air pollution is explicitly mentioned in article 1.

7. The most interesting convention in this context is the ECE Convention on Long-range Transboundary Air Pollution, adopted by 35 States in November 1979.

In its basic commitment the Convention provides that "the Contracting Parties ... shall endeavour to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution". In order to achieve this objective the parties undertake to use "the best available technology is economically feasible...". Within the framework of the Convention the parties will develop "policies and strategies which shall serve as a means of combating the discharge of air pollutants...". As a support for national or joint decisions on measures to be taken the parties will engage in extensive exchanges of information and scientific co-operation. Such exchanges and co-operation in research work is of great importance in order to obtain a data base that can be accepted by all parties for future negotiations on measures to be taken.

3. Major elements and principles of a convention for the protection of the stratospheric ozone layer

8. The basis for a convention can be derived from the fundamental principle of international law that States have a duty not to cause damage to the environment of other States or to areas beyond the limits of national jurisdiction. The responsibility of States in this area is reflected in principle 21 of the 1972 Stockholm Declaration.

9. According to Governing Council decision 9/13 B the international instrument for the protection of the ozone layer should be a global framework convention.

(a) Scope

10. A global approach is required by the very nature of the issue. The ozone layer is a global environmental resource, and efforts to protect it should be world-wide in scope. The protection of the ozone layer can only be ensured by concerned international action. Thus a general treaty open to all States and international organizations seems to be the most appropriate way of ensuring its protection.

(b) Structure

11. Central to the framework concept is flexibility. The interactions between ecosystems and the atmosphere are very complex. Many chemical, physical and biological processes and reactions are as yet unknown. A convention aiming at protecting the ozone layer should be easily adaptable to accommodate new knowledge about these interactions.

12. A system frequently used in the environmental context is a convention composed of parts, the convention itself and annexes. The technical requirements defined in the annexes can be amended more expeditiously than the convention itself. A separate organ is often vested with the power to effect changes in the technical annexes, subject to a "contracting procedure" or "optional clause" whereby a State that does not wish to enter a reservation by a decision of the organ is given the right to enter a reservation against the decision.

13. Co-operation for the protection of the ozone layer must be flexible in operation and adaptable to changing circumstances and constantly developing needs. Knowledge and experience must be made as simple as possible, and ways must be open for new co-operative efforts to be initiated without delay. This fundamental concept the main body of such a convention could be shaped as a broad framework laying down basic principles. Provisions should be limited to parts of the convention where amendments are not expected, while the annexes, though an integral part of the convention, should be more open to amendments reflecting both technical requirements and the best available scientific and technical knowledge at any given time.

(c) Fundamental Principles

14. A convention should include a general obligation for States to protect the ozone layer and to that end limit and as far as possible gradually reduce and prevent emissions under their jurisdiction or control which may have adverse effects on the ozone layer.

15. If, however, a convention on the protection of the ozone layer is to be truly international, it should also include an obligation for States to co-operate actively with each other and with the competent international bodies in developing policies and strategies which will serve as a means of combating the discharge of substances which have or are likely to have adverse effects on the ozone layer.

16. These two fundamental obligations imply a third responsibility for carrying out international cooperation at the national level.

17. Concerted measures should be taken to close the gap between international intention and national action. At the national level States must use the best available practical means to minimize the discharge from all sources of substances having or likely to have adverse effects on the ozone layer. The objective of this responsibility is to keep the level of such discharge as low as possible, taking into account economic and social factors, international cooperation.

18. Although obligations will be general preventive measures, certainly it is difficult to establish norms concerning reparation within a framework convention of a general nature. However, it is desirable to have means to settle controversies in certain cases.

(d) Exchanges of information

19. Exchanges of information are necessary to fulfil the obligations mentioned here. Within the framework of a convention the States should regularly exchange relevant legal, scientific and technical information related to activities designed to combat emissions of substances which may have an effect on the ozone layer, and should also forward information to institutions established under the convention.

(e) Transfer of technology and knowledge

20. The transfer of technology and knowledge is of particular importance in realizing the intentions of a global convention in this relatively unexplored field. The transfer is important for both developed and developing States, and should be promoted within the framework of the convention.

(f) Institutional aspects

21. In decision 9/13 B, the Governing Council explicitly protected "the ... mandate of the United Nations Environment Programme and enhancing the global environment". Since the world has decided to entrust the initial drafting of a convention to UNEP, it is logical that, when a convention is concluded, UNEP should have permanent functions in its implementation. It is therefore a reasonable function that UNEP will act as depositary, perform secretariat and also - as part of its over-all environmental monitoring - coordinating and also - as part of its over-all environmental monitoring - necessary scientific research.

(g) Final clauses

22. The final clauses should state that the convention shall be open to all States and intergovernmental organizations, and shall be subject to reservations.

APPENDIX II

DRAFT RECOMMENDATION ON LEGAL ASPECTS AND ELEMENTS OF A
GLOBAL FRAMEWORK CONVENTION FOR THE PROTECTION OF THE
STRATOSPHERIC OZONE LAYER

(Submitted by the delegations of Finland, Sweden and Switzerland)

1. In view of the nature of the issue, the convention must be truly global in structure and content.
2. Also bearing in mind the nature of the issue, the convention must be sufficiently flexible to be easily adaptable to changing circumstances as new scientific evidence becomes available.
3. It would appear appropriate that the convention should contain two separate parts:
 - (a) A main part constituting the broad and comprehensive framework of the convention;
 - (b) Another part made up of an annex or annexes containing detailed provisions and technical requirements, amendments to which may be agreed upon more expeditiously than amendments to the main part.
4. The basic provision in the convention should be a general obligation for the contracting parties to protect the ozone layer from external influences that may cause disturbances in the basic properties of the ozone layer and cause subsequent hazards for man, biosphere and climate. A further obligation to co-operate actively in developing policies and strategies for this purpose should also be included. National efforts and measures are of prime importance.
5. The convention should contain provisions for the monitoring and assessment of changes in the ozone layer, as well as for scientific research in the field.
6. The convention should also contain provision for a regular exchange of information on relevant subjects.
7. Provisions relating to the transfer of technology should also be incorporated in the convention, to enable contracting parties to fulfil their obligations under the convention.
8. As regards institutional arrangements, UNEP should be designated the depositary and entrusted with necessary secretariat functions as well as a co-ordinating role with regard to the monitoring and assessment components of the convention.
9. A policy-making organ responsible for the implementation of the provisions of the convention should be part of the basic institutional arrangements.

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