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The Battle of Montreal: Neo-Conservative vs Regulatory Nationalism

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Abstract

The essay discusses the negotiations of the Montreal Protocol of 1987 by the Reagan administration, arguing that the protocol served as a tool to export and impose a level of environmental protection on the world that was already enforced in the US. The analysis of the domestic debates surrounding the treaty shows that the negotiations became a contest of strength between a dying "New-Dealist" regula-tory nationalism and a thriving neo-conservative nationalism. The former won the battle in Montreal, but lost the war; the agreement represented its last flicker of life before the final rise of the latter.

Keywords: Montreal Protocol; Reagan Administration; Regulatory Nationalism; Neo-conservative Nationalism; Environmental Legislation.

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1 An Unexpected Achievement

On September 16 1987, in Montreal, the Montreal Protocol, which was embedded in the 1985 Vienna Convention, was signed.[1] The Montreal Protocol banned certain Chlorofluorocarbons (CFCs) and halons.[2] In the protocol, it was decided that "both consumption … and production would be frozen and then reduced according to an agreed-upon schedule."[3] Additionally, 1986 was established as the first year to begin cutting emissions to avoid cheating by the parties.[4] This timing was clearly set so that countries could steadily cut their own CFCs emissions.[5]

Moreover, it was decided that the U.S. would sign the agreement with six other large consumer countries, or the U.S. and the EC alone would sign the agreement. If either one of these two conditions held, then the treaty would be valid. The procedure to delete the 30 percent cut was made difficult, while the procedure to increase emission curbs was rather simple.[6]

Furthermore, the treaty provided trade restrictions to avoid trade linkage and trade leakage issues. The former is the exchange of technologies among countries, which despite being part of an agreement, is forbidden. The latter is a form of positive externality, according to which the cutbacks of emissions in a country party to an agreement brings benefit to another non-party country.[7] A prohibition on items *holding* the controlled substances would be started to be applied four years after the Protocol began, which was rooted in a product list established by the parties. In no more than five years, the parties would decide if embargoing or hindering the imports from nonparties of commodities *produced with* (but not containing) controlled substances was attainable, and would list them on such products. These two requirements would only be applied toward parties that agreed with the product lists. Finally, protocol parties agreed to deter technology export and funding for manufacturing or consuming the controlled chemicals to nonparties. Instead, helpful technologies in curbing emissions were exempted.[8]

The Montreal Protocol was a watershed agreement, because in the time before it environmental treaties merely forbade the use of a single substance, while ignoring the surrounding context.[9] Instead, the Montreal protocol had a wider scope, not forbidding only the substance, but containing social and economic measures as well on a global scale.[10] Moreover, the Montreal Protocol's outcome was successful because it changed the underlying incentives for the players involved.[11] The Montreal protocol did not have a traditional conservationist rationale, as the treaty prohibited a whole set of products that were considered essential for modern living standards, while some substitutes needed to be invented.[12] Such a treaty imposed short-term economic costs to preserve human health and the environment against speculative dangers. The issue, in fact, was considered deadly and any preventive action without evidence was considered better than any delayed action.[13]

1. Richard Eliot Benedick, *Ozone Diplomacy. New Directions in Safeguarding Planet* (Cambridge, MA: Harvard University Press, 1998), 74–75.
2. Benedick, *Ozone Diplomacy*, 15.
3. Ibid, 81.
4. Ibid, 83; Scott Barrett, *Environment and Statecraft: The strategy of Environmental Treaty-Making* (New York: Oxford University Press, 2003), 225.
5. Benedick, *Ozone Diplomacy*, 74–75.
6. Ibid, 89–90.
7. Ibid, 91; Barrett, *Environment and Statecraft*, 310–311.
8. Benedick, *Ozone Diplomacy*, 92.
9. Barrett, *Environment and Statecraft*.
10. Potsdam Institute for Climate Impact Research, *International Relations and Global Climate Change* (Potsdam, Potsdam Institute for Climate Impact Research, 1997).
11. Barrett, *Environment and Statecraft*, 50.
12. Benedick, *Ozone Diplomacy*, 1–2; John R. McNeill *Something New Under the Sun: An Environmental History of the Twentieth-Century World* (New York: W.W. Norton, 2000); Ian Tyrrell, "Modern Environmentalism" in *A Companion to Post-1945 America,* eds. by Jean-Cristophe Agnew and Roy Rosenzweig (Malden, MA: Blackwell Publishing, 2002), 328–342.
13. Benedick, *Ozone Diplomacy*, 2–3.

The U.S., together with the energetic leadership of UNEP, was one of the main parties responsible for its creation and committed as much as possible to ensure it happened. Its diplomatic influence, scientists, business groups and even some environmental groups worked to create a global consensus.[14] The analysis about the technicalities and of the rationales that led to the creation of the treaty are plentiful.[15] Nonetheless, few authors analyzed the treaty, considering it as the battleground between two nationalisms within the Reagan administration. Specifically, it was a clash between a dying, New Dealist, regulatory nationalism and a thriving neo-conservative nationalism. This paper thus reconstructs how the former prevailed within a neo-conservative administration.

