INTERNATIONAL ENVIRONMENTAL AGREEMENTS: PROCESS, GOVERNANCE & CASE STUDIES

A Preliminary Compilation Report for the Oil Depletion Protocol

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Introduction

This Summary Report is not original work nor is it intended to be. It is a compilation of relevant pieces of information from a variety of sources, some of which have been summarized, added to this report verbatim, added to other areas within this report (out of original context) as appropriate, or written / supplemented by this author.

The scope of this Summary Report spans the first steps involved in initiating the treaty-making process to specific examples of treaties that are currently in force. As such, this report is separated into two distinct sections: 1) background information that sets the stage for, 2) specific international treaties, environmental and other.

Section 1 focuses on how international treaties come into force; what the usual steps are in the treaty-making process; the governance, structure, and process of multilateral environmental agreements; and the International Energy Agency as an institution that is associated with a treaty that specifically pertains to oil and energy.

Section 2 focuses on actual treaties, all of which are entirely or partially relevant to the Oil Depletion Protocol. Specifically, this section covers, in varying degrees depending on the treaty, the history, governance, external mitigating factors, mechanisms, structure, and other elements as appropriate.

1. International Treaties: Idea to Implementation

There are no supranational bodies that dictate international law. Though there are advantages and disadvantages to this, historically, the lack of a supranational law-making body has been overcome via international agreements. Given the transboundary nature of many environmental crises, international cooperation is often imperative.

There are several sources of international law:

- multilateral international agreements
- customary law, which is similar to conventional law
- soft law, norms that are not binding but are generally observed

The products of the international legislative process are not binding per se, and governments are only bound to proposed and/or enacted international legislation if they wish to be bound – and only after reviewing in great detail the precise wording of the treaty in question. The international legislative process is highly decentralized.

The forum in which new international law, particularly environmental agreements, is created has almost exclusively become the international intergovernmental organizations (IGOs).

1.1 Steps in the Treaty-making Process

A. Precursors to the treaty-making process

In certain circumstances an international organ, faced with a newly emerged or recognized problem as to which international action appears desirable and urgent, will in the first instance adopt a declaration expressing that consensus, making certain recommendations (that in the parlance of international lawyers may be considered as "soft," or non-binding, law) and perhaps taking the initial steps towards the formulation of a law-making treaty.

Though in some instances the adoption of such a decision occurs as soon as the organ is seized of the subject (i.e. at the same session), in others there is a lengthier process of consideration, including by subsidiary organs, which itself constitutes an abbreviated version of the treaty-making process. Indeed, in some instances the organ may in effect embark on the quest for a treaty, only to discover that that may be a difficult goal to attain and that at the current stage only the adoption of a non-binding resolution can be achieved.

B. Initiating the treaty-making process

A proposal for an international agreement generally enters the consciousness of the international community when it is first advanced, typically:

- in some IGO
- by the representatives of one or more member states
- or possibly by those of a non-governmental organization (NGO)

Once an IGO is presented with an idea for an international treaty, it must consider whether or not to initiate the process, based on its perceived need, anticipated value, and likelihood of implementation and adoption. To determine whether or not to go forward, a series of questions are generally answered via research and surveys of IGO member states, experts, and NGOs:

1. The need that the new instrument is to meet
2. The existing legal regime, including the extent of its applicability to the perceived problem
3. Any relevant legislative efforts in other fore
4. The likelihood of success in developing an instrument, i.e. is it foreseeable that the required measure of agreement can be reached on the solution aimed for?

5. The optimal form for the proposed instrument: treaty, solemn declaration, model law or rule, etc.
6. The likelihood that the proposed instrument will be accepted by a sufficient number of significant states
7. An anticipated time-schedule for the project
8. The expected costs of formulating and adopting the proposed instrument, both to the IGO concerned and to the states participating in the process
9. Particularly in formulating instruments in relation to technical or scientific problems (such as outer space or the environment) it may be necessary to carry out extensive scientific studies or research to determine the parameters of the problem and the lines of potential solutions

There is a sovereign right of any state to introduce proposals in any international organ in which it participates.

C. Formulating multilateral treaties

Once an IGO has agreed to initiate the process, the second major stage of the international legislative process begins – one that involves numerous steps that do not necessarily follow each other in sequence.

Preliminary studies

Depending on what studies were carried out prior to the project being proposed, additional investigations may be necessary before formulating the instrument.

Often this task is assigned to the IGO's secretariat which can undertake the research on its own, with staff, or with consultants. Expert groups can also be convened, or the research and studies can be undertaken by subsidiary organs of the IGO.

Preparing an initial draft

The preparation of a draft is often assigned to the organ that prepared the preliminary studies, to an interested NGO, or a working group of the secretariat.

Negotiation

Often negotiation begins before the treaty-making process has been formally initiated – the initiator (IGO) may consult with leading states before ever introducing a proposal.

The preferred organ for carrying out negotiations should be a representative one that consists of the states involved. A standing restricted organ (such as the 58-member UNEP Council) always has a balanced composition considered appropriate for such tasks.

Although the negotiations are normally carried out by persons formally designated as state representatives, such as the members of IGO organs, it is becoming more customary to allow participation of non-official organizations, particularly NGOs (well-financed and knowledgeable ones).

Consultations with governments

The international legislative process is primarily a dialogue among governments, carried out by their designated representatives for the most part in IGO organs. Governments are technically always up to date with the progress via state reps. However, progress reports are also sent directly to governments of member states.

Consultations with the public

As multilateral treaty-making is generally carried out in the open, i.e. in meetings at least in principle open to the media and to interested NGOs, and at least the reports made from one organ to another or from one session of an organ to another are rarely subject to classification, the public usually has sufficient access so as to be able to exert such influence as it can. This is accomplished through the normal process in democratic societies by which popular views may be translated into legislative recommendations addressed to the executive, which in turn instructs the negotiators.

D. Adopting multilateral treaties

When it is judged by the competent organ that the process of treaty formulation is complete or at least that it has progressed as far as it can at that stage, a decision as to its adoption must be taken. If it is decided that the treaty will be adopted, the next steps include:

Choice of forum

The forum for adoption must be designated. If the decision is open, the choice is normally between a standing organ and an ad hoc conference. The adoption organ should consist only of all the potential parties to the instrument. Depending on the nature of the subject-matter, adoption may occur via a high profile senior IGO organ, such as the UN General Assembly. Alternatively, in certain circumstances, a special conference, even if convened for only a few days, may be considered a better forum.

Tasks of the adopting forum

The adopting forum must, at the end of its work, be able to approve the texts of one or more instruments to be then submitted for formal action by states. It must complete whatever the formulating organ has not: negotiations, perfection of the text, formulation of final clauses, consideration of potential reservations, and the making of a formal record. The final product of the adopting forum will consist of one or more instruments meant for action by states (a principal treaty and subordinated protocols).

Decision-talking

Voting procedures – one-vote, consensus, majority…

E. Bringing multilateral treaties into force

When a country indicates its commitment to an international accord, this needs to be followed by a decision or an action in the form of establishing a mechanism for implementing the agreement in the country. The most common mechanisms used have either been enacting acts or laws in the country to implement what has been agreed at the international level, or incorporating these agreements in domestic policy in the form of creating national incentive or disincentive schemes.

A country can enact a domestic law that incorporates what has been agreed upon at the multilateral level. The advantage of this is that when the domestic law includes internationally agreed provisions, it becomes legally binding in nature.

Once international provisions become part of domestic policy, they are immediately mainstreamed in national plans and priorities which facilitates their implementation. It should be cautioned that because a provision becomes national policy it does not necessarily mean that it is going to be implemented.

General Considerations

The adoption of an international treaty by an IGO or a conference normally has no immediate legal effect at all. In order for a treaty to become binding, individual states must take action in respect of the instrument – normally by having an authorized representative sign it and then having that signature ratified by

appropriate government action. Even then, the treaty only enters into force for the states that have ratified, and subsequently for those that do so later.

An important determinant of the fate of any treaty is its specific provision concerning its entry into force. If the substantive provisions are such that they can sensible and beneficially apply if only a few states are parties, then this can be provided. In other situations, full party ratification is necessary.

There are situations in which a regime might function even with uneven participation, but certain states consider themselves disadvantaged if they are bound if their neighbours or rivals are not.

Reservations and Options

Domestic legislation generally applies uniformly throughout the jurisdiction in question, for any exceptions or variations have to be expressed in the legislative instrument itself. International treaties are different, because usually states can accept them with reservations that modify the obligations as between the reserving state and the other parties, in part depending on how the latter react to the reservation. The result is that there may be considerable variations in the respective obligations of the parties, and a most complicated network of non-uniform bilateral relations among them.

The Domestic Aspects of Ratification

Although international ratification itself is an international act, what precedes it is carried out subject to domestic law and domestic political and administrative considerations. In democratic states, a series of steps may have to be taken to ensure the proposed treaty is both politically and legally acceptable. This constitutes a real problem - very few agreements have even one-half of the potential participation.

Only a few treaty-sponsoring lGOs provide technical assistance in translating treaty instruments into local languages, in preparing presentations to parliamentary and other bodies, and in drafting domestic legislation and regulations to facilitate implementation of treaty obligations.

