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the Ozone Layer

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INSTITUTIONAL ARRANGEMENTS FOR A CONVENTION
FOR THE PROTECTION OF THE OZONE LAYER

Text prepared by the UNEP secretariat

I. BACKGROUND

1. This paper has been prepared in response to the recommendation of 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 that "A special paper should be prepared by UNEP on the institutional arrangements of a convention, in particular on the role and functions of UNEP, should that arrangement be preferred. Financial, logistical and practical implications for UNEP should be highlighted". 1/

2. In preparing this paper, a number of relevant international instruments were examined:

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);

Convention relating to Intervention on the High Seas - International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Brussels, 29 November 1969);

Agreement for the Establishment of a Commission for the Desert Locust - Agreement for the Establishment of a Commission for Controlling the Desert Locust in Northwest Africa (Rome, November 1970);

Convention on Wetlands - Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971);

Convention on Protection against Hazards of Poisoning - Convention concerning Protection against Hazards of Poisoning arising from Benzene (Geneva, 23 June 1971);

Convention on the Establishment of an International Fund - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December 1971);

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

Convention for the Protection of Natural Heritage - Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972);

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

1/ UNEP/WG.69/10, para. 36 (iv).

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

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);

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);

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

Convention on the Conservation of Antarctic Marine Living Resources - (Canberra, 20 May 1980);

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);

Convention on the Law of the Sea - Third United Nations Conference on the Law of the Sea.

3. The structure of this paper is as follows: section II, Secretariat; section III, Conference of the Contracting Parties; section IV, Scientific-technological advisory body/mechanisms; section V, Depositary. Each section analyses the objectives and the meaning of the relevant institutional provisions of the draft convention and their financial and legal implications. The explanation also discusses, without repeating examples cited in the commentary on the draft convention (UNEP/WG.78/2, *passim*.) the relevant provisions found in other international legal instruments, as well as the relevant parts of the report of the Working Group at its first session and other views brought to the attention of the secretariat during the preparation of the present text of the draft convention.

II. SECRETARIAT

4. There was general agreement at the first session of the Working Group that the secretariat function would be provided within the framework of UNEP, in conformity with its catalytic and co-ordinating role.

5. UNEP is already exercising this role in relation to the ozone layer. The World Plan of Action on the Ozone Layer states, in its section on institutional arrangements: 2/

"1. The Action Plan will be implemented by United Nations bodies, specialized Agencies, international, national, intergovernmental, and non-governmental organizations and scientific institutions.

"2. The UNEP should exercise a broad co-ordinating and catalytic role aimed at the integration and co-ordination of research efforts by arranging for:

- collation and dissemination of information on ongoing and planned research activities
- presentation and review of the results of research
- identification of further research needs
- appropriate encouragement of such research

"3. In order for UNEP to fulfil that responsibility it should establish a Co-ordinating Committee on the Ozone Layer composed of representatives of the agencies and non-governmental organizations participating in implementing the Action Plan as well as representatives of countries which have major scientific programmes contributing to the Action Plan. The Committee should meet with sufficient regularity to meet its responsibilities. The Committee should be provided with secretariat services adequate to carry out the activities noted in the above section.

" The Committee should make recommendations relevant to the continuing development and co-ordination of the Action Plan to the Executive Director who will report these to the Governing Council.

2/ UNEP/WG.7/25/Rev.1, of 8 March 1977, annex III, sect.4.

"4. While much of the work included in the Action Plan is being and will be undertaken at the National level, and is the financial responsibility of countries, there is a continuing need for co-ordination of the planning and execution of monitoring and research related to particular segments of the Action Plan. This need can most effectively be met by the Specialized Agencies as indicated in the recommendations.

"5. Each Agency should arrange for the provision of scientific advice relevant to its needs and those of the Co-ordinating Committee on the Ozone Layer. In addition, the Executive Director of UNEP may from time to time convene a multidisciplinary panel of experts to provide broadly-based scientific advice on the Action Plan.

"6. UNEP should consider the need for and feasibility of establishing special co-ordinating mechanisms or procedures for certain areas of interdisciplinary research included in the recommendations, such as photobiology, which presently lack such co-ordinating facilities."

