

Control of Transboundary Movement of Hazardous Wastes and Their Disposal. In December 1989 and April 1990, the Secretary-General was invited by the OAU to participate in the work of legal and technical experts of the Member States of the OAU on the subject of transboundary movement of wastes in Africa. The Secretary-General actively participated in the preparatory process of the African Convention on the subject. Subsequently, the Bamako meeting in February 1991 adopted the OAU Convention on the Ban of the Import into Africa and Control of Transboundary Movement of Hazardous Wastes within Africa based on the proposals of the Legal and Technical Experts' Group.

Following the General Assembly's decision to convene the United Nations Conference on Environment and Development (UNCED) in Rio, Brazil in June 1992, the AALCC at its twenty-ninth session held in Beijing in March 1990 recommended, *inter alia*, that it should involve itself in the preparations for the UNCED and render assistance to its Member States in that regard. Since then, this matter has been a priority item with the AALCC. At the Cairo Session, it was decided that the Secretary-General of the AALCC continued to monitor the progress of work of the UNCED. The thrust of the AALCC's endeavours has been on (i) Promotion of ratifications of/accessions to the 1982 United Nations on the Law of the Sea and its subsequent implementation; (ii) Transboundary movement of hazardous wastes and their disposal; (iii) Consideration of the issues before the PREPCOM for the UNCED; (iv) Assistance in the preparation of the Framework Conventions on Climate Change and Biodiversity; and (v) Development of legal principles on environmentally sound and sustainable development. The AALCC Secretariat prepared analytical studies on these issues to assist the Member States to actively participate in the preparatory meetings for UNCED.

The first substantive session of the Preparatory Committee for UNCED was held in Nairobi in August 1990. The Second Session was held in Geneva from 18th March to 5th April 1991. The Secretary-General represented the AALCC at that Session. As agreed in the first session, the first ten days of the Session were devoted to the proceedings of the Working Groups and the plenary held most of its meetings during the final week of the Conference.

In his opening statement the Secretary General of the UNCED, Dr. Maurice F. Strong emphasised the exceptional importance of the Preparatory Committee's Second Session which was intended to mark the transition from the overview and analysis on which Nairobi Session

concentrated on identification of potential areas for action. It was envisaged, in his view that the primary task of the Secretariat and other UN partners after the Second Session would be to formulate specific action proposals to be considered at the next Session. He, therefore, advised the Working Group to concentrate on the potential areas for action. He also emphasised the importance for the Working Group I and II to include in their work considerations of cross-sectoral aspects of each substantive issue which would enable the Preparatory Committee to have detailed discussion of these cross-sectoral issues and the fact that substantive session which would also be the primary focus of the fourth session.

One of the important issues resolved by the Plenary during this session was on the participation of Non-governmental Organisations (NGOs). It was agreed that all NGOs with consultative status with the ECOSOC and other NGOs having relevance to the work of the Preparatory Committee may apply to the Secretariat for admission to the Conference. All such applications should indicate the relevance, competence, purpose of the organization and its programme relevant to the work of UNCED, annual reports, list of governing board and indication of membership and geographical spread. Such NGOs with consultative status with the ECOSOC would be deemed to be qualified if such information had already been given.

### Report of Working Group I

The Working Group I had on its agenda the following items for the Second Session.

1. Protection of the atmosphere:
  - (a) Climate change;
  - (b) Ozone depletion;
  - (c) Transboundary air pollution.
2. Land Resources :
  - (a) Deforestation;
  - (b) Soil loss;
  - (c) Desertification and drought.
3. Conservation of biological diversity.
4. Environmentally sound management of biotechnology.



Working papers had been prepared on all the items of the agenda for the Second Session by the Secretariat and they formed the basis for discussion of Working Group I.

On climate change it will be recalled that the Secretary General of the Conference was requested to prepare a report and make recommendations on the activities of the Inter-Governmental Panel on Climate Change and the negotiations sponsored by UNEP and WMO on Framework Convention on Climate change and on the preparations for and the Second World Climate Conference as well as other major related meetings which were to take place between the First and Second Session of the Preparatory Committee. Two documents one entitled *Synthesis Report of the Secretary General Conference on On-going Processes and Recommendations in regard to Climate Change* and the other entitled *Progress Report on Cost Analysis of Measures adopted to limit Possible Climate Change and its Adverse Effects* were considered by the Working Group.

## Report of the Working Group II

The Working Group II had on its agenda the following substantive items :

1. Protection of the oceans and all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources :
  - (a) Global aspects of marine pollution;
  - (b) Regional seas and coastal areas;
  - (c) Protection, rational use and development of living marine resources.
2. Protection of the quality and supply of fresh water resources: application of integrated approaches to the development, management and use of water resources.
3. Environmentally sound management of wastes, particularly hazardous wastes, and of toxic chemicals, as well as prevention of illegal international traffic in toxic and dangerous products and wastes :
  - (a) Environmentally sound management of wastes, particularly hazardous wastes;
  - (b) Environmentally sound management of toxic chemicals;

- (c) Prevention of illegal international traffic in toxic and dangerous products and wastes.