F. The process of keeping international legislation up-to-date

Traditionally, treaty law is adjusted from time to time by additional treaty actions. A number of devices have been developed for simplifying the process of updating treaties:

- the use of framework or umbrella conventions that merely state general obligations and establish the machinery for further norm-formulating devices – UNFCCC
- the supplementation of such conventions by individual protocols establishing particular substantive obligations in implementation of the general objectives of the convention – Kyoto Protocol to the UNFCCC
- the use of easily amendable technical annexes

In respect of all these devices, the international phase of the treaty-making process - initiation, formulation, and adoption - can be simplified and accelerated by assigning them to specially designated, dedicated expert or representative organs that either meet periodically or that are easy to convene as the need for further legislative action arises, and that are serviced by a specialized secretariat thoroughly familiar with the regime in question as well as with other related regimes that must be taken into account

Notes:

The quality of the international environmental rules established depends in the first instance on the expertise of the specialized representative, expert, and secretariat organs charged with carrying out or assisting these legislative tasks, which for the most part are likely to be the organs of a number of existing IGOs active in this field. Such organs are already quite numerous in the UN system. NGOs that have relevant expertise in the proposed legislation should be encouraged to participate in all aspects of the relevant international legislative process.

There are many examples of how a particular individual will essentially personally influence the formulation of a particular treaty. These persons more often than not are representatives of minor states who through their merits capture key positions in developing some instrument: chair of an influential expert group, of a drafting committee, etc. An instrument or project that attracts the support of one or more talented and dedicated legislative heroes, preferably from nominally opposite camps, is much more likely to succeed than can be predicted by a sober political analysis of the supposed interests of power blocks.

2. Multilateral Environmental Agreements

There are over 500 international treaties and other agreements related to the environment, of which over 320 are regional. None of the core environmental agreements are exclusively oriented to protection and conservation.

There is a delicate balance to international treaties. Those appealing enough to gain widespread support often aren't strong enough to solve the problems they focus on. Yet treaties with real "teeth" may have difficulty attracting enough widespread support to be effective.

Of the 41 core Multilateral Environmental Agreements (MEAs), all but 6 are legally binding.

2.1 UN Involvement in MEAs

Of the 41 core environmental conventions, protocols, and related international agreements, UNEP provides the secretariat for 22. Is also promoted and facilitated the negotiations for 13 other conventions and agreements. With these 13 and remaining 6, UNEP maintains a working relationship. UNEP is the principal organization providing secretariats to the core environmental conventions and with working relationships with all the core environmental conventions.

All MEAs and their secretariats work to different degrees with other international organizations that support the implementation of their convention or protocol. Most MEAs have voluntary cooperative arrangements with international organizations, NGOs, and bilateral donor agencies, or collaboration arrangements. In most conventions, NGOs, private industry, civic groups, local communities, and indigenous groups are invited and allowed to participate in the deliberations of the Parties.

2.2 Scope of Core Environmental Conventions

The core environmental conventions and related international agreements are basically divided into 5 clusters:

1. Biodiversity-related conventions
2. Atmosphere conventions
3. Land conventions
4. Chemicals and hazardous waste conventions
5. Regional seas conventions and related agreements

The atmosphere conventions include:

- UNFCCC (UNFCCC)
- Kyoto Protocol (to the UNFCCC)
- Vienna Convention for the Protection of the Ozone Layer
- Montreal Protocol on Substances that Deplete the Ozone Layer (to the Vienna Convention)

2.3 Institutional and Governance Structure

MEAs adopted after 1972 generally have the following institutional elements:

A. Conference of the Parties (COP)
B. Secretariat
C. Advisory Bodies
D. Clearing-house Mechanism
E. Financial Mechanism

A. COP & MOP

The COP of each convention or the Meeting of the Parties (MOP) of a Protocol to a convention are the ultimate decision-making bodies regarding the overall implementation and development of their respective MEA, including the programme or work, budget, and the revision of annexes where applicable. Most MEAs have established or are associated with subsidiary bodies and assessment bodies that are generally advisory in nature and present their recommendations to the COP or MOP.

B. Secretariat

The scope and mandate of MEA secretariats can vary, and can generally be divided into 2 categories:

1)
   i) Prepare and service the meetings of the COPs and their subsidiary bodies and coordinate with other international organizations
   ii) Provide administrative, technical, and scientific support to the COP and subsidiary bodies
   iii) Provide advice on implementation to Parties when requested
   iv) Prepare background documentation for meetings of the convention and in coordinating the work carried out under the convention with that of other relevant institutions and conventions

2) All of the above with the addition that secretariats in this category are also involved in implementing programmes or projects at the regional and country levels.

Most framework conventions with protocols are serviced by joint secretariats that oversee the overall implementation of the convention and its protocols (UNFCCC & Kyoto; Vienna & Montreal)

An important function of most secretariats is the monitoring and evaluation of the implementation of their MEA, proposing formats for national reports, receiving and analyzing reports submitted, and providing the COP or MOP with syntheses of the information contained in national reports.

<u>UNEP-administered Secretariats of MEAs</u>

Most of the global conventions relevant to the environment, including regional conventions of global significance, have secretariats provided by basically 5 organizations of the UN system: IMO, UN General Secretariat, FAO, ILO, and IAEA.

Of the 41 core environmental conventions, protocols, and related international agreements, UNEP provides the secretariat for 22, and has working relationships with all the core environmental conventions. Of the other 19 core MEAs that are not UNEP-administered, UNEP also promoted and facilitated the negotiations of 13.

The UNEP-administered conventions can be divided into 2 groups:

1. The secretariats of MEAs that operate as self-contained units with administrative capabilities whose staff and operations are financed from the budgets approved by their COPs or MOPs with funds drawn from their respective trust funds administered by UNEP
2. The secretariats of 3 global MEAs that are embedded within a functional unit of UNEP and whose operations are largely, but not exclusively, covered from UNEP's Environment Fund. This is a different governance structure than other MEAs.

C. Subsidiary Bodies

Several conventions and protocols have subsidiary scientific and technical bodies that provide the COP or MOP with advice and recommendations on the scientific and technical aspects of the implementation of their MEAs. Subsidiary bodies are generally advisory in nature and present their recommendations to the COP or MOP.

D. Clearing-House Mechanisms (CHM)

Several MEAs have clearing-houses, generally operated by the secretariats, to promote and facilitate the exchange of scientific, technical, environmental, and legal information.

E. Financial Mechanism

Although the priorities of MEAs differ, strengthening the capacity of Parties or member states to meet their obligations and commitments through financial assistance ranks as a high priority for all MEAs. They must find ways to finance the operation of their Secretariats and their programmes of work. There are various means/sources of obtaining funds, with the most popular being:

- Traditional mandatory and voluntary trust funds
- Other multilateral funding mechanisms (Multilateral Fund for the Montreal Protocol)
- bilateral arrangements with donor countries
- bilateral arrangements with donor countries
- foundations such as the UN Foundation,
- private sector donors
- NGOs

Traditional Mandatory and Voluntary Trust Funds

Traditional trust funds are financed either by mandatory or voluntary contributions from Parties. Generally only developed countries and Countries with Economies in Transition are required to make mandatory contributions. A high percentage of voluntary contributions to MEAs are provided by a small number of donor countries.

Voluntary contributions are rare and increasingly difficult to obtain. Some conventions receive regular voluntary contributions from a non-Party.

Examples of trust funds include:

> *Global Environment Facility (GEF)*: created in 1991 to promote international cooperation and foster actions to protect the global environment
>
> *The Multilateral Fund for the Montreal Protocol*: The Protocol mandates the creation of a Financial Mechanism to assist developing countries in meeting their protocol obligations.
>
> *Joint Implementation (JI)*: JI is a project-based activity under Kyoto in which one country can receive emissions reduction credits when it funds a project in another country where emissions are reduced.

Administration of MEA Funds

Traditional trust funds are generally administered by the international organizations that provide the Secretariats. These organizations have the responsibility of effectively managing the resources of the MEAs. Most MEAs have agreed financial rules adopted by the Parties, and financial rules and regulations are strictly applied to trust funds.

For UNEP-administered conventions, UNEP serves as the Trustee.

Funding MEA Secretariats, Programmes & Activities

Budgets are proposed by the Secretariats, both for the operations of the Secretariat itself, and for the programme of work. Conferences and meetings of the Parties are financed either through Secretariats core budgets or other budgets for this purpose. Special meetings and activities are financed either with core

funds, voluntary contributions, private sector contributions, or funds secured from international financial institutions.

2.4 Implementation of MEAs

Many developing countries are apprehensive that either they lack access to advanced technologies to meet required standards, or if they try to acquire or utilize these technologies, the cost of production will go up to such an extent that their products will lose competitiveness in international markets. Thus, many countries view these agreements with considerable skepticism.

Participation in negotiations

It is found that, in many countries, the Ministry of Foreign Affairs have attended the meetings and signed agreements.

Mechanisms used for implementing agreements

Commitments to international agreements need to be followed by a decision or an action in the form of establishing a mechanism for implementing the agreements. The most common mechanisms used have either been enacting laws in the country to implement what has been agreed at the international level, or incorporating these agreements in domestic policy in the form of creating national incentive or disincentive schemes.

