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the Ozone Layer
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DRAFT CONVENTION FOR THE PROTECTION OF THE
OZONE LAYER, WITH COMMENTARY

Text prepared by the UNEP secretariat

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INTRODUCTION

At its first session (Stockholm, 20 - 28 January 1982), the Ad Hoc Working Group of Legal and Technical Experts for the Elaboration of a Global Framework Convention for the Protection of the Ozone Layer recommended inter alia that, in the event of the Governing Council deciding that a second session of the Working Group should be held, the secretariat of the United Nations Environment Programme (UNEP) should prepare a new text of a draft framework convention for the protection of the ozone layer. The text was to be based on comments and proposals made during the Working Group's first session on the structure, format and elements of the convention, and was to contain alternative provisions and commentaries as required.

2. By decision 10/17 of 31 May 1982, the Governing Council approved the recommendations of the Working Group for its future work, and requested the Executive Director to convene a second session of the Working Group in autumn 1982 and to submit to the Governing Council at its eleventh session a further report on the Working Group's work.

3. Accordingly, the present text of the draft international convention for the protection of the ozone layer has been prepared. In preparing the text, a number of relevant international conventions, protocols, and principles were examined, including the draft international convention for the protection of the stratospheric ozone layer submitted by the delegations of Finland, Norway and Sweden to the Working Group at its first session (UNEP/WG 69/3). These instruments are listed in paragraph 8 below. In addition, the relevant conclusions and recommendations of the Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law (Montevideo, 28 October - 6 November 1981) were taken into consideration.

4. As recommended by the Working Group, the present text of the draft convention is accompanied by commentaries. The purpose of the commentaries is to explain the objectives and meaning of each provision and, where alternatives are proposed, their reasons and legal implications. The commentaries also refer, wherever applicable, to the relevant provisions of the other international legal instruments referred to above, as well as to the relevant parts of the report of the Working Group on its first session. 1/

5. In the present text of the draft convention, the articles or their parts concerning protocols and/or annexes to the Convention have been placed between in square brackets. The reason for this is that, while the Working Group at its first session discussed the need to supplement the draft convention with annexes and/or protocols which would contain, for example, specific provisions on regulatory measures to be adopted under the convention, no decision was taken as to the desirability of one or the other, or both. In this connexion, the attention of the Working Group is drawn to a discussion paper on alternative structures and formats for annexes and/or protocols, prepared by the secretariat in accordance with the recommendation of the Working Group at its first session. 2/

1/ Document UNEP/WG. 69/10.

2/ UNEP/WG./78/3

6. Similarly, with respect to articles 7 and 8 of the draft convention, the attention of the Group is drawn to a paper on the institutional arrangements of the convention, also prepared by the secretariat in accordance with the recommendation of the Working Group at its first session. 3/

7. The size of the present draft convention would not require grouping of the articles into several chapters as was done for the Convention on the Law of the Sea. However, it may be useful to state the general characteristics of the provisions incorporated in the present text. There are nine categories of provisions as follows:

1. Preamble
2. Use of terms: Article 1 - Definitions.
3. General obligations: Article 2 - General obligations
4. Co-operation: Article 3 - Research and monitoring;
Article 4 - Scientific and technological co-operation;
Article 5 - Periodic reports;
5. Institutional arrangements: Article 6 - Conference of the Contracting Parties; Article 7 - Secretariat;
Article 8 - [Scientific-technological advisory body/mechanisms].
6. Protocols: Article 9 [Adoption of protocols].
7. Amendments and annexes: Article 10 - Amendment of the Convention [or Protocols], [Article 11 - Status of annexes] [Article 12 - Adoption and amendment of annexes]; [Article 13 - Amendment by simplified procedure].
8. Settlement of Disputes: Article 14 - Settlement of disputes.
9. Final provisions: Article 15 - Signature; Article 16 - Ratification, acceptable or approval; Article 17 - Accession; Article 18 - Entry into force of the Convention; Article 19 - Reservations; Article 20 - Withdrawal; Article 21 - Depositary; Article 22 - Authentic texts.

3/ UNEP/WG.78/4

4/ A/CONF.62/L.78

8. For the purpose of this commentary a number of international instruments have been examined. They are cited as follows:

Charter of the UN - Charter of the United Nations (San Francisco, 26 June 1945);

Convention on Narcotic Drugs - Single Convention on Narcotic Drugs (New York, 30 March 1961);

Vienna Convention - Vienna Convention on the Law of Treaties (Vienna, 23 May 1969);

Oslo Convention - Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo, 15 February 1972);

Convention on International Trade in Endangered Species: - Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973);

London Convention - Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London, 29 December 1972);

MARPOL Convention - International Convention for the Prevention of Pollution from Ships (London, 2 November 1973);

Helsinki Convention - Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 22 March 1974);

Paris Convention - Convention for the Prevention of Marine Pollution from Land-Based Sources (Paris, 4 June 1974);

Barcelona Convention - Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona, 16 February 1976);

Barcelona Dumping Protocol - Protocol for the Prevention of Pollution of Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona, 16 February 1976);

Barcelona Emergency Protocol - Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency (Barcelona, 16 February 1976);

Athens Protocol - Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources (Athens, 17 May 1980);

Rhine Convention - Convention for the Protection of the Rhine Against Chemical Pollution (Bonn, 3 December 1976);

Kuwait Convention - Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait, 24 April 1978);

Convention on the Conservation of Migratory Species - Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979);

Geneva (ECE) Convention - Convention on Long-Range Transboundary Air Pollution (Geneva, 13 November 1979);

Abidjan Convention - Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Abidjan, 23 March 1981);

Jeddah Convention - Regional Convention for the Conservation of the Marine Environment of the Red Sea and Gulf of Aden (Jeddah, February 1982);

Convention on the Law of the Sea - Third United Nations Conference on the Law of the Sea, (Drafting Committee, Working Paper 1, 7 June 1982);

Stockholm Declaration - Declaration of the United Nations Conference on the Human Environment (Stockholm, 16 June 1972);

Principles on shared natural resources - Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (UNEP/IG.12/2, 8 February 1978).

Finland/Norway/Sweden draft - Draft International Convention for the Protection of the Stratospheric Ozone Layer. Text submitted by the delegations of Finland, Norway and Sweden to the Ad Hoc Working Group of Legal and Technical Experts for Elaboration of a Global Framework Convention for the Protection of the Ozone Layer at its first session (UNEP/WG.69/3, 1 January 1982).

THE PARTIES TO THIS CONVENTION

[AWARE of the potentially harmful impact of modification of the ozone layer which may be caused by the world-wide emission of chlorofluorocarbons and other compounds,]

[AWARE of the potentially harmful impact on human health or the environment through human modification of stratospheric ozone,]

RECALLING the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21, which provides that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

RECALLING further decisions 84 C (V) of 25 May 1977, 8/7 B of 29 April 1980 and 9/13 B of 26 May 1981 of the Governing Council of the United Nations Environment Programme,

MINDFUL of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of the United Nations Environment Programme,

AWARE that measures to protect the ozone layer from modifications due to human activities require international co-operation and action,

RECOGNIZING the co-ordinating and catalytic role of the United Nations Environment Programme, which provides an appropriate institutional framework for international co-operation on problems concerning the ozone layer,

DETERMINED to protect man and the environment from adverse effects of modifications of the ozone layer,

HAVE AGREED AS FOLLOWS:

Commentary

The preamble of the text is based on the draft presented by Finland, Norway and Sweden during the first session of the Working Group.

