

Montreal Protocol

The Copenhagen Meeting

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The Fourth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer was held at ministerial level at Copenhagen from 23 to 25 November 1992. It was preceded by a meeting of the Open-Ended Working Group elaborating adjustments and amendments of the Protocol and by a meeting of the Preparatory Committee preparing decisions of the Parties. The Meeting adopted far-reaching decisions in respect of control measures, preferences for developing countries as well as the institutional structure and adopted another compound Amendment to the Protocol.

Prior to the meeting, the London Amendment to the Montreal Protocol had entered into force on 10 August 1992, more than seven months later than scheduled. As of 31 October 1992, 33 out of the 91 Parties to the Montreal Protocol had ratified the London Amendment, including India which acceded to the Protocol as amended in June 1992.

1. Control Measures

Background

Originally the Montreal Protocol addressed only two groups of anthropogenic substances that were believed to be primarily responsible for the depletion of the ozone layer. In 1987, the negotiating parties agreed to reduce both the production and consumption of five fully halogenated CFCs - chlorine containing compounds used mainly as aerosols, refrigerants, solvents, cleansing and blowing agents - by 50 % until the end of the century. They also

agreed to freeze production and consumption of three halons, bromine containing compounds with an even higher ozone depletion potential as CFCs used for fire-extinguishing, by 1992. Although other actors, most notably the USA, Canada and the Nordic Countries, considered them essential, further measures were not acceptable to some major participants in the negotiations, in particular to the EC and Japan, not least because they lacked operable substitutes.

Following from this conflict, a simplified amendment procedure was introduced into the Protocol with far-reaching implications for its further development. The reduction schedules of the, then, two groups of controlled substances could be tightened ("adjusted") by a simple decision of the annually convened Meeting of the Parties. Although such decisions could in theory be adopted by majority voting, they would in practice always be taken by consensus. More important, therefore, these *adjustments* enter into force *for all parties* within six months of their adoption. The procedure thus effectively avoids the cumbersome and time-consuming process of domestic ratification to which regular amendments to international treaties are subjected. It does not even provide the parties with the usual right of international environmental agreements to opt out of opposed decisions. The adjustment mechanism is thus a means to accelerate the revision of legal provisions to modified knowledge and increased margins for compromise as they emerge.

The control measures of 1987, insufficient as they were, sent a strong signal to producing and consuming industries. Consumption of CFCs decreased almost immediately, while investments in the development of substitutes increased considerably. The First Meeting of the Parties initiated, therefore, a major revision of the Protocol

that was adopted at the Second Meeting in 1990¹⁾. Political negotiations were preceded by expert deliberations in the four areas of the scientific assessment of knowledge concerning the status and future projection of the ozone layer and its depletion, its environmental impact on the biosphere, technological options for reductions, and economic implications. These meetings produced technical consensus among the relevant experts and cleared the political negotiations from disputes over the interpretation of facts.

In London, the reduction schedules for the substances already controlled were adjusted and considerably tightened by a decision of the Meeting. The adjusted schedules entered into force for all parties on 9 March 1991. In addition, schedules for several new substances were adopted (see Table 1). Yet, these measures were part of a compound Amendment subject to ratification by the parties. Although the range of control measures of the Protocol was simultaneously deepened and widened, it was also decided in London to reconsider a number of these measures already in 1992 with a view to their further tightening. In a resolution, the Parties moreover resolved to regularly review the use of certain transitional substances, namely partially halogenated CFCs (HCFCs) used as substitutes for traditional CFCs. In this regard, the London compromise already envisaged the next step in the development of the Protocol.