A country can enact a domestic law that incorporates what has been agreed upon at the multilateral level. The advantage to this is that when the domestic law includes internationally agreed provisions, it becomes legally binding in nature. However, such laws are often not enforced in many developing countries for reasons such as an inadequate legal system, which implies that actual implementation may not take place.

Incorporating provisions in domestic policy

Once these international provisions become part of domestic policy, they are immediately mainstreamed in national plans and priorities. However, because a provision becomes national policy does not necessarily mean that it is going to be implemented.

2.5 Partnerships with International Organizations

All MEAs and their secretariats work to different degrees with other international organizations that support the implementation of their convention or protocol. Most MEAs have voluntary cooperative arrangements with international organizations, NGOs, and bilateral donor agencies, or collaboration arrangements called for by COPs on specific issues.

The atmosphere-related conventions are the smallest cluster and work with a smaller group of international organizations made up principally of organizations from the UN system and bilateral donor agencies largely linked to the Montreal Protocol Multilateral Fund.

2.6 Cooperative Agreements between MEAs

The last 2 years has seen a marked rise in the signing of memoranda of understanding (MOUs) between conventions, signaling a period of increasing political will for MEAs to collaborate more closely in the implementation of their respective agreements.

In the atmosphere conventions cluster, no MOUs with other MEAs have been developed. The Vienna Convention and its Montreal Protocol have ad hoc agreements with other MEAs in areas of common interest, but no MOUs.

2.7 Participation of Civil Society in the Implementation of MEAs

Participation in Meetings

In some conventions, NGOs, private industry, civic groups, local communities, and indigenous groups are allowed to participate in the deliberations of the Parties.

The MOPs of the Montreal Protocol are open to NGOs, private industry, scientists, and expert organizations in the field of ozone protection. The Vienna Convention and its Montreal Protocol, as well as other agreements, have always encouraged the participation of civil society – NGOs, business and industry associations, labour unions, academia, civic groups, and indigenous groups.

Relation of Civil Society to MEA Secretariats

Secretariats of some agreements maintain regular contacts with civil society organizations for exchange of information and views, receipt of documentation, and preparation of background papers.

Participation of Civil Society in the Implementation of MEAs

In most conventions, NGOs, private industry, civic groups, local communities, and indigenous groups are invited and allowed to participate in the deliberations of the Parties. Some secretariats maintain regular contacts with civil society organizations, for example, for exchange of information and preparation of background papers.

For the Montreal Protocol, representatives of civil society act as catalysts and protagonists for the elimination of ozone depletion substances. They also monitor progress in the implementation of the protocol. Civil society also provides scientific and technical expertise for some protocols and agreements.

2.8 Weaknesses

Among the current MEAs, there is inconsistency at the national level regarding compliance and enforcement. Also, the role of non-state actors such as NGOs and the private sector in relation to compliance and enforcement needs to be clearly defined.

Inadequate funding is another weakness that hampers the effective implementation of MEAs, including required support needed by many developing countries.

2.9 Multilateral Trade Agreements and Market-Based Environmental Policies

Global trade is in large part governed by the GATT and related trade agreements under the auspices of WTO. The fundamental constraint the GATT legal framework imposes on national policymaking involves the nondiscriminatory treatment of goods traded between participating countries.

According to Public Citizens' Global Trade Watch, recent WTO rulings "reveal a systemic bias in the WTO rules and the WTO dispute resolution process against the rights of sovereign states to enact and effectively enforce environmental laws.

Possible Grounds for Conflict

What constitutes a conflict would be a matter of interpretation of the MEA and various agreements under the WTO. A general conflict does not exist unless one treaty requires a particular course of action that is either prohibited in the other instrument, or the latter instrument requires the opposite course of action. The incompatibility emerges where a party to both treaties cannot comply with the obligations under both simultaneously.

Countries must impose their environmental taxes or regulations equally on domestic as well as imported goods. If a product could cause environmental damage or health problems, the government of the importing country may legitimately bar its importation.

In the event of conflict, the rules of treaty interpretation would apply to resolve any conflicts between MEAs and WTO requirements.
A MEA 'savings clause' may provide greater clarity on how MEAs that allow for trade-restrictive measures should be treated at the WTO. Savings clauses have been added to MEAs in order to ensure that the agreement's provisions do not override existing obligations of the parties under other international agreements, such as the WTO agreements.

Least Trade-Restrictive Exceptions

Exception (g) of GATT provides leeway to conserve scarce natural resources if such measures are combined with restriction on domestic production and consumption.

Implications for Tradable Emissions Allowances
(and similar systems such as TEQs)

A system of domestic tradable allowances (permits) is in itself consistent with the GATT, particularly given the general exceptions clause and that such a program would almost always be less trade restrictive than command-and-control regulations.

Most commentators have held that licenses or permits provided by the parties to the Kyoto Protocol are a form of government regulatory activity, and would not be equivalent to either a good or service under WTO disciplines.

Conclusion

Most of the restrictions that multilateral trade agreements pose for market-based environmental policies are speculative at this point. Emissions taxes and tradable permit systems are not so widespread and have not yet significantly affected export industries. For the most part, the GATT can be (or can be made) quite consistent with sound market-based environmental policy.

While it is true that WTO cannot become directly involved in the formulation of the environmental policy of national governments, it can indirectly influence these policies by setting certain standards for production processes for goods and commodities traded in international markets.

3. The International Energy Agency and the International Energy Program Agreement

3.1 The International Energy Agency (IEA)

The IEA is an autonomous body which was established in November 1974 within the framework of the Organization for Economic Co-operation and Development (OECD) to implement an international energy programme.

It was created in response to the oil crisis of 1973-1974 to ensure that industrial nations of the world are less vulnerable to a major disruption in oil supplies. The IEA is a cooperative grouping of most of the Member countries of the OECD, committed to responding swiftly and effectively in future oil emergencies and to reducing their dependence on oil. It is the energy forum for 26 industrialized countries.

Measures to attain the first of these objectives included the establishment of adequate oil stocks, agreement to reduce consumption, and sharing of supplies, if necessary. Member countries agreed to increase the efficiency of their use of energy, to conserve this valuable resource, and to diversify their energy supplies through development of alternatives to oil. They agreed to cooperate in the development of cleaner, more efficient energy technologies.

It carries out a comprehensive programme of energy co-operation among twenty-six of the OECD's thirty member countries. The basic aims of the IEA are:

a. to maintain and improve systems for coping with oil supply disruptions;
b. to promote rational energy policies in a global context through co-operative relations with non-member countries, industry and international organizations;
c. to operate a permanent information system on the international oil market;
d. to improve the world's energy supply and demand structure by developing alternative energy sources and increasing the efficiency of energy use;
e. to assist in the integration of environmental and energy policies.

The IEA member countries are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Republic of Korea, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States. The European Commission takes part in the work of the IEA.

3.1.1 Organization and Secretariat

The IEA's main decision-making body is the Governing Board, composed of senior energy officials from each Member country. A Secretariat, with a staff of energy experts drawn from Member countries, supports the work of the Governing Board and subordinate bodies.

3.1.2 Shared Goals

The 26 Member countries seek to create the conditions in which the energy sectors of their economies can make the fullest possible contribution to sustainable economic development and the well-being of their people and of the environment.

- Diversity, efficiency, and flexibility within the energy sector
- The ability to respond promptly and flexible to energy emergencies
- The environmentally sustainable provision and use of energy
- More environmentally acceptable energy sources
- Improved energy efficiency
- Research, development, and market deployment of new and improved energy technologies
- Undistorted energy prices

- Free and open trade
- Cooperation among all energy market participants

3.1.3 Energy Statistics

The IEA collects and processes a wide range of data for over 130 countries world-wide. The agency also prepares current oil market assessments from information submitted by Member governments, international oil companies, and others. Issues covered include: oil exploration and production developments; supply, demand, price, and refining trends; and international trade in crude and products. The agency claims to be the world's leading source of energy statistics.

3.2 The International Energy Program Agreement (IEPA)

Created in 1974 as a result of the 1973-1974 oil crisis, with the goals of promoting secure oil supplies, creating an International Energy Agency, promoting cooperative relations with oil producing and other oil consuming nations, establishing an international information system, and reducing dependence on imported oil.

IEA Member governments agreed to share energy information, to coordinate their energy policies, and to cooperate in the development of rational energy programmes.

3.2.1 Some elements of the Agreement

<u>Emergency Self-sufficiency</u>

Participating countries shall establish a common emergency self-sufficiency in oil supplies – each country shall maintain emergency reserves sufficient to sustain consumption for at least 60 days with no net oil imports.

<u>Demand Restraint</u>

Each country shall at all times have ready a program of contingent oil demand restraint measures enabling it to reduce its rate of final consumption. Final consumption means total domestic consumption of all finished petroleum products.

Oil supplies available means: all crude oil; all petroleum products; all finished products and refinery feedstocks which are produced in association with natural gas and crude oil.

