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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
First part of the third session

Geneva, 17-21 April 1983

REPORT OF THE WORKING GROUP

INTRODUCTION

1. In accordance with the recommendation of the Working Group at the second part of its second session (UNEP/WG.78/13, para. 36 (a)), the first part of the third session was held at the Palais des Nations, Geneva, from 17 to 21 October 1983.

I. ORGANIZATIONAL MATTERS

A. Opening

2. The third session was opened on behalf of the Executive Director of UNEP by the Assistant Executive Director, Office of the Environment Programme. He expressed the hope that it would be possible to reach consensus on a single draft text of the convention, without alternative wordings, which could be forwarded to the Governing Council with the Working Group's recommendations and comments as required.

B. Attendance

3. The first part of the session was attended by experts from Argentina, Australia, Belgium, Canada, Chile, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, Germany, Federal Republic of, Greece, Italy, Japan, Kuwait, Netherlands, Norway, Peru, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America, Venezuela, Yugoslavia, and Zaire and by observers from Austria and Poland. Representatives of the World Health Organization, the World Meteorological Organization, and the European Economic Community also attended.

C. Election of officers

4. At the opening meeting, the Working Group, unanimously re-elected Mr. Willem J. Kakebeeke (Netherlands) as Chairman and elected Mr. Y. Sedunov (Union of Soviet Socialist Republics) as Vice-Chairman and Mr. Juan Sola (Argentina) as Rapporteur.

D. Organization of work

5. At the opening meeting, the Working Group agreed that, following a general discussion, it would continue the third reading of the draft convention, including proposed annexes and/or protocols in an informal working group of the whole, the results of whose deliberations, in the form to the extent possible of agreed texts, would be communicated to the Working Group, meeting in formal session, for discussion and decision as appropriate.

6. At the 4th meeting, the Working Group established an informal technical working group to discuss and refine elements of article 3 and annexes I and II.

7. Prior to the commencement of deliberations on the draft convention, the UNEP secretariat drew attention to the full report of the Co-ordinating Committee on the Ozone Layer on its sixth session, which was available to participants for information. The Working Group agreed that the assessment contained in that report, the executive summary of which had been before it at its previous session (UNEP/WG.78/12), should be taken as the scientific basis for work on the draft convention at the Group's third session.

II. CONSIDERATION OF THE DRAFT TEXTS

A. General comments

8. The expert from the United Kingdom withdrew the United Kingdom's general reservation regarding the need for annexes and/or protocols (UNEP/WG.78/13, para. 16): it was now in a position to accept annexes as integral parts of the convention, on condition that they were restricted to scientific and technical matters, and agreed that there should also be provision for appropriate protocols. He also withdrew the reservation regarding the replacement of the references to "a diplomatic conference" in articles 9 and 10 (UNEP/WG.78/13, para. 12).

9. The expert from Sweden announced that the authors of the proposed annex concerning limitation of CFCs (UNEP/WG.94/4) were agreeable to its being discussed as a proposed protocol. The United States expert indicated the support of the United States of America for an integral protocol to the convention concerning non-essential aerosol uses of CFCs.

10. There was general agreement that more extensive participation by developing countries was desirable in order to ensure that the convention was truly universal in scope, and that every effort should be made to elicit comments from as many countries as possible before any future session of the Working Group.

B. Conclusions on the draft articles, annexes and protocols

1. Draft articles

Article 1

11. It was agreed that the definition of the ozone layer should be revised on the basis of the definition contained in the report of the informal technical working group convened at the second part of the Ad Hoc Working Group's second session (UNEP/WG.78/13, annex IV, para. 2).

12. Regarding the definition of "adverse effects", reservations were expressed regarding the phrase "taken overall", which might be interpreted as implying that regional or local adverse effects were acceptable. That would inter alia be contrary to Principle 21 of the Declaration adopted at the United Nations Conference on the Human Environment (Stockholm, 1972). One expert suggested that "taken overall" might be replaced by "on balance".

Article 2

13. Consensus was reached on a bracket-free text of the article based on alternative 1 in document UNEP/WG.94/3, with the addition of a paragraph reading "The application of this article shall be based on relevant scientific and technical considerations". One expert expressed the view that subparagraph 2 (b) did not oblige contracting parties to enact legislative measures. It was also stated that the term "control" used in respect of activities included actions to limit, reduce and prevent them. Regarding paragraph 3, one expert considered that it would be desirable to refer to "additional" rather than "stricter" domestic measures.