Fact Finding

The Third Meeting of the Parties in 1991 mandated the assessment panels to update their reports of 1989 and the standing Open-ended Working Group to draw conclusions from these reports²⁾. Several hundreds of experts from almost fifty countries were involved in the ensuing deliberations. Summaries

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of their findings were compiled in a synthesis report³⁾ that was submitted to and discussed by the Working Group and formed the technical basis of the deliberations. Concerning the state of the ozone layer and projections of its depletion, the experts agreed that larger ozone decreases had been observed not only in the Antarctic region but also in middle and high latitudes. These ozone losses could be attributed predominantly to surface activities while the impact of other sources such as supersonic aircraft, rockets and space shuttles was low. The scientific assessment panel projected a peak of chlorine concentrations in the stratosphere around 2000, while a full implementation of the London control measures would lead to the disappearance of the ozone hole only in the second half of the next century. The panel therefore confirmed the need to strengthen the control measures.

The merged economic and technological assessment panel reported a 40% decrease of world-wide consumption of CFCs below the base-line of 1986. It expected that developed countries' consumption would be reduced by 50% in 1992. This implementation of the Protocol three years ahead of schedule was attributed to a greater success in the development of substitutes than anticipated. Concerning halons, consumption rose until 1988, but then also decreased below the base-line of 1986. Provided that transitional substances such as HCFCs and partially halogenated fluorocarbons (HFCs; see below) were available, controlled substances could be phased out by 1995-1997.

Tightening Control Measures

On the basis of these findings, the margins of disagreement concerning an accelerated phase-out of controlled substances was modest. The three major producers and consumers of ozone depleting substances - the EC, the United States and Japan - declared in Spring 1992 that they would phase out fully halogenated carbons by the end of 1995. Concerning the two groups of controlled CFCs and carbon tetrachloride, the EC, the USA and Canada proposed a phase-out by 1996. However, whereas the two North American countries favoured the retention of the existing

third step (50% reduction in 1995), the EC favoured a reduction of 85% already in 1994. Sweden, Austria, Switzerland and Norway proposed a complete phase-out by 1995. On methyl chloride proposals of the EC (-50% in 1994, -100% in 1996), USA (-100% in 1996), Canada (-85% in 1995 and -100% in 2000) and the smaller European countries mentioned (-100% in 1995) differed slightly more. For halons, similar phase-out schedules were proposed, but an informal halon working team during the seventh meeting of the Working Group considered a complete phase-out feasible already in 1994 since considerable halon banks existed. Remaining differences were settled at the

Copenhagen meeting, but were no key issue.

With the reduction schedules adopted (see Table 1) the major ozone depleting substances are envisaged to be phased out in industrialised countries within a few years. They are not likely to play a major role in future Meetings of the Parties. All these measures are subject to amendments. In respect of the two originally controlled groups of substances they will enter into force within six months of the Meeting for all parties, while in respect of the substances introduced by the London Amendment they become effective only for those parties having ratified this Amendment. ➡

Table 1 : The Development of Control Measures under the Montreal Protocol

Substances (Base-Line)	Montreal 1987	London 1990	Copenhagen 1992
CFCs 11,12 113,114,115 (1986)	mid 1989 : freeze mid 1993 : -20% mid 1998 : -50% ---	mid 1989: freeze 1995 : -50% 1997 : -85% 2000 : -100%	mid 1989 : freeze 1994 : -75 % 1996 : -100% ---
Halons 1211, 1301,2402 (1986)	1992 : freeze --- ---	1992 : freeze 1995 : -50% 2000 : -100%	1992 : freeze 1994 : -100% ---
10 other CFCs (1989)	--- --- ---	1993 : -20% 1997 : -85% 2000 : -100%	1993 : -20% 1994 : -75% 1996 : -100%
Carbon tetra- chloride (1989)	--- ---	1995 : -85% 2000 : -100%	1995 : -85% 1996 : -100%
Methyl chloroform (1989)	--- --- --- ---	1993 : freeze 1995 : -30% 2000 : -70% 2005 : -100%	1993 : freeze 1994 : -50% 1996 : -100% ---
HCFCs (1989 plus 3.1% of CFC consumption in 1989)	--- --- --- --- ---	--- --- --- ---	1996 : freeze 2005 : -35% 2010 : -65% 2015 : -90% 2020 : -99,5% 2030 : -100%
HGFCs	---	---	1996 : -100%
Methyrbromide (1991)	---	---	1995 : freeze

Note : All Control measures are related to production and consumption of substances except for HCFCs for which only restrictions on consumption are applied. Source : Own compilation

New Substances

In contrast to the comparatively smooth development in respect of substances already subject to control, views varied widely concerning the control of several new groups of substances.