The first, second, sixth and eighth paragraphs of the preamble state a general concern over the problem of the protection of the ozone layer.

The first two preambular paragraphs are alternatives, and for that reason are still in brackets. In the second paragraph the term "stratospheric ozone" is used, though this term is not used in the remainder of the text of the draft convention, except in Alternative 4 of article 2; the reason for this is explained in the commentary to article 1 (Definitions). The use of the term "stratospheric ozone" in these places is to remind the experts that an alternative description of the ozone layer could be considered by the Ad Hoc Working Group.

The third paragraph of the preamble reflects the fact that obligation to protect the ozone layer is indirectly embodied in principle 21 of the Stockholm Declaration.

The fourth, fifth and seventh paragraphs recall several decisions of the UNEP Governing Council concerning the protection of the ozone layer, and stress the co-ordinating and catalytic role of UNEP in the implementation of the World Plan of Action on the Ozone Layer.

Article 1

DEFINITIONS

For the purpose of this Convention:

1. "The ozone layer" means the total ozone above the earth's surface, most of which is found in the stratosphere.
2. "Adverse effects" means changes in the physical environment or biota, including changes in climate, which are, taken over-all, deleterious to human health or to the composition, resilience and productivity of natural and managed ecosystems.

Commentary

This article incorporates the text of the definitions prepared by technical experts. The need to have the terms "the ozone layer" and "adverse effects by depletion" precisely defined was stressed during the first session of the Working Group (UNEP/WG.69/10, para. 20). However, the question of whether the objective of the convention should be to protect atmospheric ozone in general or only the "stratospheric ozone layer" has not fully been discussed by the Working Group. Decision 9/13 B refers (para. 1) simply to "a global framework convention for the protection of the ozone layer", whereas the recommendations of the Montevideo Meeting refer to "the protection of the stratospheric ozone layer".

Very few technical experts were represented at the Montevideo Meeting. If the purpose of the convention were to protect total ozone, the Working Group's concern would be not only with chlorofluorocarbons and other chlorine-containing compounds, but also with other compounds and activities of man.

Most of the atmospheric ozone is to be found in the stratosphere, and most of the predicted anthropogenic destruction of atmospheric ozone also occurs in the stratosphere, particularly above 35 km, as a result of chemical reactions involving chlorofluorocarbons. Of the chlorofluorocarbons, CFC-11 and CFC-12 are manufactured in the greatest quantity and hence, as well as owing to their stability, constitute the principal current danger of destruction of atmospheric ozone. Consequently, most attention has been focused on quantifying and reducing the threat of ozone destruction by CFC-11 and CFC-12. This approach has led to popular usage of the phrase "depletion of the stratospheric ozone layer" and its variations. The phrase is acceptable for common usage, but unfortunately, it leads the less well-informed to assume that "protection of the stratospheric ozone layer against depletion" will definitely prevent adverse effects. This is not necessarily so.

Adverse effects occur as a result of increased amounts of UV-B. All of the ozone between the earth's surface and the sun acts to filter out some UV-B; thus it is total atmospheric ozone, and not only the ozone in a particular part of the atmosphere, that serves to protect man, plants, and animals.

Although "total atmospheric ozone" should be the focus of attention, the term "ozone layer" is in such widespread use that it is probably best to continue using it, while defining it in this specific manner for the purposes of the convention.

Adverse effects can also occur through modification of the earth's climate. Because ozone absorbs certain wavelengths of radiation, it has a "greenhouse effect" similar to that of atmospheric carbon dioxide, water vapour and some other gases. A change in its distribution with respect to altitude would result in a change of temperature at one altitude relative to another. This in turn would have an effect on climate which cannot presently be quantified. It is conceivable that the vertical distribution of ozone could change without a net change in total atmospheric ozone. For this reason, use of the word "modification" (which would include both depletion and redistribution in space or time) is preferable on technical grounds.

It is not only chlorofluorocarbons that act to reduce total ozone. Other chlorocarbons, and oxides of nitrogen from supersonic aircraft at high altitudes, fertilizers and changes in land use also have this effect. Aircraft operating in the lower atmosphere and increasing carbon dioxide act to increase total ozone. Protection against adverse effects resulting from modifications of total atmospheric ozone is therefore likely to prove a complex matter requiring policies and strategies that may change over time.

If the framework convention is to be valid despite changes in scientific understanding and, over time, in the relative importance of different chemical emissions and activities of man, then this definition of the ozone layer is to be preferred. Adaptability can be achieved by amending the protocols as necessary.

Article 2

GENERAL OBLIGATIONS

Alternative 1

1. The Contracting Parties shall limit, reduce and prevent activities under their jurisdiction or control which have or are likely to have adverse effects resulting from modifications of the ozone layer.
2. To this end they shall take all relevant legislative, administrative, technical and other measures, in particular as specified in this Convention [and protocols and/or annexes thereto].
3. Within the framework of this Convention, the Contracting Parties shall co-operate, by means of monitoring, research, exchange of information and transfer of technology, in developing and harmonizing policies, strategies and measures for minimizing the release of substances which cause or are likely to cause modifications of the ozone layer.

Alternative 2

1. The Contracting Parties shall protect the ozone layer and, to that end, limit and, as far as possible, gradually reduce and prevent activities under their jurisdiction or control which may have adverse effects resulting from modifications of the ozone layer.

2-3. Same as Alternative 1, paragraphs 2-3 above.

Alternative 3

1. The Contracting Parties shall, either individually or jointly, take all appropriate measures in accordance with the provisions of this Convention [and those protocols in force to which they are party] to protect man and the environment against adverse effects resulting from modifications of the ozone layer.

2. Same as Alternative 1, paragraph 3.

[3. The Contracting Parties shall co-operate in the formulation and adoption of protocols prescribing agreed measures, procedures and standards for the implementation of this Convention.]

4. The Contracting Parties shall take all necessary measures to ensure that activities under their jurisdiction or control are so conducted that they do not cause damage to areas beyond their national jurisdiction through modification of the ozone layer.

5. The Contracting Parties further pledge themselves to co-operate in promoting further, within the competent international bodies, programmes and measures concerning the protection of the ozone layer.

Alternative 4

1. The Contracting Parties shall protect human health and the environment from adverse effects caused by modification of stratospheric ozone layer. To this end, the Contracting Parties shall promote research, monitoring, and information exchange in order to determine whether human activities could modify or are modifying stratospheric ozone. If it is determined that such modifications would have adverse consequences on human health or the environment, then the Contracting Parties shall endeavour to take appropriate measures with regard to ozone-modifying substances.

2. The Contracting Parties, within the framework of this Convention, shall co-operate in monitoring, research, and exchange of information. The Contracting Parties shall identify and determine the need for policies, strategies, and measures regarding potential net depletion of stratospheric ozone.