First, I will reconstruct the history of CFCs. Second, I will describe the impact CFC research had on political systems. Third, I will deal with the Reagan administration and its environmental outlook and policies. Fourth, I shall show what the American negotiating strategy was, and how it was affected by the two kinds of nationalisms that clashed within the Reagan administration. Finally, I will show why the Montreal Protocol was the swan song of regulatory nationalism.

2 A Short History of CFCs

In the stratosphere, sunlight and oxygen mix forming ozone and sponge up to 99% of the ultraviolet radiation entering the atmosphere. In the periods without the ozone layer, life had to stay underwater. During the 1930s, the first chlorofluorocarbons (CFCs) were created. Helpful for refrigerants, solvents and spray propellants, they were seminal for the invention of air-conditioning and substituted for previous toxic or flammable gases. Nevertheless, when they are emitted into the atmosphere, CFC molecules break up when they are hit by direct UV radiation, thus corroding ozone molecules.[16] After World War II, CFC releases soared because of its broad use, often led by high-income consumption.[17]

The use of CFCs have faded since 1974. In that year, Sherwood Rowland and Mario Molina hypothesized that CFCs could corrode and dwindle the ozone layer.[18] Since then, several research projects about the effects of CFCs on the atmosphere were conducted, but only in 1985, Joseph Charles Farman, Brian Gardiner and Jon Shanklin proved that the hypothesis put forward by Rowland and Molina was correct. Although the effects were uneven, there were mini-holes above Chile and Australia, while above the tropics there was no ozone layer thinning, and above the Northern Hemisphere it thinned negligibly.[19] Some historians claim that the fledgling findings resulted in a bizarrely swift political reaction, due to the fact that the enhanced UV-B radiation would have exterminated phytoplankton, affected photosynthesis in green plants, and increased cataracts and skin cancer.[20] Nonetheless, the impact of Farman's team research, despite its importance, has been overestimated because their research had a negligible impact on the Montreal Protocol negotiation.[21] Instead, a greater role was played over time by the American epistemic community, which was among the forerunner in the research concerning the ozone depletion issue. This role, in turn, was boosted by the Cold War pressures to be at the forefront of the advancement of the research.[22] Since 1974, the National Academy of Science, the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmo-

14. Ibid.

15. Benedick, *Ozone Diplomacy*; McNeill, *Something New*; Frank Grundig, "Patterns of International Cooperation and the Explanatory Power of Relative Gains: An Analysis of Cooperation on Global Climate Change, Ozone Depletion, and International Trade," *International Studies Quarterly*, 50, 4 (December 2006): 781–801; William Nordhaus, "Climate Clubs: Overcoming Free-Riding in International Climate Policy," *American Economic Review*, 105, 4 (2015): 1339–1370.

16. McNeill, *Something New*, 111.

17. Ibid, 113.

18. Ibid.

19. Ibid; Benedick, *Ozone Diplomacy*.

20. McNeill, *Something New*, 113.

21. Barrett, *Environment and Statecraft*, 224–225; Benedick, *Ozone Diplomacy*, 22.

22. Benedick, *Ozone Diplomacy*; Peter M. Haas "Banning Chlorofluorocarbons: Epistemic Community Efforts to Protect Stratospheric Ozone," *International Organization*, 46, 4 (1992): 187–224.

spheric Administration (NOAA) and important universities pushed in that direction.[23] Also the EPA played a crucial role, often cooperating with the UNEP.[24]

The contribution of UNEP was also crucial because since 1977 it had helped to internationalize the issue. Furthermore, UNEP pushed until 1987 for an international agreement on the issue, while at the same time it provided valuable scientific, economic and technical information, and was a forum where both members of the international epistemic community and politicians could meet.[25] The role of the epistemic community in shaping the debate is evident from the 1986 WMO/UNEP scientific assessment which affected the platform of the Alliance for Responsible CFC Policy. In turn, this was a group, established in 1980, that comprised 500 major U.S. manufacturers and user companies which were in favor of an international effective CFC regulation.[26] The epistemic community raised awareness about the health and environmental costs, but this is insufficient to explain why big business and the U.S. government would support and seek an international agreement. For them, as will be subsequently explained, what was at stake was U.S. economic primacy and U.S. security.[27]

3 Early CFCs regulations

In America, shortly after the publication of the article by Molina and Rowland, the side effects of CFC-driven ozone depletion became highly debated. This is unsurprising because post-war American society had experienced several changes. In fact, as it experienced one of the biggest and longest economic booms in history, post-modern demands mushroomed. One of the consequences was the rise of post-war environmentalism, which criticized the non-ecologically friendly by-products of modernity. The demands of environmentalists, a movement which became increasingly influential, concerned the mitigation of the issues and the protection of the wellbeing of citizens.[28]