<u>General Section – Information System</u>

Participating countries shall, on a regular basis, make available to the Secretariat information on the following subjects relating to oil companies operating within their respective jurisdictions (some areas include):

- Current rates of production and anticipated changes therein
- Allocations of available crude supplies to affiliates and other customers
- Stocks
- Cost of crude oil and oil products
- Prices
- Terms of arrangements for access to major sources of crude oil

<u>Special Section</u>

The Secretariat shall continuously survey the supply of oil to and the consumption of oil within the group and each Participating Country.

Participating Countries shall, on a regular basis, make available to the Secretariat information on:

- Oil consumption and supply
- Demand restraint measures
- Levels of emergency reserves
- Availability and utilization of transportation facilities
- Current and projected levels of international supply and demand

3.2.2 Organs of the Agency

- A Governing Board (one or more ministers or delegates from each Participating Country)
- A Management Committee (one or more senior reps of the gov't of each Participating Country)
- Standing Groups on
    - Emergency Questions
    - The Oil Market
    - Long Term Co-operation
    - Relations with Producer and Other Consumer Countries
- Secretariat

4. The United Nations Framework Convention on Climate Change

1973	1st Earth Summit in Stockholm, Sweden – world leaders announced intention to hold a gathering every 10 years to determine health of the planet
1988	Intergovernmental Panel on Climate Change (IPCC) created by the UN, the IPCC brought together scientists from world's governments. During 1980s, discussion was about climate change and whether the world was warming or cooling.
1988	Toronto Conference on the Changing Atmosphere – Gro Brundtland hosted one of the world's first major scientific conferences on climate change. Called for a 20% cut to 1988 GHG emissions by 2005 and called effect of climate change second only to global nuclear war
1990	IPCC's 1st report – 2 years after its formation, the IPCC released its first report. Stated planet was warming and that human activity was causing it
1992	2nd Earth Summit in Rio, Brazil – the United Nations Framework Convention on Climate Change (UNFCCC) was created at this earth summit. Called for global stabilization of 1990 GHG emissions by 2000.
1994	UNFCCC entered into force on March 21st
1995	COP I – countries that ratified UNFCCC hold a COP each year to review progress
1995	IPCC's 2nd report – 5 years after saying it needed more science to be certain, the IPCC released its second report saying balance of evidence pointed to human influence on global climate system
1997	COP III – Kyoto Japan. After reviewing original targets of UNFCCC and finding them too weak, the countries came up with new targets
1998	COP IV – BA, Argentina. Plan of Action developed to decide how the Kyoto mechanism would be implemented. Countries agreed the mechanisms through which targets would be achieved would be finalized by 2000.
2000	COP VI – The Hague. Deadline countries gave themselves to develop a way to cut emissions as outlined in Kyoto Protocol. Meeting failed.
2001	COP VI.5 – Germany. 180 countries agreed to the rules for implementing Kyoto. Each country now has to officially ratify the accord.
2005	Kyoto Protocol entered into force on February 16th

4.1 The Impetus: The IPCC

Scientists sound the alarm

It fell to scientists to draw international attention to the threats posed by global warming. Evidence in the 1960s and '70s that concentrations of carbon dioxide in the atmosphere were increasing first led climatologists and others to press for action. It took years before the international community responded.

In 1988, the IPCC was created by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP). Consisting of scientists from the world's governments, the IPCC has 3 Working Groups and 1 Task Force. A main activity of the IPCC is to provide in regular intervals an assessment of the state of knowledge on climate change. The IPCC also prepares Special Reports and Technical Papers on topics where independent scientific information and advice is deemed necessary and it supports the UNFCCC through its work on methodologies for National Greenhouse Gas Inventories.

The IPCC issued a first assessment report in 1990 which reflected the views of 400 scientists. The report stated that global warming was real and urged that something be done about it. The IPCC publishes global warming reports approximately every 5 years.

The findings in the IPCC's reports spurred governments to create the UNFCCC. By standards for international agreements, negotiation of the Convention was rapid. It was ready for signature at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro.

The IPCC now has a well-established role. It does not conduct its own scientific inquiries, but reviews worldwide research, issues regular assessment reports, and compiles special reports and technical papers.

The IPCC's findings, because they reflect global scientific consensus and are apolitical in character, form a useful counterbalance to the often highly charged political debate over what to do about climate change. IPCC reports are frequently used as the basis for decisions made under the Convention, and they played a major role in the negotiations leading to the Kyoto Protocol.

4.2 The UNFCCC

In the early nineties, most countries joined an international treaty – the UNFCCC – to begin to consider what can be done to reduce global warming and to cope with temperature increases. Recently, a number of nations have approved an addition to the treaty: the Kyoto Protocol, which has more powerful (and legally binding) measures. The UNFCCC secretariat supports all institutions involved in the climate change process, particularly the COP, the subsidiary bodies, and their Bureau.

The UNFCCC sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. 189 countries have ratified the UNFCCC.

Under the Convention, governments:

- gather and share information on greenhouse gas emissions, national policies and best practices
- launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries
- cooperate in preparing for adaptation to the impacts of climate change

The Convention entered into force on 21 March 1994.

4.3 Facing and surveying the problem

A major accomplishment of the Convention, which is general and flexible in character, is that it recognizes that there is a problem. That was no small thing in 1994, when the treaty took effect and less scientific evidence was available. It is hard to get the nations of the world to agree on anything, let alone a common approach to a difficulty which is complicated, whose consequences aren't entirely clear, and which will have its most severe effects decades and even centuries into the future.

The Convention sets an ultimate objective of stabilizing greenhouse gas emissions "at a level that would prevent dangerous anthropogenic interference with the climate system." It states that "such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner."

Countries ratifying the treaty agree to take climate change into account in such matters as agriculture, industry, energy, natural resources, and activities involving sea coasts. They agree to develop national programmes to slow climate change. The Convention requires precise and regularly updated inventories of greenhouse gas emissions from industrialized countries.

The Convention is a "framework" document – something to be amended or augmented over time so that efforts to deal with global warming and climate change can be focused and made more effective. The first addition to the treaty, the Kyoto Protocol, was adopted in 1997.

4.4 Bodies of the Convention

<u>Conference of the Parties (COP)</u>

The COP is the prime authority/highest decision-making authority of the Convention. It is an association of all member countries (Parties) and usually meets annually for a period of two weeks. The COP evaluates the status of climate change and the effectiveness of the treaty. These sessions are attended by several thousand government delegates, observer organizations, and journalists.

Key responsibilities include:

- evaluates the status of climate change and the effectiveness of the treaty
- examines the activities of member countries (by reviewing national communications and emissions inventories)
- considers and reviews new scientific findings
- is responsible for keeping international efforts to address climate change on track
- reviews the implementation of the Convention and examines the commitments of Parties in light of the Convention's objective
- assesses the effects of the measures taken by Parties and the progress made in achieving the ultimate objective of the Convention

Subsidiary Bodies

The Convention established two permanent subsidiary bodies. These bodies give advice to the COP and each has a specific mandate. They are both open to participation by any Party and governments often send representatives who are experts in the fields of the respective bodies. Both subsidiary bodies meet twice a year.

The subsidiary bodies work together on cross-cutting issues that touch on both their areas of expertise. These include capacity building, the vulnerability of developing countries to climate change and response measures, and the Kyoto Protocol mechanisms.

Subsidiary Body for Scientific and Technological Advice (SBSTA)

As its name suggests, the SBSTA's task is to provide the COP with advice on scientific, technological, and methodological matters. Two key areas of work in this regard are promoting the development and transfer of environmentally-friendly technologies, and conducting technical work to improve the guidelines for preparing national communications and emission inventories.

The SBSTA also carries out methodological work in specific areas, and plays an important role as the interface between the scientific information provided by expert sources such as the IPCC, and the policy-oriented needs of the COP.

Subsidiary Body for Implementation (SBI)

The SBI helps review how the Convention is being applied, for example by analyzing the national communications submitted by member countries. It also deals with financial and administrative matters.

The SBI gives advice to the COP on all matters concerning the implementation of the Convention. A particularly important task in this respect is to examine the information in the national communications and emission inventories submitted by Parties in order to assess the Convention's overall effectiveness. The SBI also advises the COP on budgetary and administrative matters.

Expert Groups

Several expert groups exist under the Convention. A Consultative Group of Experts (CGE) helps developing countries prepare national reports on climate change issues. A Least Developed Country Expert Group (LEG) advises such nations on establishing programmes for adapting to climate change. And an

Expert Group on Technology Transfer (EGTT) seeks to spur the sharing of technology with less-advanced nations.

Partner Agencies

Partner agencies include the Global Environment Facility (GEF) and the IPCC.

The GEF has existed since 1991 to fund projects in developing countries that will have global environmental benefits. The job of channeling grants and loans to poor countries to help them address climate change, as called for by the Convention, has been delegated to the GEF because of its established expertise.

The IPCC provides services to the Convention, although it is not part of it, through publishing comprehensive reviews every five years of the status of climate change and climate-change science, along with special reports and technical papers on request.

4.5 Actors in the Negotiation Process

Countries belonging to the Convention hold the real power – they make decisions at sessions of the COP (most decisions are reached by consensus). Member countries often form alliances to increase efficiency and maximize influence during negotiations.