[3. The Contracting Parties shall co-operate in the formulation and adoption of protocols, as necessary, prescribing agreed measures, procedures and standards for the implementation of this Convention.]

4. The Contracting Parties further pledge themselves to co-operate with and support all competent international bodies, programmes and measures concerning the protection of stratospheric ozone.

Commentary

Alternative 1

Paragraph 1

This paragraph contains the formula used by the Montevideo Meeting. This is in accordance with the recommendation made at the first session of the Working Group (UNEP/WG.69/10, para. 19) that with respect to a basic obligation it would be convenient to keep the original Montevideo wording. It should be emphasized that it is a duty of States to take the necessary steps to prevent, reduce and eliminate adverse effects on the environment.

A number of international treaties concerning environmental protection refer to this point, for example the Barcelona Convention, article 4, paragraph 1, the Helsinki Convention, article 10, the Kuwait Convention, articles III and VII, the Paris Convention, article 1 and the Convention on the Law of the Sea, articles 192 and 194.

The obligation of States to limit, reduce and prevent activities under their jurisdiction or control which have or are likely to have adverse effects on the environment stems from the obligation to protect the environment which is already established as a general principle of environmental law. This principle may be derived equally from national legislation and from international conventions.

An important question to be asked is to what extent States are bound to limit, reduce and prevent activities that have or are likely to have adverse effects to the environment. This should be determined by the content of the convention and its protocols or/and annexes.

Paragraph 2

Paragraph 2 of article 2 is common to Alternative 1 and Alternative 2. This formulation was proposed in the Finland/Norway/Sweden draft, article 1, paragraph 2.

Paragraph 3

The paragraph, which is common to Alternatives 1 (para. 3), 2 (para. 3) and 3 (para. 2), elaborates specific means by which to arrive at policies, strategies and measures to implement such fundamental obligations. Similar provisions are found in article 2 of the Finland/Norway/Sweden Draft and article 3 of the Geneva (ECE) Convention.

Alternative 2

The comments concerning Alternative 1, paragraph 1, also apply, in general, to Alternative 2, since its content is similar to Alternative 1, but more flexible, in that it uses the wording ... "limit and, as far as possible, gradually reduce and prevent". A similar more flexible approach is found in article 2 of the Geneva (ECE) Convention.

Principles 1-3 of the principles on shared natural resources are also pertinent in this respect.

Alternative 3

Paragraph 1

Alternatives 1 and 2 are more direct in binding States to apply control measures to sources, whereas this alternative takes a more gradual approach and also avoids the problem of defining the "activities ... which have or are likely to have adverse effects upon the ozone layer" as referred to in Alternatives 1 and 2.

Paragraph 3

This paragraph provides, as an option, for the formulation and adoption of protocols in which detailed regulatory measures, procedures and standards may be prescribed rather than in the Convention or its annexes.

Similar provisions are found in article 4 (2) of the Barcelona Convention, article III (b) of the Kuwait Convention and article 4(2) of the Abidjan Convention.

Paragraph 4

This paragraph refers to a special obligation concerning transboundary environmental damage in conformity with principle 21 of the Stockholm Declaration.

Similar provisions are found in article 9 of the Paris Convention, article II of the Athens Protocol, article 4 (5) of the Abidjan Convention and article 194 (2) of the Convention on the Law of the Sea.

Paragraph 5

This paragraph provides for an additional but basic obligation for Parties to co-operate in furthering the objective of the Convention to protect the ozone layer by participating actively in the relevant programmes of the competent international organizations such as UNEP, WMO and OECD. Similar provisions are found in article 4, (3) of the Barcelona Convention, article III (d) of the Kuwait Convention, article 7 of the Athens Protocol, article 4(4) of the Abidjan Convention and article 197 of the Convention on the Law of the Sea.

Alternative 4

Alternative 4 to this article, which was brought to the attention of the secretariat during the preparation of the present document, constitutes another possible approach to the general obligations article. As regards the use of the term "stratospheric ozone" in this alternative, the same comment as on paragraph 2 of the preamble is valid.

Article 3

RESEARCH AND MONITORING

The Contracting Parties undertake to initiate and cooperate in, directly or through competent international bodies, the conduct of research, as appropriate to their needs, on:

- (a) The physical aspects of the ozone layer;
- (b) The biological effects of increased UV-B radiation, particularly human health effects;
- (c) Related socio-economic matters including alternative technologies.

2. The Contracting Parties undertake, directly or through competent international bodies, and taking into full account relevant on-going activities at both the national and international levels, to promote or establish joint or complementary programmes, appropriate to their needs, for monitoring the state of the ozone layer and the sources, extent, trends and effects of its modifications, and to provide the resulting data regularly and without undue delay to world data centres that exist or may be created to receive such data.

3. The Contracting Parties undertake to co-operate, directly or through international bodies, in improving the quality and usefulness of observational data.

[4. The Contracting Parties further undertake to carry out the research and monitoring as described in annex I.]

Commentary

There was general agreement at the first session of the Working Group that the convention should contain provisions for increased co-operation in research and monitoring and for the exchange of information on its results (UNEP/WG.69/10, para. 12). Specific components of research and monitoring will be dealt with in annex I to the convention.

Provisions concerning international co-operation in research are included in some international treaties - for example the Geneva (ECE) Convention, article 7, the Oslo Convention, article 12, the Paris Convention, article 10, the Abidjan Convention, article 14 and the Convention on the Law of the Sea, article 242.

As regards monitoring, a similar approach is provided for in article 10, (3) of the Barcelona Convention. Likewise, interationally co-ordinated monitoring systems are provided for in some other international treaties. Such monitoring may be supplemented by a reporting system under which Contracting States would submit periodic reports on the data obtained to a relevant body. In this connexion, attention is drawn to article 13 of the Oslo Convention, article 11 of the Paris Convention, article 10 of the Kuwait Convention, and article 204 of the Convention on the Law of the Sea.

The "biological effects of increased UV-B radiation" mentioned in paragraph 1 (b) cover all biological effects; the wording "...particularly human health effects..." does not exclude other effects of increased UV-B radiation (for example effects on agriculture).

Article 4

SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION

Alternative 1

1. The Contracting Parties undertake, taking fully into account the relevant on-going programmes at both the national and international levels, in particular the World Plan of Action on the Ozone Layer, to promote or establish, directly or through the competent international bodies, joint or complementary programmes for data analysis and interpretation concerning the state of the ozone layer and the sources, extent, trends and effects of its possible modification.
2. The Contracting Parties shall facilitate and encourage the exchange of legal, scientific and technical information relevant to this Convention, particularly information related to:
 - (a) Activities undertaken or planned with a view to limiting and reducing activities and emissions of substances that modify or are likely to modify the ozone layer;
 - (b) Other activities under their jurisdiction or control that modify, or are likely to modify, the ozone layer.
3. The Contracting Parties shall co-operate, [in accordance with their national legislation and regulations] [and with the provisions of annex II to this Convention,] and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge in fields relating to reduction of emissions that modify, or are likely to modify, the ozone layer, particularly through:

- (a) Facilitation of licensing and of sale of alternative technologies to other countries;
- (b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;
- (c) Supply of necessary monitoring equipment and facilities needed to supplement existing monitoring systems;
- (d) Appropriate training of scientific and technical personnel.