Furthermore, it should be emphasized that during the 1970s regulatory policies inspired to those created during the New Deal era were affecting the U.S. public policies. This aimed to protect citizens and consumers from the side effects of capitalism in two ways: it constrained the freedom of enterprises to act as they wished, and it had a redistributive nature which included a form of higher taxation toward enterprises, as well as through the provision of public goods. The environmental regulation was merely a subgroup of this wave. Consequently, the environmentalist's demands were exploited by vote-seeking politicians, who turned the environmentalist's requests into regulatory and distributive policies.[29]

Since environmental groups were so proactive, they increased the awareness of CFC risks among the public opinion and Congress.[30] On the federal level, the 1970 Clean Air Act was emended in August 1977 by Congress to respond to the threat of ozone depletion. Thus, the EPA was authorized to take action with increased autonomy. The rationale was that the risks of inaction due to scientific uncertainties were larger than lack of action.[31] The EPA, thus, implemented the Toxic Substances Control Act, to ban the use of CFCs as aerosol propellants in unnecessary applications which concerned a range of products worth 3 billion USD by 1978. Consequently, the U.S. CFC production slumped by

23. Benedick, *Ozone Diplomacy*, 11.

24. Ibid, 49.

25. Ibid.

26. Ibid, 32.

27. Ibid.

28. Ibid, 28; McNeill, *Something New*; Tyrrell, *Modern Environmentalism*; Ronald Inglehart, "Post-Materialism in an Environment of Insercurity," *The American Political Science Review*, 75, 4, (December 1981): 880–900; Tyrrell, *Modern Environmentalism*, Michael E. Kraft, "U.S. Environmental Policy and Politics: From the 1960s to the 1990s," *Journal of Policy History* 12 (2000): 17–42; John R. McNeill and Peter Engelke, "Into the Anthropocene: People and Their Planet" in *Global Interdependence: The World After 1945*, eds. by Akira Iriye and Jürgen Osterhammel (Cambridge, MA: The Belknap Press of Harvard University Press, 2014), 365–533.

29. Tyrrell, *Modern Environmentalism*; Kraft, "U.S. Environmental Policy."

30. Benedick, *Ozone Diplomacy*, 28.

31. Ibid, 23.

95%. Since the American chemical industry adapted quickly to the new regulation, replacements were hastily found.[32]

Several countries emulated the U.S. legislation, often led by the belief that the advantages of CFC-propelled products were trivial compared to the potentially enormous price whether the scientific theories showed to be true or not.[33] The effectiveness of these measures was mixed, either due to the legislation, or to the country size. As the U.S. was the largest CFC producer and consumer, the American ban alone sufficed to level off worldwide CFC emissions between the late 1970s and the early 1980s.[34] Nevertheless, the CFC was also used in items other than aerosols both in the U.S. and overseas, and thus global CFC consumption rose again in the early 1980s.

During this first wave of international regulations, the acting countries began to suspect that unilateral regulation was insufficient. In 1977, the countries that had already taken unilateral action to decrease CFC use demanded an International Conference about the ozone layer, which was summoned by UNEP. The conference argued for the negotiation of a global framework convention for the protection of the ozone layer and was a key step in further regulation. However, due to an apparent decline of consumption in the early 1980s, even unilateral regulations were seen as overreactions. In the same year, the U.S. hosted an intergovernmental conference in which the issue of CFC banning was officially discussed for the first time, and on that occasion most governments involved supported voluntary international agreements to superfluous aerosol.[35]

The major adversaries of international regulations were France, Italy and the U.K., which were among the greatest European CFC producers, and influenced the response of the European Community to the conjectured risk.[36] Unlike the U.S., where CFCs were produced for domestic consumption, in these European countries CFCs were essential because they were embedded within several exported items. Since the enactment of the U.S. ban, the EC became the leading CFC producer in the world.[37] Therefore, for the EC a banning CFC agreement would be self-harming because it would affect a crucial source of revenue.[38]

For an extended period, the problem seemed to have disappeared. Thus, when the UNEP Governing Council resolutions were passed between 1980 and 1981, inviting its member states to set quantitative CFC targets, not to expand their production capacity, and to negotiate an international agreement on ozone depletion, the EC ignored the suggestion.[39]

4 The Environmental outlook and policies of Ronald Reagan's administrations

Since the 1970s, some changes took place within the Republican Party, as neo-conservatism gained prominence and in turn successfully addressed the demands of some groups that were unhappy with the status quo.[40] A part of American business, in fact, was concerned with environmentalism and its subsequent federal policies that sought to immediately pass the costs of environmental deterioration onto consumers and industries.[41] The neo-conservatives and their agenda were a suitable ideological and institutional partner for this group, and Ronald Reagan championed these positions. According

32. Ibid, 24.

33. Benedick, *Ozone Diplomacy*, 24; Barrett, *Environment and Statecraft*, 223.

34. Benedick, *Ozone Diplomacy*, 41; Barrett, *Environment and Statecraft*, 223.

35. Barrett, *Environment and Statecraft*, 223–224; McNeill, *Something New*; Benedick, *Ozone Diplomacy*, 41.

36. Benedick, *Ozone Diplomacy*, 24.

37. Ibid, 11.

38. Ibid, 26–27; Barrett, *Environment and Statecraft*.

39. Ibid, 41.

40. Jacob Darwin Hamblin, "Ronald Reagan's Environmental Legacy" in *A Companion to Ronald Reagan*, ed. Andrew L. Johns (Chichester: Wiley Blackwell, 2015), 257–274.