The work of the Co-ordinating Committee on the Ozone Layer is further discussed in section IV below in the context of the scientific-technological advisory body/mechanisms for the convention.

6. UNEP thus seems well placed to provide secretariat services for the convention. The designation of international organizations or their chief administrative officers to be responsible for secretariat duties in relation to conventions is provided for in a number of international agreements. For example, the Convention on Narcotic Drugs provides in its article 16 that the secretariat services of the Commission and the Board shall be furnished by the Secretary-General of the United Nations. The London Convention, in article XIV, provides that the Contracting Parties shall designate a competent organization existing at the time of that meeting to be responsible for secretariat duties: the meeting of the Contracting Parties designated the Inter-Governmental Maritime Consultative Organization (IMCO now the International Maritime Organization (IMO)) as the Secretariat. Under the Geneva (ECE) Convention, article II, secretariat functions are to be carried out by the Executive Secretary of ECE. In the case of the Convention for the Protection of the World Cultural Natural Heritage, the secretariat functions have been discharged by a secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Article VII of the Agreement for the Establishment of a Commission for the Desert Locust stated that the Director-General of the Food and Agriculture Organization (FAO) shall provide the Secretary and staff of the Commission, which form the Secretariat. For administrative purposes, they shall be responsible to him, and they shall be appointed under the same terms and conditions as the staff of the FAO.

7. Some recent international treaties concerning environmental protection have designated UNEP as the secretariat. Such a provision is contained in article 13 of the Barcelona Convention. UNEP has been designated by the Contracting Parties as the organization responsible for carrying out the secretariat functions for the Convention and their protocols and for acting as the over-all co-ordinator of the activities agreed upon within the framework of the Action Plan. For the Kuwait Convention, UNEP assumed responsibility for the secretariat function of the action plan and the Convention in the interim period leading to the first meeting of the Council; responsibility for the secretariat functions was assumed by the secretariat of the regional organization in January 1981. The Endangered Species Convention states in article XII that: "Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora". The Governing Council at its first session authorized the Executive Director to provide secretariat services for the Convention in accordance with that article, and further asked the Executive Director "to give assistance as appropriate in the preparation of other international conventions in the environmental field".^{3/} The Convention on the Conservation of Migratory Species similarly provides that the Secretariat is provided by the Executive Director of UNEP, who may be assisted by appropriate organizations.

8. The reasons for designating the above United Nations organizations, especially UNEP, to provide secretariat services for conventions concerning environmental protection are that these organizations possess appropriate mandates and mechanisms to assist States in implementing the conventions. In the case of the convention on the ozone layer UNEP possesses ongoing assessment programmes such as GEMS for monitoring of the effectiveness of

^{3/} Regarding the position of UNEP as a secretariat to conventions, it may be useful to recall General Assembly Resolution 2997 (XXVII) of 15 December 1972, which reads in part as follows:

1. Decides that a small secretariat shall be established in the United Nations to serve as a focal point for environmental action and co-ordination within the United Nations system in such a way as to ensure a high degree of effective management;

2. Decides that the environment secretariat shall be headed by the Executive Director of the United Nations Environment Programme ... and who shall be entrusted, inter alia, with the following responsibilities:...

(e) To provide, at the request of all parties concerned, advisory services for the promotion of international co-operation in the field of the environment.

the provisions of the convention and co-ordinating mechanisms such as the Co-ordinating Committee on the Ozone Layer. Moreover, assignment to UNEP of secretariat functions has strengthened its role in assisting the implementation of international conventions concerning the protection of the environment. The experience gained through conventions for which UNEP acts as secretariat confirms the validity of the proposition to designate UNEP as responsible for carrying out secretariat functions in accordance with article 7 of the draft convention.