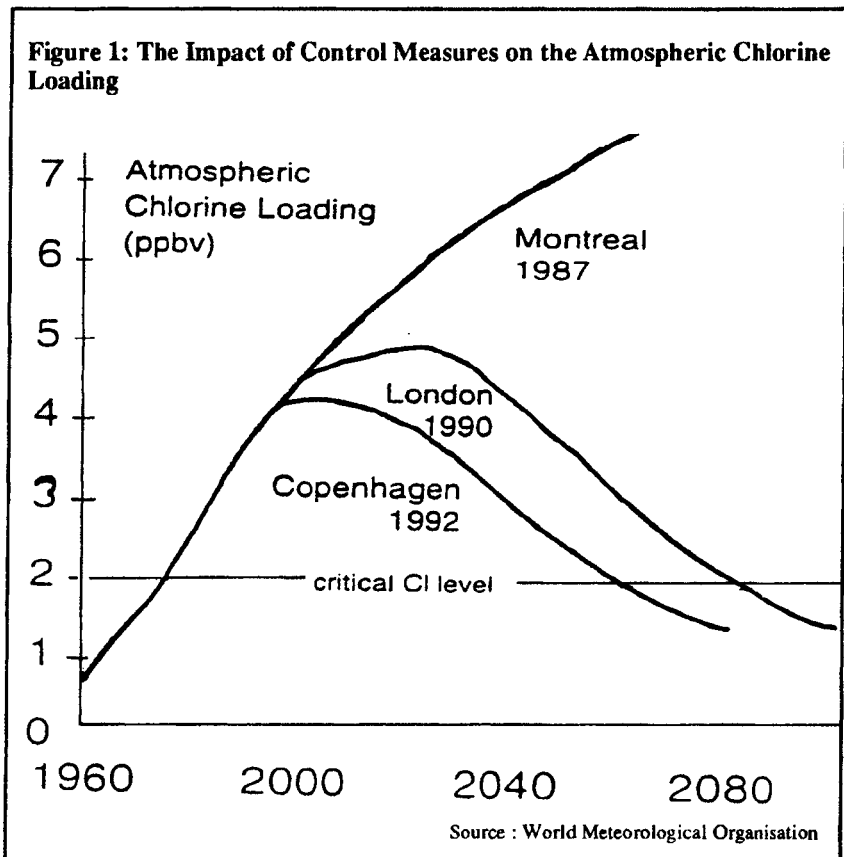
One of these groups is made up of HCFCs. These substances, of which only a few are actually marketable or in the process of industrial development, have ozone depletion potentials of considerable variance which are throughout lower than those of fully halogenated CFCs but not at all negligible. HCFCs provide a future market of considerable size. For example, the most important HCFC 22 already in 1991 reached an annual production of about 260,000 tons and production levels are projected to increase to 500-700,000 tons within the 1990s. As transitional substances HCFCs are relevant for the replacement of CFCs, but their uncontrolled growth is hardly desirable. Since the London Meeting, the concept of a cap on these substances had gained considerable support. Austria, Norway, Sweden and Switzerland proposed to limit the production and consumption of HCFCs to 2-4 % of CFC consumption in 1986 (base-line) and to restrict it to certain uses. From 2000 onwards, new equipment containing or produced with HCFCs should not be installed, and by 2005-2010 the substances should be phased out. The European Community generally supported the concept of a cap, while the United States favoured a restriction of usages and a distinction between substances with higher and lower ozone depleting potentials. Moreover, the two major actors in the issue-area insisted on considerably longer transitional periods.