Countries get extensive input from other sources, both through official channels and in behind-the-scenes chatter.

"Observer" is the official term for groups and agencies allowed to attend and even speak at international meetings, but not to participate in decision-making. Among observers permitted by the Convention are intergovernmental agencies, such as the United Nations Development Programme (UNDP); UNEP; WMO; the Organization for Economic Cooperation and Development (OECD); the International Energy Agency; the Organization of Petroleum Exporting Countries (OPEC), and the IPCC.

To date, over 50 intergovernmental agencies and international organizations attend sessions of the COP.

There are also NGOs that represent business and industrial interests, environmental groups, local governments, research and academic institutes, religious bodies, labour organizations, and population groups such as indigenous peoples. To win accreditation as observers, NGOs must be legally constituted not-for-profit entities "competent in matters related to the Convention." Currently, more than 750 NGOs are accredited to participate in meetings related to the Convention.

4.6 The Secretariat

A secretariat staffed by international civil servants supports the Convention and its supporting bodies. It makes practical arrangements for meetings, compiles and distributes statistics and information, and assists member countries in meeting their commitments under the Convention.

The UNFCCC and the Kyoto Protocol are serviced by the secretariat, also known as the Climate Change Secretariat. The work programme of the secretariat is carried out through 3 clusters of programmes (Implementation, Scientific and Technological Advice, Intergovernmental and Support Services). The main functions of the secretariat are:

- to make practical arrangements for sessions of the COP
- to monitor implementation of the commitments under the Convention and the Protocol through collection, analysis and review of information and data provided by Parties
- to assist Parties in implementing their commitments
- to support negotiations, including through the provision of substantive analysis

- to maintain registries for the issuance of emission credits and for the assigned amounts of emissions of Parties that are traded under emission trading schemes
- to provide support to the compliance regime of the Kyoto Protocol
- to coordinate with the secretariats of other relevant international bodies
- compilation of GHG inventory data

The secretariat is institutionally linked to the United Nations without being integrated in any programme, and administered under United Nations Rules and Regulations. Its head, the Executive Secretary, is appointed by the Secretary-General of the United Nations in consultation with the COP through its Bureau.

As an impartial body of international civil servants, the secretariat is accountable, through the Executive Secretary, to the COP, COP/MOP, and subsidiary bodies and carries out those tasks that fall under its mandate in the Convention and programme budget.

4.7 Financial Mechanism

The contribution of countries to climate change and their capacity to prevent and cope with its consequences vary enormously.

Developed country Parties shall provide financial resources to assist developing country Parties implement the Convention. To facilitate this, the Convention established a financial mechanism to provide funds to developing country Parties.

Global Environment Facility (GEF)

The Parties to the Convention assigned operation of the financial mechanism to the GEF. The COP provides regular policy guidance to the GEF, and the GEF reports on its climate change work every year.

In addition to providing guidance to the GEF, Parties have established three special funds (the Special Climate Change Fund and Least Developed Countries Fund under the Convention; and the Adaptation Fund under Kyoto). Funding to climate change activities is also available through bilateral, regional and multilateral channels.

Adaptation Fund

The Adaptation Fund was established to finance concrete adaptation projects and programmes in developing countries that are Parties to the Kyoto Protocol.

4.8 Education and Outreach

Since governments are directly responsible for only a small proportion of greenhouse gas emissions, they must persuade businesses, communities, and individuals to adjust their activities in a way that reduces their direct emissions. Otherwise, it will not be possible to realize the Convention's objective and the Protocol's targets.

Many governments, IGOs, and NGOs are already working actively to raise awareness. The scale of changes required and the vast number of people and interests that must be influenced call for outreach activities of a greater magnitude.

4.9 Technology

Under the Convention, the developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly to developing countries to enable them to implement the provisions of the Convention. This commitment is echoed in similar provisions under the Kyoto Protocol.

Parties were able to reach an agreement to work together on a set of technology transfer activities, grouped under a framework for meaningful and effective actions.

Expert group on technology transfer

The Marrakech Accords provide also for the establishment of an Expert Group on Technology Transfer (EGTT), nominated by the Parties. The Expert Group comprises 20 experts from developing country regions and relevant international organizations.

Technology information clearinghouse - TT:CLEAR

The main objective of TT:CLEAR is to improve the flow of, access to, and quality of information relating to the development and transfer of environmentally sound technologies and to contribute to the more efficient use of available resources.

4.10 Cooperation with International Organizations

Cooperation with relevant international organizations, such as with scientific bodies, UN agencies, and other conventions, is an important dimension of the Convention process. The Convention calls on the COP to utilize the services and cooperation of, and information provided by, competent international organizations and IGOs and NGOs.

5. The Kyoto Protocol to the United Nations Framework Convention on Climate Change

It took all of one year for the member countries of the UNFCCC to decide that the Convention had to be augmented by an agreement with stricter demands for reducing greenhouse gas emissions. The Convention took effect in 1994, and by 1995 governments had begun negotiations on a protocol. The text of the Kyoto Protocol was adopted unanimously in 1997; it entered into force on 16 February 2005.

The Kyoto Protocol is a complicated agreement that has been slow in coming – there are reasons for this. The Protocol not only has to be an effective against a complicated worldwide problem – it also has to be politically acceptable. As a result, panels and committees have multiplied to monitor and referee its various programmes, and even after the agreement was approved in 1997, further negotiations were deemed necessary to hammer out instructions on how to "operate" it. These rules, adopted in 2001, are called the "Marrakech Accords."

The Protocol's major feature is that it has mandatory targets on greenhouse gas emissions for the world's leading economies which have accepted it.

To compensate for the sting of "binding targets," as they are called, the agreement offers flexibility in how countries may meet their targets.

Some mechanisms of the Protocol had enough support that they were set up in advance of the Protocol's entry into force. The Clean Development Mechanism, for example – through which industrialized countries can partly meet their binding emissions targets through "credits" earned by sponsoring greenhouse gas-reducing projects in developing countries – already had an executive board before the Kyoto Protocol entered into force on 16 February 2005.

5.1 Mechanisms of the Protocol

Clean Development Mechanism

Provides for Annex 1 Parties to implement project activities that reduce emissions in non-Annex I parties, in return for certified emission reductions (CERs). The CERs generated by such activities can be used by Annex I Parties to help meet their emissions targets.

Emissions Trading

Emissions trading provides for Annex I Parties to acquire units from other Annex I Parties and use them towards meeting their emissions targets under the Kyoto Protocol.

The "carbon market":

- The Kyoto Protocol sets limits on total emissions by the world's major economies, a prescribed number of "emission units." Individual industrialized countries will have mandatory emissions targets they must meet.

- The Protocol allows countries that have emissions units to spare to sell this excess capacity to countries that are over their targets. This so-called "carbon market" is both flexible and realistic. Countries not meeting their commitments will be able to "buy" compliance but the price may be steep.

- A global "stock market" where emissions units are bought and sold is simple in concept, but in practice the Protocol's emissions-trading system has been complicated to set up. The details weren't specified in the Protocol, and so additional negotiations were held to hammer them out. The problems are clear: countries' actual emissions have to be monitored and guaranteed to be

what they are reported to be; and precise trading records have to be kept. Accordingly, "registries" – like bank accounts of a nation's emissions units – are being set up, along with "accounting procedures," an "international transactions log," and "expert review teams" to police compliance.

Joint Implementation

Joint Implementation (JI) and the CDM are 2 project-based mechanisms of Kyoto that may be used by Annex 1 Parties to fulfill their Kyoto targets.

Annex 1 Parties can implement an emissions-reducing project that enhances removals by sinks in the territory of another Annex I Party and count the ERUs towards meeting its own targets.

5.2 Bodies of the Protocol

The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP)

The COP (of the UNFCCC) serves as the meeting of the Parties to the Kyoto Protocol, referred to as the COP/MOP. This body, the COP/MOP, meets during the same period as the COP. Parties to the Convention that are not Parties to the Protocol are able to participate in the COP/MOP as observers. The functions of the COP/MOP relating to the Protocol are similar to those carried out by the COP for the Convention.

Constituted Bodies under the Kyoto Protocol

CDM Executive Board
The CDM Executive Board supervises the Clean Development Mechanism under the Kyoto Protocol and prepares decisions for the COP/MOP. It undertakes a variety of tasks relating to the day-to-day operation of the CDM, including the accreditation of operational entities.

Joint Implementation Supervisory Committee (JISC)
The JISC, under the guidance of the COP/MOP, supervises the Joint Implementation Mechanism.

Compliance Committee
The Protocol's compliance system gives "teeth" to its commitments. It consists of a Compliance Committee, composed of a plenary, a bureau, and two branches: a facilitative branch and an enforcement branch.

5.3 Compliance

An introduction to the Kyoto Protocol Compliance Mechanism

At COP 7, Parties adopted a decision on the compliance regime for the Kyoto Protocol which is among the most comprehensive and rigorous in the international arena. It makes up the "teeth" of the Kyoto Protocol, facilitating, promoting and enforcing adherence to the Protocol's commitments.

The compliance mechanism is designed to strengthen the Protocol's environmental integrity and the carbon market's credibility. Its objective is to facilitate, promote and enforce compliance with the commitments under the Protocol.

