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Ad Hoc Working Group of Legal and
Technical Experts for the Elaboration
of a Global Framework Convention for
the Protection of the Ozone Layer
Third Session

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SECOND REVISED DRAFT CONVENTION FOR THE
PROTECTION OF THE OZONE LAYER,
WITH ADDITIONAL COMMENTARY

Text prepared by the UNEP secretariat

Na.83-2403-3663C

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INTRODUCTION

1. The present text of the draft international convention for the protection of the ozone layer has been prepared in response to the recommendation of the Ad Hoc Working Group during the second part of its second session (UNEP/WG.78/13, para. 36 (b)).

2. As recommended by the Working Group, the second revised text of the draft convention is accompanied, where appropriate, by commentaries designed to explain as briefly as possible the changes made in the second revised draft. As in the earlier versions of the draft convention (UNEP/WG.78/2, UNEP/WG.78/10), brackets are used to indicate alternative wordings and proposals on which agreement was not reached. Except where there is specific indication to the contrary, the commentary which accompanied the earlier versions remains generally valid in respect of the new text. The present document should therefore be read in conjunction with the earlier versions, as well as with the report of the Working Group on the first and the second part of its second session (UNEP/WG.78/8 and UNEP/WG.78/13).

3. In the present text of the draft Convention, the articles or their parts concerning protocols to the Convention have been placed between square brackets because a final decision was not taken as to the need for and content of protocols.

4. During the second part of the second session of the Ad Hoc Working Group it was agreed that throughout the draft convention and associated texts, "monitoring" would be replaced by "systematic observations".

5. The draft convention incorporates a draft technical annex on Research and Systematic Observations, which represents a shortened and improved version of the proposed texts submitted to the second part of the second session of the Ad Hoc Working Group by the delegations of the United States of America and of Norway. The new draft text was prepared by the technical working group during the second part of the second session of Ad Hoc Working Group and is based on an amalgamation of the texts submitted concerning Research and Monitoring and also a list of chemical substances which have the potential to modify the ozone layer. The draft annex submitted by the technical working group was considered in depth by the informal session of the Ad Hoc Working Group and substantial agreement was reached.

6. A second draft annex entitled 'Information Exchange', also prepared by the technical working group based on a proposed text submitted by the delegation of the United States of America, was placed before the informal session of the ad hoc Working Group. However, due to time constraints, little discussion of this draft Annex II took place. Consequently, the proposed annex is attached to the second revised draft convention for further consideration by the Ad Hoc Working Group during its third session

7. In addition, an "Annex concerning measures to control, limit and reduce the use and emissions of fully halogenated chlorofluorocarbons (CFCs) for the protection of the ozone layer" was submitted at the second part of the

second session by Finland, Norway and Sweden, and at the request of the Ad Hoc Working Group was transmitted to Governments for comments, by letter of the Executive Director dated 14 July 1983. This draft annex, together with a summary of comments received from Governments is also placed before the Ad Hoc Working Group for its consideration (UNEP/WG.94/4).

Preamble

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 [of stratospheric ozone] [of the ozone layer] [likely to be caused by world-wide emission of chlorofluorocarbons and other compounds],]
- 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, 9/13 of 26 May 1981, 10/17 of 31 May 1982 and 11/7, Part II B, section I of 23 May 1983 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, [and should be based on clear scientific and technical considerations],]
- AWARE also of the need for further research and monitoring to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modification,]

[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 was not a subject of discussion during the second part of the second session, thus the text of the Preamble remains substantively unchanged from that contained in the revised draft convention (UNEP/WG.78/10). Accordingly, the commentary appearing in document (UNEP/WG.78/10) is still relevant to this Preamble. An additional reference in paragraph 4 of the Preamble concerns a decision of the eleventh Governing Council on the Protection of 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 above the planetary boundary layer, in the upper troposphere and 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

The definition of the ozone layer in paragraph 1 of this article is the result of the work of an informal technical working group during the second part of the second session, on the basis of advice provided by COOL at its sixth session (5-8 April 1983, Geneva).

Paragraph 2 was left unchanged (UNEP/WG.78/2 and 10).