On this basis, a reduction schedule was negotiated in Copenhagen that combines the concepts suggested. It envisages a consumption cap by 1996 at the aggregate of 1989 consumption of HCFCs plus 3,1 % of 1989 consumption of CFCs. This percentage was disputed until the last minute with the United States favouring a higher figure. A complete phase out shall be achieved as late as 2030 over no less than five reduction steps. Although competent in the field of control measures, the European Community did not speak with one voice. France precluded agree-

ment on a 35 % reduction already by 2003. The United States, on the other hand, insisted on a "tail" for the servicing of existing equipment that led to the peculiar final reduction steps. Lastly, from 1996 onwards applications of HCFCs shall be restricted and controlled. Considering the past dynamics of the Protocol, this schedule may become subject to some acceleration by adjustments in future rounds.

phase-down of CFCs and methyl chloroform or of halons by three years.

Large quantities of methyl bromide are used for soil fumigation (*i.e.* as a pesticide ca. 85 %) mainly in warmer developed countries, including the Mediterranean members of the European Community and the United States. Methyl bromide is also used for commodity fumigation (ca. 15 %) in particular in developing countries - that is,



Another serious conflict arose on methyl bromide. Having come up in the negotiations only in February 1992, this substance is comparatively new on the agenda of the ozone regime. Containing bromine, it has a considerable ozone depleting potential that is particularly effective in the short to medium term. Restricting its usage would therefore considerably alleviate the peak load of ozone depleting substances on the stratosphere that is believed to occur around the year 2000 (see Figure 1). The scientific assessment panel estimated that an immediate reduction of methyl bromide by only 10 % would be comparable to an acceleration of the

for food storage, pre-shipment and quarantine purposes - and instructional fumigation appliances (ca. 5 %). While substitutes exist for the first use, this had not yet been entirely clear for the latter ones. A thorough investigation of this chemical had not been part of the regular assessment. An interim scientific, technological and economic assessment was elaborated only in June 1992.

The matter was brought onto the agenda of the regime by the United States which will be compelled to ban the substance under its Clean Air Act once its ozone depletion potential (about 0,7) is determined conclusively. Hen-

ce, the United States proposed a complete phase-out by 2000. Yet, due to the position of its Mediterranean members, the European Community did not accept more than a freeze in 1995, while the developing countries rejected any obligations concerning this substance. However, the fiercest protest to its inclusion into the Protocol came from Israel whose delegation was almost entirely composed of representatives of the interested industry that makes Israel a major producer and exporter of methyl bromide.

Against this background, the Copenhagen Meeting agreed only on a freeze of consumption and production of methyl bromide in 1995. Yet this initial step is important because, once the Copenhagen Amendment enters into force, the substance will be subject to the simplified adjustment procedure. The scientific and technological assessment panels are requested to submit information about the substance in time for consideration by the Open-Ended Working Group prior to the Seventh Meeting of the Parties in 1995. Moreover, the Parties resolved in a Resolution to decide not later than 1995 on reduction targets beginning at the latest in 2000.

As the last group of new substances, bromine containing halogenated hydrocarbons (HBFCs) did not pose major difficulties. Their control and immediate phase-out merely constitutes a precautionary measure. It does not affect vested economic interests since these substances are not yet marketed.

In contrast, HFCs, another group of substitutes for CFCs, have not been addressed expressly. These substances do not contain chlorine or bromine and are therefore not ozone depleting, but they have a significant global warming potential. It is not clear whether they fall into the regulatory competence of the ozone regime, although their economic relevance is contingent upon the measures adopted here. The scientific assessment panel was mandated to scrutinise the global warming potential of transitional substances in general but an initial express reference to HFCs in that decision proposed by the Netherlands stirred the protest of the observing chemical industry and was later deleted at the request of the United Kingdom.

2. System of Preferences for Developing Countries

For the long-term success of the regime for the protection of the ozone layer a global participation is crucial that includes both industrialised and (at least the major) developing countries. The Protocol as of 1987 comprised primarily the Western industrialised (OECD-) countries. This comparatively small group caused about 80 % of the production and consumption of the original ozone depleting substances. From Eastern Europe only the Soviet Union took an active part in the negotiations. Most developing countries that became early parties to the Protocol had only a marginal impact on the state of the ozone layer. The major developing countries with both large potential domestic markets and the technological ability to produce CFCs and halons in large quantities (such as Brazil, India and China) stayed apart.