On the protection of the oceans, the document presented by UNCED was a comprehensive report on the recommendations for action concerning twenty substantive areas including work done by other UN bodies involved in the oceans. These included IMO, IOC, UNESCO, WMO and the Office for Ocean Affairs and Law of the Sea of the United Nations. The Report also dealt with three specific topics on the London Convention on the Prevention of Marine Pollution by Dumping Wastes and other matters, the Global Ocean observing system protection of the Marine Environment from and Land Based Sources of Marine Pollution.

Several delegations addressed themselves on some of these issues. It will not be correct to term the debate as having been indepth and many of the issues dealt with within the report and specific issues on which UNCED Secretariat had asked for guidelines had not been satisfactorily addressed to in the debate. However, there were important statements particularly from the respective UN agencies on their area of involvement. It was hoped that the close analysis of the issues raised in the report with specific suggestions would be prepared by the AALCC Secretariat for the third Session of the Preparatory Commission.

The Secretary General presented a statement in which he underscored the importance of ratification of the Law of the Sea Convention which contains in Part XII a comprehensive blue print on the protection of oceans and all kinds of seas including the coastal areas and also provides basic principles concerning land based sources of pollution.

It was brought to the attention of the Conference that an intergovernmental meeting of Experts on Land Based Sources of Marine Pollution which was to be held in Halifax, Canada from 6 to 10 May 1991 and organised by Canada in co-operation with UNEP, IOC and Office for Ocean Affairs of the Law of the Sea and UNCED Secretariat. In this connection it was emphasised that about 70% of all pollutants entering into the oceans emanate from land based sources and hence this important Conference was intended to address itself to containing these sources of pollution.

The Working Group addressed itself to the question of protection of the quality and supply of fresh water resources on the basis of a report prepared by the Secretariat of UNCED. That report dealt with



various aspects of fresh water and was divided into nine major sections as follows :

1. Importance of fresh water for environmental development;
2. Living fresh water resources;
3. Supply of fresh water in adequate quantity and quality;
4. Monitoring and assessment of fresh water resources;
5. Integrated water resources management;
6. Transboundary fresh water resources;
7. Human resources development for fresh water management;
8. Strengthening of institutional capacities; and
9. Potential areas for action.

#### **Framework Convention on Climate Change : An Overview**

Following an initiative by the Government of Malta, the General Assembly at its forty-third session, while considering the item entitled "Conservation of climate as part of the heritage of mankind", recognised that climate change was a common concern of mankind and determined that necessary and timely action should be taken to deal with climate change within a global framework.

Subsequently at its forth-fifth session, the General Assembly, during adoption of the resolution "Protection of Global Climate for present and future generations of mankind" established an Inter-governmental Negotiating Committee (INC) and entrusted it with the task of preparation of an effective Framework Convention on Climate Change, and any related instruments as might be agreed upon. It considered that the negotiations for the framework convention and the related instruments should be completed prior to the United Nations Conference on Environment and Development in June 1992. It authorised the establishment of an *ad hoc* Secretariat and set the tentative time-table and the venue of the meetings of the INC.

Accordingly, the First Session of the INC was held in Washington from 4 to 14 February 1991. The Committee elected Mr. Jean Ripert (France) as Chairman. Mr. Ahmed Djoghlat (Algeria), Mr. Ion Draghichi (Romania) and Mr. C. Dasgupta (India) as Vice-Chairmen. Mr. Ion Draghichi (Romania) was elected also as Rapporteur. It adopted the rules of procedure and the guidelines for negotiations and established two Working Groups.

During the debate at the INC, First Session in Washington, the general view was that the issues of climate change should be addressed in an integrated and comprehensive manner. It was considered necessary to take full account of the special circumstances and needs of the developing countries and to recognise the special vulnerability of low lying areas and small island countries and the impact of climate change on arid and semi-arid areas. It was emphasised that an effective framework convention and its related legal instruments should be based on the principles of equity and common but differentiated responsibility. Some delegations were of the view that actions should be based on the precautionary principle and the best scientific knowledge. Most delegations recognised "the polluter pays Principle" as the corner stone of the Framework Convention. Others suggested that the Framework Convention should include provisions on scientific and economic research and the exchange of information and data in order to enhance understanding of the climate change.

Several delegations emphasised that the Framework Convention should provide the right incentives for the development of clean technology and take into account all economic aspects of implementing measures to combat climate change.

The need to include within the Framework Convention procedures concerning settlement of disputes, non-compliance and review and updating procedure, was emphasised.

There were divergent views in regard to the content and the time-frame for the negotiation of the Convention. While some delegations expressed the view that the Framework Convention should include specific commitments supplemented by Protocols negotiated in parallel, a number of delegations stressed the need for specific commitments by developed countries to provide transfer of technology on a preferential and concessionally basis and new and additional financial resources to developing countries to enable them to deal with the problems of global climate change. It was suggested that the negotiations be completed well in time for the adoption of the Framework Convention by the UNCED, 1992.