The compliance regime consists of a Compliance Committee made up of two branches: a Facilitative Branch and an Enforcement Branch. As their names suggest, the facilitative branch aims to provide advice and assistance to Parties in order to promote compliance, whereas the enforcement branch has the power to determine consequences for Parties not meeting their commitments.

Enforcing compliance among sovereign nations is the fundamental challenge of any international treaty. Essential to the success of the Kyoto Protocol will be mechanisms that invite sovereign nations to report their emissions performance with integrity, that provide incentives for sovereigns to comply with their emissions limitation obligations, and that hold sovereigns accountable for any failures to comply.

The commitments included in Kyoto are legally binding under international law. However, its parent convention, the UNFCCC is not, as it committed nations to aim to stabilize emissions only.

5.4 Accounting, Reporting, and Review

The Kyoto Protocol's effectiveness will depend upon two critical factors: whether Parties follow the Protocol's rulebook and comply with their commitments; and whether the emissions data used to assess compliance is reliable. Recognizing this, the Kyoto Protocol and Marrakech Accords, include a set of monitoring and compliance procedures to enforce the Protocol's rules, address any compliance problems, and avoid any error in calculating emissions data.

Reporting and Review

Each Annex I Party must submit an annual inventory of its greenhouse gas emissions and removals to the secretariat, calculated using standard guidelines based on IPCC methodologies. They also submit regular national communications, particularly on the action they are taking to implement the Protocol. All of these submissions will be subject to in-depth review by expert review teams to ensure completeness, accuracy, and conformity.

Parties must also establish and maintain a national registry to track and record transactions under the mechanisms. As an added monitoring tool, the secretariat will keep an independent transaction log to ensure that accurate records are maintained.

6. The Vienna Convention for the Protection of the Ozone Layer

1930s	Research on the ozone layer began
1970s	In the 1970s, concerns arose that stratospheric transport aircraft might damage the ozone layer. It was at this time that the theory was proposed on the role of CFCs in the depletion of the ozone layer
1974	Sherwood Rowland and Mario Molina link the emission of CFCs used in industry to the destruction of ozone layer
1977	The Coordinating Committee on the Ozone Layer was established by the UNEP and UNEP's Governing Council adopted the World Plan of Action on the Ozone Layer.
1981	In 1981, UNEP acted on a proposal submitted by a meeting of legal experts and decided to develop a global convention. Sweden spearheaded the effort, and with assistance from Norway, Finland, and Denmark, developed a convention which was first presented to the international community in 1981. Initial negotiations were very difficult because of a lack of understanding about the threat.
1985	Vienna Convention for the Protection of the Ozone Layer establishes principle of international cooperation on ozone destruction, stressing the need to cooperate in research and monitoring, to share information on CFC production and emissions, and to pass control protocols if and when warranted. For the first time, nations agree in principle to tackle a global environmental problem before its effects are clear, or its existence scientifically proven. First example of the acceptance of the precautionary principle in a major international negotiation.
1985	Ozone hole first detected over the Antarctic. At the same time, research was published on the adverse environmental and human health effects of a thinning ozone layer: skin cancer, depressed immune systems, and decreased primary agricultural productivity.
1987	Montreal Protocol on Substances that Deplete the Ozone Layer ratified.
1989	Helsinki Declaration adopted at the first meeting of the parties to the Protocol includes a commitment to facilitate the access of developing countries to relevant scientific information, research results and training and to seek to develop appropriate funding mechanisms to facilitate the transfer of technology and replacement of equipment at minimum cost to developing countries.
1990	Second Meeting of the Parties to the Montreal Protocol, the London Meeting, agrees on the total phase-out of CFCs and halons. The London Meeting also agrees to facilitate the transfer of new ozone-friendly technologies for Article 5 countries and to establish an Interim Multilateral Fund to assist these Parties.
1991	Interim Multilateral Fund established its Secretariat located in Montreal, Canada.
1991	UNDP, UNEP and the World Bank become implementing agencies of the Fund.
1992	UNIDO becomes an Implementing Agency of the Fund.
1992	Copenhagen Amendment formally creates the Multilateral Fund.
1994	Multilateral Fund established on a permanent basis.

6.1 The evolution of Ozone Depletion Policy

The evolution of stratospheric ozone depletion policy can best be understood as a two-stage process:

1. the first stage involves the emergence of stratospheric ozone depletion as a domestic issue in the United States and several other countries in the 1970s
2. the second stage focuses on its transformation to an international issue in the 1980s

These are not separate issues. The development of an international response clearly followed from the concern raised in the United States, Canada, Sweden, and other countries which had taken unilateral action to control CFCs in the 1970s.

During stage I of the process of formulating stratospheric ozone policy in the early and mid-1970s, CFC-induced stratospheric ozone depletion emerged as a major environmental and political issue primarily in the U.S. The threat of stratospheric ozone depletion was already an environmental and political issue in the U.S. before it was known that CFCs depleted the ozone. Second, U.S. public interest over the fate of the

ozone layer was built both on the growing importance of environmental problems as political issues and on the growing public concern with cancer and the substances and activities that might cause it. Third, the Europeans were not convinced that a problem existed. The shift in the European position came about through difficult negotiations. The Europeans were also convinced by the weight of recent scientific assessments.

6.2 From Vienna to Montreal

Following unilateral actions by some countries, an international agreement was opened for signature in 1985. This document, the Vienna Convention for the Protection of the Ozone Layer, acknowledged the potential severity of the problem but did not impose any obligations upon nations.

Speculative Science

While the Vienna Treaty was under negotiation, the science was still speculative and based on projections from evolving computer models of imperfectly understood atmospheric processes — models that yielded varying, sometimes contradictory predictions each time they were refined. While many scientists suspected CFCs, this had not been proven. It was necessary to base the protocol on established scientific consensus. Shortly after the Vienna Convention was opened for signature, scientists discovered the Antarctic ozone hole, an event which received much media attention.

Workshops

In January 1986, EPA announced its new Stratospheric Ozone Protection Plan. The plan was based on organizing a series of domestic and international workshops to develop and assess information on CFCs and stratospheric ozone to be used in upcoming international negotiations and for domestic rulemaking. These workshops were critical in building an international consensus on the need for measures controlling CFC production and use.

Mitigating Factors

In 1986 and 1987 a new sense of urgency about stratospheric ozone emerged, specifically as a result of several key events. First, there was the rapid growth in demand for CFCs with the end of the global economic recession. There was also an expanding and increasingly powerful environmental movement and growing public concern for and fear of environmental problems.

Conferences and Scientific Reports

In addition, in June 1986, EPA and UNEP jointly sponsored an international conference. The conference brought together 300 scientists and policymakers from 20 nations and produced a four-volume report. The June EPA/UNEP conference was followed in September by an international workshop sponsored by the United States.

The importance of these scientific reports was two-fold. First, they demonstrated a strong international consensus among scientists and policymakers that CFCs posed a serious threat to the ozone layer, that the problem was global in scope, and that society would have to deal with the effects for decades, if not centuries. Second, this research demonstrated the connections between ozone depletion and global warming. Thus the emerging consensus was that the two issues, ozone depletion and global warming, should be considered together.

Montreal

In 1987, building on the achievement of the Vienna Treaty, 27 countries signed a landmark protocol in Montreal in September 1987 (the Montreal Protocol on Substances that Deplete the Ozone Layer) that committed every signatory state to reduce its use of certain CFCs by 50 percent of their level of use in 1986

by 1999. The Montreal protocol was the legal linchpin of the international regime to protect the ozone layer. Scientific findings sparked the political process.

Commentators have stated that the rapid governmental assessment and response to the CFC issue "would not have been possible without the earlier growth of a corps of scientists and policymakers who knew and cared about the stratosphere."

NOTE:

CFCs and related substances seemed virtually synonymous with modern standards of living. They were ideal chemicals — nonflammable, nontoxic, noncorrosive. In the 1980's, they were finding new applications in thousands of products and processes across dozens of industries, from electronics, refrigeration, insulation, and plastics, to telecommunications, aerospace, pharmaceuticals, and agriculture. Powerful political and economic interests were very much aligned against meaningful controls. However, an international agreement was considered by all parties, including industry, as a powerful incentive for developing and marketing CFC substitutes.

The development of alternatives was dependent on economic and regulatory incentives to do so. An international protocol was seen by industry as a useful mechanism for providing the necessary economic incentive to develop and market suitable alternatives – industry needed regulation to spur its development of alternatives.

6.3 UNEP's Role

Many of the early efforts of UNEP and the other international organizations were aimed specifically at coordinating international research. In addition to these efforts, UNEP took on a second task: in May 1981, the governing council of UNEP formed an ad hoc legal and technical working group to draft a Global Framework Convention for the Protection of the Ozone Layer. The result was the "Vienna Convention for the Protection of the Ozone Layer," adopted at a conference of 43 states in March 1985. The convention also called for international cooperation in research, monitoring, and information exchange. It was designed as an "umbrella treaty" to be supplemented by more specific protocols and subtreaties.