Alternative 2

1. Same as Alternative 1, paragraph 1 above.
2. The Contracting Parties undertake to co-operate, directly or through competent international bodies, in the fields of science and technology relevant to this Convention and to exchange scientific data and other information [in accordance with the provisions of annex II to this Convention.]
3. Same as Alternative 1, paragraph 3 above.

Commentary

Paragraph 1

Paragraph 1 of this article is common to both alternatives.

Similar provisions concerning the promotion or establishment of joint or complementary programmes are included in some international treaties, such as the Oslo Convention, article 12, the Paris Convention, article 10, and the Abidjan Convention, article 14.

Paragraph 2

There was general agreement at the first session of the Working Group that several types of information in particular scientific fields, as well as other kinds of information, needed to be exchanged (UNEP/WG.69/10, para. 13 and 15).

The question to be decided is whether details concerning exchange of information should be provided in an annex to the convention, as proposed in Alternative 2, or whether a general text should be retained, as proposed in Alternative 1.

In any case, an annex was recommended to elaborate even on Alternative 1. A similar provision to Alternative 1 was included in the Finland/Norway/Sweden draft (article 3, para. 2).

Paragraph 3

Paragraph 3 of this article is common to both alternatives. At its first session, the Working Group stressed the need for co-operation in the field of

development and technology transfer (UNEP/WG.69/10, paras. 16 - 18). Some experts stated that technologies existed whereby CFCs could be replaced, but that they gave rise to socio-economic problems. They also said that it would be appropriate to consider provisions to facilitate the licensing and sale of alternative technologies to other countries. Many participants referred to the need for training for technical staff in developing countries, and the need for manuals or guidelines for the application of such technologies was also noted.

In this connexion, attention is drawn to the Stockholm Declaration which provides (principle 20) that environmental technologies should be made available to developing countries on terms which would not constitute an economic burden on them. Some indications of specific forms which this assistance could take can be found in article IX of the London Convention, article XII of the Kuwait Convention, article 10 of the Athens Protocol and article 202 of the Convention on the Law of the Sea.

A similar provision is to be found in article 5 of the Finland/Norway/Sweden draft. At the first session of the Working Group, it was also noted that consideration should be given to the problems of the confidentiality of information on proprietary data, patents and government constraints affecting the import and export of technology.

The parameters to be used for this purpose would be laid down in the annex II envisaged under this paragraph.

Article 5

PERIODIC REPORTS

Alternative 1

The Contracting Parties shall establish a periodic reporting system which shall cover all the necessary information on activities within their jurisdiction or control that have or are likely to have adverse effects resulting from modification of the ozone layer, and such other information as may be determined by the Conference of the Contracting Parties established under article 6 or requested by the [scientific-technical body mechanisms] in accordance with article 8, paragraph 2 (d). The reports shall be submitted to the Secretariat established under article 7.

Alternative 2

The Contracting Parties shall transmit to the Conference of the Contracting Parties established under article 6 and to the [scientific-technological body/mechanisms] established under article 8, through the Secretariat established under article 7, reports on the measures adopted in implementation of this Convention, as well as the data and information obtained in accordance with the provisions of article 4 and article 8, paragraph 2 (d), in such form and at such intervals as the Conference of the Contracting Parties may determine.

Commentary

The establishment of a periodic reporting system providing for the submission of national reports was considered necessary at the first session of the Working Group.

Alternative 1

The Finland/Norway/Sweden draft contains a similar article concerning periodic reports (art.4). According to this alternative the Contracting Parties would have an obligation to include in their reports "all the necessary information on activities within their jurisdiction or control that have or are likely to have adverse effects from modification of the ozone layer."

Alternative 2

This alternative is somewhat more limited in scope than Alternative 1.

The purpose of this formulation, which is included in a number of conventions (Barcelona, Kuwait, Abidjan), is not only to ensure that the Contracting Parties take action to implement the provisions of the Convention, but also to achieve the greatest possible degree of harmonization between the measures adopted by individual countries.

Article 6

CONFERENCE OF THE CONTRACTING PARTIES

1. The first meeting of the Conference of the Contracting Parties shall be convened by the Executive Director of the United Nations Environment Programme [not later than one year] after the entry into force of this Convention. Thereafter, [ordinary] meetings of the Conference of the Contracting Parties may be held [at regular intervals to be determined by the Conference. Extraordinary meetings of the Conference of the Contracting Parties may be held at such other times as may be deemed necessary by the Conference, or] at the written request of any Contracting Party, provided that such a request is supported by at least one third of the Contracting Parties.

2. At its first meeting, the Conference of the Contracting Parties shall agree upon and adopt rules of procedure and financial rules for itself and for its subsidiary bodies established under article 8, as well as financial provisions governing the functioning of the secretariat established under article 7.

3. The Conference shall keep under continuous review the implementation of this Convention, and, in addition, shall:

- (a) Consider periodic reports submitted through the Secretariat in accordance with article 5 as well as reports submitted by [the scientific-technological advisory body/mechanisms] established under article 8 of this Convention and by the scientific, technical or legal working groups referred to in subparagraph (h) below;
- (b) Review the state of the ozone layer;
- (c) Define common policies, strategies and measures, in accordance with the provisions of article 2 for minimizing the release of substances causing or likely to cause modification of the ozone layer, and make recommendations on any other measures relating to this Convention;
- (d) Adopt programmes and measures, in accordance with the provisions of article 2, for minimizing the release of substances causing or likely to cause modification of the ozone layer, as well as programmes for research and monitoring, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge in accordance with the provisions of articles 3 and 4;
- (e) Consider and adopt amendments to this Convention [as well as to the protocols and/or annexes thereto] as laid down in article[s] 10 [and 12];
- [(f) Consider the need for new protocols.]
- [(g) Consider and adopt annexes to this Convention as laid down in article 12];
- (h) Establish such scientific, technical or legal working groups as are deemed necessary for the implementation of this Convention;
- (i) Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Health organization, [and] the World Meteorological Organization [and

the Co-ordinating Committee on the Ozone Layer], in scientific research and monitoring and other activities pertinent to the objectives of this Convention, and make use, as appropriate, of information from such bodies and committees;

- (j) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention [and the protocols thereto].

4. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Contracting Parties by observers who shall have the right to participate in the debate without the right to vote. Any body or agency, whether national or international, governmental or non-governmental, [technically] qualified in fields relating to the protection of the ozone layer, which has informed the secretariat of its wish to be represented at a meeting of the Conference as an observer, may be admitted unless [at least one third of] the Contracting Parties present object. Once admitted, the observers of such bodies or agencies shall have the right to participate in the debate without the right to vote [at that meeting].

Commentary

There was general agreement at the first session of the Working Group that there should be a conference of the contracting parties. It was proposed that the convention should provide for the convening of the first meeting of the conference at a specified time after the convention's entry into force and that the conference itself should decide on the convening of further meetings (UNEP/WG.59/10, para 24).