41. Tyrrell, *Modern Environmentalism*, 335–336.

to this agenda it was essential to create a night-watchman government and to unleash the forces of the market.[42] The environmental outlook of Reagan played a role too. In fact, it was an anthropocentric one, in which nature had been created by God for the sake of human progress.[43]

In 1980, Reagan won the presidential election. During his campaign and his two terms, Reagan set up an ideological campaign to repeal environmental regulations. Since entering the White House he had to cope with environmental policies that were implemented by the previous administrations, which would prove hard to swiftly repeal.[44] Nonetheless, he vigorously attempted to repeal the pollution standard regulations established during the 1960s and 1970s. To do so, he first appointed Anne Gorsuch, a neo-conservative ideologue, as EPA Administrator.[45] Despite Gorsuch, Reagan controlled the Office of Management and Budget (OMB), and used that instrument to cut EPA funds for the enforcement of environmental regulation as an extreme solution.[46]

Furthermore, Reagan politically delegitimized science-based environmental legislation. Specifically, scientific evidence was not denied, but uncertainties were simultaneously underscored, hence encouraging procrastination.[47]

Reagan environmental policies fueled opposition against his administration because his strategies, policies, and appointees were perceived as attempts to erase the efforts of the previous decades.[48] Reagan was more successful in crafting policies than changing laws since environmentalists often found support in Congress or in the courts.[49]

The preservation of U.S. sovereignty, as well as its economic and political primacy was essential for neo-conservatives, even denying, if it was the case, support to non-governmental and international organizations, as well as environmental treaties.[50] Neo-conservatism, nonetheless, allowed some forms of international cooperation whenever these interests were not considered at stake.[51]

During his second term, Reagan's policies were more moderate,[52] and according to some authors, Reagan could ignore his industry allies and timing issues.[53] During that term, among many treaties, the 1987 Montreal Protocol was signed.[54] Nevertheless, some scholars have perceived the Reagan years as those in which environmental issues were ignored in favor of industry interests.[55] Several factors explain this contradiction. Reagan, at least concerning the 1987 Montreal Protocol, renounced it for its anti-regulatory and anti-environmental ideology because there was no contradiction between U.S. business and global environmental interests. Specifically, Reagan was not only motivated to maximize the economic gains of his constituency. In some cases, they became secondary, as in this case, especially when some foreign policy goals were more important than economic returns.[56]

During his first term, Reagan did not manage to repeal the 1970 Clean Air Act and the EPA regulations implemented under this framework. In American legislation of the period, a substance could be prohibited even in the absence of scientific consensus, while European legislation could ban a substance only if there was scientific certainty. Therefore, the U.S. had a comparative advantage because

42. Ibid; Hamblin*, "Environmental Legacy," 259.

43. Hamblin, "Environmental Legacy," 259.

44. Ibid, 258; McNeill, *Something New*, 352.

45. Tyrrell, *Modern Environmentalism*, 336; Hamblin, "Environmental Legacy," 260.

46. Hamblin, "Environmental Legacy," 260–261.

47. Ibid, 257.

48. Ibid.

49. Ibid, 267.

50. Ibid.

51. Ibid, 266.

52. Ibid, 262.

53. Ibid.

54. Ibid, 262–263.

55. Ibid, 262.

56. Ibid, 262.

they could negotiate a treaty that would forbid certain chemicals, even in the absence of ultimate scientific evidence, while U.S. business had adapted swiftly, undertaking some sunk costs.[57]

In 1980, the Alliance for Responsible CFC Policy aimed to lobby against the regulation. In 1986 they supported an international agreement in favor of cutting CFC emissions. One of the reasons that they pushed the coalition in that direction was the negative public coverage received by their acts depleting the ozone. Moreover, an international agreement banning CFCs contained in some products would have been less draconian than the existing domestic legislation on the same issue. Meanwhile, Congress required new controls on global CFC emissions. Besides, since Reagan supported the agreement, diverse NGOs pressed foreign governments toward the end of ratifying the agreement. Additionally, in the aftermath of Gorsuch's dismissal, governmental expertise gained importance within the EPA.[58] Finally, the science on this issue was more certain than in others, which pushed Reagan to support an effective multilateral treaty.[59]