Because of the range of meanings that may be given to the word 'monitoring', the technical working group suggested that 'monitoring' be replaced by 'systematic observations' which was believed to define more correctly the procedures envisaged. In view of this change, it was felt unnecessary to define 'monitoring' and thus it was agreed to delete the proposed definition of 'monitoring' from Article 1 (former paragraph 3).

Article 2

GENERAL OBLIGATIONS

Alternative 1

1. The Contracting Parties' shall [, either individually or jointly,] take [all] appropriate [precautionary] measures [, subject to review,] in accordance with the provisions of this Convention [and those protocols in force to which they are party] to protect human health and the environment against adverse effects resulting from human activities [which modify [or are likely to modify] the ozone layer] [should it be found that these activities have or are likely to have adverse effects by reason of their modification of the ozone layer] [, [and] using for this purpose the best practical means at their disposal and in accordance with their capabilities] [, and] in accordance with the means at their disposal and their capabilities];

2. To this end the Contracting Parties shall [, within the framework of the Convention]:

(a) Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;

[(b) Co-operate in taking appropriate legislative or administrative measures and in [harmonizing] [endeavouring to harmonize] policies to [control] [limit, reduce [and] [or] prevent] [human activities under their jurisdiction [or control]] [should it be found that these activities] [that] [have] [release of substances which cause] [or are likely to have] [significant] adverse effects [by reason of their] [resulting from] modification of the ozone layer;]

(c) Co-operate in the formulation [and] [with a view to] adoption of [appropriate] protocols and annexes prescribing agreed measures, procedures and standards for the implementation of this Convention;

(d) Co-operate with competent international bodies to implement effectively this Convention [and those protocols to which they are a party].

[3. The provisions of the present convention shall in no way affect the right of Contracting Parties to adopt stricter measures than those adopted under paragraphs 1 and 2, nor shall they affect stricter measures already taken by a Contracting Party.]

Alternative 2

1. The Contracting Parties shall, either individually or jointly, take all appropriate measures to protect the ozone layer and to that end limit and gradually reduce and prevent activities under their jurisdiction and control that may have adverse effects resulting from modifications of the ozone layer, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.

2. To this end the Contracting Parties shall co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modifications of the ozone layer.
3. The Contracting Parties shall co-operate in the formulation and adoption of protocols and annexes prescribing agreed measures, procedures and standards for the implementation of this Convention.
4. The Contracting Parties shall co-operate with competent international bodies to implement effectively this Convention and those protocols to which they are a party.
5. Within the framework of this Convention, the Contracting Parties shall co-operate, by means of systematic observations, research, exchange of information and transfer of technology, in developing and harmonizing policies, strategies and measures for limiting, reducing [and] [or] preventing the release of substances which cause or are likely to cause adverse effects on the ozone layer.

Commentary

Alternative 1 here is based on the text of Alternative 1 appearing in document UNEP/WG.78/10 and on the text submitted by the United States of America (UNEP/WG.78/CRP/33).

The numerous amendments proposed during the third reading on which agreement was not reached, together with alternate placements of the phrases are indicated by the use of brackets (UNEP/WG.78/13 paras. 27-30).

Alternative 2 of this article is a slightly changed version of Alternative 2 contained in the former Article 2 (document UNEP/WG.78/10).

Article 3

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Contracting Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research generally on:

(a) The physical, chemical, and dynamic processes that may affect the ozone layer;

(b) The human health and other biological effects deriving from modifications of the ozone layer, particularly those resulting from changes in UV-B radiation;

(c) Climatic effects deriving from modifications of the ozone layer;

(d) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;

(e) Alternative substances and technologies;

(f) Related socio-economic matters;

as further elaborated in Annex I.

2. The Contracting Parties undertake to promote or establish, as appropriate, directly or through competent international bodies and taking fully into account relevant on-going activities at both the national and international levels, joint or complementary programmes for systematic observation of the state of the ozone layer and other relevant parameters, and to provide the resulting data to world data centres in a regular and timely fashion, as elaborated in annex I.

3. The Contracting Parties undertake to co-operate, directly or through international bodies, in ensuring the collection, availability and validation of observational data.

