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Ad Hoc Working Group of Legal Experts on
Non-compliance with the Montreal Protocol
Third meeting
Geneva, 5-8 November 1991

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

I. INTRODUCTION

1. The Third Meeting of the Ad Hoc Working Group of Legal Experts on Non-Compliance with the Montreal Protocol was held at Geneva from 5 to 8 November 1991.
2. The Meeting was attended by representatives of the following countries and regional economic integration organizations: Argentina, Australia, Austria, Bolivia, Burkina Faso, Cameroon, Canada, Chile, China, Costa Rica, Denmark, Egypt, the European Community, Fiji, France, Greece, India, Indonesia, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Poland, Republic of Korea, Saudi Arabia, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Uganda, Union of Soviet Socialist Republics, United Kingdom, United States of America and Venezuela.
3. The Meeting was attended by representatives of the following United Nations bodies: UNCHS (Habitat) and the United Nations Conference on Environment and Development (UNCED).
4. The Meeting was attended by representatives of the following intergovernmental organizations: General Agreement on Tariffs and Trade (GATT) and the Inter-American Development Bank (INTAMBANK).
5. The Meeting was attended by representatives of the following non-governmental organizations: Industrial Technology Research Institute (ITRI) and the International Union for the Conservation of Nature (IUCN).

II. ORGANIZATIONAL MATTERS

A. Opening of the Meeting

6. The Meeting was opened by Mr. K. Madhava Sarma, Coordinator, the Secretariat for the Vienna Convention and Montreal Protocol, who welcomed the participants on behalf of Dr. M.K. Tolba, Executive Director of UNEP. He

summarized those decisions relevant to the Ad Hoc Working Group of Legal Experts taken at the Second and Third Meetings of the Parties to the Protocol. The Parties had extended the mandate of the Working Group to elaborate further procedures on non-compliance and terms of reference for the Implementation Committee, to be submitted to the Parties at their Fourth Meeting. The Parties had also decided to request the Ad Hoc Working Group of Legal Experts to consider procedures for expediting the amendment procedure under Article 9 of the Vienna Convention.

7. The note by the Secretariat (UNEP/OzL.Pro/WG.3/3/2) contained a summary of the recommendations of the Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol, possible situations of non-compliance, an indicative list of advisory and conciliatory measures to encourage full compliance and an indicative list of measures that might be taken in respect of Parties that were not in compliance with the Protocol.

B. Adoption of the Agenda

8. The following agenda, as contained in document UNEP/OzL.Pro/WG.3/3/1, was adopted by consensus:

1. Opening of the meeting
2. Adoption of the agenda
3. Election of officers.
4. Substantive matters:
 - (a) Further elaboration of the procedure on non-compliance, including the terms of reference for the Implementation Committee
 - (b) Identification of possible situations of non-compliance with the Protocol
 - (c) Developing an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol
 - (d) The possible need for legal interpretation of the provisions of the Protocol and methods of providing the interpretation
 - (e) Developing an indicative list of measures that might be taken by a meeting of the Parties in respect of Parties that are not in compliance with the Protocol
 - (f) Procedures for expediting the amendment procedure under Articles 9 of the Vienna Convention
5. Other matters
6. Adoption of the report
7. Closure of the meeting

C. Election of Officers

9. The Meeting agreed to continue with the Bureau elected at its First and Second Meetings. The composition of the Bureau was as follows:

Chairman:	Mr. Patrick Szell (United Kingdom)
Vice-Chairmen:	Mr. Gao Feng (China) Ms. Imeria Odreman (Venezuela)
Rapporteur:	Mr. Maurice Hartenbach (Switzerland)

10. In his introductory statement, the Chairman said that the Working Group's mandate was to strengthen further the provisional non-compliance procedure and not to replace it. Some paragraphs might be acceptable as they stood. Texts which had been finalized at the Working Group's previous meetings should not be reopened. At its Second Meeting, however, the Working Group had not completed its work on new paragraph 4 (UNEP/OzL.Pro/WG.3/2/3, page 7) and that would be its first task. Once that paragraph had been approved, it would then revert to the original text of the non-compliance procedure (UNEP/OzL.Pro.2/3, annex III) to consider its remaining paragraphs 4 to 11.

11. He reminded the Meeting that the European Community had submitted a formal proposal, the text of which was to be found in the report of the Working Group's Second Meeting (UNEP/OzL.Pro/WG.3/2/3, annex I). When it had completed its work on the non-compliance regime, the Working Group would have to decide on ways to have the non-compliance regime adopted by the Parties.

12. Finally, the Working Group would have to address the matter of procedures for expediting the amendment procedures under Article 9 of the Vienna Convention.

III. SUBSTANTIVE MATTERS

(a) Further elaboration of the procedure on non-compliance, including the terms of reference for the Implementation Committee

13. One representative asked whether the Parties' request that the Working Group should reflect on the possible need for legal interpretation of the provisions of the Protocol did not constitute an expansion of its mandate.

14. The Chairman replied that the heading of the decision in question clearly indicated that the legal interpretation in question related solely to the non-compliance procedure and that, therefore, the request remained within the existing mandate of the Working Group. He then invited the Working Group to consider paragraph 4, which had been left unfinished at its Second Meeting.

15. The Chairman of the Implementation Committee said that, with the increase in the size of the Committee from five to ten members, there would be better balance between developed and developing countries. It was unclear, however, why reference to such a balance had been deleted by the Parties from the paragraph in question.

16. She thought that the Committee should hold at least two meetings a year. The reference to a "two-year" term for its members was not very clear and she suggested that the text should specify that the term would begin in the month of June. *Chair*

17. Some participants felt that the wording regarding the balance between developed and developing countries should remain.

18. The Chairman of the Working Group said that the imprecision regarding "the two-year term" could be got over with the reasonable interpretation that the members would continue to serve until they were replaced by the meeting of the Parties in the second year after their election. Since the Parties had only recently deleted the words "and a balance between developed and developing countries" from paragraph 4, the Working Group had to accept their decision.

19. After some discussion, paragraph 4 was adopted with certain amendments. The words "chairman" and "deputy chairman" in square brackets were deleted, the other square brackets being removed. The word "also" in the third sentence was deleted. The words "with the possibility of re-election for one further year " in the penultimate sentence were replaced by the words "one year at a time".

(More to come)