14. One expert reserved the right to comment further on parts of the consensus text at a later stage.

Article 3

15. It was agreed that "physical, chemical and dynamic" in subparagraph 1 (a) should be replaced by "physical and chemical" and that the reference to annex I at the end of paragraph 1 should be replaced by a reference to annexes I and II.

16. The remainder of article 3 was agreed to as revised by the informal technical working group in the light of comments in the Working Group.

Article 4

17. It was agreed that the title of the article should be amended to read "Co-operation in the legal, scientific and technical fields", and that paragraph 1 of the text appearing in document UNEP/WG.94/3 should be deleted. One expert, however, reserved the right to comment on that deletion at a later stage, since the paragraph contained elements which were in her view important.

18. Agreement was also reached on a revised text of original paragraph 2 (new paragraph 1).

19. Following extensive discussion, a consensus text of original paragraph 3 (new paragraph 2) was arrived at incorporating elements of the text contained in document UNEP/WG.94/3 and a new text proposed by one expert. Regarding the inclusion of a phrase referring to national laws, regulations and practices, some experts considered that its opening words should be "subject to" rather than "consistent with", while others said that they would have preferred it to quote the second sentence of paragraph 1 in draft annex II as it appeared in document UNEP/WG.94/3, annex II. A number of experts considered that the introduction of any such phrase constituted an escape clause that could undermine the convention and deter developing countries from signing or acceding to it.

Article 5

20. It was agreed that the bracketed references to annexes and protocols should be deleted, and that a paragraph should be added relating to the transmission of information called for in protocols or in any annexes adopted subsequent to the entry into force of the convention. An informal drafting group was requested to prepare the text of such a paragraph. In the event, the drafting group produced a revised text of the article in a single paragraph.

Article 6

21. It was agreed that paragraph 1 should be divided into two paragraphs dealing respectively with ordinary and extraordinary meetings of the Conference of the Contracting Parties.

22. To simplify the text of paragraph 2 (new paragraph 3), the reference to the articles by which subsidiary bodies were established was deleted, and a consensus requirement for the adoption of the rules of procedure and financial rules was introduced to ensure that contributions could not be imposed on a Contracting Party without its consent. One expert stated that he would have preferred the establishment by the convention of an advisory body as provided for in article 9 in document UNEP/WG.94/3.

23. Following extensive discussion, a number of modifications in the subparagraphs of paragraph 3 (new paragraph 4) were agreed to, and some alternative versions of subparagraphs were deleted. An informal drafting group was requested to prepare revised texts of the subparagraphs dealing with the adoption of annexes, protocols and amendments, and of paragraph 4 (new paragraph 5).

Article 7

24. It was agreed that paragraph 1 of the article should simply define the secretariat functions, paragraph 2 should provide for their temporary discharge, and paragraph 3 should relate to permanent secretariat arrangements. One expert strongly felt that the secretariat should not be assigned the function (para. 1 (d)) of inviting the attention of Contracting Parties to any matter pertaining to the purposes of the convention.

Article 8

25. Article 8 was deleted.

Article 9 (new 8)

26. Paragraph 2 was deleted on the grounds that its content was covered by article 6, paragraph 2.

Article 10 (new 9)

27. Paragraph 5 was deleted. Consensus was reached on paragraphs 1 and 4. In respect of paragraph 3, one group of experts favoured adoption of amendments to the convention or its protocols by consensus, whereas another group was in favour of their adoption by majority vote. One expert pointed out that the majority required for amendment might differ in the case of the different types of instrument. Another suggested that the solution resorted to in the United Nations Convention on the Law of the Sea, whereby there should be no voting on amendments until all efforts at consensus had been exhausted, might prove appropriate in the present case also. Another said that the adoption procedures specified in paragraph 3 for amendments to protocols should make allowance for cases in which the protocols themselves specified otherwise.

28. Regarding the text of paragraph 2, one expert expressed the view that circulation of the text of proposed amendments should be confined to the Contracting Parties: the provision for their circulation also to signatories was at variance with established practice.

29. Another expert pointed out, in connection with paragraph 1, the need to indicate how amendments should be proposed and the concomitant need to empower the secretariat, under article 7, to receive such proposals.

Article 11 (new 10)

30. The secretariat was requested to prepare for consideration by the Working Group at the second part of the third session a restructured text of the article.

31. One expert, supported by others, suggested that the reference in paragraph 1 to annexes being integral could be deleted if a text could be incorporated in article 2 to the effect that unless otherwise provided, any

reference to the convention or its protocols should be interpreted as referring also to any annexes thereto; that would also clear up the conceptual regarding the status of annexes that had been apparent throughout the discussion.

