

FOR PARTICIPANTS ONLY

UNEP/IG.53/CRP.3  
18 March 1985

ENGLISH

Conference of Plenipotentiaries on the  
Protection of the Ozone Layer  
Vienna, 18-22 March 1985

ARTICLE 11

SETTLEMENT OF DISPUTES

(Proposal by the USA)

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.
2. If the parties concerned cannot reach agreement by negotiation, they may seek the good offices of, or jointly request mediation by, a third party.
3. When ratifying, accepting, approving or acceding to this Convention, a State or regional economic integration organization referred to in article 12 may declare in writing that for disputes not resolved in accordance with paragraphs 1 and 2 above, that it accepts one or both of the following means as compulsory:
  - (a) Arbitration in accordance with procedures annexed to this Convention;
  - (b) Submission of the dispute to the International Court of Justice.
4. If the parties have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.
5. A conciliation commission shall be created upon the request of one of the parties. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.
6. The procedures set out in this article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

ANNEX ON ARBITRATION

Article 1

Unless the Parties agree otherwise, arbitration procedure shall be in accordance with the rules set out in this Annex.

Article 2

1. An Arbitration Tribunal shall be established upon the request of one Contracting Party addressed to another in application of paragraph 3 of article 11 of the Convention. The request for arbitration shall include a brief statement of the basis for the request.

2. The requesting Party shall notify the Secretariat of its request to submit the dispute to arbitration pursuant to paragraph 3 of article 11 of the Convention. The notification shall state the names of the parties to the dispute and the subject matter of the arbitration and shall identify the provisions of the Convention or any Protocol thereto, the interpretation or application of which is the subject of disagreement. The Secretariat shall transmit this information to all Contracting Parties to the Convention or relevant Protocol.

Article 3

1. The Tribunal shall consist of a single arbitrator if so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.

2. In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

Article 4

1. Where the parties to a dispute do not agree upon a Tribunal in accordance with article 3 of this Annex, the Tribunal shall consist of three members:

- (i) One arbitrator nominated by each Party to the dispute; and
- (ii) A third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General of the Permanent Court of Arbitration within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3. If one party to a dispute fails to nominate an arbitrator as provided in subparagraph 1(i) of this article within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General of the Permanent Court of Arbitration within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the Party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provisions of paragraphs 1(i) and 2 of this article within 90 days of such death, disability or default.

5. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General of the Permanent Court of Arbitration an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4 of this article, the Secretary-General shall appoint the arbitrator or arbitrators not yet nominated from among persons of international standing.

#### Article 5

The Tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 6

The Tribunal may, at the request of one of the parties to a dispute, recommend interim measures of protection.

Article 7

Each Party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the Arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties to the dispute.

Article 8

Any Contracting Party to the Convention or relevant Protocol which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal. Any such intervenor shall participate at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matter giving rise to its intervention, in accordance with procedures established pursuant to article 9 of this Annex, but shall have no rights with respect to the composition of the Tribunal.

Article 9

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 10

Unless otherwise agreed by the parties to the dispute or requested by the Tribunal, there shall be one round of written pleadings and one round of oral argument.

Article 11

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by a majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not constitute an impediment to the Tribunal's reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The parties to the dispute shall facilitate the work of the Tribunal, and in particular shall, in accordance with their legislation and using all means at their disposal:

- (i) Provide the Tribunal with all necessary documents and information; and
- (ii) Enable the Tribunal to enter their territory, to hear witness or experts, and to visit the scene.

3. The failure of a party to the dispute to comply with the provisions of paragraph 2 of this article or to defend its case shall not preclude the Tribunal from reaching a decision and rendering an award.

Article 12

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretariat, which shall inform the Contracting Parties to the Convention or relevant Protocol. The parties to the dispute shall immediately comply with the award.