Commentary

During the third reading of the draft convention, discussion concentrated on the related annex prepared by the technical Working Group. Except for the replacement of the term "monitoring", the article remained unchanged, subject to further consideration by the Ad Hoc Working Group

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Article 4

SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION

1. The Contracting Parties undertake, taking fully into account the relevant on-going programmes at both the national and international levels, and that carried out under 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 [causes, 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 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) Exchange of necessary equipment for systematic observations and facilities needed to supplement existing systematic observation systems;

(d) Appropriate training of scientific and technical personnel;

(e) Ensure intercalibration of observational means and methods with a view to generating comparable or standardized data called for in specialized protocols or annexes]

[2. The Contracting Parties shall facilitate and encourage the exchange of legal, scientific and technical information relevant to this Convention as specified in the annex or annexes thereto and protocols to which they are a party.]

Commentary

This article was not further discussed during the second part of the second session of the Working Group and remains unchanged from the former draft of the convention (UNEP/WG.78/10).

Article 5

TRANSMISSION OF INFORMATION

The Contracting Parties shall transmit through the Secretariat to the Conference of Contracting Parties information on the measures adopted by them in implementation of this Convention [and annexes and protocols thereto,] [and of protocols to which they are parties,] in such form and at such intervals as the Conference of Contracting Parties may determine.

Commentary

This Article remains unchanged from the former draft of the convention (UNEP/WG.78/10) and reflects the compromise reached during the first part of the second session (UNEP/WG.78/8, para. 22).

Article 6

CONFERENCE OF THE CONTRACTING PARTIES

1. A Conference of the Contracting Parties is hereby established. The first meeting of the Conference of the Contracting Parties shall be convened by the secretariat designated under article 7 not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Contracting Parties shall be held at regular intervals to be determined by the Conference at its first meeting. 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 any subsidiary bodies established [under article 8] [or] [by this article], as well as financial provisions governing the functioning of the secretariat designated under article 7. [These rules and provisions shall ensure that no financial contributions shall be imposed on a Contracting Party without its agreement.]

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

(a) Consider [periodic reports] [information] 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;] [such mechanisms, groups, bodies, committees and organizations referred to in subparagraphs (f) and (g) below;]

(b) Review the state of the [latest scientific information on 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;]

(c) [Consider co-operative activities to be undertaken within the framework of the Convention and its protocols or annexes;]

(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, systematic observations, 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;]

(d) [Make recommendations regarding the adoption of protocols or amendments to this Convention or its protocols in accordance with article 10;]

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[(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 11;]

[(f) Consider the need for new protocols;]

[(g) [Consider and] adopt [review and amend] annexes to this Convention as laid down in [in accordance with] article 11;]

[(h) Establish such [mechanisms] [scientific, technical or legal] [scientific, technical, socio-economic 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, systematic observations 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]. The participation of [a non-governmental body or agency] [an observer] may be limited to parts of the meeting that are considered to be directly relevant to its work.

Commentary

Only paragraph 1 and 2 of this Article were discussed during the second part of the second session of the Working Group.

In accordance with the compromise reached during the third reading of paragraph 1, the secretariat designated in article 7 should convene the first meeting of the Conference of the Contracting Parties.

In paragraph 2 some of the brackets were removed, and a proposed additional sentence was introduced between brackets.

Article 7

SECRETARIAT

1. The Contracting Parties designate the United Nations Environment Programme as responsible for carrying out the following secretariat functions [taking into account the organizational and financial possibilities of UNEP] [until the first ordinary meeting of the Conference of the Parties held pursuant to article 6. These functions shall be]:

(a) To arrange for and service the meeting of the Contracting Parties as provided for in articles [6], [8], [9 and 10];

(b) To arrange for and service the meetings of [the advisory body established under article 8 and] [scientific, technical, socio-economic or legal] working groups established under article 6;

(c) To transmit the information received in accordance with article 5 as well as information derived from meetings of bodies established under articles [6 and 8];

[(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 the Secretariat by any protocols to this convention;]

(f) To prepare [administrative] 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 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 may be determined 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 shall make alternative arrangements for the Secretariat.]

[2. The Contracting Parties shall, at the first ordinary meeting of the Conference of the Parties, make arrangements for a permanent secretariat.]