Periodic meetings of the Contracting Parties are provided for under article XIV of the London Convention, article 14 of the Barcelona Convention, article 14 of the Athens Protocol, article 17 of the Abidjan Convention and other international instruments requiring review and adjustment of their technical provisions. A similar provision is contained in the Finland/Norway/Sweden draft (art. 7).

The part of paragraph 1 in square brackets sets out details concerning the convening of ordinary and extraordinary meetings of the Contracting Parties; under this wording the regular meetings of the conference of the contracting parties would be determined by the conference itself. However, during the preparation of this draft the attention of the secretariat was drawn to the possibility of leaving to the Contracting Parties all decisions concerning their meetings. These two possibilities are included in this paragraph.

At the first session of the Working Group some experts proposed that an interim institutional arrangement should be provided for, pending the entry into force of the convention (UNEP/WG.69/10, para. 24). This proposal, however, is not introduced in the present text, as it would require a separate resolution to be effective prior to the entry into force of the convention.

Similar steps were taken in the case of the Barcelona Convention, the Kuwait Convention, the Abidjan Convention and the Geneva (ECE) Convention.

Paragraph 4

At the first session of the Working Group the need to determine more clearly the role of the United Nations specialized agencies and other national and international governmental and non-governmental organizations was underlined (UNEP/WG.69/10, para. 23). This paragraph provides for the participation of the United Nations bodies and organizations, non-party States and national or international governmental or non-governmental organizations concerned in the meetings of the conference of the contracting parties, as observers.

The question to be decided is whether, once admitted, observers should have the right to participate in the debate at that particular meeting or at every single meeting of the conference of the contracting parties. These two possibilities are included in this paragraph.

Article 7

SECRETARIAT

1. The Contracting Parties designate the United Nations Environment Programme as responsible for carrying out the following secretariat functions:

- (a) To arrange for and service the meetings of the Conference of the Contracting Parties;
- (b) To arrange for and service the meetings of scientific, technical or legal working groups established under article 6 paragraph 3 (viii) [and the scientific-technological advisory body/mechanisms established under article 8];
- (c) To collect and transmit to the Conference of the Contracting Parties and to [the scientific-technological advisory body/mechanisms] as appropriate reports, and other information as obtained under the provisions of Article 5;
- [(d) To invite the attention of the Contracting Parties to any matter pertaining to the purposes of this Convention];
- [(e) To perform the functions assigned to it by the protocols to this Convention];

- (f) To prepare reports on the activities carried out by the Secretariat in the implementation of this Convention and present them to the Conference of the Contracting Parties;
- (g) To ensure the necessary co-ordination with other relevant and international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of the secretariat functions;
- (h) To perform such other functions as are deemed necessary by the Conference of the Contracting Parties.

2. If the United Nations Environment Programme is no longer able to provide the Secretariat, [the Conference of the Parties] [a diplomatic conference] shall make alternative arrangements for the Secretariat.

Commentary

At the first session of the Working Group, there was a general agreement that the secretariat function would be provided within the framework of UNEP (UNEP/WG.69/10, para. 21).

A number of recent international treaties concerning environmental protection designate UNEP as the secretariat. Such a provision is contained in article 13 of the Barcelona Convention and article 16 of the Abidjan Convention. An analogous example in the London Convention is article XIV, paragraph 2, which reads as follows:

"The Contracting Parties shall designate a competent organization existing at the time of that meeting to be responsible for Secretariat duties in relation to this Convention".

The first meeting of the Contracting Parties designated IMCO as the secretariat responsible to carry out such functions.

The role of UNEP in assisting the implementation of international conventions concerning the protection of the environment has been increasing, especially through the assignment to it of secretariat functions.

Paragraph 1 (d) is still in brackets because it was brought to the attention of the secretariat during the preparation of this draft that this function of the secretariat is partly covered by paragraph 1 (h); however under paragraph 1 (d) the secretariat should merely "invite the attention of the Contracting Parties". It needs to be decided whether or not such a provision should be maintained in the text.

Paragraph 2. This paragraph provided for a situation in which for some reason (e.g. UNEP's mandate as a catalytic organization, financial difficulties) UNEP is no longer able to fulfil the secretariat functions. A comparable provision is included in the Convention on the Conservation of Migratory Species (art. IX, para. 3).

Article 8

[SCIENTIFIC-TECHNOLOGICAL ADVISORY BODY/MECHANISMS]

Alternative 1

1. An Advisory Committee is hereby established consisting of [x of] the representatives of the Contracting Parties to this Convention. The selection of members, their terms of office, admission of observers, and approval of the procedures of the Committee will be provided for in the rules of procedure established under article 6.
2. The functions of the Committee shall be:
 - (a) To formulate recommendations for consideration by the Conference of the Parties;
 - (b) To facilitate the exchange of relevant legal, scientific and technical information related to actions that increase, limit, or reduce activities and emissions of substances that modify or are likely to modify the ozone layer;
 - [(c) To facilitate the development and transfer of technology and knowledge relating to reduction of such emissions in implementation of article 4, paragraph 3;]
 - (d) To review and analyse the information and reports submitted in accordance with articles 4 and 5, and to request under the authority of the Conference of the Parties such additional information from the Contracting Parties as may be deemed necessary by the Committee to meet the responsibilities assigned to it by this Convention and the Conference of the Parties;
 - (e) To advise the Conference on the state of the ozone layer, the extent and trends of its modifications and possible resultant effects;
 - (f) To perform such other functions as may be deemed necessary by the Conference of the Parties.
3. The Committee shall seek as appropriate, from the Co-ordinating Committee on the Ozone Layer [and other scientific bodies], scientific, socio-economic and technological advice as well as assessments of the state of the ozone layer, the extent and trends of its modification, and possible resultant effects.

4. The Committee shall utilize [ad hoc] [standing] working groups of experts on scientific, legal and socio-economic aspects of the protection of the ozone layer [and on the transfer of technology], and shall arrange for or undertake in accordance with the financial rules, special scientific, legal and technical studies, as required to meet the responsibilities given to it by this Convention [and any protocol in force] and by the Conference of the Parties.

Alternative 2

1. The Conference of the Parties shall, under its rules of procedures and financial rules, provide for the necessary mechanisms to carry out its responsibilities under article 6 of this Convention.

2. In addition to such mechanisms, the Conference of the Parties shall request from the Co-ordinating Committee on the Ozone Layer [and other scientific bodies] scientific, socio-economic and technological advice as well as assessment of the state of the ozone layer, the extent and trends of its modification, and possible resultant effects.

Alternative 3

1. Same as Alternative 2, paragraph 1.

2. Same as Alternative 2, paragraph 2.

3. As part of such mechanisms, the Conference shall establish [ad hoc] [standing] [scientific] advisory bodies to provide advice and recommendations on the development and exchange of legal and technical information with regard to reduction of emissions of substances that modify or may modify the ozone layer.

Commentary

The title is in square brackets because the alternatives contain different degrees of specificity as to the nature of the advisory mechanisms. Selection of an alternative should lead naturally to the selection of an appropriate title.

