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Ad Hoc Working Group of Legal Experts on
Non-compliance with the Montreal Protocol
Third meeting
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DRAFT REPORT OF THE THIRD MEETING OF THE AD HOC
WORKING GROUP OF LEGAL EXPERTS ON NON-COMPLIANCE
WITH THE MONTREAL PROTOCOL (continued)

III. SUBSTANTIVE MATTERS (continued)

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

20. The proposal by the European Community that, when a Party that was a member of the Implementation Committee was itself involved in a case of non-compliance, it should not participate in the proceedings on that case was then discussed. There was general agreement that both the "accuser" Parties and the "accused" Parties should be able to present their case to the Implementation Committee. Some representatives felt that that end could be achieved by according ad hoc membership of the Committee to the non-member Parties involved. Some argued that the Working Group had no mandate to add to or subtract from the membership of the Committee.

21. After the matter had been considered in a drafting group, the Working Group approved the provision in the form of two paragraphs, the first reading: "Where a Party that is not a member of the Implementation Committee is itself identified by a Party in a submission under paragraph 1, or itself makes such a submission, it shall be entitled to participate in the consideration by the Implementation Committee of that submission." The second paragraph would read: "No Party, whether or not a member of the Implementation Committee, involved in a matter under consideration by the Implementation Committee, shall take part in the elaboration and adoption of recommendations on that matter to be included in the report later."

22. With respect to paragraph 5 and the European Community's proposed amendment thereto, the Working Group decided that the paragraph should read: "The Committee shall, unless it decides otherwise, meet twice a year. The Secretariat shall arrange for and service its meetings."

23. The Working Group then considered a European Community proposal for paragraph 6. There was broad agreement on subparagraphs (a) and (b). On the remaining subparagraphs of the proposal ((c) considering possible irregularities, (d) obtaining further information and (e) undertaking examinations), opinions were divided. Many representatives considered that the Implementation Committee needed such powers if it were to function effectively. Many others, however, felt that those subparagraphs were inconsistent with the advisory and conciliatory role of the Committee. A number of them objected to consideration by the Committee of any information from non-governmental sources, such as industry, the mass media, non-governmental organizations or individuals. However, others took the view that information from such sources was important for the effective implementation of the Protocol. After consideration of the matter by a drafting group, a compromise text for paragraph 6 was approved by the Working Group. Paragraph 7 of the European Community's proposal was then deleted.

24. After a discussion, the Working Group decided to retain original paragraph 6 of the provisional Non-Compliance Procedure unchanged, apart from the replacement of the word "resolution" in the third line by the word "solution" and the placing of square brackets around the figure "5" in the second line, pending a decision on the final numbering of the paragraphs.

25. One representative submitted a proposal in writing for a new paragraph on the subject of a Party reporting its own inability to comply fully with its obligations under the Protocol. After a discussion, the Working Group amended the paragraph by deleting the word "itself" in the third line and the entire last line. It then approved the paragraph, placing it provisionally as 3 bis.

26. One representative proposed, in writing, a new subparagraph (e) for addition to paragraph 6 on the functions of the Committee. A second representative then proposed an oral amendment whereby a phrase would be inserted. Whereas there appeared to be broad agreement in the Working Group that the original proposal was acceptable, strong differences of opinion were expressed concerning the proposed amendment. The Working Group finally decided to place the entire subparagraph within square brackets and to place further square brackets around the proposed amendment.

More to come.