Commentary

This article was not further discussed during the second part of the second session of the Working Group and remains unchanged from the former draft of the convention (UNEP/WG.78/10).

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Article 8

ADVISORY BODY

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 and socio-economic 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 the 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 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 procedure and financial rules, provide for the necessary mechanisms to carry out its responsibilities under article 6 of this Convention.]

[1. The Conference of the Contracting Parties shall establish a committee consisting of representatives of the Contracting Parties and having the function of advising the Conference on all matters of relevance to the implementation of the Convention. The selection of members, admission of observers, and approval of the procedures of the Committee shall be provided for in the rules of procedure established under article 6.]

2. In addition to [such mechanisms] [that Committee], the Conference of the Parties shall request from the Co-ordinating Committee on the Ozone Layer [and other 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.

Commentary

This article was not further discussed during the second part of the second session of the Working Group and remains unchanged from the former draft of the convention (UNEP/WG.78/10).

Article 9

ADOPTION OF PROTOCOLS

1. The Conference of the Contracting Parties may adopt, at an extraordinary meeting, protocols to this Convention pursuant to the provision of article 2, paragraph [2] [3].
2. Such a meeting 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.

Commentary

The above text reflects the compromise reached during the second reading of the draft based on the former text of paragraphs 1 and 2 of this article (UNEP/WG.78/10). It was agreed that the adoption of any protocols to the convention should be by the Conference of the Contracting Parties rather than by diplomatic conference because of the link which should exist between the convention and protocols to this convention. It was emphasized that only Parties to the Convention could be Parties to the protocols. (Document UNEP/WG.78/3 provides additional commentary relevant to this article).

The former paragraph 3 of this article was deleted (UNEP/WG.78/10).

Article 10

AMENDMENT OF THE CONVENTION [OR PROTOCOLS]

1. Any Contracting Party to this Convention [or to any protocol thereto] may propose amendments to this Convention [or to such protocol] [or any protocol thereto]. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations. The secretariat shall circulate such proposals to all Contracting Parties. Amendments shall be adopted by the Conference of the Contracting Parties at an extraordinary meeting which shall be convened by the secretariat at the request of at least [one-third] [two-thirds] of the Contracting Parties.
2. The text of any proposed amendment shall be communicated to the Contracting Parties and the signatories by the secretariat ... days before such an extraordinary meeting.
3. Amendments to this Convention [or any protocol] shall be adopted by [consensus] [a two-thirds 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.]
4. 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 ninetieth day following the receipt by the Depository of notification of their acceptance by 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.
5. 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.

Commentary

The above text reflects the compromise reached during the second reading (UNEP/WG.78/13 paras. 9,12) based in principle on Alternative 1 of this article in document UNEP/WG.78/10, as well as on amendments proposed during the second part of the second session. Paragraph 1 is based on paragraph 1 Alternative 1 of document UNEP/WG.78/10, while the reference to a "diplomatic conference" was replaced by that to an extraordinary meeting of the Conference of the Contracting Parties to be convened by the Secretariat.

Paragraph 3 is based on the corresponding paragraph of Alternative 2 of document UNEP/WG.78/10. Paragraphs 4 and 5 correspond to paragraphs 3 and 4 of former Alternative 1, while paragraph 5 of former Alternative 1 was deleted.

Article 11

ADOPTION AND AMENDMENT OF ANNEXES

1. 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[, and shall be reserved for scientific, technical and administrative matters]. [They shall not deal with matters relating to regulatory and control measures].

2. Any Contracting Party may propose amendments to the annexes to this Convention [or to the annexes to any protocol] at the meeting referred to in article 6. Such annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

3. [Except as may be otherwise provided in any protocol with respect to its annexes, the] [The] following procedure shall apply to the adoption and entry into force of amendments to annexes to this Convention [or annexes to a protocol]:

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

(b) Any Contracting Party that is unable to approve an amendment to the annexes to this Convention [or to the annexes 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 thereupon enter into force for that Party;

(c) 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 subparagraph (b) above.

4. 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 [annexes 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.

[5. Apart from the procedures set out above, the amendments may be adopted by the simplified procedure referred to in article 12.]