In view of the complexity and the highly specialized nature of the issues involved in the protection of the ozone layer, the question of the institutional arrangements in the field of science and technology received much attention at the first session of the Working Group (UNEP/WG.69/10 para. 22). Three basic possible alternatives were proposed:

- (a) The establishment of a new scientific and technological body in addition to the Co-ordinating Committee on the Ozone Layer;
- (b) Direct provision of services to the Conference of the Parties by the Co-ordinating Committee on the Ozone Layer;

- (c) The merger of the two bodies, with the amendment of the Co-ordinating Committee on the Ozone Layer's mandate so that it could serve as a scientific body to the convention, supplemented by an extended bureau for proposing policy recommendations to meetings of the Conference of the Parties. Under this alternative, the Co-ordinating Committee on the Ozone Layer would be the only scientific and technical body whose advice would be sought.

It should be pointed out also that the Co-ordinating Committee on the Ozone Layer reports to different Governments from those composing the Conference of the Contracting Parties, and that its lifetime will not necessarily be co-extensive with that of the Convention. Moreover, the Co-ordinating Committee on the Ozone Layer is a scientific body that has no experience in, or inclination to deal with, socio-economic and technological fields. Therefore, Alternative 1 creates a committee that will call on the services of the Co-ordinating Committee on the Ozone Layer and other bodies, and also convene its own working groups as needed.

Alternatives 2 and 3 postpone, by assigning it to the later Conference of the Working Parties, the task of conceptualizing and initiating an advisory body and working groups, if any.

[Article 9

ADOPTION OF PROTOCOLS

1. The Contracting Parties may adopt, at a diplomatic conference, additional protocols to this Convention pursuant to the provision of article 2, paragraph [2] [3].
2. A diplomatic conference for the purpose of adopting protocols shall be convened by the secretariat at the written request of any Contracting Party, provided that within six months from the date of communication by the secretariat to the Contracting Parties of the fact of such a request, it is supported by at least one third of the Contracting Parties.
3. Pending the entry into force of this Convention, the Executive Director of United Nations Environment Programme may, with the agreement of majority of the signatories to this Convention, convene a diplomatic conference for the purpose of adopting protocols.]

Commentary

Many recent international conventions on the protection of the environment contain, besides technical annexes, special protocols to which the Contracting Parties of those conventions may become party separately. Such protocols do not form an integral part of the respective conventions, but are treated as additional - more detailed - agreements. Examples of these protocols can be found in a number of international conventions concerning the

protection of the environment such as the Barcelona, Kuwait, Abidjan and Jeddah conventions, which provide for the development of additional protocols laying down detailed obligations not explicitly spelled out in the conventions. Such protocols may be adopted at the same time as the convention or at a later stage. Parties to the conventions may or may not accede to any of the protocols.

During the first session of the Working Group, several experts stressed the need to provide for annexes and/or protocols containing specific provisions on the regulatory measures to be applied under the convention (UNEP/WG.69/10 para. 26). Procedures for the adoption of protocols could be laid down in the rules of procedure of the conference of the contracting parties. The secretariat has prepared a discussion paper on alternative structures and formats for technical annexes and/or protocols (UNEP/WG.78/2).

Article 10

AMENDMENT OF THE CONVENTION [OR PROTOCOLS]

1. Any Contracting Party to this Convention may propose amendments to this Convention [or any Protocol thereto]. Such amendments shall take due account of relevant scientific and technical considerations. The secretariat shall circulate such proposals to all Contracting Parties. Amendments shall be adopted by a meeting of [the Conference of the Contracting Parties] [a diplomatic conference] which shall be convened by the Executive Director of the United Nations Environment Programme at the request of two-thirds of the Contracting Parties.
2. Amendments to this Convention [or any protocol] shall be adopted by [consensus] [a two-third majority vote] of the Contracting Parties to the Convention [or to such protocol] [present and voting at the meeting] and shall be submitted by the Depository for acceptance by all Contracting Parties to the Convention [or to such protocol]. [For these purposes "Contracting Parties present and voting" means Contracting Parties present and casting an affirmative or negative vote.]
3. Acceptance of amendments shall be notified to the Depository in writing. Amendments adopted in accordance with paragraph 2 of this Article shall enter into force [between Contracting Parties having accepted such amendments] on the [sixtieth day] [ninetieth day] following the receipt by the Depository of notification of their acceptance by [all Contracting Parties] [at least three fourths of the Contracting Parties] to this Convention [or to the protocol concerned]. Thereafter the amendments shall enter into force for any other Party thirty days after that Party deposits its instrument of acceptance of the amendments.
4. Following the entry into force of an amendment to this Convention [or to any protocol], any new Contracting Party to this Convention [or such protocol] shall become a Contracting Party to the instrument as amended.
- [5. Apart from the procedures set out above, the amendments may be adopted by the simplified procedure provided for in article 13.]

Commentary

As stated in articles 39 and 40 of the Vienna Convention, a treaty may be amended by agreement between the parties.

The draft includes in paragraph 1 two possible procedures by which amendments could be adopted: by the conference of the contracting parties or by a diplomatic conference. Corresponding provisions in other agreements on environment protection are as follows:

- (a) Adoption of amendments by the Conference of the Contracting Parties: London Convention, Paris Convention, Abidjan Convention;
- (b) Adoption of amendments by diplomatic conference: Barcelona Convention, Kuwait Convention.

At the first session of the Working Group, many experts were of the opinion that amendments to the convention should be adopted by consensus, rather than by a two-thirds majority, as favoured by a number of other experts (UNEP/WG.69/10, para. 29). Both of these opinions are reflected in this article. Corresponding provisions in other agreements on environment protection are as follows:

- (a) Two-thirds majority vote - London Convention, Abidjan Convention;
- (b) Three-fourths majority vote - Barcelona Convention;
- (c) Consensus - Geneva (ECE) Convention;
- (d) Unanimous vote - Kuwait Convention, Paris Convention.

Concerning the entry into force of amendments, an interval of ninety days, rather the sixty days called for in the Finland/Norway/Sweden draft, was suggested at the first session of the Working Group. Paragraph 3 provides square brackets for both possibilities.

Other international agreements provide for varying intervals e.g. for ninety days - Geneva (ECE)/Convention; thirty days - London Convention, Barcelona Convention, Kuwait Convention.

[Article 11]

STATUS OF ANNEXES

The annexes to this Convention [or to any protocol] shall form an integral part of this Convention [or such protocol, as the case may be].

Commentary

As mentioned above, at the first session of the Working Group several experts stressed the need to provide for annexes and/or protocols which would contain specific provisions on regulatory measures to be adopted under the convention. Some experts felt that such provisions should be regarded as an integral part of the convention and included in one or more annexes to it. A number of international treaties concerning the protection of the environment concluded during the last ten years or so contain additional annexes which form an integral part of the convention (e.g. Paris Convention, Barcelona Convention, and their protocols; Oslo Convention; London Convention; Helsinki Convention; Rhine Convention).

[Article 12

ADOPTION AND AMENDMENT OF ANNEXES

1. Any Contracting Party may propose amendments to the annexes to this Convention [or to any protocol] at the meeting referred to in article 6.

2. Such amendments shall be adopted by [consensus] [a two-thirds majority vote] of the Contracting Parties [present and voting on the instrument in question]. The Depositary shall without delay communicate the amendments so adopted to all Contracting Parties.

