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First Meeting of the Ad Hoc Working Group
of Legal Experts on non-compliance
with the Montreal Protocol

Geneva, 11-14 July 1989

REPORT OF THE FIRST MEETING OF THE AD HOC
WORKING GROUP OF LEGAL EXPERTS ON NON-COMPLIANCE
WITH THE MONTREAL PROTOCOL

I. INTRODUCTION

1. The First Meeting of the Ad Hoc Working Group of Legal Experts on non-compliance with the Montreal Protocol was held in Geneva from 11 to 14 July 1989.

2. The meeting was attended by representatives from the following countries: Argentina, Australia, Brazil, Chile, China, Colombia, Ecuador, Finland, France, The Gambia, German Democratic Republic, Germany (Federal Republic of), India, Japan, Kenya, Mexico, Netherlands, Philippines, Rwanda, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States of America and Venezuela. The following organizations were also represented: General Agreement on Tariffs and Trade (GATT), Commission of the European Economic Communities, International Council of Environmental Law (ICEL), European Free Trade Association (EFTA), International Chamber of Commerce (ICC), Regional Organization for the Protection of the Maritime Environment, Organization of African Unity (OAU) and the International Union for the Conservation of Nature and Natural Resources (IUCN).

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6. The Committee shall consider the submissions, information and observations referred to in paragraph 5 with a view to securing an amicable resolution of the matter on the basis of respect for the provisions of the Protocol.
7. The Committee shall report to the Meeting of the Parties. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the case, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Party's compliance with the Protocol, and to further the Protocol's objectives.
8. The Parties involved in a matter referred to in paragraph 5 shall inform, through the Secretariat, the Meeting of the Parties of the results of proceedings taken under Article 11 of the Convention regarding possible non-compliance, about implementation of those results and about implementation of any decision of the Parties pursuant to paragraph 7.
9. The Meeting of the Parties may, pending completion of proceedings initiated under Article 11 of the Convention, issue an interim call and/or recommendations.
10. The Meeting of the Parties may request the Committee to make recommendations to assist the Meeting's consideration of cases of possible non-compliance.
11. The members of the Committee and any Party involved in its deliberations shall protect the confidentiality of information they receive in confidence.

C. Adoption of the agenda

7. The meeting adopted the following agenda:
1. Opening of the meeting
 2. Appointment of the chairman, election of the two vice-chairmen and rapporteur
 3. Adoption of the agenda
 4. Proposals on a procedure for non-compliance with the Montreal Protocol
 5. The proposal for a conciliation procedure
 6. Other matters
 7. Adoption of the report
 8. Closure of the meeting.

III. SUBSTANTIVE MATTERS

A. Non-compliance

8. The working group discussed the issue of non-compliance on the basis of written proposals by the United States, Netherlands and Australia and in the light of comments made prior to the meeting by Senegal, Spain and Japan.

9. After a general discussion of various aspects of procedural and institutional mechanisms for determining non-compliance with the obligations of the Protocol and for the treatment of Parties found to be in non-compliance, the working group reached the following conclusions:

- (a) it was important to avoid drawing up an unnecessarily complex and duplicative system;
- (b) the procedure should not be confrontational;
- (c) action under the non-compliance procedure could be commenced by either one or a number of Parties or the Parties collectively registering concern with the Secretariat;
- (d) the procedure proposed should not alter or weaken in any way article 11 of the Vienna Convention on the Protection of the Ozone Layer;

- (e) confidentiality must be respected and specific reference to this should be made in the procedures proposed;
- (f) the Secretariat's role should be that of a servicing, administrative body rather than a judicial one;
- (g) the Secretariat should compile the necessary data and other information;
- (h) early indications of possible non-compliance might be resolved through administrative action by the Secretariat and through diplomatic contacts between Parties;
- (i) decisions on non-compliance should be taken only by the Meeting of the Parties and should be recommendatory rather than mandatory.

10. The working group considered the case for establishing a committee on non-compliance as well as the functions of such a committee. The group agreed that there should be such a committee and that it should be called the Implementation Committee.

11. Several delegates pointed out the differences between the dispute settlement procedure in article 11 of the Vienna Convention and a non-compliance procedure. They supported the establishment of a committee that could react quickly in cases of possible non-compliance and considered that there was merit in introducing a process aimed at making it less likely that there would be need for recourse to formal arbitration or to the International Court of Justice. The majority of delegates emphasized that the committee created should not have a judicial function.

12. One delegate was of the opinion that it was important to allow the committee to make recommendations to Meetings of the Parties based on a review of the Secretariat's report. He suggested that the committee could play a role after an arbitration procedure, reference to the International Court of Justice or conciliation had taken place so as to facilitate implementation of the Protocol.

13. Some delegates suggested that the Bureau of the Meeting of the Parties could carry out the functions of the proposed committee.