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Commentary

Two earlier versions of article 11 were deleted (UNEP/WG.78/10) and the status of annexes was defined as in paragraph 1 of former article 12. The brackets indicate two alternative ways of limiting the contents of annexes (positively or negatively), both of which were proposed during the second part of the second session of the Working Group.

Paragraph 2 is based on former paragraph 1 of this article, with minor amendments.

Paragraph 3, with sub-paragraph (a), (b) and (c), corresponds to former paragraphs 2, 3 and 4 of this article. Paragraphs 4 and 5 correspond to former paragraphs 5 and 6.

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[Article 12

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 annexes to 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 and signatories.
3. If, at any time within a period of six months thereafter, a Contracting Party objects to the proposal for the adoption of the amendment by simplified procedure, 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 proposal for adoption by simplified procedure, the proposed amendment shall be considered adopted. The secretariat shall notify all Contracting Parties accordingly.]

Commentary

In view of the reservations expressed by a number of delegations at the second part of the second session of the Ad Hoc Working Group, this entire article, as well as the related paragraph 5 of Article 11, was placed between brackets.

Paragraphs 1 and 2 of this Article are identical to those contained in document UNEP/WG.78/10.

With respect to paragraph 3 of this article, attention is drawn to the fact that consensus was reached on the provision that an objection by one of the Contracting Parties would be sufficient to reject a proposal for adoption of an amendment by simplified procedure.

Article 13

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.

Alternative 4

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of the Convention [or Protocols to which they are party], if settlement by negotiation or by other peaceful means has not been possible, shall be submitted by common agreement to the International Court of Justice or upon the request of one of them to arbitration. Arbitration procedures, unless the parties to the dispute decide otherwise, shall be in accordance with annex ... of this Convention.
2. Any amendment to that annex shall be proposed and adopted, and shall enter into force, in accordance with the procedures set out in article 10.

Commentary

Alternatives 1, 2 and 3 remain unchanged from the former drafts of the Convention (UNEP/WG.78/2 and 10). A fourth alternative, proposed by the United States and based on article 10 of the MARPOL Convention, has been added for consideration by the Ad Hoc Working Group.

Article 14

SIGNATURE

1. This Convention shall be open for signature at _____ from _____ to _____ by any State 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 [and a majority of whose member States are signatories to this Convention].

2. In matters within their competence, such regional economic integration organizations may, 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 text of the proposed article is based on article 14 of the Geneva (ECE) Convention and is identical to Alternative 1 contained in document UNEP/WG.78/2 and 10 except for the proposed text added between brackets in paragraph 1.

In paragraph 2, the word "may" replaced the former word "shall" to reflect an understanding of the delegations to the second part of the second session of the Working Group.

Article 15

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Convention [and any protocol thereto] shall be subject to ratification, acceptance or approval by any State and by the regional economic integration organizations referred to in article 14. Instruments of ratification, acceptance or approval shall be deposited with the Depository.
2. This Convention [and any protocol thereto] shall also be subject to ratification, acceptance or approval by the organizations referred to in article 14 [if a majority of their member States are Contracting Parties to the Convention]. In their instruments of ratification, acceptance or approval, such organizations shall declare the extent of their competence with respect to the matters governed by the Convention [and the relevant protocol]. Subsequently, these organizations shall also inform the Depository of any substantial modification in the extent of their competence.
3. In matters within their competence, such regional economic integration organizations may 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.
4. In the fields of their competence, regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to the Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Commentary

During the second part of the second session of the Working Group, agreement was reached to retain two separate articles for ratification, acceptance or approval and for accession, as proposed in document UNEP/WG.78/2;

The substance of paragraph 1 related to the ratification, acceptance or approval of the Convention by the regional economic integration organizations is repeated in the first phrase of paragraph 2 of this Article.

The attention of the experts is drawn to the fact that paragraph 3 of this Article, which has been adjusted to the wording of Article 14 of the Geneva (ECE) Convention, is already reflected in paragraph 2 of Article 14.

Paragraph 4 was added during the second part of the second session of the Ad Hoc Working Group.

/...

