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Unlike other global environmental problems—such as the transboundary movement of hazardous wastes, the loss of biodiversity, climate change, and persistent organic pollutants—the impacts of ozone depletion cannot be readily seen or felt. Even so, the world’s nations chose to apply the precautionary principle because the most reliable scientific evidence pointed to the fact (even though we could not be certain) that the Earth’s protective ozone layer had been, was being, and, above all, was continuing to be depleted. They chose to negotiate a binding treaty—the Montreal Protocol—to phase out the production and use of ozone depleting substances.

The sense of urgency shared by the Protocol’s negotiators caused the establishment of a number of other precedents, quite apart from this vivid application of the precautionary principle. They include:

- The application of the principle of common but differentiated responsibility, where developing countries were given a ten year grace period before they had to apply the Protocol’s provisions.
- The provision of technical and financial support to poor countries through a special Multilateral Fund essentially paid by developed countries, but

with developing ones having an equal number of votes in the Executive Committee that decides on its disbursement. The developed nations were also committed to transferring the necessary technologies to developing ones so that they could meet their obligations under the Protocol.

- And, most important: flexibility. Governments originally resolved, under the Protocol, to phase out 50 per cent of all ozone-depleting substances by the year 2000. Three years later, in 1990, they agreed a 100 per cent phase out by the same date. After another two years, and the accumulation of more scientific evidence, they advanced this to 1995.

These changes were not considered to be amendments of the Protocol that would have required lengthy ratification procedures. Instead the negotiators invented the term “adjustment”, which meant that when any of these changes was adopted by a two thirds majority of the Parties it became binding on all without any need for ratification. When the Multilateral Fund was established by an amendment to the Protocol, the Parties decided by a simple decision to establish an Interim Fund of US\$240 Million until it entered into force. Many considered this to be unprecedented in international law.

Lessons learned

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Several key ingredients made a difference time and again during the negotiations:

- The presence of a core group of countries intent on moving to a Protocol phasing out all ozone depleting substance.
- The role of science and technology. Science—and the consensus among scientists worldwide—was a critical ingredient in the Protocol process. So was technology, and the consensus that emerged on what could be accomplished and by when. Even more important was the Protocol's assessment and reassessment process, since it forced review and was almost impossible for the Parties to discount.
- Willingness to compromise. The negotiation of the Protocol involved many countries with strong views on what should be done—but there was always a willingness to take one step at time. The spirit of compromise was critical to its success.
- Some strong personalities. In the end, everything boils down to individuals and personalities. The Montreal Protocol process had more than its share of

strong and effective ones. UNEP's leadership had to pull all the parts together, know whom to ask to do what, cajole, coax, push and pull. And the G-77 had a leadership that was savvy about when and where take a stand - and about when and where to compromise.

- Mobilizing public opinion is the sine qua non of environmental negotiation. The framework Vienna Convention was agreed in a climate of only mild interest: neither the NGOs nor the media had drawn enough attention to the ozone problem to arouse the public. But when reputable scientists reported that the ozone layer was being depleted above the Antarctic and that the likely results would be increased risks of cancer, cataracts, and crop failures and reduced immunity, the media responded with headlines and an aroused public pressed for quick action. Citizen groups and NGOs demanded and got the swift negotiation, adoption and entry into force of a viable control mechanism. From scientists' first signalling the role of chlorofluorocarbons (CFCs) in ozone depletion in 1974 to the Vienna Convention's entry into force in 1989 took fifteen years. By contrast it took only two to negotiate, adopt, sign, ratify, and enforce the Montreal Protocol. Scientific certainty, mobilizing public concern, made the difference.

Probably the most important lesson of the negotiations was the value of the informal consultation, away from the microphones. The negotiators' goals remained the same as in the formal sessions. But because they were not committing their governments in these informal off-the-record conversations they could be more relaxed - and more open to seeing the others' interest in reaching common solutions and to making compromises. They become friends working for a common cause.

None of these factors, however, would have been enough to bring about the Protocol had it not been for a basic change in national attitudes away from the primacy of national sovereignty and toward international cooperation. During the negotiations, the issue of sovereignty was never raised, though, in a sense, each country was interfering in the internal affairs of all the others in safeguarding everyone's environment.

What is really important is that the legal obligations established under the Ozone Convention and the Protocol are preventive rather than remedial. The two instruments, and particularly the Protocol, were designed to be flexible and to be adapted to changing conditions. The periodic assessments mandated by them will assure their relevance and usefulness well into the future. Of concern, however, is the fact that Governments have been unwilling to strengthen the non-compliance procedures and to carry them out vigorously; this needs serious consideration.

As the Protocol celebrates its twentieth anniversary, its Parties can also use it to help combat global warming. The hydrochlorofluorocarbons (HCFCs) and the hydrofluorocarbons (HFCs), which have been used as substitutes for ozone-depleting substances, have long been known to have high global warming potential. They have been in use for almost twenty years and now need to be phased out.

The Parties of the Montreal Protocol can apply its flexible adjustment gradually to achieve this. The protocols existing phase-out measures, it is estimated, will reduce the global warming potential of greenhouse gases five to six times as much as the cuts agreed in the Kyoto Protocol, and accelerating the phase out of HFCs and HCFCs will cut it even more. This deserves serious consideration. I believe it can be done if the world community is really concerned about the very serious impacts of climate change.