5 Shaping the American position for Vienna and Montreal

Regarding the shaping of the American position, the State Department and EPA spokespersons reported on their developments to a specific senior-level working group in the Domestic Policy Council (DPC). The DPC was a cabinet-level body put in place by President Reagan to counsel him on domestic issues, with Attorney General Edwin Meese presiding. Normally, its formal membership would include the secretaries of Agriculture, Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, the Interior and the Treasury, the OMB director, the United States Trade Representative, and the Vice-President, but in order to face the ozone negotiations, the Secretary of State and the EPA administrator were included as well. Officers of the National Security Council, the Office of Science and Technology Policy, the Office of Policy Development and the Council of Economic Advisers also joined the DPC meeting. The massive DPC action on the ozone issue began in the summer of 1986. The rationale was that the ratification of an international treaty on CFCs and halons would necessitate a domestic regulation on its execution. The Clean Air Act empowered the EPA to take action on feasible regulatory options. These options were scrutinized and changed by other participants during the meetings. Since the first meetings, the worldwide CFC ban option proposed in 1985 was rejected because the majority of countries would decline it. As a substitute, the U.S. would propose an overall emission cap and the market would decide which products were replaceable. Furthermore, it was decided that an effective ozone protection was unfeasible, unless the freeze on the CFC 11 and 12 emissions went well beyond the ongoing levels.[60]

The rationales behind this decision were several: science suggested that CFC 113 and halons also played a major role; the reduction of the parties to the protocol would need to be substantial to offset the emissions from countries which would abstain from joining the treaty; some increases for developing countries with low CFC consumption levels would have persuaded them to join the agreement; it was crucial that the EPA reason for banning a substance deemed dangerous embody the Vienna Convention and the Montreal Protocol regardless of the existence of a strong scientific consensus beyond it. Finally, unless manufacturers were faced with the expectation of a large plummet in CFC production, it would not be useful for them to renew research into alternatives; the sooner substitutes were obtainable, the smaller the likelihood that nations would build new capacity in an outdated CFC technology. Thus, the U.S. commitment was crucial to encourage businesses to develop substitutes.[61]

In November 1986, the State Department issued the circular 175, which was also endorsed by the Department of Commerce, the Department of Energy, the Council on Environmental Quality, EPA, NASA, NOAA, OMB, USTR and the DPC. Its main points were the following: firstly, a short-run freeze

57. Ibid, 271; Benedick, *Ozone Diplomacy*.

58. Hamblin, "Environmental Legacy," 271; Benedick, *Ozone Diplomacy*, 31.

59. Hamblin, "Environmental Legacy," 267.

60. Benedick, *Ozone Diplomacy*, 52.

61. Ibid, 52–53; Barrett, *Environment and Statecraft*, 258.

on the combined releases of the most dangerous substances to the ozone layer; secondly, an expected long-run reduction of these chemicals with the explicit goal of eliminating them. The only exceptions were made for products that did not have commercially available alternatives. Thirdly, a regular review of the protocol provisions founded on regular assessment of the research issued by the international epistemic community. The review could eliminate or add some chemical substances and modify the schedule or the quantity of emission cuts.[62] The draft also incorporated a freeze at 1986 levels of emissions. Furthermore, there were three illuminative reduction phases of 20, 50 and 90 percent. The reduction timing was to have eventually been negotiated. This solution was conceived as a mechanism to allow the industry to adapt, gradually finding substitutes to CFCs to avoid last-minute research.[63] An essential section of the American proposal were the trade restriction measures that would induce countries to join the protocol, while at the same time protect the U.S. business from trade leakage and related issues.[64] The underpinning principle of the treaty, according to the U.S. government, was to take immediate action through adequate actions, with the goal of avoiding greater future costs. Simultaneously, the treaty would create some industry predictability. Importantly, the U.S. negotiators underlined how the proposal was exploratory, and their willingness to negotiate how much, and when, CFC production would be cut. On the one hand, they sought a flexible negotiating strategy, while on the other hand, there was no consensus about the precise extent and timing of CFC reduction within the American government. However, Congress, environmental groups, and other observers perceived the circular 175 as a steady commitment to curb CFC emissions.[65]

Eventually, the State Department, using American diplomatic influence, envisioned and controlled a multifaceted plan to create consensus among as many nations as possible with the U.S. policy, as well as on the science and threats of the ozone depletion.[66] It was essential that the U.S. government supported its negotiating teams because if Congress, U.S. business, or American environmental groups dropped their support, then the U.S. government would not seem sufficiently committed. Accordingly, negotiations would fail, health and economic costs would increase, and U.S. businesses would suffer under domestic regulation while being undermined abroad. In a scenario where a treaty was enforced, American businesses would constrain its competitors, while simultaneously the U.S. would avoid a health threat. Without Congressional support, the treaty would not have been ratified. If environmentalists had rejected their own support, the support among both domestic and international polities would have been undermined. Finally, without the support of the American business, foreign businesses could follow their example so that their own governments would not ratify the treaty.[67]

The drafted treaty was the last cry of a regulatory nationalism that had embodied the U.S. foreign policy since 1945. This nationalism aimed to spread the domestic, New-Dealist post-1945 American regulations and social contract abroad, and tackle the side-effects of capitalism while enhancing social cohesion. By doing so, American security would be improved by extending domestic social organization overseas.[68]