Article 16

ACCESSION

1. This Convention [and its protocols] shall be open for accession by any State and by the regional economic integration organizations referred to in article 14 from the date on which the Convention [or the protocol concerned] is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 shall declare the extent of their competence with respect to the matters governed by the Convention [and the relevant protocol]. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Commentary

As emphasized in the commentary in document UNEP/WG.78/2, several conventions on the protection of the environment lay down a special procedure for accession.

Paragraph 1 of this Article is based on article 15, paragraphs 2 and 3 of the Geneva (ECE) Convention.

Paragraph 2 corresponds to paragraph 2 of Article 15.

[Article 16 (bis)]

Relationship between the Convention and its protocols

1. No State or regional economic integration organization may become a Contracting Party to a protocol unless it is, or becomes at the same time, a Contracting Party to the Convention.
2. Decisions concerning any protocol shall be taken only by the Contracting Parties to the protocol concerned.]

Commentary

During the second part of the second session of the Ad Hoc Working Group reference was made to the need to state explicitly the link between the convention and its protocols. Document UNEP/WG.78/3 provides additional commentary relevant to this matter.

/...

Article 17

ENTRY INTO FORCE

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. Any protocol to this Convention, except as otherwise provided in such protocol, shall enter into force on the _____ day following the date of deposit of the _____ instrument of ratification, acceptance or approval of such protocol or accession thereto.]

[3.] 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.

[4. For the purposes of paragraphs 1 and 2, any instrument deposited by an organization referred to in article 15 shall not be counted as additional to that deposited by a member State of such organization].

Commentary

Paragraphs 1, [2] and [3] of this article remain as in documents UNEP/WG.78/2 and 10. Paragraph 2 was placed between brackets because of lack of consensus on the need and the content of protocols.

The addition of paragraph [4] was proposed during the second part of the second session of the Ad Hoc Working Group.

[Article 18

RESERVATIONS

No reservations or exceptions may be made to this Convention [or to any protocol thereto] unless expressly permitted by [other articles of] this Convention.]

Commentary

The article is shown in brackets to reflect the proposal by some delegations that a decision on the inclusion of this article should be taken after the whole Convention had been agreed.

Article 19

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 Depositary.

[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 Depositary.]

3. Any such withdrawal shall take effect upon expiry of [six months] [one year] after the date of its receipt by the Depositary, 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

The text of this article remains as in document UNEP/WG.78/10.

[Article 19 bis

In order to take account of advances in scientific knowledge regarding the ozone layer, the Contracting Parties shall consider at a meeting of the Conference of Parties the need to review the Convention.]

Commentary

The addition of this article was proposed by France during the first part of the second session.

It was decided during the second part of the second session of the Ad Hoc Working Group that this proposal should be discussed together with article 6.

Article 20

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 15 and 17;
 - (b) Of the date on which the Convention [and any protocol thereto] will come into force in accordance with the provisions of article 17;
 - (c) Of notification of withdrawal made in accordance with the provisions of article 19;
 - (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 11;
 - (f) Of notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention [and relevant protocols], and of any modifications thereto.

Commentary

During the second part of the second session of the Working Group, a consensus was reached that the Secretary-General of the United Nations should assume the functions of Depositary of this Convention.

This solution is provided for in a number of international treaties concluded within the framework of the United Nations, e.g. Geneva (ECE) Convention, United Nations Convention on the Law of the Sea, etc.

The functions of the Depositary are generally defined in article 77 of the Vienna Convention; the functions cited in paragraph 2 of this article are thus not exhaustive.

Sub-paragraph (f) of this paragraph was added during the second part of the second session.

Article 21

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.

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

Done at, this

Commentary

The text of this article remains as in document UNEP/WG.78/2. Brackets were deleted at the second part of the second session of the Ad Hoc Working Group.

ANNEX I TO THE CONVENTION. RESEARCH AND SYSTEMATIC OBSERVATIONS */

1. Recognizing the importance of research and systematic observations to the protection of the ozone layer, and of international scientific assessments to the development of international scientific consensus, the Contracting Parties agree to support, individually, or collectively, research, systematic observations and scientific assessments appropriate to their [needs,] expertise, geography, and available resources.

