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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 (continued)

III. SUBSTANTIVE MATTERS (continued)

(b) Identification of possible situations of non-compliance
with the Protocol

35. The Working Group then turned to its mandate under Decision III/2, paragraphs (i), (ii) and (v), of the Parties, as contained in document UNEP/OzL/Pro.3/11. It decided to base its work on the lists suggested in paragraph 6 of the Note by the Secretariat (UNEP/OzL.Pro/WG.3/3/2).

36. The text of possible situation (i) was approved, the words "including those" having been inserted in the second line before the words "covering" and the word "essential" between the words "to" and "uses" in the penultimate line.

37. The Working Group approved an amended text of possible situation (ii).

38. One delegation proposed a new paragraph to address a possible situation under Article 5 but, after some discussion, the proposal was withdrawn. The Working Group noted, however, that there were two possible interpretations of the provision concerning failure to maintain specified consumption levels.

39. The text of possible situation (iii) was approved with the deletion of the words: "Reporting of data".

40. After some discussion, an amended text of possible situation (iv) was approved.

41. No agreement could be reached on the inclusion in the list of possible situations of non-compliance with the Protocol of a failure to comply with the provisions concerning the operation of the financial mechanism and the payment of contributions to the financial mechanism, because a view was expressed that Article 10 (after entry into force) provided for voluntary rather than mandatory contributions to the financial mechanism.

42. Because of lack of time and the apparent political implications of the question concerned, it was decided not to pursue the discussion on that question further and to refer it to the Meeting of the Parties for its consideration. A number of delegations expressed amazement at and serious concern with the view that Article 10 (after entry into force) did not contain an obligation to contribute to the financial mechanism.

43. After a prolonged discussion, during which it was agreed that the words "Multilateral Fund" should be replaced by the words "financial mechanism" and an alternative text was proposed by one representative, it was decided that, since agreement could not be reached, both alternatives should be included in the list between square brackets.

44. One representative noted that, in identifying possible situations of non-compliance, there was a possibility that, in the event of a Party operating under Article 5, paragraph 1, exceeding the allowable consumption limits permitted under that Article, issues concerning its compliance with Article 2 must be resolved. That issue was raised in Decision III/13 and would be addressed by the Open-Ended Working Group of the Parties.

45. The text of possible situation (vi) was approved, although one representative expressed some misgivings about the drafting style.

46. A number of representatives pointed out that decisions of the Parties were not on the same level as articles of the Protocol. Some representatives stated that not all such decisions were binding on the Parties. Some other representatives maintained that they were always legally binding if they related to matters of substance.

47. The note at the bottom of the list was intended to clarify that, in determining non-compliance with any provision of the Protocol, due account should be taken of its context in the Protocol and the relationship of that provision to the other provisions of the Protocol.

- (e) Developing an indicative list of measures that might be taken by the Parties in respect of Parties that are not in compliance with the Protocol

48. The Working Group took the view that, when considering cases of non-compliance, flexibility should be ensured in selecting and administering appropriate response measures, understanding that all situations of non-compliance were not of equal importance. Response measures contemplated should be commensurate with the nature and degree of and reason behind non-compliance, as well as with the importance of the provision itself. All possible assistance measures encouraging Parties to comply with the Protocol should be exhausted before stronger measures were considered.

- (c) Developing an indicative list of advisory and conciliatory measures to encourage full compliance with the Protocol

49. Some representatives thought that there was no time to attempt the task in question, while other representatives took the view that the measures included in paragraph (e)(i), already approved, went a long way towards carrying out the Working Group's mandate under Decision III/2, paragraph (ii).

- (d) The possible need for legal interpretation of the provisions of the Protocol and methods of providing the interpretation

50. Many delegates noted that, in its work, the Implementation Committee would need to make legal interpretations of the provisions of the Protocol and that, first and foremost, the question of legal interpretation of the Protocol was for the Parties themselves. One delegation, however, felt that there was not enough time in the Meeting to discuss that issue and that there was a need to provide legal interpretation of the provisions of the Protocol.

- (f) Procedures for expediting the amendment procedure under Article 9 of the Vienna Convention

51. The Working Group did not recommend any means of expediting the amendment procedure. Any amendment would follow the same procedure as in Article 9 and there would be many problems inherent in different procedural obligations for different Parties, if such an amendment was proceeded with. Moreover, considering the need for acceptance of the substance of any amendment to the Protocol by a large number of Parties for its effective implementation, the existing procedure was satisfactory. In addition, the Parties had successfully adopted an amendment in London, using the existing procedure, and measures such as reducing the period for tabling an amendment were not feasible in the current state of communications.

Recommendations by the Working Group

52. The Working Group made the following recommendations:

1. That the report of the Meeting be brought to the notice of the fourth Meeting of the Parties of the Montreal Protocol in Autumn 1992;
2. That the Meeting be invited to adopt by means of a decision the Non-Compliance Procedure set out in Annex --- to that report, subject to resolution of any outstanding matters;
3. That that Meeting be invited to take action, as appropriate, with regard to the indicative lists set out in Annexes ---- to the report; and
4. That that Meeting be invited to take note of the Working Group's advice on the question of expediting the amendment procedure under Article 9 of the Vienna Convention, set out in paragraph 51 of the report.