As a first step of a positive encouragement system the original Montreal Protocol contained a ten-year grace period applicable to developing countries with an annual per capita consumption below a certain limit (so-called Article-5.1. countries). Reduction targets and dates of the Protocol are thus applicable only for industrialised and very few developing countries exceeding this level, namely (from the current parties) Bahrain, Malta, Singapore and the United Arab Emirates⁹. For all other developing countries these targets and dates are automatically extended by ten years.

The 1990 London Amendment elaborated the preferential treatment. It

established a financial and technological assistance mechanism. Its core is constituted by a Multilateral Fund that shall meet incremental costs incurred by Article 5.1. countries in the course of the transfer of their economies to ozone-friendly technologies. The Fund should discharge its task in carefully negotiated collaboration with three existing international organisations, namely UNEP, UNDP and the World Bank. But it was to be supervised by an Executive Committee responsible to the Meeting of the Parties. The effective start of this Fund was, however, contingent upon the entry into force of the London Amendment. The Second Meeting of the Parties, therefore, established on the basis of a simple Decision an Interim Multilateral Fund. Its size for the first three years (1991-1993) was fixed at US \$ 160 m, with a possible extension to US \$ 240 m if "other countries" (referring to China and India) joined the Protocol (while Brazil had already done so). It was understood that the obligations of developing countries arising under the Protocol were contingent upon the satisfactory operation of this mechanism. The fear of the developing countries of not being able to fulfil their obligations because the necessary technology could not be obtained on the market is reflected in a specific settlement procedure for such problems (cf. Article 5.6 and 5.7).

The Interim Fund began to operate in 1991. It has financed the exploration of 39 country programmes. Nine of them covering about 20 % of consumption of controlled substances by Article 5.1 countries have already been approved, including those for China, Me-

Table 2 : Coverage of the Montreal Protocol

Parties	Instruments of Ratification etc. as of 1 November			
	1989	1990	1991	1992
Industrial Countries	29 incl. EC	33	33	36
Developing Countries	20	33	41	55
Total	49	66	74	91

Source : Own calculation, figures from Document UNEP/OzL.Rat 18

xico, Brazil, Malaysia, Egypt and Jordan. Upon ratification by China, the Third Meeting of the Parties raised the three-year Fund to US \$ 200 m (*i.e.* US \$ 73,3 m for 1992). However, by November 1992, US \$ 11,6 m out of the agreed contributions of US \$ 53,3 m for 1991 were still outstanding. This was due in particular to the performance of France and the Russian Federation.

At the Copenhagen Meeting this system of preferential treatment of developing countries was a major issue of dispute that consisted of three interconnected elements, namely the amount of the Fund in the years to come, the status of the Fund, and the applicability of the tightened and widened control measures to developing countries.

It was widely accepted that the amount of the Fund should be increased upon ratification of the Protocol by India, as envisaged in London. While some donor countries (especially Japan) interpreted this to mean an assessed contribution of US \$ 80 m for 1993 (*i.e.* one third of the now US \$ 240 m), the Fund Secretariat calculated differently: It took the US \$ 240 m as a basis and subtracted the assessed contributions for 1991 (US \$ 53,3 m equal to one third of US \$ 160 m) and for 1992 (US \$ 73,3 m equal to the half of US \$ 200 m minus the 1991 contribution). It thus reached an assessed contribution of US \$ 113,3 m for 1993. This sum (although not its calculation) was virtually undisputed.