32. Paragraph 5 was deleted. Some experts, however, indicated their preference for having a simplified procedure for the adoption of amendments as provided for in article 12 as contained in document UNEP/WG.94/3.

Article 12

33. The article was deleted. Some experts reiterated their view that there should be a simplified procedure for the adoption of amendments.

Article 13 (new 11)

34. The article was not discussed. A request was made that experts should express their views on it at the second part of the session.

Article 14 (new 12)

35. One expert, speaking on behalf of the experts from EEC member countries present at the meeting and supported by another expert, proposed the deletion of the bracketed phrase in paragraph 1. Another expert strongly opposed that proposal. It was agreed that the phrase should remain between brackets.

36. It was agreed that paragraph 2 could be deleted, on condition that the identical wording contained in article 15 (new 13), paragraph 3 was retained.

Article 15 (new 13)

37. One expert, speaking on behalf of the experts from EEC member countries present at the meeting, proposed the deletion of the bracketed phrase in the first sentence of paragraph 2, and of the second and third sentences of that paragraph. Several experts said that those sentences should be retained, and one referred in that connexion to the April 1983 amendment to article 5 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The same expert who had opposed deletion of the bracketed text in article 14 requested that the bracketed part of article 15 paragraph 1 also be retained, and indicated that he would have reservation regarding paragraph 4, and also regarding some subsequent articles, when they were discussed. Following a proposal by one expert, the Chairman suggested that the secretariat prepare a compilation of relevant provisions in other international conventions to aid the group in its future work.

38. No changes were made in article 15 (new 13) other than the deletion of brackets round the references to protocols. Articles 16-21 (new 14-19) were not discussed; however, it was agreed to delete article 19 (bis) in document UNEP/WG.94/3. The Bureau recommended (see para. 56 below) that these draft articles be submitted to the next session without changes, except for the deletion of brackets concerning protocols.

2. Draft annexes

39. The Working Group approved drafts of annexes I and II to the draft convention as revised by the informal technical working group. An orally proposed addition to annex I dealing with hydrogen substances was provisionally approved pending study of the translated text in writing. Regarding the phrase in annex II, paragraph 2 "consistent with national laws ...", the same views were expressed as regarding the identical phrase in article 4 of the convention (see para. 19 above).

3. Draft protocols

40. In accordance with the recommendations of the Working Group at the second part of its second session, the Executive Director of UNEP by letter dated 14 July 1983 had solicited written comments on the draft text submitted by Finland, Norway and Sweden. Comments were received from Australia, Belgium, Canada, Central African Republic, Denmark, Djibouti, Italy, Japan, Kenya, Madagascar, Netherlands, New Zealand, Sri Lanka, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, the Economic Commission for Latin America and the European Economic Community. These were before the Working Group in document UNEP/WG.94/4/Add.1-4.

41. The expert from Norway said that the authors of the protocol on regulation of CFCs welcomed the extensive support for its main provisions reported in document UNEP/WG/94/4/Add.1-4. Together with other experts, they had prepared a revised draft which was more flexible than the earlier version.

42. The preparation of a revised draft of the protocol by the sponsors was generally welcomed. Several experts considered that work on its development should proceed concurrently with work on the draft convention itself, so that the two texts would be ready for simultaneous adoption. They accordingly hoped it would be possible to have a preliminary discussion of the revised draft at the current session. One of them said it was desirable, if not essential, that all parties to the convention should adhere to all protocols to it, and particularly to that dealing with CFCs. Another noted the need for sufficient flexibility in the protocol to accommodate differences in domestic regulations, while a third said that the convention should extend to all substances with potential for affecting the ozone layer, avoiding over-emphasis on any one of them: the time was, however, ripe for a protocol banning all non-essential aerosol uses of CFCs, which should be integral to the convention.

43. Some experts, however, considered that the Working Group's primary task was to finalize the text of the draft convention and its two annexes; only once that had been done should work proceed on protocols to it. Consideration of any draft protocol at the present session would therefore be premature, and might create unwarranted delay in the finalization of the convention. Moreover, the signature of the convention should in their view be an independent exercise, not linked to the signature of any protocol. One of

them added that he could agree to consider the possible content of a protocol regulating CFC use, if that was the decision of the Working Group, only on the understanding that work on the convention should be completed before any protocol was discussed in detail.

44. The Chairman pointed out that the Working Group's terms of reference did not impose any set order for its work, and included the elaboration of annexes and protocols as well as a draft convention.

45. At a subsequent meeting, the expert from Sweden said that in the preparation of the draft protocol on CFC regulation, in the course of which experts from 19 countries had been consulted, every effort had been made to overcome the difficulties it had occasioned some experts in its previous version as a draft annex.