7. The Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention on Substances that Deplete the Ozone Layer

The Montreal Protocol, the result of nearly 15 years of political and public concern over the impact of CFCs on the ozone layer and years of negotiation fostered by UNEP among major CFC producing countries, outlines specific measures and timetables for reducing production and consumption of CFCs and halons. Within less than six years after negotiations began in late 1986, the Montreal Protocol had been ratified by more than 100 (later over 160) nations and had undergone two major revisions.

Perhaps the real measure of success for the protocol is how well it works as an incentive to develop economical and environmentally safe alternatives to CFCs and halons.

The Montreal Protocol is a landmark agreement in that it is the first international treaty for mitigating a global atmospheric problem before serious environmental impacts have been conclusively detected. Its existence is encouraging because decision makers decided to take significant action more on the basis of the theory that CFCs destroyed ozone than on conclusive evidence that ozone was actually being depleted by CFCs.

It had taken less than five years to move from the scientific discovery of a potentially serious environmental problem to the implementation of a major new regulation designed to resolve that problem.

In addition to the emergence of stratospheric ozone depletion as an international political issue, four other factors are important in understanding the sources of the Montreal Protocol: (1) the evolving scientific understanding of the problem, (2) increasing public concern based on the threat of skin cancer and the discovery of the Antarctic ozone hole, (3) the availability of acceptable substitutes for CFCs, and (4) the recognition that ozone depletion is a global problem requiring an international response.

The United States, EPA, and the State Department in particular, deserve much credit for the strength of the Montreal Protocol.

7.1 Role of Science

The role of scientists in the ozone history provided useful lessons for the climate change issue. In the 1980's, scientific assessments on climate change appeared regularly, under the aegis of WMO and UNEP, from a small group of largely self-selected scientists called the Advisory Group on Greenhouse Gases. Findings would be more credible coming from a larger and diverse group of scientists under intergovernmental auspices.

Vienna

The Vienna Convention for the Protection of the Ozone Layer was an important milestone: nations agreed in principle to tackle a global environmental problem before its effects were clear, or its existence scientifically proven — probably the first example of the acceptance of the ‘precautionary principle’ in a major international negotiation. Talks on a control protocol began almost immediately, spurred by mounting scientific evidence of the ozone destruction hypothesis.

Within six months convincing evidence of the link between ozone depletion and CFCs was published and opposition to the principle of controls on ODS largely collapsed.

Montreal

Unquestionably the indispensable element in the success of the Montreal Protocol was the role of science and scientists. Without the curiosity and courage of a handful of researchers in the mid-1970's, the world might have learned too late of the deadly, hidden dangers linked with rapidly expanding use of these substances.

> It was not sufficient for scientists merely to publish their findings. In order for the theories to be taken seriously and lead to concrete countermeasures, scientists had to interact with diplomatic negotiators and government policy makers.

The Montreal Protocol later institutionalized this idea by establishing international expert panels to periodically assess scientific, technological, economic, and environmental knowledge and thereby guide the negotiators in the further evolution of the treaty. Over the years hundreds of scientific experts from dozens of countries participated in the effort to learn more about both the dangers and the possible technological solutions. This proved to be a central element in the protocol's success.

An important feature of the Montreal Protocol was its inherent adaptability to evolving scientific knowledge and technological developments.

7.2 Public Education

Another lesson from the protocol's success was the importance of public education: interpreting the continually evolving and sometimes confusing data, and communicating it intelligibly to the public and the media. Later, UNEP and WMO played prominent roles, through workshops, publications, and electronic media, in disseminating relevant information, including the availability of new technologies, to officials, business, and public around the world.

7.3 Data Collection

There is no formal procedure for verifying the accuracy of submitted data.

Inevitably, the quality of the data received by the secretariat is also somewhat variable. But problems are still experienced, ranging from simple input errors to changes in the way in which countries collect data:

"…there is generally little information available on the methods used by parties in collecting data. Different methods might result in very divergent figures of varying accuracy'. Perhaps more importantly, no review mechanism is available to check the accuracy of the data submitted. Doubts exist about the reliability of a number of figures provided by governments."

7.4 Compliance

In 1987, negotiators decided, wisely, not to try and agree the details of the protocol's non-compliance procedure at the time, setting the trend for a number of later MEAs. It was not until 1992 that the full structure was agreed, but it has subsequently evolved into what most observers consider to be one of the most effective non-compliance mechanisms of any MEA.

The key weapon in the protocol's non-compliance armoury is the threat of restrictions on trade in products controlled by the agreement. Arguably more important than the protocol's 'sticks' are its 'carrots', the financial and technical assistance available for aiding compliance.

The next, and probably more serious, challenge that is beginning to manifest itself concerns compliance by developing countries.

The secretariat itself is the main channel for reporting possible cases of noncompliance to the committee. In fact, the non-compliance procedure allows parties to report to the secretariat any party about which they have 'reservations regarding [its] implementation of its obligations under the Protocol'.

7.5 Financing

<u>Multilateral Fund (MLF)</u>

The Protocol provides for a financial mechanism to meet the incremental costs facing developing countries in phasing out ODS. The MLF was thus established, and industrialized parties contribute to it.

The fund has its own secretariat (based in Montreal, Canada) and is directed by an Executive Committee, comprising representatives of seven developing and seven developed countries selected by the annual MOP.

7.6 Technology Transfer

Article 10A calls on all parties to transfer 'the best available, environmentally safe substitutes and related technologies' to developing countries. Effectively this function has been taken over by the Multilateral Fund, and appropriate measures built into its decisions on investment projects.

7.7 Strengths

The Montreal Protocol has a unique combination of strengths:

- an effective set of procedures and institutions, centered around the Implementation Committee
- a well-funded financial mechanism to assist with compliance
- a credible threat of sanctions—chiefly trade measures—for use in cases of persistent non-compliance

It has a successful record in dealing with non-compliance among transition economies.

7.8 Factors of Success

Along with its adaptability to changing scientific and technological developments, a number of other factors have contributed to the protocol's success:

1. The recognition—now commonplace, but in 1987 an innovation—of 'common but differentiated responsibilities', recognizing the special needs of developing countries through slower phase-out schedules.

2. The participation, in regard to negotiation and implementation, of key sectors of society: governments, industry, scientists and non-governmental organizations (NGOs).

3. The extent to which industry responded to the control schedules. Once initial resistance was overcome, companies rushed to compete in the markets for non-ozone depleting substances and technologies, developing alternatives at a speed that no one initially anticipated.

4. The incentives for compliance built into the protocol, in the form of 'sticks' (trade measures) and 'carrots' (financial and technical assistance).

5. The development of the protocol's data reporting and noncompliance systems

6. Public education through workshops, publications, and electronic media, in disseminating relevant information, including the availability of new technologies, to officials, business, and public around the world.

8. The Geneva Conventions

The first Geneva Convention was signed in 1864 to protect the sick and wounded in war time. This first Geneva Convention was inspired by Henri Dunant, founder of the Red Cross. Ever since then, the Red Cross has played an integral part in the drafting and enforcement of the Geneva Conventions.

In 1863 Henri Dunant arranged an unofficial international conference at which it was agreed that each country should form a relief organization capable of assisting the Army Medical Services in wartime. This was how the Red Cross began.

In 1864 governments were invited to send representatives to a diplomatic conference. As a result 12 European nations signed a treaty stating that in future wars they would care for all sick and wounded military personnel, regardless of nationality. The treaty was called the Geneva Convention.

In 1929, two more Geneva Conventions dealt with the treatment of the wounded and prisoners of war. In 1949, four Geneva Conventions extended protections to those shipwrecked at sea and to civilians.

There are now four Geneva Conventions, which were drawn up in 1949. In addition, two new Protocols (a Protocol is an addition or amendment to a Convention) were drawn up in 1977 at a diplomatic conference. The conventions were the results of efforts by Henri Dunant, who was motivated by the horrors of war he witnessed at the Battle of Solferino in 1859.

In 1977 and 2005 three separate amendments, called protocols, were made part of the Geneva Conventions.

9. The Geneva Convention on Long-range Transboundary Air Pollution

The Geneva Convention on Long-range Transboundary Air Pollution (CLRTAP) is one of the central means for protecting our environment. It has served as a bridge between different political systems and as a factor of stability in years of political change. It has substantially contributed to the development of international environmental law and has created the essential framework for controlling and reducing the damage to human health and the environment caused by transboundary air pollution. It is a successful example of what can be achieved through intergovernmental cooperation.

9.1 History

The history of the Convention can be traced back to the 1960s, when scientists demonstrated the interrelationship between sulphur emissions in continental Europe and the acidification of Scandinavian lakes. The 1972 United Nations Conference on the Human Environment in Stockholm signaled the start for active international cooperation to combat acidification.

Between 1972 and 1977 several studies confirmed the hypothesis that air pollutants could travel several thousands of kilometers before deposition and damage occurred. This also implied that cooperation at the international level was necessary to solve problems such as acidification.

In response to these acute problems, a High-level Meeting within the Framework of the UN Economic Commission for Europe (UNECE) on the Protection of the Environment was held at ministerial level in November 1979 in Geneva. It resulted in the signature of the CLRTAP by 34 Governments and the European Community (EC). The Convention was the first international legally binding instrument to deal with problems of air pollution on a broad regional basis. Besides laying down the general principles of international cooperation for air pollution abatement, the Convention sets up an institutional framework bringing together research and policy.