However, the major donor countries refused to determine the size of the Fund for 1994, let alone the upcoming three year period (1994-1996). This approach did not only abandon the concept of a three-year rolling budget agreed in London. It also threatened to preclude any clarity about the future size of the Fund. The size of the 1994 budget, for example, would be determined only by October or November 1993, too late not only for medium term work plans of the Fund and the benefiting developing countries but probably also for the accommodation of contributions into the domestic budgets of contributors. In a compromise the Meeting refrained from deciding the exact figures but determined margins. The Fund budget of 1994 will, accordingly, not be less than that of 1993 (*i.e.* US \$ 113,3 m). And the three-year

budget for 1994-1996 will be between US \$ 340 m and US \$ 500 m. The annual budget will thus not be lower than in 1993 and 1994, but the aggregate might rise to a figure identified by the Fund Secretariat. Further decisions will be taken at the Fifth Meeting of the Parties in 1993 on the basis of a review of the performance of the Fund since 1991.

Closely related was a conflict on the future status of the Fund. According to the London compromise, that comprised, *inter alia*, the Amendment of the Protocol and the terms of reference of the Fund and the supervising Executive Committee⁹, the Interim Multilateral Fund established on the basis of a Decision by the Meeting of the Parties should be transferred into the regular Multilateral Fund established under the amended Protocol. This seeming formality was challenged by a number of European donor countries, in particular by France, Italy, the Netherlands and the United Kingdom. These countries favoured the continuation of the Interim Fund and the decision at a later stage on its transfer into a specific window of the Global Environmental Facility (GEF). A reason appeared to be the desire of the ministries of finance concerned to establish a single comprehensive mechanism for the financing of environmental aid. Yet, for this purpose the structure of the GEF which is still under the control of the World Bank had to be considerably modified as envisaged by the financial mechanism of the UN Framework Convention on Global Climate Change and the UN Convention on Biological Diversity⁶. Whereas in London the United States as the largest donor had insisted on a strong involvement of the World Bank, it favoured now the smooth transfer of the Fund to its new legal basis. So did several small industrialised countries. For the developing countries the funding mechanism constitutes the core of the regime. They vigorously refused to participate in further meetings of the Preparatory Committee (so that the Committee could not meet for its two sessions on Friday, 20 November) until the small group of donor countries withdrew its proposal and the establishment of the regular Fund was generally agreed.

Lastly, the developing countries,

led by India and Malaysia, refused to enter into any new obligations in the field of control measures beyond those adopted at London. They argued that an adjustment and tightening of control measures as agreed by the industrialised countries might not be implementable by them as their phase-out plans were oriented by the London targets. Beyond that, little experience had been gained concerning the transition of their economies. The developing countries did not, therefore, any more accept an automatic entry into force of the control measures agreed by the industrialised countries with a ten year grace period. Instead, they requested a general exemption from new obligations until the comprehensive review of their situation envisaged for 1995, that included the issues of the availability of the necessary technology and the satisfactory operation of the financial mechanism.

Further decisions could be adopted on the basis of this review. To promote the proposal, India threatened effectively to preclude any consensus on new control measures whatsoever. As a result, the Meeting of the Parties adopted as part of the Copenhagen Amendment an addition to paragraph 1 of Article 5 and a new paragraph 1 *bis* including an *automatic* application of the new control measures to developing countries and enabling the Meeting of the Parties to decide before 1996 (*i.e.* in 1995) on reduction targets and dates applicable to this group of parties without a further formal amendment of the Protocol.

3. Institutional Matters

The international regime for the protection of the ozone layer did not lead to an extensive new bureaucracy. In contrast to traditional international organisations the three Secretariats (joint Secretariat of the Vienna Convention and the Montreal Protocol in Nairobi and Secretariat of the Fund in Montreal) have remained small and have not acquired an autonomous existence. They are affiliated to UNEP. Instead, the core of the institutional structure of the regime is formed by its annual Meeting of the Parties. It is this Meeting that assures the continued ability of the contracting parties to decide *collectively* on matters of their common con-

cern. The regime comprises a comprehensive process of communication among its members and is thus more than a simple international treaty amended from time to time⁷. This is particularly important in two respects. The interpretation of the obligations entered into is not left to the parties individually. It can be, and frequently is, discharged by them collectively. Likewise, conflicts about the compliance record of parties, or incidents of clear non-compliance, may be discussed and decided upon by the Parties collectively.