However, the negotiations faced some criticism from environmentalists and Congress for its scope and its slow pace.[69] It was criticized as well as by part of the Reagan administration for potential economic damages to the U.S. economy and the scientific evidence that underpinned the proposed treaty. The criticism was especially prevalent when the negotiators were nearing an agreement. The critics

62. Benedick, *Ozone Diplomacy*, 53.

63. Ibid, 53–54.

64. Ibid, 54; Barrett, *Environment and Statecraft*.

65. Benedick, *Ozone Diplomacy*, 54.

66. Ibid, 55–56.

67. Ibid, 57.

68. Kenneth N. Waltz, *Theory of International Politics* (London, UK: Addison-Wesley Publishing Company, 1979); Micheal H. Hunt, *American Ascendancy. How the United States Gained & Wielded Global Dominance* (Chapel Hill, NC: University of North Carolina Press, 2007); John G. Ikenberry, *Liberal Leviathan. The Origins, Crisis and Transformation of the American World Order* (Princeton: Princeton University Press, 2011).

69. Benedick, *Ozone Diplomcay*, 57.

rose in early 1987, and those who criticized the U.S. negotiating team were officers of the Department of Interior, Department of Commerce, Department of Agriculture, Office of Science and Technology Policy and White House staff. Specifically, they casted doubts on the scientific evidence and the possible damage to the American economy. However, part of these controversies backfired, as the majority of public opinion supported the negotiations.[70] Specifically, Secretary of the Interior Donald Hodel criticized the treaty because it was possible that many CFC producing countries could not join. A precondition for a successful treaty, in his opinion, would have been widespread participation. Moreover, he argued that all countries should have paid the same price. Hodel also casted doubts about the feasibility, safeness and cost of alternatives. Finally, he proposed to postpone the establishment of a regulation enforcing controls until a consensus among the scientific community regarding the phenomenon was reached.[71]

During the DPC meetings, Deputy Secretary of State John Whitehead and EPA Administrator Lee Thomas claimed the case for better inspections. Eventually, the President's Council of Economic Advisers issued a cost-benefit analysis, according to which the cost of skin cancer prevention was inferior to those related to CFC controls, which reinforced the consensus for the Treaty.[72]

Eventually, those who opposed the treaty devised a new plan, which was that of demanding unachievable aims for the American negotiating team. For instance, they claimed that the U.S. should not have to ratify the treaty unless all nations agreed to firm controls. However, impossible American demands would allow for impossible demands from all other countries. Nonetheless, the anti-regulatory faction was overcome because U.S. business strongly supported the treaty.[73]

In due course, the main focus of international negotiations became the timing and stringency of reductions concerning chemicals harmful to the ozone. Many countries had already concurred on a quick cut of CFC emissions. Eventually, a further development would have been a 20 percent reduction. Nonetheless, given the lasting scientific uncertainties about the benefits of this massive reduction, the proposal of a planned future cutback in the range of 95% had not gained sufficient consensus. The U.S., Canada and other nations claimed that the protocol should have a "final goal"—rooted in future scientific developments—which was to banish all ozone-depleting substances.[74]

Nevertheless, the riskiest proposed issue was a second phase which sought to reduce approximately 30 percent of the emissions, a requirement two to four years after the initial reduction. Canada, the U.S. and Scandinavian countries had supported it, while the EC, Japan, the USSR and a number of American government agencies were against it. A feasible compromise, on both sides, was to make a 30 percent cut depending on the supportive resolution by the parties' protocol contingent on their assessment of the developing science.[75] American agencies that had gradually abandoned the negative views of the protocol found it interesting. As the final options paper on the U.S. negotiating policy was coming into existence that June, only the State Department and EPA favored a "semiautomatic" 30 percent trimming. If this mechanism was in place, the parties of the protocol would have to vote to invalidate the second phase of reduction. Such a policy, nevertheless, enjoyed strong support from Congress and from U.S. environmental groups.[76] The EPA and the Department of State claimed at the interagency meetings that a "20 percent protocol" would be a weak treaty, since it would send a false sense of having taken adequate action. In fact, industry could effortlessly attain the 20 percent cut

70. Ibid, 58–59.

71. Ibid, 61; Donald Hodel to editor, July 6, 1987, in *Energy Daily*, July 6, 1987; U.S. House of Representatives, Committee on Energy and Commerce, *Circular 175: Request for Authority to Negotiate a Protocol to the Convention for the Protection of the Ozone Layer. Memorandum from Assistant Secretary of State John Negroponte to Under Secretary of State Allen Wallis*, 99h Cong. 2nd sess. March 9, 1987; U.S. Senate, Committee on Environment and Public Work, *Ozone Depletion, the Greenhouse Effect and Climate change*, 100th Cong. 1st sess. January 28, 1987; U.S. Senate, Committee on Environment and Public Work, *Stratospheric Ozone Depletion*, 100th Cong. 1st sess. May 12–14, 1987; U.S. House of Representatives, Committee on Foreign Affairs, *U.S. Participation in International Negotiations on Ozone Protocol*, 100th Cong. 1st sess. March 5, 1987.