9. Types of secretariat functions provided in the draft convention are as follows:

(a) Administrative

- To arrange for and service the meetings of the Conference of the Contracting Parties (art.7, 1 (a));
- 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] (art.7, 1 (b));
- 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 (art.7, 1 (c));
- 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 (art.7, 1 (f));

(b) Co-ordinating

- To ensure the necessary co-ordination with other relevant 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 (art.7, 1 (g));

(c) Substantive

Possible substantive functions, depending on the decisions of the Conference of the Contracting Parties, are:

- [To invite the attention of the Contracting Parties to any matter pertaining to the purposes of this Convention] (art.7, 1 (d));
- [To perform the functions assigned to it by the protocols to this Convention] (art.7, 1 (e));
- To perform such other functions as are deemed necessary by the Conference of the Contracting Parties (art.7, 1 (h)).

10. The secretariat functions proposed in Finland/Norway/Sweden draft included the following:

(a) To undertake scientific and technical studies in accordance with programmes authorized by the conference of the parties for the fulfilment of the obligations of the present convention: - to collect, analyse and present to the conference of the parties and the scientific-technical committee established under article 9 and the Working Groups the information provided by the parties to the present convention in accordance with article 3;

(b) To analyse and present to the conference of the parties the national reports submitted by the parties in accordance with article 4 and request from parties such further information as might be necessary to ensure the implementation of the present convention. 4/

At the first session of the Working Group it was suggested that the undertaking of scientific and technical studies should be left to the Co-ordinating Committee on the Ozone Layer or, as the case may be, to a scientific-technological committee.

11. The advantages of having the secretariat to the convention co-located with the UNEP secretariat are those of economy of staff. The UNEP secretariat presently services the Co-ordinating Committee on the Ozone Layer, supports a joint project with WMO on ozone monitoring, and has an Environmental Law Unit and a Conference Services Section. The convention secretariat could thus draw on available technical and legal expertise, and UNEP's conference services, administrative and publications staff could intermittently support the conference of contracting parties as the need arose. The services of existing UNEP staff could also be used for the preparation of the budget estimates for the Conference of Contracting Parties, the secretariat and the scientific-technological advisory body/mechanisms, which would also be a function of the convention secretariat.

12. The designation of UNEP as the organization responsible for carrying out the secretariat functions would also be financially advantageous, since it would not entail the creation of a new body. The performance of such functions would, however, certainly need staff administrative support, equipment and miscellaneous components. The cost of these will depend upon the level of activity and responsibilities assigned to the secretariat. For discussion purposes illustrative figures for minimum staff on the secretariat would be provided therefor at the meeting if required.

4/ For comparison, the secretariat functions provided for in the Endangered Species Convention are: "to undertake scientific and technical studies in accordance with programmes authorised by the Conference of the Parties as will contribute to the implementation of the present convention ... to study the reports of Parties, and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention ... to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature".

13. Because of future work relating to the preparation of possible new annexes and protocols to the convention, it seems likely that the services of the legal officer would be required on a full-time basis for the first two years. Thereafter, the legal officer could be employed on a part-time basis, as necessary. Where the post of scientist is concerned, it seems likely that because of the complexity and highly specialized nature of the issues involved in the protection of the ozone layer in the implementation of this convention, such a qualified person would be needed on a permanent basis.

III. CONFERENCE OF THE CONTRACTING PARTIES

14. One of the principal tasks of the Conference of the Contracting Parties is to promote the co-operation among the Contracting Parties provided for in article 4 of the draft convention. To this end, periodic meetings of the Conference will be required, and provision may also need to be made for special sessions. Usually the details concerning the convening of regular and special sessions of the Contracting Parties or other bodies created by conventions are determined in the respective conventions (e.g. article 12 of the Helsinki Convention, article 14 of the Barcelona Convention, article XVII of the Kuwait Convention, article 17 of the Abidjan Convention). However, there are also conventions in which the meetings of the Contracting Parties or other bodies created by the conventions are determined by the Conference itself, in the rules of procedure. Such an approach is provided for in, for example, article 16 of the Oslo Convention and article 15 of the Paris Convention. As is noted in the commentary (UNEP/WG.78/2), the present draft of the convention leaves the options in this respect open.