Decisions

In their past Meetings, the Parties have adopted a multitude of decisions on their collective interpretation of treaty provisions and related issues. The most important of these decisions was no doubt, the establishment of the Interim Multilateral Fund prior to the entry into force of the London Amendment. The Copenhagen Meeting also took decisions on a number of questions of common concerns.

Several parties are members of the Montreal Protocol of 1987 but have not yet ratified the London Amendment of 1990. However, another group of parties, that has already ratified the Amendment, is bound by its provisions. From the parallel existence of two separate legal instruments, conflicts arise especially in the area of trade restrictions. Accordingly, the Meeting of the Parties decided that the export of the originally controlled substances (Article 4.2 of the London Amendment) shall apply *only* to countries that are not members of the Montreal Protocol of 1987. And that export restrictions of the London substances (Annex B) according to Article 4 *bis* shall commence only in August 1993. This refers to EC provisions envisaging a ban of these substances already beginning in January 1993, at a time at which some South-East Asian importers will not have ratified the London Amendment. Finally, an exemption from trade restrictions has been adopted for the benefit of Colombia that is not yet a party to the Protocol but fulfilled the conditions of Article 4.8 that allows for such exemptions in case of countries complying with the control measures of the Proto-

col and submitting data to that effect.

So far the Protocol distinguishes economically between two groups of countries, those (developing) countries operating under Article 5.1 and those not doing so. It obliges the latter group not only to comply with the regular schedules, but also to contribute to the Fund. There is no specific status for "countries with economies in transition", as is provided for in the Climate Change Convention. South Africa had therefore proposed to introduce such intermediate status. The Meeting of the Parties should be enabled to confer the status to a party and to exempt it from part or all of its obligations concerning both the reduction of controlled substances and the contribution to the Fund. The proposal was supported by the Russian Federation which is widely believed to be incapable of complying with the control measures as well as with its financial obligations under the Protocol. It was rejected, however, by the developing countries, fearing that the overall size of the Fund might decrease if countries were exempted from their obligations to contribute, as well as by the industrialised countries. However, it was generally recognised that countries might not be in a position to fulfil part or all of their obligations. The Meeting of the Parties considered itself competent to decide in these cases *without a particular enabling clause*. In this regard, the Meeting was faced with concrete requests from Hungary, Bulgaria and Poland to be exempted from contributions to the Fund in hard currency for the years 1991-1993. Yet, the matter was assigned to the Executive Committee and the Fund Secretariat since in certain circumstances contributions may be made in kind. (See also page 51)

Non-Compliance Procedure

The supervision of the compliance record of the parties and opportunities to react collectively to incidents of non-compliance is crucial for the stability and effectiveness of sectoral legal systems such as the ozone regime. Whereas the Protocol envisages the elaboration of procedures and institutional mechanisms for this purpose (Article 8), the Second Meeting of the Parties adopted only a provisional non-

compliance procedure⁸. It provided means for the amicable and non-judicial solution of disputes over the performance of parties. While the dispute-settlement clause of the Vienna Convention (Article 11), that is also applicable to conflicts arising under the Protocol, addresses *bilateral* disputes between two (or a limited number of) parties, the non-compliance procedure addresses situations in which the community of parties is faced with non-compliant behaviour by an individual party.

On the basis of the provisional procedure and a set of proposals submitted by the European Community a comprehensive non-compliance mechanism has been developed by a legal expert group and adopted by the Copenhagen Meeting. (See also page 51) The mechanism may be triggered in three ways, either by a complaint of one or more parties regarding the implementation of another party, or by a party that considers itself temporarily unable to fulfil its obligations, or by the Secretariat. In this last way, information received, for example, from an NGO may enter the process even if not channelled through a State party. An Implementation Committee consisting of ten countries shall review the information submitted, request further information as appropriate and (upon invitation of the party concerned) even gather information in the territory of that party. While it shall generally seek amicable solutions, decisions on recommendations to the Meeting of the Parties shall be adopted *without the participation* of the parties concerned. Eventually, the highest decision-making body of the regime, the Meeting of the Parties, will decide the matter.