[3. Any Contracting Party that is unable to approve an amendment to the annexes to this Convention [or to any protocol] shall so notify the Depositary, in writing, within six months from the date of the circulation of the communication by the Depositary. The Depositary shall without delay notify all Contracting Parties of any notification received.] [A Contracting Party may at any time substitute an acceptance for a previous declaration of objection and the amendment shall there upon enter into force for that Party.]

[4. On the expiry of six months from the date of the circulation of the communication by the Depositary, the amendment to the annex shall become effective for all Contracting Parties to this Convention [or to any protocol concerned] which have not submitted a notification in accordance with the provision of paragraph 3 above.]

5. The adoption and entry into force of a new annex to this Convention [or to any protocol] shall be subject to the same procedure as for the adoption and entry into force of amendments to the Convention [or to any protocol], provided that, if any amendment to the Convention [or to the protocol concerned] is involved, the new annex shall not enter into force until such time as the amendment to the Convention [or the protocol concerned] enters into force.

[6. Apart from the procedures set out above, the amendments may be adopted by the simplified procedures referred to in article 13.]

Commentary

Regarding the question of amendments to the possible annexes, many experts were of the opinion that these should be adopted by consensus, rather than by the two-thirds majority which was favoured by a number of other experts. Both these opinions are reflected in this article. Corresponding provisions in other agreements on environment protection are as follows:

- (a) Unanimous approval - Oslo Convention, Rhine Convention;
- (b) Two-thirds majority vote - London Convention;
- (c) Three-fourths majority vote - Barcelona Convention;
- (d) Unanimous vote - Kuwait Convention.

The provision in paragraph 3 of this article that any Contracting Party may substitute an acceptance of amendment for a previous declaration of objection is connected with the views expressed at the first session of the Working Group, as reflected in paragraph 28 of the report. This solution would allow those Contracting Parties having problems concerning, inter alia, the harmonization of national regulations with proposed amendments to the annexes, to make a declaration of objection pending the resolution of the problem, whereupon it would notify an acceptance and the amendment would enter into force for that Party.

In paragraph 4 of this article, the proposed period required for the entry into force of the amendments to the annexes for the Parties which have not submitted a notification is six months from the date of circulation of the communication of the Depositary. Corresponding provisions in other agreements on environment protection are as follows:

- (a) Two hundred and thirty days after the vote - Paris Convention;
- (b) Twelve months - Abidjan Convention, Convention on the Law of the Sea;
- (c) Required period to be determined by the Contracting Parties - Barcelona Convention, Kuwait Convention;
- (d) Required period determined by the Commission - Helsinki Convention.

[Article 13

AMENDMENT BY SIMPLIFIED PROCEDURE

1. A Contracting Party may, by written communication addressed to the secretariat, propose an amendment to annexes to this Convention [or to the Convention and protocols thereto] to be adopted by a simplified procedure pursuant to the provisions of this article.

2. The secretariat shall circulate such communications to all Contracting Parties.

3. If, at any time within a period of six months thereafter, [one third of the Contracting Parties] [a Contracting Party] object[s] to the proposed amendment or to the proposal for its adoption by simplified procedure, the amendment or the proposal shall be considered rejected. The secretariat shall notify all Contracting Parties accordingly. If on the expiry of six months no Contracting Party has objected to the proposed amendment or to the proposal for its adoption by simplified procedure, it shall be considered adopted. The secretariat shall notify all Contracting Parties accordingly.]

Commentary

At the first session of the Working Group some experts suggested that the tacit consent procedure for adoption of amendments should be included in the Convention; other experts considered however that this expedited procedure would not be acceptable, except for matters of a formal, technical character (UNEP/WG.69/10, para. 30).

For these reasons article 13, and paragraph 5 of article 10 and paragraph 6 of article 12, which concern the same questions, appear between brackets.

The tacit consent procedure for amendments is a rather new international practice, but is often utilized in agreements on environmental protection in their technical aspects. The possibility of amendments by simplified procedure was provided for in the Finland/Norway/Sweden draft (art. 13).

With respect to paragraph 3 of this article, attention is drawn to the two possible provisions concerning the number of objecting Parties which would be sufficient to reject the proposed amendment or a proposal for its adoption by simplified procedure - "one third of the Contracting Parties" as an alternative to "a Contracting Party".

Article 14

SETTLEMENT OF DISPUTES

Alternative 1

The Contracting Parties to this Convention shall settle any dispute between them concerning the interpretation or application of this Convention [and any protocol thereto] by peaceful means in accordance with Article 2, paragraph 3 of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1 of the Charter.

Alternative 2

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention [and any protocol thereto], the Parties concerned shall seek a solution by negotiation. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Contracting Party, a qualified international organization or a qualified person.
2. Where the Parties concerned are unable to resolve their dispute through negotiation, or to agree on the measures as described above, the dispute shall, by common agreement, be referred to an ad hoc tribunal, to a permanent arbitration tribunal or to the International Court of Justice.

Alternative 3

In the event of a dispute arising between two or more Contracting Parties to this Convention [and any protocol thereto] concerning the interpretation or application of the Convention, the Parties to the dispute shall seek a solution by negotiation or by any other method of dispute settlement acceptable to them.

Commentary

Several conventions concerning the protection of the environment lay down special procedures for the settlement of disputes that may arise with respect to their interpretation or application (London Convention, Oslo Convention, Barcelona Convention, Geneva (ECE) Convention, Kuwait Convention, Abidjan Convention, Convention on the Law of the Sea.)

At its first session, the Working Group decided that some provision on this matter was needed (UNEP/WG.69/10, para. 25). The three alternatives proposed during the session are reflected in the draft. There are no substantial differences between these alternatives; the issue is one of the order of recourse to different procedures for the settlement of disputes.

Alternative 1

This alternative aims at covering one of the proposals made during the session by invoking Article 33, paragraph 1 of the Charter of the United Nations, as was done in the case of the Convention on the Law of the Sea in article 279.

Alternative 2

At the first session of the Working Group, some experts proposed that all disputes concerning the interpretation or application of the convention should be settled by negotiations, good offices, or mediation by a third Contracting Party, but if the parties concerned could not settle their dispute by these means, the dispute should, by common agreement, be referred to an ad hoc tribunal, to an arbitrator, or to the International Court of Justice (UNEP/WG.69/10, para. 25).

An identical article was included in the Finland/Norway/Sweden draft (art. 10).

Alternative 3

At the first session of the Working Group, many experts felt that article 13 of the Geneva (ECE) Convention was more succinct and appropriate as a model. This alternative is modelled on that article.

Article 15

SIGNATURE

1. This Convention shall be open for signature at _____ from _____ to _____ by any States [and by regional economic integration organizations, constituted by sovereign States, which have competence in respect to the negotiation, conclusion and application of international agreements in matters covered by this Convention.

2. In matters within their competence, such regional economic integration organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this Convention attributes to their member States. In such cases, the member States of these organizations shall not be entitled to exercise such rights individually.]

Commentary

The bracketed part of this article reflects the suggestion made at the first session of the Working Group that the convention should be open for signature not only to States but also to regional economic integration organizations which have competence in respect of this subject (UNEP/WG.69/10, para. 34).