15. Regarding the membership of the Conference of the Contracting Parties, article 15 paragraph 1 of the draft convention contains an alternative whereby regional economic integration organizations constituted by sovereign States could be Contracting Parties to the Convention. It is proposed in paragraph 2 of article 15 that, in matters within their competence, such regional economic organizations shall, on their own behalf, exercise the rights and fulfil the responsibilities which the Convention attributes to their member States. In such cases, the member States of these Organizations which are parties to the Convention would presumably not be entitled to exercise such rights individually. The participation of such organizations in the Conference of the Contracting Parties needs to be defined in more detail; this could be done in the rules of procedure of the Conference of the Contracting Parties. One possible approach to this question is the solution adopted for the Convention on the Conservation of Antarctic Marine Living Resources which provides for participation in the Convention by both the European Community and its member countries, and for their representation on the Commission, provided that there is no multiple or double voting on any issue.

16. Another issue relating to participation in the Conference is the provision in article 6, paragraph 4 for participation by United Nations bodies and organizations, non-party States and national or international, governmental or non-governmental organizations in the meetings of the Conference of the Contracting Parties as observers, without the right to vote. In view of the composition of the Co-ordinating Committee on the Ozone Layer (see para.5 above), such an arrangement might make a useful contribution to the work of the Conference.

17. Article 6 paragraph 3 of the draft Convention contains a list of various duties of the Conference of the Contracting Parties. It shall, for example, consider reports prepared by the secretariat (see para.9 above), and "review the state of the ozone layer". Its other duties, such as the adoption of a programme and measures for minimizing the release of substances causing or likely to cause modification of the ozone layer, the adoption of a programme for research and monitoring, scientific and technological co-operation, defining of common policies, strategies and measures for minimizing the release of substances causing or likely to cause modification of the ozone layer and adoption of the recommendation or any other measures relating to the convention are expected to be the subject of future decisions by the Conference. This applies also to the adoption of amendments to the convention, as well as the adoption of the protocols and annexes thereto.

18. The Conference shall also (art.6, para 3 (h)) establish such scientific, technical or legal working groups as are deemed necessary for the implementation of the Convention. In the present draft form of the Convention working groups established by the Conference of the Contracting Parties cannot adopt decisions aimed directly at the Contracting Parties, but only provide suggestions and report on results of their work. The Committee provided for in article 8 (Alternative 1) is a body for co-operation among the representatives of the Contracting Parties, and acts in an advisory capacity to the Conference of the Contracting Parties, which is not bound to accept its recommendations.

19. Other decisions taken by the Conference of the Contracting Parties will be of an internal nature, such as the adoption of the rules of procedure and financial rules for itself and for its subsidiary bodies, and of the financial provisions for the functioning of the secretariat (art.6, para.2). The adoption of the financial rules would entail direct financial obligations for the Contracting Parties. Thus, it is to be expected that prior to their adoption, Contracting Parties will obtain the approval of the appropriate national organs (e.g. the Ministry of Finance).

20. It may be presumed that, under the rules of procedure it adopts, the Conference of the Contracting Parties shall adopt by consensus its budget as well as the budget of the secretariat and scientific-technological advisory-body/mechanisms. These budgets may be annual or biennial; they should be managed in accordance with financial regulations approved by the Conference of the Contracting Parties and should be subject to audit.

21. In order to provide for its budgetary/financial requirements, the Conference of the Contracting Parties may wish to consider the establishment of a voluntary Trust Fund in accordance with the Financial Regulations and Rules of the United Nations, the Staff Regulations and Rules of the United Nations, and other administrative policies or procedures promulgated by the Secretary-General. In this event, the Conference of the Contracting Parties would draw up terms of reference for the administration of the Trust Fund which are consistent with the above rules and regulations, and would agree

upon the contributions to the Trust Fund by each Contracting Party. By way of example, the terms of reference of the Trust Fund for the Endangered Species Convention are annexed to the present report - it should be noted, however, that although those terms of reference contain provision for a contribution from the Fund of UNEP, no commitment can at present be made in respect of a contribution from the Environment Fund to any trust fund that might eventually be established for the ozone layer convention.

22. Should the Contracting Parties wish to establish a trust fund along these lines, the proposal to do so would require the approval of the UNEP Governing Council. In line with existing precedents, the trust fund would then be established by the Secretary-General of the United Nations, who would delegate to the Executive Director of UNEP the authority for its administration.