2. Further recognizing that the major scientific issues are:
(a) modification of the ozone layer which would result in a change in the amount of solar UV-B radiation that reaches the earth's surface, with potential consequences for human health and ecological organisms and systems;
(b) modification of the vertical distribution of ozone, which could change the temperature structure of the atmosphere with potential consequences for weather and climate; (c) direct modification of the thermal structure of the atmosphere due to the addition of gases that absorb infra-red radiation.

3. The Contracting Parties shall co-operate in:

(a) Conducting research and publishing in peer-reviewed literature information developed on understanding the physics and chemistry of the earth's atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and on environmental and climatic effects which would result from changes in either the total column content or the vertical distribution of ozone on all time-scales;

(b) The assessment of research results and the development of recommendations for future research;

(c) The sharing of information on planned and on-going research, both governmental and private, to facilitate the co-ordination of research programmes so as to make the most effective use of available national and international resources;

(d) The development and implementation of multi-national satellite and ground-based global measurement systems;

(e) The exchange of scientific data including the emission data needed for research;

(f) Providing research and systematic observational data to World Data Centres in a regular and timely fashion.

*/ Text prepared by the informal technical working group and amended during the third reading of the convention.

4. Areas of research and systematic observation that the Contracting Parties recognize as important include:

(a) Research in the physics and chemistry of the atmosphere

- (i) Comprehensive theoretical models: further development of models which consider the interaction between radiative, chemical and dynamic processes; studies of the simultaneous effects of various man-made and naturally occurring species upon atmospheric ozone; interpretation of satellite and non-satellite measurement data sets; studies of the radiative effects of ozone and other trace species and their impact on climate; evaluation of trends in atmospheric and geophysical parameters, and the development of methods for attributing changes in these parameters to specific causes;
- (ii) Laboratory studies of: rate coefficients, absorption cross-sections, and mechanisms of tropospheric and stratospheric chemical and photochemical processes; spectroscopic data to support field measurements in all relevant spectral regions;
- (iii) Field measurements: understand the fluxes of key source gases from both natural and anthropogenic origins; atmospheric dynamics studies; simultaneous measurements of photochemically related species down to the planetary boundary layer using in situ and remote sensing instruments; the intercomparison of different sensors; obtaining three-dimensional fields of key atmospheric trace constituents, solar flux, and meteorological parameters; co-ordinated correlative measurements for satellite instrumentation;
- (iv) Instrument development, including: satellite and non-satellite sensors for atmospheric trace constituents, solar flux and meteorological parameters as required in 4 (a) (iii) and in 4 (c) on systematic observations;

(b) Research in health and biological effects

- (i) The relationship between human exposure to solar radiation, visible and ultra-violet, and the development of both non-melanoma and melanoma skin cancer, and the effects on the immunological system;
- (ii) Effects of UV-B, including the wavelength dependence, upon (a) agricultural crops, forests and other terrestrial ecosystems, and (b) the aquatic food web and fisheries;
- (iii) The mechanisms by which UV-B radiation acts on biological materials, species and ecosystems, including: the relationship between dose, dose rate, and response; photorepair, adaptation, and protection;

/...

- (iv) Studies of biological action spectra and the spectral response using polychromatic radiation in order to include possible interactions of the various wavelength regions;
 - (v) The influence of UV-B radiation on: the sensitivities and activities of biological species important to the biospheric balance; primary processes such as photosynthesis and biosynthesis; the photodegradation of pollutants and agricultural chemicals;
 - (vi) Effects of climate change on ecological systems;
- (c) Systematic observations
- (i) The status of the ozone layer (i.e. the spatial and temporal variability of the total column content and vertical distribution) by making the Global Ozone Observing System, based on the integration of satellite and ground-based systems, fully operational;
 - (ii) The tropospheric and stratospheric concentrations of source gases for the HO_x, NO_x, CO_x and carbon families;
 - (iii) The temperature from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (iv) Wavelength-resolved solar flux reaching the earth's atmosphere, utilizing satellite measurements;
 - (v) Wavelength-resolved solar flux reaching the earth's surface in the ultra-violet range with biological effects (UV-B);
 - (vi) Aerosol distribution and properties from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (vii) Improved methods for analysing global data from systematic observations trace species, temperatures, solar flux, and aerosols.