14. A number of delegates emphasized that any supranational body to review data would be unacceptable.

15. Some delegates stated that they would prefer to outline in the Working Group's proposals possible actions in response to a Party's non-compliance while others made it clear they would prefer not to do so but rather leave such decisions to the discretion of the Meeting of the Parties.

16. The committee might, in the view of some delegates, be called upon to assist at Meetings of the Parties in developing the Parties' decisions regarding individual cases of non-compliance.

17. The working group concluded that there was room within the non-compliance procedure for a committee which would consider observations or reservations addressed to it through the Secretariat. The committee should work for amicable resolution of issues referred to it. The committee should be composed of 5 members elected by the Meeting of the Parties and it should operate in accordance with Rule 26 of the Rules of Procedure. It should not perform any judicial or quasi-judicial functions. Any decisions concerning non-compliance by a Party would have to be taken by the Meeting of the Parties.

B. Approval of the non-compliance regime

18. On the issue of approval by the Meeting of the Parties of the non-compliance regime, the working group considered the various options to which the Meeting might have recourse. Most delegations indicated that they would favour adoption of a decision under article 11.3(d) and 4(j) of the Protocol since it was important to the effectiveness of the regime that all Parties would be subject to the system and moreover a decision would become operative immediately. Whilst recognizing these benefits of a decision, some delegations were concerned about the possible implications of such an approval for an out-voted minority of Parties, as well as the capacity of the non-compliance regime to evolve characteristics of a mandatory nature, and hence were of the opinion that no specific recommendation for approval by the Parties should be made by the working group.

19. The working group recommends to the Second Meeting of the Parties to the Montreal Protocol that it approves the regime in the annex to this report

C. Conciliation procedure

20. The working group also discussed the possibility of adopting a conciliation procedure, as proposed by Finland. Whilst the group recognized that it might be desirable, as opposed to necessary, to elaborate such a procedure, it was generally felt that, in light of the progress that had been made on the non-compliance procedures, as well as the shortage of time available to discuss this additional matter, it should not be a priority to develop such a procedure.

IV. ADOPTION OF THE REPORT

21. The working group adopted this report.

V. CLOSURE OF THE MEETING

22. After a brief statement, the Chairman declared the meeting closed at 5.00 p.m. on Friday, 14 July 1989.

A N N E X

Draft Non-compliance Procedure

1. If one or more Parties have reservations regarding another Party's implementation of its obligations under the Protocol, those concerns may be addressed in writing to the Secretariat. Such a submission shall be supported by corroborating information.

2. The Party whose implementation is at issue is to be given the submission and a reasonable opportunity to reply. Such reply and information in support thereof is to be submitted to the Secretariat and to the Parties involved. The Secretariat shall then transmit the submission, the reply and the information provided by the Parties, to the Implementation Committee referred to in paragraph 3, which shall consider the matter as soon as practicable.

3. An Implementation Committee is hereby established. It shall consist of five Parties elected by the Meeting of Parties for two years, based on equitable geographical distribution. Outgoing Parties may only be re-elected for one immediate consecutive term. At the first election, two Parties shall be elected for a one-year term.

4. The Committee shall meet as necessary to perform its functions.

5. The functions of the Committee shall be to receive, consider and report on:
 - (a) Any submission made by one or more Parties in accordance with paragraphs 1 and 2;

 - (b) Any information or observations forwarded by the Secretariat in connection with the preparation of the report referred to in Article 12(c) of the Protocol.

II. ORGANIZATIONAL MATTERS

A. Opening of the meeting

3. The meeting was opened by Mrs. Iwona Rummel-Bulska, Acting Chief of the Environmental Law & Machinery Unit, United Nations Environment Programme (UNEP). She welcomed the participants on behalf of the Executive Director of UNEP and explained the background to the issues, as well as the outcome of the meeting of the legal working group on non-compliance convened in Helsinki during the First Meeting of the Parties to the Montreal Protocol. She also outlined the objectives of the meeting with reference to the relevant decisions of the Parties to the Montreal Protocol and introduced the background documents.

B. Election of officers

4. The meeting agreed that Mr. Patrick Szell (United Kingdom) should continue as Chairman of the meeting following his Chairmanship of the legal working group on non-compliance convened during the First Meeting of the Parties to the Montreal Protocol held in Helsinki from 2 to 5 May 1989.

5. Mrs. Imeria Odreman (Venezuela) and Mr. Qu Geping (China) were elected as Vice-Chairmen and Mr. Maurice Hartenbach (Switzerland) was elected Rapporteur.

6. The Chairman of the meeting, Mr. Patrick Szell, then made an introductory statement in which he emphasized that the issue of non-compliance could be regarded as both large and small; 'large' because non-compliance was an increasingly important topic and the Working Group's work was likely to set a precedent in the field of international environmental law and 'small' because non-compliance was a single narrow issue within the Montreal Protocol. He recommended that the meeting should concentrate on identifying a procedure for non-compliance that was appropriate for and specific to the Montreal Protocol. He then recalled the events that had taken place in Helsinki and introduced the latest versions of the proposals from the United States of America and Finland.