23. At the present stage, it is difficult to prepare even an approximate budget for meetings of the Conference of the Contracting Parties. The financial costs of these meetings depend on various circumstances e.g. documentation, venue, languages, duration, need for concurrent meetings, amount and nature of servicing etc. ^{5/} The costs at this stage can thus only be based on assumptions. For indicative purposes, assuming that meetings will last nine days, and will be held in Geneva the cost of translation, typing and interpretation is currently estimated at some \$71,000. To this would have to be added the cost of travel and subsistence for five substantive staff from UNEP headquarters, Nairobi, as well as the cost of secretarial and conference room staff, etc.

IV. SCIENTIFIC-TECHNOLOGICAL ADVISORY BODY/MECHANISMS

24. Article 8 of the draft convention relates to the creation, functions and institutional make-up of the scientific-technological advisory body or mechanisms. These issues are important because of the complexity of the assessment and control of ozone layer depletion.

25. As is noted in document UNEP/WG.78/2, in the commentary on article 8, the three basic alternatives proposed at the first session of the Working Group were:

^{5/} For instance, the cost of the third meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against pollution and its related protocols and the Inter-governmental Review Meeting of Mediterranean Coastal States on the Action Plan in 1983, is \$116,000 (UNEP/IG.23/6, 17 February 1981); the cost of Extraordinary Meeting of the Contracting Parties to the Barcelona Convention and Conference of Plenipotentiaries on Specially Protected Areas Protocol made in Geneva, 1981 was \$94,800 (UNEP/IG.36/8, 21 April 1982).

(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 Co-ordinating Committee on the Ozone Layer serving as a scientific body to the Convention, supplemented by an extended bureau for proposing policy recommendations. At that session, there was agreement on the desirability of using, as far as possible, the expertise of the Co-ordinating Committee, and on the need to avoid duplication of work between it and any proposed new scientific-technological committee or other bodies, and consensus was ultimately established that the scientific activities the Committee should be expanded to include socio-economic and technological aspects. All three alternatives for article 8 in the draft convention therefore refer to the provision by the Committee of technological and socio-economic, as well as scientific, advice to the Conference of the Contracting Parties.

26. However, the third of the alternatives proposed at the first session of the Working Group has not been reflected in the draft. In addition to the points made in the commentary on article 8 in document UNEP/WG.78/2, it should be recalled that the Co-ordinating Committee is composed of representatives of Member States, United Nations organizations and non-governmental organizations, all with equal status. It would thus be difficult to envisage the Committee acting as the scientific-technological committee without alteration of its membership, as well as its terms of reference. Such an alteration would require action on the part of Governing Council which established it and might also be detrimental to the present successful operation of the Committee.

27. At the same time, there is no doubt that the Co-ordinating Committee should serve as appropriate the Conference of the Contracting Parties and/or other bodies or mechanisms which would be created. It may therefore be useful to clarify the status of the Co-ordinating Committee on the Ozone Layer and the possibilities of using it for the purposes of the convention. The Meeting of Experts designated by Governments, Intergovernmental and Non-Governmental Organizations on the Ozone Layer (Washington, D.C., 1-7 March 1977) recommended ^{6/} the adoption of a world plan of action on the ozone layer and the establishment by UNEP of a committee to enable UNEP to exercise a broad co-ordinating and catalytic role aimed at the integration and co-ordination of research efforts related to the ozone layer. The provisions of the Plan of Action regarding institutional arrangements are quoted in paragraph 5 above. Pursuant to Governing Council decision 84(V) of 25 May 1977, UNEP accordingly established a Co-ordinating Committee on the Ozone Layer, composed of representatives of the agencies and non-governmental

^{6/} UNEP/WG.7/25/Rev.1, of 8 March 1977 annex III, section 4, paragraphs 2 and 3

organizations participating in implementing the Action Plan as well as representatives of countries which have major scientific programmes contributing to the Action Plan. The Committee meets, usually once a year, to discuss research results, make an assessment of ozone layer depletion and its impact and, on the basis of the assessment, make recommendations to the Executive Director relevant to the continuing development and co-ordination of the World Plan of Action on the Ozone Layer.