Since 1979 the CLRTAP has addressed some of the major environmental problems of the UNECE region through scientific collaboration and policy negotiation. The Convention entered into force in 1983 has been extended by eight protocols that identify specific measures to be taken by Parties to cut their emissions of air pollutants.

The aim of the Convention is that Parties shall endeavour to limit and gradually reduce and prevent air pollution including long-range transboundary air pollution. Parties develop policies and strategies through exchanges of information, consultation, research and monitoring.

9.2 Executive Body

The Executive Body (EB) is the annual meeting of the representatives of the Parties to the Convention. It is responsible for taking action to implement the fundamental principles of the Convention, reviewing the implementation of the Convention and setting up subsidiary bodies to carry out the work on implementation and development.

The EB fosters collaboration with relevant international organizations and with international agreements on air pollution in other regions.

9.3 Subsidiary Bodies

Working Group on Effects

Early in the discussions on the CLRTAP it was recognized that a good understanding of the harmful effects of air pollution was a prerequisite for reaching agreement on effective pollution control. To develop the necessary international cooperation in the research on and the monitoring of pollutant effects, the Working Group on Effects (WGE) was established.

The WGE provides information on the degree and geographic extent of the impacts on human health and the environment of major air pollutants, such as sulphur and nitrogen oxides, ozone and heavy metals. The work is underpinned by scientific research.

Working Group on Strategies and Review

The Working Group on Strategies and Review is the principal negotiating body for the Convention. It assists the Executive Body in policy-oriented matters including:

- Assessing scientific and technical activities relating to the preparation and revision of protocols
- Negotiating revisions to existing protocols and the preparation of new ones
- Promoting the exchange of technology
- Preparing proposals for any strategic development under the Convention

The EMEP Steering Body

The EMEP Steering Body meets annually and reports to the Executive Body on its activities. Four programme centres and three task forces coordinate the work of EMEP and provide reports to its Steering Body.

9.4 The EMEP Programme

This is cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe, linked to the CLRTAP. The main objective of the EMEP programme is to regularly provide governments and subsidiary bodies under the CLRTAP with qualified scientific information to support the development and further evaluation of the international protocols on emission reductions negotiated within the convention.

The EMEP programme provides scientific support to the Convention on:

- Atmospheric monitoring and modeling
- Emission inventories and emission projections
- Integrated assessment modeling

9.5 Secretariat

The Convention, which now has 50 Parties, identifies the Executive Secretary of UNECE as its secretariat.

9.6 Financing

Parties to the Convention pay contributions to the EMEP in the first half of each year.

9.7 Implementation Committee

The Implementation Committee was established by the Executive Body in 1997 to review compliance with obligations under the protocols to the CLRTAP. It is not a decision-making body. It meets twice per year.

The Committee's work focuses on three main areas:

1. it reviews periodically compliance with Parties' reporting obligations
2. considers any submission or referral of possible non-compliance by an individual Party with any of its obligations under a given protocol
3. carries out in-depth reviews of specified obligations in an individual protocol at the request of the Executive Body

10. The International Campaign to Ban Landmines

10.1 History

Since the early 1990s, a coalition of more than 1,400 NGOs in over 90 countries known as the International Campaign to Ban Landmines (ICBL) had been spearheading the effort to ban landmines and raise awareness of the problems they cause.

The coalition was formed in 1992 when six groups with similar interests, including Human Rights Watch, medico international, Handicap International, Physicians for Human Rights, Vietnam Veterans of America Foundation and the Mines Advisory Group, agreed to cooperate on their common goal. From the beginning, the ICBL has defined itself as a flexible network of organizations that share common objectives.

These founding organizations witnessed the horrendous affect of mines on the communities they were working with in Africa, Asia, the Middle East and Latin America and saw how mines hampered and even prevented their development efforts in these countries.

- They realized that a comprehensive solution was needed to address the crisis caused by landmines and that this was a complete ban.
- They also knew that coordination was required, and thus the ICBL was born.
- As Jody Williams describes it, "[the NGO community] did not wait for anyone to appoint them leaders on the issue – they saw that a critical problem had to be addressed and they took it up".
- The founding organizations brought to the international campaign a practical experience of the impact of landmines. They also brought the perspective of the different sectors they represented: human rights, children's rights, development issues, refugee issues and medical and humanitarian relief. Their contacts with civil society groups in diverse parts of the world were also beneficial.
- The ICBL went on to organize conferences and campaigning events in different regions so the word spread and many new initiatives were born.
- The ICBL's membership grew rapidly and today there are campaigns in over 90 countries.
- The organization's structure and strategy has evolved with the changing circumstances.

The campaign has expanded to included members from human rights, humanitarian, children's, peace, disability, veteran's, medical, humanitarian, mine action, development, arms control, religious, environmental and women's groups – in over 90 countries, working locally, nationally, and internationally to eradicate antipersonnel landmines.

The ICBL monitors the mine situation in the world (through a network of researchers producing the annual Landmine Monitor Report), and conducts advocacy activities, lobbying for implementation and universalization of the Mine Ban Treaty, humanitarian mine action programs geared toward the needs of mine-affected communities, support for landmine survivors, their families and their communities, and a stop to the production, use and transfer of landmines, including by non-State armed groups.

<u>Prominent Support</u>

A prominent supporter was Diana, Princess of Wales. The involvement of Diana and her highly publicized visits to war-torn Angola and Bosnia gave a tremendous boost to the anti-landmine campaign and helped to galvanize public opinion and apply additional pressure on governments. The ICBL has a very informative

website and tracks all progress on this initiative. It is very well established and has garnered a lot of support and credibility.

Campaign Steering Committee

In 1993, the Campaign Steering Committee, consisting of the original six organizations, was formalized and the coordinator was recognized. As dozens of national campaigns formed and hundreds of organizations joined the Campaign, the Steering Committee was expanded in 1996 and 1997 to reflect the growth and diversity of the Campaign.

10.2 Organizational Structure

The ICBL has a four member Management Committee, an Advisory Board composed of 21 member organizations, and five ambassadors who serve as campaign representatives at speaking events and other conferences worldwide. They include Jody Williams, Tun Channareth, Cambodian landmine survivor and founder of the Cambodian Campaign to Ban Landmines and fellow landmine victim, Song Kosal, the youth Ambassador for the ICBL. In addition, the ICBL has recently appointed two new ambassadors as well, Elisabeth Bernstein, and Margaret Arech Orech, a Ugandan landmine survivor and well known advocate in the fight to ban landmines. Currently, the ICBL has four staff members based in Geneva, Paris, and Rome.

10.3 Participation

The ICBL participates in the periodical meetings of the Mine Ban Treaty process, urges States not Parties to the Treaty to join and non-State armed groups to respect the mine ban norm, condemns mine use and promotes public awareness and debate on the mine issue, organizing events and generating media attention.

11. The Mine Ban Treaty (The Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on Their Destruction)

The Mine Ban Treaty is the international agreement that bans antipersonnel landmines. The treaty is the most comprehensive international instrument for ridding the world of the scourge of mines and deals with everything from mine use, production and trade, to victim assistance, mine clearance, and stockpile destruction.

In December 1997 a total of 122 governments signed the treaty in Ottawa, Canada. In September the following year, Burkina Faso was the 40th country to ratify, triggering entry into force six months later. Consequently, in March 1999 the treaty became binding under international law, and did so faster than any other international treaty in history. The treaty has a long and detailed history (see Appendix I).

11.1 Implementation, Compliance & Enforcement

As with all international treaties, the real test lies in the implementation of the Mine Ban Treaty. There is no overall mechanism that could force states parties to comply with the treaty. But for the first time in history, an informal civil-society based network of monitors was created to monitor and compile information about countries' landmine policies and activities.

Implementation and compliance are facilitated in a number of ways:

- Article 8 provides for fact-finding missions to investigate potential violations of the treaty. Most delegations were clear that an overly intrusive arms control-type verification and compliance regime was unnecessary in the case of antipersonnel mines

- Under Article 9, States Parties are required to "take all appropriate legal, administrative and other measures, including imposition of penal sanctions, to prevent and suppress any activity prohibited" by the treaty. To date only a small percentage of States Parties have passed domestic laws to implement the treaty.

- Importantly, there are no stringent mechanisms to make signatories comply or to verify that they have carried out commitments, such as stockpile destruction. Instead, the treaty aims to promote transparency and trust amongst States Parties.

- Annual reports are to be sent to the UN Sec-Gen about the type and quantity of mines in stock and other details related to destruction and land

- Regular gatherings of States Parties are also an important occasion for review and monitoring. Meetings of State Parties, held on an annual basis at first and then at regular intervals, amount to mini-reviews of the treaty.

- NGOs play a crucial part in monitoring and encouraging compliance. ***Landmine Monitor*** is an important initiative by the ICBL to monitor the implementation of and compliance with the treaty, and more generally to assess the efforts of the international community to resolve the landmines crisis. The Landmine Monitor report is another important mechanism for holding governments accountable.

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