46. Introducing the revised text of the draft protocol, the representative of Norway said that the part of the earlier version relating to information exchange had been deleted, as it was covered by annex II to the convention. Article II introduced a distinction between significant and non-significant uses of CFCs. Article III was more flexible than in the earlier version, and article IV was no longer mandatory. Article IV.2 (b) and article V were between square brackets on the ground that they might more appropriately be located in an annex to the convention (art. IV.2 (b)) or in the convention itself (art. V).

47. While some experts reiterated that they were not at present in a position to discuss a protocol in depth, the draft was generally welcomed as a sound basis for further work on the important topic of CFC regulation. A number of experts indicated that the draft would be given serious consideration in their countries, and noted the desirability of having an opportunity to submit written comments, both to the secretariat and to the sponsors, before the Group's next session.

48. Others, while welcoming the efforts of the sponsors, and particularly the flexibility they had shown, said that no legal or procedural consequences should be derived from their willingness to give preliminary consideration to the draft protocol.

49. Two experts reiterated their view that an action-oriented protocol for the implementation of the convention should be ready for adoption at the same time as the convention itself, and considered the draft to be a welcome step in that direction, although the details needed refining.

50. One expert expressed a preference for retaining the bracketed portions of the text in the protocol, rather than including them in the convention or an annex to it. Article IV.2 (b) should be more explicit as to the mechanism envisaged for co-operation between countries, and article V should refer to that article as well as to articles II and III.

51. One expert said that the preamble to the protocol should contain a reference to Principle 21 of the Declaration adopted at the United Nations Conference on the Human Environment, and pointed out that to refer to atmospheric ozone rather than the ozone layer was inconsistent with the wording of the convention itself. In general, the draft protocol placed too much emphasis on prohibitory and regulatory measures; for the sake of balance, some additional topics should be included, such as technical and scientific co-operation for better understanding of processes in the ozone layer and development of alternative technologies.

52. One expert asked whether "outweigh" in article IV.1 should be replaced by "offset". In reply, the expert from Sweden emphasized that the paragraph in question should be understood as a statement of intent, which was not to be interpreted in precise quantitative terms.

53. The expert from France expressed an objection to the draft protocol being examined by the Working Group at the present session, which was not designed for such an exercise. He reserved his position regarding the Group's competence to take cognizance of the draft.

III. RECOMMENDATIONS FOR FUTURE WORK

54. The Working Group makes the following recommendations to the Executive Director:

(a) The next meeting of the Working Group, to finalize the draft convention, should be convened from 16-20 January 1984 as a resumed third session;

(b) The version of the draft documents resulting from the first part of third session of the Working Group, together with the report thereon, should be transmitted to States at the earliest opportunity together with the invitation to attend the second part of the session or to submit written comments;

(c) Special efforts should be made to encourage participation by an even larger number of countries in the work of the Group;

(d) In view of the useful role performed by the informal technical working group in the Working Group's deliberations and in the preparation of the scientific and technical elements of the draft convention, technical participation in the Group's future work should be encouraged;

(e) Governments should be invited to make available resources to contribute to the holding of the second part of the session or any other future session of the Working Group;

(f) Without prejudice to the possible role UNEP itself might play, other United Nations organizations competent in fields covered by the draft convention should be consulted concerning the execution of the secretariat functions envisaged under the draft convention, and the outcome of these consultations should be reported to the Working Group at the second part of the session.

55. Two experts observed that, in the interests of efficiency, continuity in the participation of experts in the Group's work was desirable. Another expert pointed out that, in view of what was stated in paragraph 10 of the present report, it was implicit in recommendation (c) that increased participation from developing countries should be encouraged.

IV. ADOPTION OF THE REPORT

56. The Working Group authorized its Bureau, in co-operation with the secretariat, to finalize the texts of the draft convention and related documents as agreed to at the session, as well as the present report.

57. On 21 October 1983 the Working Group adopted paragraphs 1-44 of the present report, subject to the incorporation of amendments approved during the consideration of the draft report, and took note of the report of the informal technical working group (see annex).

V. CLOSURE OF THE MEETING

58. The Working Group expressed its gratitude for the offer by the Government of Austria to host the second part of the session in January 1984.

59. After the customary exchange of courtesies, the Chairman declared the first part of the third session closed.

Annex

REPORT OF THE INFORMAL TECHNICAL WORKING GROUP

1. As at the previous session of the Working Group, an ad hoc informal technical working group was established to consider those aspects of the draft framework convention concerned with scientific and technical matters.