The text of the proposed article is based on article 14 of the Geneva (ECE) Convention.

Article 16

RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention [and any protocol thereto] shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Commentary

It is common practice for international conventions to contain special articles governing ratification, acceptance or approval.

A similar provision was included in article 25 of the Barcelona Convention, article XVIII of the Kuwait Convention, Article 15 of the Geneva (ECE) Convention and article 27 of the Abidjan Convention.

Article 17

ACCESSION

As from...this Convention shall be open for accession by any States [and by the regional economic integration organizations referred to in article 15]. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Commentary

Several conventions concerning the protection of the environment lay down a special procedure for accession (e.g. the Oslo Convention, art. 22, the Helsinki Convention, art. 26, para. 1, the Barcelona Convention, art. 26, the Kuwait Convention, art. XXVII and the Convention on the Law of the Sea, art. 307).

The text of the proposed article is based on article 15, paragraphs 2 and 3 of the Geneva (ECE) Convention.

Article 18

ENTRY INTO FORCE OF THE CONVENTION

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the..... instrument of ratification, acceptance, approval or accession.
2. For each Contracting Party which ratifies, accepts, approves this Convention or accedes thereto after the deposit of the instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession, subject to paragraph 1.

Commentary

Paragraph 1

A balance needs to be struck between the need to ensure sufficiently broad coverage at the moment the convention enters into force and the desirability to avoid delaying its entry into force by setting too high a figure for the number of States that should ratify, accept or approve the

convention before it becomes binding. The ninetieth day after the date of deposit of the instrument of ratification, acceptance, approval or accession, as the date of entry into force of the convention was suggested in article 18 of the Finland/Norway/Sweden draft.

For comparison, under other conventions the dates laid down are:

Thirtieth day - Oslo Convention,
London Convention,
Paris Convention,
Barcelona Convention;

Sixtieth day - Abidjan Convention;

Two months - Helsinki Convention;

Ninetieth day - Geneva (ECE) Convention,
Kuwait Convention;

Twelve months - Convention on the Law of the Sea.

Paragraph 2

Under other similar conventions, the date of their entry into force for parties ratifying, accepting, approving or acceding to them after the deposit of the number of instruments required for their initial entry into force varies between the thirtieth and the ninetieth day (e.g. Draft Convention on the Law of the Sea - thirtieth day; Geneva (ECE) Convention - ninetieth day; Paris Convention - thirtieth day; London Convention - thirtieth day).

Article 19

RESERVATIONS

No reservations or exceptions may be made to this Convention unless expressly permitted by this Convention.

Commentary

During the first session of the Working Group the view was expressed that reservations to the convention should not be permitted; other experts however felt that it would be difficult to exclude reservations altogether (UNEP/WG.69/10, para. 28). The formula proposed in this article covers both opinions expressed during this session. A similar provision is included in article 309 of the Convention on the Law of the Sea.

Article 20

WITHDRAWAL

1. At any time after [three] [five] years from the date on which this Convention has entered into force with respect to a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depository.

[2. Except as may be provided in any protocol to this Convention, at any time after [three] [five] years from the date on which such protocol has entered into force with respect to a Contracting Party, that Contracting Party may withdraw from the protocol by giving written notification to the Depository.]

3. Any such withdrawal shall take effect upon expiry of [six months] [one year] after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.

[4. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is a party.]

Commentary

According to article 54 of the Vienna Convention "the termination of a treaty or the withdrawal of a party may take place:

"(a) In conformity with the provisions of the treaty ..."

In this draft of Convention two alternatives - three or five years - were provided with regard to the period of withdrawal from the Convention; provision of five years was included in the Finland/Norway/Sweden draft (art. 19).

As concerns the protocols, if any, the same provision would apply except when another formula is used in a protocol.

In this connexion, attention is drawn to other international agreements which, with regard to the period of withdrawal from the conventions provide for:

Five years - Helsinki Convention, Kuwait Convention, Geneva (ECE) Convention, Abidjan Convention;

Three years - Barcelona Convention;

Two years - Oslo Convention, Paris Convention;

and with regard to the date after which such withdrawal shall take effect:

Thirty-first day - Helsinki Convention;

Ninety days - Barcelona Convention, Kuwait Convention, Geneva (ECE)/Convention, Abidjan Convention;

Twelve months - Oslo Convention, Paris Convention, Convention on the Law of the Sea.

It is normally assumed that, when a party withdraws from a convention itself, it should be considered as also withdrawing from any protocol to which it is a party. This is explicitly provided for in such international treaties as the Barcelona Convention, the Kuwait Convention and the Abidjan Convention.

A more detailed analysis of the possibilities concerning the protocols will be presented in the discussion paper on alternative structures and formats for technical annexes and/or protocols (UNEP/WG.78/3).

Article 21

DEPOSITARY

1. The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention [and its protocols] and amendments thereto.
2. The Depositary shall inform the Contracting Parties in particular:
 - (a) Of the signature of this Convention [and of any protocol thereto], and of the deposit of instruments of ratification, acceptance, approval or accession in accordance with the provision of articles 16 and 18;
 - (b) Of the date on which the Convention [and any protocol thereto] will come into force in accordance with the provisions of article 18;
 - (c) Of notifications of withdrawal made in accordance with the provisions of article 20;
 - (d) Of amendments adopted with respect to the Convention [and any protocol], their acceptance by the Contracting Parties and their date of entry into force in accordance with the provisions of article 10;
 - (e) Of the adoption of new annexes and of the amendment of any annex in accordance with the provisions of article 12.

Commentary

Paragraph 1

According to article 76 of the Vienna Convention the designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization.

The third alternative is provided for in a number of international agreements, e.g. Geneva (ECE) Convention (Secretary-General of the United Nations, Convention on the Narcotic Drugs (Secretary-General of the United Nations), Convention on the Law of the Sea (Secretary-General of the United Nations).

The Finland/Norway/Sweden draft provided that the depositary functions should be assumed by the Executive Director of UNEP. However, in the light of the discussion during the tenth session of the Governing Council concerning the question of the Executive Director acting as a depositary of conventions, this provision was not reproduced in this draft. Moreover, according to the legal opinion of the United Nations Secretariat the only depositary of multilateral treaties in the United Nations is the Secretary-General (opinion of 29 August 1974 (Juridical Year Book 1974 - opinion number 25) concerning the position of the Secretary-General with respect to the discharge of administrative and depositary functions in relation to the treaties concluded under the auspices of the United Nations). This is in accordance with the long-standing practice based on the need to preserve uniformity of policies and procedures, particularly in matters of participation or reservations.

Paragraph 2

The functions of the depositary are generally prescribed in article 77 of the Vienna Convention, and for this reason the functions cited in paragraph 2 are not exhaustive.

Article 22

AUTHENTIC TEXTS

The original of this Convention, of which the [Arabic, Chinese, English, French, Russian and Spanish] texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Commentary

Because the Convention for the Protection of the Ozone Layer is intended to be global in character, it would be consistent with the practice exemplified in, for example, article 75 of the Vienna Convention for the texts of its versions in all the official languages of the United Nations to be equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at, this