Views were expressed that the negotiating process should concentrate on drafting the provisions of the Framework Convention, which would set out general principles and obligations subsequently, protocols and other related legal instruments could be negotiated defining commitments in a detailed and binding manner, taking into account the 1992 UNCED.



It was also suggested that the principles established under the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on substances that Deplete the Ozone Layer could provide a model for the Framework Convention. Some industrialized countries, however, did not agree with this viewpoint.

It was the general view that both developed and developing countries should participate actively in the on-going negotiations if a meaningful Convention was to be achieved. In that context, the establishment of a Special Fund to encourage and ensure participation of the developing countries was considered a useful step.

At the close of the general debate, the Committee took certain decisions regarding the organisational matters, use of the voluntary fund and arrangements for future sessions of the Committee.

The guidelines for the negotiations, among other things, provided that the funding commitments, mechanisms and means for transfer of technology to developing countries, as well as matters concerning international scientific and technological co-operation should be an integral element in the negotiations. Further, "the final agreement on the Convention should cover in an integrated manner all areas of common concern, including, *inter alia* : (a) emissions, (b) sinks, (c) transfer of technology, (d) financial resources and funding mechanisms for developing countries, (e) international scientific and technological co-operation, and (f) measures to counter the effects of climate change and its possible adverse effect, particularly on small island developing countries, low-lying, coastal, arid and semi-arid areas, tropical regions liable to seasonal flooding and areas prone to drought and desertification.

As for the work of the Working Groups, the guidelines provided that it should be inter-related and integrated by the Plenary, and to achieve that, it was envisaged that the Working Groups would report regularly to the Plenary.

The Working Group I which was concerned with matters concerning commitments was requested to prepare a text related to :

- (a) Appropriate commitments, beyond those required by existing agreements, for limiting and reducing net emissions of carbon dioxide and other greenhouse gases, on the protection, enhancement and increase of sinks and reservoirs, and in support of measures to counter the adverse effects of climate change, taking into account that contributions should be equitably

differentiated according to countries, responsibilities and their level of development.

- (b) Appropriate commitments on adequate and additional financial resources to enable developing countries to meet incremental costs required to fulfil the commitments referred to above and to facilitate the transfer of technology expeditiously on a fair and most favourable basis;
- (c) Commitments addressing the special situation of developing countries, taking into account their development needs, including *inter alia* the problems of small island developing countries, low-lying coastal areas and areas threatened by erosion, flooding, desertification and high urban atmospheric pollution; also taking into account the problems of economies in transition.

The task assigned to the Working Group II was to prepare a text on mechanisms and related to :

- (a) Legal and institutional mechanisms, including *inter alia* entry into force, withdrawal, compliance and assessment and review;
- (b) Legal and institutional mechanisms related to scientific co-operation, monitoring and information;
- (c) Legal and institutional mechanisms related to adequate and additional financial resources and technological needs and co-operation, and technology transfer to developing countries corresponding to the commitments agreed to in Working Group I.

The Second Session of the INC was held in Geneva from 19 to 28 June 1991. The documents before the Session included a set of 25 informal papers submitted by various delegations including "non-papers", related to preparation of a framework convention on climate change.

One of the items on the agenda was the election of the officers of the Working Groups. In spite of hectic consultations, it had not been possible to achieve prior consensus on the designations of the Chairmen of the two Working Groups. Ultimately, on the proposal of the Chairman, the Committee waived rules 40 to 50 of its Rules of Procedure and as an exceptional measure decided that the Bureau of each Working Group would consist of two Co-Chairmen and one Vice-Chairman.

Working Group I was allocated the item entitled "Elements related to commitments". Subsequently, issues concerning principles and definitions were also allocated to Working Group I. The Working



Group I held extensive discussions on commitments and principles. It was agreed that the principles should be compiled under various headings and a draft proposal by the Bureau entitled "Draft Compilation of Principles" was submitted for consideration.

Working Group II considered the question of legal and institutional mechanisms, including entry into force, withdrawal, compliance and assessment and review. Issues concerning legal and institutional mechanisms related to scientific co-operation, monitoring and information, additional financial resources and technological needs and co-operation, and technology transfer to developing countries were also considered.

## (ii) Decisions of the Thirtieth Session (1991)

### Agenda Item "Environment including the Transboundary Movement of Hazardous Wastes and Their Disposal"

The Asian-African Legal Consultative Committee having taken note at its thirtieth session the brief of documents prepared by the Secretariat of the Committee (AALCC Doc. No. AALCC/XXX/91/3, 3A, 12, 12A, and 27) and having heard the Secretary-General and the statement of Mr. S. G. Cornford, the representative of the World Meteorological Organization (WMO).

- Expresses its gratitude to Mr. S. G. Cornford for his statement on climate change and to the WMO.
- Expresses its appreciation to the Secretary-General of the Committee for the comprehensive briefs of documents prepared for the session.
- Requests the Secretary-General to participate in the future work on climate change and to cooperate with the W.M.O. in that regard.
- Congratulates the Organization of African Unity on the conclusion of "The BAMAKO Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa, 1991".
- Urges Member States concerned to consider, ratifying the BAMAKO Convention on "The Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa" and the Basel Convention on "The Control of