72. Benedick, *Ozone Diplomacy*, 63.

73. Ibid, 63–64; Barrett, *Environment and Statecraft*, 259.

74. Benedick, *Ozone Diplomacy*, 64.

75. Ibid, 64.

76. Ibid, 64–65.

with present technologies for recycling and conservation, while the extra 30 percent demand would be enough to develop CFCs substitutes.[77]

Given the lack of consensus among federal agencies over some elements of the proposed agreement, it became clear that President Reagan would have the final say. Since the Department of State supported a strong and compelling American negotiating position, it is unsurprising that the Secretary of State advocated in favor of the treaty in face of President Reagan and other cabinet members. This event was pivotal, as Shultz enjoyed great influence over Reagan.[78] The State Department representatives argued that if the U.S. did not sign the agreement after their earlier notable involvement, then American international credibility would be undermined. On the other hand, if the protocol was signed, the U.S. would achieve a crucial foreign environmental policy success. The State Department further underlined that, in the absence of the treaty, the EPA would be compelled to regulate unilaterally. Finally, the State Department recalled that there was a strong bipartisan congressional backing of the protocol.[79] Due to these actions, and considering the upcoming 1988 presidential election, Reagan supported the State Department proposal, thus overcoming his typical ideological boundaries.[80] Not by chance, the event was barely covered by the media because it would disparage his traditional allies and his party.[81]

6 Negotiating the treaty

In 1983 the Toronto Group was established. Composed of Canada, Norway, Sweden, Finland and Switzerland, it aimed to curb CFC emissions. Midlevel EPA officers, exploiting changes at the top of the organizations, claimed that the U.S. should have supported the international initiative because of its similar domestic regulation. Thus, in late 1983, the U.S. joined the Toronto Group, and supported a proposal of the Toronto Group, according to which the *Ad Hoc Working Group* should have prepared a separate protocol to be adopted concurrently with the framework convention, in which an international regulation was embedded, while U.S industry was held up as an example to follow.[82]

European companies aimed to delay the replacement of old products and claimed that the U.S. had faced losses because of its restrictive legislation. Moreover, in the event that the negotiations failed, the U.S. would be forced to reform its domestic regulation, thus bolstering the competitive position of the European Community. The EC Commission stressed the uncertainties and the impracticality of the substitutes, but also the costs of regulation on European Living Standards.[83]

In late 1984, the EC proposed a different version of the protocol text, which would forbid adding to CFC production capacity, while the "nonessential use" notion was relative to each country. The Toronto Group rejected this proposal, as it would not have cut enough CFC emissions and market shares would have been frozen. Meanwhile, countries with limited or a lack of surplus capacity would have been undermined. In January 1985 during the negotiating session of the Ad Hoc Working group, the U.S. gave notice of a new theory from Harvard University, according to which the ozone layer would have collapsed if a certain amount of atmospheric chlorine had exceeded a particular threshold level. Nevertheless, EC negotiators labeled the U.S. proposal as "alarmist."[84] The Toronto Group members then proposed a mixed system composed of aerosol reduction and the capacity cap. Nonetheless, since this proposal would have required extra regulations by all parties, it was rejected by the EC, the USSR and Japan.[85]

77. Ibid, 65.

78. Ibid, 65; Hunt, *American Ascendancy*, 259–260.

79. Benedick, *Ozone Diplomacy*, 66.

80. Ibid, 66–67.

81. Ibid, 67.

82. Ibid, 42.

83. Ibid, 33.

84. Ibid, 43.

85. Ibid, 44.

In March 1985, 43 countries assembled in Vienna to finish work on the ozone convention. By that date, the Ad Hoc Working Group had attained fundamental consensus on a framework convention, while most protocol selections had already been drafted, with the exception of the control strategies.[86] Twenty countries, mostly big CFC producers including the EC Commission, validated the Vienna Convention for the Protection of the Ozone Layer.[87] Nations were now compelled to protect the ozone layer through proper measures, even before the danger exploded. A system of gathering and monitoring data about the ozone depletion was also established. Nevertheless, a specific chemical was not identified as an ozone-modifying substance.