2. The group suggested amended texts for paragraphs 1 and 3 of article 3, and in that context considered the interpretation of the word validation. The Chairman interpreted "validation of data" as meaning ensuring the quality of data. In accordance with that clarification, one expert agreed to provide an appropriate equivalent for the Russian text of article 3. Paragraph 3 of article 3 was revised as follows:

"3. The Contracting Parties undertake to co-operate, directly or through competent international bodies, in ensuring the collection, validation and transmission of research and observational data through appropriate world data centres in a regular and timely fashion."

3. The group then re-examined the proposed annexes to the convention to see if they needed amendment in the light of the discussions in the Working Group and of the comments received from Governments since their initial formulation.

4. With regard to annex I, the group considered that the preamble contained in paragraph 1 was superfluous, as the information it contained, with the exception of the concept of scientific assessments, was already included in article 3. The group suggested that paragraph 1 of article 3 be revised to read "research and scientific assessments". Also, paragraph 3 was recommended for deletion as the information would be more conveniently incorporated in annex II or in old paragraph 4 of annex I.

5. The group examined paragraph 2 of annex I and concluded that (a) and (b) should be retained, but (c) should be deleted as "modification of the thermal structure of the atmosphere", other than through ozone, was outside the scope of the convention.

6. A new opening sentence was added to paragraph 4 of annex I (which it was agreed would now become new paragraph 2), reading:

"The Contracting Parties, in accordance with article 3, shall co-operate in conducting research and systematic observations and in developing recommendations for future research in such areas as:"

7. A new subparagraph 2 (c) "Research on effects on climate" was introduced incorporating the reference to the subject previously contained in 4 (a) (i). Old 4 (c) was renumbered 2 (d).

8. In old paragraph 4 (a) (iii) the words "understand" in line 1 and "obtaining" in line 3 were deleted and in line 6 the words "including co-ordinated correlative measurements for satellite instrumentation" were added after "sensors". In view of that change, the final clause of paragraph 4 (a) (iii) was deleted.

9. Old paragraph 4 (b) (vi) [new paragraph 2 (c) (vi)] "Effects of climate change on ecological systems" was deleted, in view of the need to establish first the nature and extent of climatic change occurring as a consequence of ozone layer depletion, and also of the parallel programme being undertaken by UNEP in co-operation with WMO and ICSU, under the World Climate Programme, on the climate/carbon dioxide issue, particularly that part concerned with assessing the impact of climate change on man and the environment resulting from increasing levels of atmospheric carbon dioxide or other causes. It was also recognized that there were other, equally important, impacts of climate change not mentioned in annex I. Therefore, the group recommended that the international organization concerned should report progress in the CO₂/climate programme to the Contracting Parties on a regular basis in order that co-ordination of research in overlapping areas of interest could be effected.
10. An additional paragraph was inserted after paragraph 3 on promoting scientific and technical training in order that developing countries might participate in research and systematic observations.
11. The list of chemical substances which were thought to have the potential to modify the ozone layer was expanded by the addition of paragraphs on hydrogen and water, and that the list was presented in no particular order was added to the introductory paragraph.
12. In preparing annex II the group took the discussions of article 4 into account: in the second paragraph of section 1, the words "will be subject to" were therefore replaced by "has to be consistent with".
13. With respect to annex II, amendments were made to paragraph 2 "Scientific Information" in order to include some of the ideas contained in paragraph 3 of the original version of annex I which had been dropped from the revised version, as earlier suggested by the informal technical working group. In particular, amended versions of 3 (a), 3 (b), 3 (c) and 3 (f) were included in paragraph 2 of annex II.
14. No changes were made to paragraph 3, "Technical information" and only small changes made to paragraph 4, "Socio-economic/business/commercial information" in order to include a reference to the requirement for information on production capacity. Paragraph 5, "Legal information", was also left substantially unchanged, although some explanatory wording was deleted.
15. A commentary was attached to the proposed text of annex II referring to the Group's discussions of possible mechanisms for the collection and dissemination of information, and containing a suggestion of one expert

attending the informal working group, on how this might be achieved. The group noted the value of the suggestion, but pointed out that shortcomings existed which needed to be resolved._/

16. The informal working group also reconsidered the definition of adverse effects, following the comments on the subject during the consideration of article 1 in the Working Group. The discussion centred around the words "taken overall". However, no improved definition could be agreed on, and it was decided to defer the matter until a future meeting.

_/ The suggested text has been added as a footnote to article 4 of the revised text of the draft convention (UNEP/WG.94/8).