28. The World Plan of Action focuses on the encouragement, support and co-ordination of:

(a) A research and monitoring programme to clarify the basic dynamical, photochemical and radiative aspects of the ozone layer and to evaluate the impact of man's activities on the ozone balances;

(b) A wide variety of investigations of the impact of ozone layer modification and increased ultraviolet radiation on man, the biosphere and climate;

(c) National and international studies of the socio-economic impact of predicted ozone layer depletions and ozone-depleting emissions to the atmosphere.

29. The Co-ordinating Committee, as presently constituted, has achieved considerable progress in the understanding of (a) and (b) above. The Committee's scientific advice contained in its meeting reports and published by UNEP in the Ozone Layer Bulletin may be considered as probably the best currently available. The Committee has a capability to advise the Contracting Parties, and has previously indicated a willingness to assist in the following aspects:

(a) Monitoring of:

- (i) The status of the ozone layer;
- (ii) UV-B irradiance;
- (iii) The global production, release and use of ozone-affecting substances;
- (iv) The content of trace constituents of the atmosphere which may affect the ozone layer;

(b) Research on:

- (i) The trace constituents of the troposphere and stratosphere;
- (ii) The chemistry and dynamics of the stratosphere;
- (iii) The biological effects of UV-B radiation;
- (iv) Computational models of the atmosphere;
- (v) The validation of such models;

(c) Use of models to calculate:

- (i) The future change of the ozone layer;
- (ii) The consequent changes of UV-B radiation; and
- (iii) The impact on climate;

(d) Assessment of:

- (i) The status of the ozone layer;
- (ii) The impact of predicted changes of UV-B radiation;
- (iii) The socio-economic impact of alternative control strategies;

(e) Development of:

- (i) Best available and economically feasible technologies to limit/reduce emissions of ozone-affecting substances;
- (ii) Alternative chemicals/techniques/products to replace those regulated by controls.

30. The Committee has not carried out work on the socio-economic impact of alternative control strategies, nor on the development of best available and economically feasible technologies to limit/reduce emissions of ozone-affecting substances. For the Committee to address these issues would mean changes in current membership and level of participation and either extended or more frequent meetings. It is probable that such a broadening of the responsibilities of the Committee to address socio-economic aspects of ozone layer depletion would not be enthusiastically welcomed by the majority of its members.

31. In the present draft of the convention, Alternative 1 creates an Advisory Committee consisting of the representatives of the Contracting Parties, not more than one from any one Party. The functions of this Committee are described in the convention, but it is provided that the Advisory Committee should perform also such other functions as may be deemed necessary by the Conference of the Parties. This Committee may call upon the Co-ordinating Committee on the Ozone Layer and other bodies, and also convene its own working groups, ad hoc or standing, as needed. The representatives to these bodies should have suitable qualifications, and to this end the Conference of the Contracting Parties should seek nominations of experts from governmental and non-governmental legal, scientific and technical organizations. Rules concerning the operation of the advisory mechanism, e.g. qualifications of experts, could be detailed in the rules of procedure of the Conference of the Contracting Parties.

32. A similar body - the Scientific Council - is provided for in article VIII of the Convention on the Conservation of Migratory Species, as an advisory body on scientific matters established by the Conference of the Parties. According to this Convention any Party may appoint a qualified expert as a

member of the Scientific Council. In addition, the Scientific Council shall include as members qualified experts selected and appointed by the Conference of the Parties; the numbers of these experts and the criteria for their selection shall be as determined by the Conference of the Parties. The Conference should determine the functions of the Scientific Council, which may include, e.g., providing scientific advice to the Conference of the Parties, to the Secretariat and to any body set up under this Convention, recommending research and the co-ordination of research, evaluating the results of such research, and recommending to the Conference of the Parties solutions to problems relating to the scientific aspects of the implementation of this Convention. A similar consultative Scientific Committee as a consultative body is also provided for in the Convention on the Conservation of Antarctic Marine Living Resources. The role of this Committee is to provide expert and independent advice to a Commission. In carrying out its functions, the Scientific Committee shall have regard to the work of other relevant technical and scientific organizations and to the scientific activities conducted within the framework of the Antarctic Treaty.

