



United Nations
Environment
Programme



UNEP'S MEETING OF EXPERTS ORGANIZED IN CO-OPERATION
WITH THE WORLD INTELLECTUAL PROPERTY
ORGANIZATION ON THE ROLE OF INTELLECTUAL
PROPERTY IN TECHNOLOGY TRANSFER AS PROVIDED
FOR UNDER THE MONTREAL PROTOCOL

Geneva,
26-27 April 1990

REPORT

1. The meeting was attended by the following experts in their personal capacity:

Ms. A. R. De Holanda Cavalcanti (Brazil), Deputy Head of International Affairs

Dr. M.Y. Saada (Egypt), Vice-President of The Academy of Scientific Research and Technology

Mr. A. Yamaguchi (Japan), Deputy Director of The Examination Standard Office

Mr. J. Kingarui (Kenya), Registrar General

Mr. V. Tarnofsky (United Kingdom), Assistant Comptroller

Mr. N. Styles (United States of America), Second Secretary, Permanent Mission of the to the United Nations Office in Geneva

The World Intellectual Property Organization was represented by:

Mr. G. Yu, Special Assistant to the Director General, Geneva

Mr. K.P. Wittig, Head, Patent Information and Developing Countries

Ms. I. Rummel Bulska and C. Peters participated on behalf of UNEP Secretariat.

2. Before the participants of the meeting were the following documents: "Note of the Executive Director of UNEP on Proprietary Rights on Alternative Substances and Associated Technologies Which Are to Substitute Those Depleting the Ozone Layer" and "Basic Notions of Industrial Property and Licensing", document prepared by the International Bureau of the World Intellectual Property Organization.

3. The meeting was opened by Ms. Iwona Rummel-Bulska, United Nations Environment Programme. In her opening statement, Ms. Rummel-Bulska gave an introduction to the problem, referring to relevant provisions under the Montreal Protocol and highlighting the obligations of the Parties to the Protocol to cut down the emissions of substances controlled under the Protocol and as a result thereof the need for substitute substances, as well as the undertaking of Parties to the Protocol to facilitate access to environmentally-safe alternatives, substances and technologies to Parties that are developing countries. Ms. Rummel-Bulska further referred to the requests being raised during meetings under the Montreal Protocol that such technologies be made available to developing countries without constraints of existing patent provisions and on an economically feasible basis. It was suggested that the discussions would focus on providing the future meetings of the Parties to the Montreal Protocol with answers to the questions raised by the Executive Director in his note to the experts.

4. In his statement, Mr. Yu of the World Intellectual Property Organization, gave an introduction to the paper produced by the International Bureau of WIPO. He informed the experts that the paper provided explanations of the basic notions used in the UNEP document, as the latter document revealed that an understanding of those basic notions would facilitate discussions relating to industrial property and licensing. The other aim of the paper was to give a preliminary indication based on a state-of-the-art search conducted by the International Bureau of WIPO of some alternative substances to those regulated under the Montreal Protocol.

5. Mr. Vic Buxton, Chairman of the UNEP Panel on Technology Assessment and Chairman of the Sessions of Open-Ended Working Group of the Parties to the Montreal Protocol dealing with Adjustments and Amendments gave a brief description of the technical options for complying with the obligations of the Montreal Protocol as well as of the status of the case studies now underway. He emphasized the need to identify ways and means to transfer the appropriate technologies to developing countries and in particular to clearly identify the possibilities and limitations of such transfers under international law.

6. It was agreed that the patents were pertinent to the question of technology transfer. It was emphasized that the issue of patents cannot be considered in isolation, but that it must be closely linked with the issue of transfer of know how, to make the transfer of technology meaningful. The particular problem arising from the fact that production of substitute substances are developed and owned by private industries was discussed. The experts found that it was therefore essential that transfer of technology be reached on the basis of co-operation, and that private industries should be "encouraged" to transfer technology on a voluntary basis.

7. The possibility of compulsory licensing was further discussed extensively. During the discussion it became apparent that although it is not a common practice and it happens only in very rare cases, it is still possible under national patent legislation in certain countries for the Government to use the given patent if it is in the public interest, for the protection of the human health or for the national security reasons. It is understood that such use can take place only if the fair compensation covering the cost of research and development of the invention and expected profit is paid to the inventor (e.g. "Crown use" in the UK). It was noted that in some cases, the use of patent as well as the level of compensation could be subject to contesting through the courts.

8. Compulsory licenses may be issued in a number of countries in the public interest. Such provisions are found, inter alia, in the patent law of Austria, Brazil, Japan, Mexico and Nordic countries. It was noted that there is no generally accepted international definition of the term "public interest", and that the interpretation of the term could vary from one country to another.

9. Another relevant reason for the issue of compulsory licenses was found to be the interest of public health. It was noted that provisions are found in the national patent legislation of some countries, such as Canada, Colombia, India, Israel and Singapore.

10. Provisions for the granting of compulsory licenses are found in the patent legislation of many countries. It was considered to be bad legislative technique, should the cases exist where the provisions for compulsory licensing appear in special legislation without being reflected in the patent legislation of the country concerned.

11. It was stressed that a compulsory license provides the government or another licensee with the right to use the patent only within the country where the patent has been registered. The only known exception is the use of patent for foreign defence purposes. The patent is still owned by its proprietor, so the Government who took the license has only right to use it.

12. Many products or processes are not patented in many countries due be the cost of patenting. It is probable that few inventions of interest to the Montreal Protocol would be patented in developing countries; hence, there would be no rights in those countries to obstruct the free use of the technology there.

13. It was suggested that UNEP consider a system of sponsoring the research and development of environmentally sound products and technologies. The meeting suggested that the UNEP Secretariat contacts the Secretariat of WHO for exchange of information on the encouragement of inventions and WHO policy of patenting or not patenting those inventions.

14. The need for voluntary agreements with the industries by Governments and possible international units or organizations was particularly emphasized. It was noted that in general Governments have not power to compel industry to market products internally nor internationally. It was emphasized that the institution of compulsory licensing is an encouragement for company to put its products/processes on the market.

15. Regarding agreements between industries and international organizations it was clear that the best way of obtaining technology including any necessary patents and know-how from the owner was through negotiation. Governments could be involved in the negotiations to advise and encourage the transfer of technologies. The negotiations should be based on normal commercial practices taking into account cost/benefits assessment.

16. It was pointed out that licensing practices are often the subject of legislative control to avoid abuses eg. anti-competition effects.

17. The experts recommended that the participants of the UNEP Experts Groups on the ozone depleting substitutes and transfer of technology should , as far as possible, consult the intellectual property experts in their respective countries. .

18. The meeting adopted the report and there after was closed at 5.30 pm by Ms Rummel Bulska who chaired the meeting.