5. The following is a list of chemical substances of natural and anthropogenic origin which are currently thought to have the potential to modify substantially the chemical, physical or radiative properties of the ozone layer.

CARBON SUBSTANCES

(i) Carbon monoxide (CO)

CO has significant natural and anthropogenic sources, and is thought to play a major direct role in tropospheric photochemistry, and an indirect role in stratospheric photochemistry.

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(ii) Carbon dioxide (CO₂)

Carbon dioxide has significant natural and anthropogenic sources, and affects stratospheric ozone by influencing the thermal structure of the atmosphere.

(iii) Methane (CH₄)

Methane has both natural and anthropogenic sources, and affects both tropospheric and stratospheric ozone.

(iv) Non-methane hydrocarbon species (NMHC)

Non-methane hydrocarbon species, which consist of a large number of chemical substances, have both natural and anthropogenic sources, and play a direct role in tropospheric photochemistry and an indirect role in stratospheric photochemistry.

NITROGEN SUBSTANCES

(i) Nitrous oxide (N₂O)

The dominant sources of N₂O is natural but anthropogenic contributions are becoming increasingly important. It is the primary source of stratospheric NO_x, which play a vital role in controlling the abundance of stratospheric ozone.

(ii) Nitrogen oxides (NO_x)

Ground-level sources of NO_x play a major direct role only in tropospheric photochemical processes and an indirect role in stratosphere photochemistry, whereas injection of NO_x close to the tropopause can lead directly to a change in upper tropospheric and stratospheric ozone.

CHLORINE SUBSTANCES

Fully halogenated alkanes [e.g. CCl₄, CFCl₃ (CFC-11), CF₂Cl₂ (CFC-12), C₂F₃Cl₃ (CFC-113), C₂F₄Cl₂ (CFC-114).]

Fully halogenated alkanes are anthropogenic and act as a source of ClO_x, which play a vital role in ozone photochemistry, especially in the 30-50 km altitude region.

Partially halogenated alkanes [e.g. CH₃Cl, CHF₂Cl (CFC-22), CH₃CCl₃, CHFCl₂ (CFC-21).]

The sources of CH₃Cl are natural, whereas the other partially halogenated alkanes mentioned above are anthropogenic in origin. These gases also act as a source of stratospheric ClO_x.

BROMINE SUBSTANCES

Fully halogenated alkanes (e.g. CF₃Br)

These gases are anthropogenic and act as a source of BrO_x, which behave in a manner similar to ClO_x.

ANNEX II TO THE CONVENTION. INFORMATION EXCHANGE */

1. Recognizing that the collection and sharing of information is an important means of implementing the objectives of this Convention and of assuring that any actions that may be taken are appropriate and equitable, the Contracting Parties shall exchange scientific, technical, socio-economic business/commercial, and legal information.

The Contracting Parties further recognize that co-operation under this annex will be subject to national laws, regulations and practices regarding patents, trade secrets, and protection of confidential [and proprietary] information.

In deciding what information is to be collected and exchanged, the Contracting Parties should take into account the usefulness of information and the costs of obtaining it.

2. Scientific information

The scientific information required is outlined in annex I and includes the nature, status, and results of work described in articles 3 and 4 and in annex I.

3. Technical information

This includes information on:

(a) The availability and cost of chemical (or other) substitutes and of alternative technologies to reduce the emissions of ozone modifying substances and related planned and ongoing research.

(b) The limitations and any risks involved in using chemical or other substitutes and alternative technologies.

4. Socio-economic/business/commercial information

This includes:

(a) Data on production, use and use patterns;

(b) [Import/export data and] international marketing data;

(c) Results of studies on the impacts (costs, risks and benefits) of human activities which may indirectly modify the ozone layer and; of regulatory actions taken and being considered to control these activities.

5. Legal information

This includes information regarding:

*/ Prepared by the informal technical working group.

(a) National laws, administrative measures and legal research relevant to the protection of the ozone layer, e.g. relevant to production, work practices, emissions, products chemical or other substitutes and alternative technologies.

(b) International agreements, including bilateral agreements, relevant to the protection of the ozone layer.

(c) Methods and terms of licensing and availability of patents relevant to the protection of the ozone layer.