33. Alternatives 2 and 3 of article 8 assign to the Conference of the Contracting Parties the task of conceptualizing and instituting the necessary mechanisms to carry out the responsibilities provided for under article 6 of the convention. Alternative 2 is similar in purport to article XIV of the London Convention, which states that the Contracting Parties shall keep under review the implementation of the Convention and may, inter alia, invite the appropriate scientific body or bodies to collaborate with and to advise the Parties or the Organization on any scientific or technical aspects relevant to that Convention. Alternative 3 in the draft of the convention for the protection of the ozone layer provides that, as part of the necessary mechanisms, the Conference of the Contracting Parties shall establish ad hoc or standing advisory bodies.

34. A similar approach is adopted with regard to the implementation of the Endangered Species Convention. At the third meeting of the Conference of the Parties (New Delhi, 1981) a Technical Expert Committee of the Conference of the Parties was established consisting of one or more experts from all interested Parties. Its functions include identifying, by means of the continual review of the annual reports of the Parties and other techniques, problems with enforcement of the convention and providing guidance to the secretariat and Parties on measures that may be undertaken to remedy these problems; reviewing the implementation of the Convention and making recommendations for harmonization of documents and procedures; and drafting resolutions for consideration by the Conference of the Parties. It may be added that at the second meeting of the Conference of the Parties (San José, 1979) a Standing Committee of the Conference of Parties was established to provide guidance and advice to the secretariat on the implementation of the Convention, and to act as Bureau at meetings of the Conference of the Parties. The Standing Committee consists of no more than nine Parties, which shall be nominated by the Conference of the Parties which shall ensure that the major geographical regions should be represented.

35. The financial costs of the scientific advisory body/mechanisms will depend upon:

(a) The rate of changes in the state of the ozone layer and the extent and trends of its modification and possible effects;

(b) The consequent timing of the need to draw up recommendations as to regulatory actions, e.g. protocols, in the foreseeable future;

(c) The aggressiveness, quality and detail desired in the performance of the functions;

(d) The extent of co-operation desired in the fields of technology development and transfer;

(e) The extent to which members themselves provide data and information of direct utility;

(f) The degree of continuity and institutional memory desired in the performance of the advisory functions;

(g) The method of operation, e.g. the extent of use of permanent staff versus use of consultants, ad hoc working groups, the amount of travel and of participation in relevant meetings of other bodies, etc.;

(h) The location of the body and the administrative support available.

36. For the present, until parties decide that the state of the ozone layer warrants regulatory action, it would seem that the principal active functions of an advisory committee would be those described in (v) of article 8, alternative 1, paragraph 2(b), (d) and (e). For these functions and for the present, it would seem that annual meetings of such a committee, with supporting work by consultants and/or working groups, as required, would suffice.

V. DEPOSITARY

37. Apart from the instances cited in the commentary in document UNEP/WG.78/2 of the chief administrative officer of an organization acting as depositary of a convention, a number of other examples of that practice may be given. The Secretary-General of IMCO (now IMO) acts as depositary of, for example, the Convention relating to Intervention on the High Seas (art.IV), the Protocol relating to Intervention on the High Seas of Marine Pollution by Substances other than Oil (art.V), the Convention relating to Civil Liability (art.5) and the Convention on the Establishment of an International Fund (art.38). The Director-General of the United Nations Educational, Scientific and Cultural Organization is designated as depositary for the Convention on Wetlands (art.9) and the Convention for the Protection of the Natural Heritage (art.31). The Agreement for the Establishment of a Commission for the Desert Locust ^{7/} states that the Director General of the Food and Agriculture Organization of the United Nations shall perform the functions of the depositary of the Agreement. The Director-General of the International Labour Office, is as provided in articles 15-19, a depositary for the Convention on Protection against Hazards of Poisoning.

^{7/} As amended by the Commission at its sixth session (4-6 April 1977) and approved by the FAO Council at its seventy-second session (8-10 November 1977).