The U.S. put forward and passed an unprecedented resolution in Vienna which was unrelated to the conference, according to which the UNEP was permitted to restart diplomatic negotiations with the target of achieving a legally indissoluble control protocol in 1987. According to this resolution the UNEP would call a study group to prepare the formal negotiations, creating useful and common knowledge to better conduct the negotiations.[88] Some officials within the Reagan administration, nonetheless, cast doubts about the negotiations and about the UN multilateral powers. By the time the Vienna negotiators were finishing their business, Secretary of State for Economic Affairs Allen Wallis advised Secretary of State George Shultz to hold back the authorization for the American delegation to validate the Vienna Convention. Wallis, in fact, considered the Vienna Convention a precursor to an international regulation, which in turn would have undermined the domestic deregulation policies undertaken by the Reagan administration. Wallis was also against the Vienna Convention because it would have restrained independent scientific findings. What Wallis had in mind was the rejection of the United Nations Convention on the Law of the Seas. However, the pressure of private sector representatives on the U.S. State Department forced the United States to sign the agreement.[89]

The two subsequent workshops that were proposed in Vienna took place in May and September of 1986. The former regarded the analysis of CFC production and consumption tendencies, outcomes of existing regulations and feasible alternatives to CFCs, while the latter assessed alternative regulatory strategies in respect to their implications for the environment, demand for CFCs, business, justice, cost effectiveness and ease of implementation. These seminars deeply affected the Montreal framework.[90]

Nonetheless, there were many skeptics about the effectiveness of the controls proposed during the workshops because the consumption and production of new CFCs was rising. Given these uncertainties, it was decided that future CFC production could grow within a range of 0 to 5 percent.[91]

Meanwhile, the U.S. State Department persuaded the American environmental organizations to stimulate their European and Japanese equivalents to lobby their own governments, while the U.S. Congress supported the American position on new international checks, drafting some trade restrictions against any countries that would not undertake the burden.[92] The U.S. also used its epistemic community and its diplomatic network to gather further information on the issue, and to share it with other countries to persuade them to support the phasing-out regulation.[93] American diplomats used reasonable scientific arguments, exalted the responsible attitude of the U.S. business and claimed that the price of inaction was higher than that of controls. Media played a role too, providing constant exposition to American scientists and diplomats, either in the U.S. or overseas.[94]

At the June 1987 G-7 economic meeting, under Reagan's proposal, the ozone layer depletion was acknowledged by the participants as a common issue. Furthermore, American diplomats regularly reported the developments occurring during the negotiations to congressmen and members of both

86. Ibid.

87. Ibid, 45.

88. Ibid.

89. Ibid, 46.

90. Ibid, 47.

91. Ibid, 48.

92. Ibid, 28–29; Barrett, *Environment and Statecraft*.

93. Benedick, *Ozone Diplomacy*.

94. Ibid, 55–56.

American business and environmental groups. Members of all the groups assembled together to exchange information, maintain good relationships as well as reassuring members of the Congress, of the U.S. business and of environmental groups that their demands would be considered during negotiations.[95]

Meanwhile, novel notions emerged, according to which the treaty should have been ratified even in the absence of a general consensus. Besides, the treaty should have been flexible enough to be modified according to the regular reassessment science.[96]

A frantic round of negotiations followed in Geneva and in Vienna during 1986. Slowly, the U.S. and the Toronto Group won the consensus of several developed and developing countries, while they exploited the divisions within the EC.[97]

Remarkably, in 1987 the American negotiating team was ordered by President Reagan to keep its strong stance and strategy. However, in America the controversy about the treaty did not halt, risking jeopardy to the previous efforts.[98] Finally, during the Montreal Protocol talks, developed countries decided to sign the treaty and cut their emissions faster than developing countries, while developing countries joined the treaty in mass.[99]

7 The consequences of Montreal

The Montreal Protocol was eventually adjusted and amended several times.[100] No administration has ever demanded a withdrawal of the U.S. from the treaty because being a party to the treaty was more advantageous than not.[101]

Nonetheless, beyond the Montreal Protocol, there was no more room for an international treaty inspired by regulatory nationalism. In fact, the New-Dealist social contract and its subsequent economic model were jeopardized by 1970s stagflation. As a solution to the crisis, an economic model was adopted which relied on monetarism and supply-side economics. In order to adapt the American economy, it was considered necessary on the domestic level to get rid of the postwar regulations. In turn, the U.S. business would adapt quickly. Finally, since American business was the first to adapt to this kind of regulation, the U.S. had to find a way to expand this form of regulation overseas. Otherwise, American business would be undermined abroad by existing foreign regulations charging some extra costs, which would ultimately undermine the US economic hegemony.[102]

95. Ibid, 57; Barrett, *Environment and Statecraft*.

96. Benedick, *Ozone Diplomacy*, 49–50.

97. Ibid.

98. Ibid, 72–73.

99. Ibid; Barrett, *Environment and Statecraft*, 304.

100. Barrett, *Environment and Statecraft*, 153.

101. Ibid.

102. Benedick, *Ozone Diplomacy*; Tyrrell, *Modern Environmentalism*; Hunt, *American Ascendancy*; McNeill and Engelke, *Into the Anthropocene*; Hamblin, *Environmental Legacy*; Peter Alexis Gourevitch, *Politics in Hard Times: Comparative Responses to International Economic Crisis* (Ithaca: Cornell University Press, 1984); Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: The Belknap Press of Harvard University, 2014); Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA: The Belknap Press of Harvard University, 2011); Ikenberry, *Liberal Leviathan*.

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