The Copenhagen Meeting therefore also adopted an indicative list of measures that might be taken by the Meeting of the Parties (See also page 52). These measures refer to appropriate assistance, issuing cautions, and suspension of specific rights and privileges arising under the Protocol. The Meeting did not, however, adopt an indicative list of possible situations for non-compliance with the Protocol as proposed by the European Community. Several of these situations were widely agreed, e.g. non-compliance with control measures, with trade restric-

tions and with data reporting obligations. However, the United States vigorously refused to accept that the failure to contribute to the Fund constituted such a situation since it considered contributions as "voluntary". Some other countries, in particular China, denied that non-compliance with obligations arising from decisions of the Parties constituted such situations. They held that decisions did not have the same legal status as contractual obligations. Rejections were thus founded in general political and legal considerations. Instead of adopting an incomplete list, the proposal was dropped altogether. In consequence, the Implementation Committee will decide itself upon the status of contributions to the Fund and of Decisions of the Parties once it is concerned with specific cases in this respect. In a separate Decision the Parties decided that cases of developing countries operating under Article 5.1 and exceeding the consumption levels of this Article shall be dealt with by the Implementation Committee.

4. Conclusion

The Copenhagen Meeting revised the legal structure of the regime by a number of far-reaching Decisions and a compound Amendment of the Protocol text. The meeting completed the institutional structure of the regime by the adoption of a non-compliance procedure that may constitute an instrument for ensuring the effective implementation of control measures not only

by pressuring States towards fulfilling their obligations but also by providing necessary assistance to this end. Further developments cannot be anticipated in this area.

As to control measures, reduction schedules have been significantly accelerated. As far as industrialised countries are concerned, the most important ozone depleting substances, that is, the originally controlled chemicals, will cease to be on the agenda of the regime. However, focus has been directed at transitional substances and chemicals that have so far escaped the regulatory attention. Reduction schedules for these substances must be worked out and may be accelerated. This is expected to take place in the next round of negotiations prior to the Seventh Meeting of the Parties (1995). One major task of the coming years may well be to secure the compliance of all parties, in particular of the "countries with economies in transition", with their obligations.

Another important item on the future agenda of the ozone regime will be the strengthening and effective implementation of control measures applying to developing, (article 5.1) countries. This task depends on the effective functioning of a transfer of financial resources and technology. The Copenhagen Meeting reinforced the Multilateral Fund as the core of the system of preferential conditions for developing countries. The performance of the funding mechanism will be under continuous supervision. In 1995 the Parties will undertake a major review of this mechanism and

decide on new obligations for developing countries.

The Fourth Meeting of the Parties to the Montreal Protocol thus proved once again the nature of the ozone regime as a dynamic international environmental institution. Adapting quickly to newly emerging scientific and political consensus, and supporting, in turn, the generation of such consensus, the case of ozone may well serve as the example of successful international cooperation for other environmental regimes currently developing, in particular for the regimes on climate change and biodiversity. □

Notes

- 1) See Richard Benedick, *Ozone Diplomacy*, Cambridge, Mass. (Harvard University Press) 1991; and Armin Rosencranz and Antony Scott, *Montreal Protocol: Bringing the Developing World on Board*; *Environmental Policy and Law* 20 (1990), pp. 201-203.
- 2) See report of the Third Meeting, UNEP/Ozl.Pro. 3/11, Decisions III/11 and III/12.
- 3) UNEP/Ozl. Pro/WG/1/6/3
- 4) See report of the Third Meeting, UNEP/Ozl.Pro. 3/11, Decision III/3
- 5) See report of the Second Meeting, UNEP/Ozl. Pro. 2/3, Annex IV
- 6) Reprinted in *Environmental Policy and Law* 22 (1992)
- 7) See Gehring, *International Environmental Regimes*; *Yearbook of International Environmental Law* 1 (1990), p. 35-56.
- 8) Reprinted in *Environmental Policy and Law* 19 (1989), p.223; see also report, *ibid.*, pp. 147-148