38. Regarding the designation of the Secretary-General of the United Nations as depositary for treaties, the legal opinion referred to in document UNEP/WG.78/2 stated that all treaties concluded under United Nations auspices should be worded to confer depositary or administrative functions on the Secretary-General only, and not on any subordinate official, because the United Nations Charter centralizes the authority and responsibility for Secretariat action in the Secretary-General. It is for him to decide which subordinate official will in fact perform functions on his behalf. He has assigned all depositary functions to the Office of Legal Affairs because it is of extreme importance that those functions be performed in a legally correct and absolutely consistent manner and that all information on United Nations treaties be available in and published by one office.

39. In theory, therefore, the possibility exists of the Secretary-General designating the Executive Director of UNEP to perform the functions of depositary, on his behalf, for conventions concerning environmental protection concluded under the auspices of the United Nations, including the convention on the protection of the ozone layer. However, in the light of the legal opinions obtained from the United Nations Secretariat, this possibility was not reflected in the present draft of the convention. Thus the depositary functions for the convention would be exercised on behalf of the Secretary-General by the Office of Legal Affairs, United Nations Headquarters, which has extensive experience in these matters.



Annex

TERMS OF REFERENCE FOR THE ADMINISTRATION OF THE TRUST FUND FOR THE
CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF
WILD FAUNA AND FLORA

1. A Trust Fund for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as the Trust Fund) shall be established for an initial period of two years to provide financial support for the aims of the Convention.
2. Pursuant to the Financial Regulations and Rules of the United Nations, the Executive Director of UNEP, with the approval of the Governing Council, shall establish the Trust Fund for the administration of the Convention. The Executive Director may delegate the administration of the Trust Fund to the Secretary General of the Convention.
3. The financial period shall be for two calendar years beginning 1 January 1980, and ending 31 December 1981. The appropriations of the Trust Fund for the financial period shall be financed from:
 - (a) The contributions made by the Parties by reference to Table 1, 8/ including contributions from any new Parties which are to be added to Table 1;
 - (b) A contribution from the Fund of UNEP in accordance with the decisions of its Governing Council;
 - (c) Contributions from States not Party to the Convention, other governmental, intergovernmental and non-governmental organizations and other sources.
4. The budget estimates covering the income and expenditure for each of the two calendar years constituting the financial period to which they relate, prepared in \$US, shall be submitted to the regular meeting of the Conference of the Parties to the Convention.
5. The estimates for each of the calendar years covered by the financial period shall be divided into sections and chapters, as shown in attached Table 2; 9/ shall be specified according to budget lines; shall include references

8/ Table 1, not included here, gives the annual contributions of Parties to the Convention, based on their assessed contributions to the United Nations regular budget.

9/ Not included here.

to the programme of work to which they relate; and shall be accompanied by such information as may be required by, or on behalf of, the contributors, and such further information as the Executive Director of UNEP may deem useful and advisable.

6. The proposed budget shall be despatched by the Secretariat to all Parties at least ninety days before the date fixed for the opening of the regular meeting of the Conference of the Parties.

7. The budget shall be adopted by a 3/4 majority of the Parties present and voting at the regular meeting.

8. The Executive Director of UNEP may make transfers from one chapter to another within the same section of the budget. At the end of the first calendar year of a financial period, the Executive Director may proceed to transfer any uncommitted balance of appropriations, to the same section in the second calendar year, provided that such transfers do not exceed 20 per cent of the smaller amount of the two annual appropriations for the sections concerned.

9. At the close of the calendar year to which they relate, the uncommitted appropriations shall be cancelled unless required for transfers or carry over. At the close of the financial period to which they relate, the uncommitted appropriations shall be cancelled.

10. All contributions shall be paid in convertible currencies. Contributions from States that become Parties after the beginning of the financial period should be made on a pro-rata basis for the balance of the financial period.

11. At the end of the first calendar year of a financial period, the Executive Director shall submit to the Parties the accounts for the year. He shall also submit, as soon as practicable, the audited accounts for the financial period.

12. Except as otherwise defined in the foregoing, the general procedures governing the operations of the Fund of UNEP and the Financial Regulations and Rules of the United Nations shall govern the financial operations of the Convention.

13. These Terms of Reference shall be effective from the date of their approval by the Parties.
