

Pledges have also been made by the United Kingdom for US \$ 50,000 and Norway 300,000, to enable the Secretariat to assist developing countries to actively participate in the various meetings that are to be held between now and 1992 Conference. It will be a good gesture on the part of AALCC member States in a position to do so to make voluntary contribution in the same spirit to enable the Secretariat to actively participate in these meetings as the budget of the Secretariat is not sufficiently adequate for this. It is hoped that this specific request will be brought to the attention of the respective member States for consideration.

Proceeding of the Working Groups

The two Working Groups established by the Conference commenced their work during the second week and continued discussing their respective agenda right to the end of the Conference. The discussion centred primarily within the respective groups with the Group of 77 formulating a common policy for negotiation with the other groups on various agenda items. While this procedure in the end proved useful, it tended at times to unnecessarily prolong the discussions, since some members of that Group tended to insist on their point of view being fully reflected under the principle of consensus. To a few of them (not members of the AALCC) consensus amounts to the right of veto. On some instances the whole Group was held at ransom by a delegation until its position was adopted.

It should also be remarked that there is a need for greater awareness of the issues on the part of many developing countries on what at times are highly technical subjects. It is therefore important that to the extent possible consistency in representation particularly from developing countries be maintained to enable these countries to play an effective role at the 1992 Conference.

The work of the two Working Groups was reported back to the Plenary. What transpired was very comprehensive requests to the Secretary General of the Conference and other UN agencies specialised in various issues to furnish additional comprehensive reports with recommendations for action on various agenda items to the forthcoming sessions of the Preparatory Committee. The Working Group I proposed for adoption specific decisions along these lines on climatic change, ozone depletion, transboundary air pollution, land resources, soil loss and desertification and drought, deforestation, conservation of biological diversity, Environmentally sound management of

biotechnology, Environmental Education all the items on its agenda. The Working Group also adopted the provisional agenda for the second session of the Working Group, which is substantially the same as for the first session.

Attention should also be drawn to an initiative submitted by the Delegation of Japan while discussing the question of deforestation. The initiative is to create an International Charter for the world's forests which Japan being the world's largest importer of tropical timber considers very important and a matter of great urgency. Japan's proposal which was circulated in Doc. A/CONF.151/PC/WG.I/CRP.2 is to build on the International Tropical Timber Agreement of 1983 which is due to expire at the end of the March 1992. In their view it would be possible to revise the agreement in order to incorporate new provisions taking into account environmental considerations. Thus International Timber Organisation could be changed into an International Forest Organisation to be supplemented by a convention or agreement on temperate and cold latitude forests. An International Charter of the World Forest in the context of the environment would therefore be created.

The proposal envisaged the adoption of an emergency programme of action to ensure an abundantly greener earth in the twenty-first century. The programme, to be called "Green Earth Management", would embrace the prevention of the deterioration of existing tropical forests, the expansion of areas for the conservation of both plant and animal species and emergency reforestation for the conservation of the earth's environment.

The Government of Japan proposed the convening of a world forest conference or senior forester conference to be held as soon as possible with the full and positive participation of developing countries and indicated their readiness to host such a conference. This initiative was broadly welcomed by the conference and it deserves the full support of our member States.

On its part the Working Group II also adopted a number of decisions on the subjects requesting for further studies from the Secretariat of UNCED. These were on the 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, protection of freshwater resources; environmentally sound management of wastes, particularly hazardous wastes and a decision on the illegal international traffic in toxic and

dangerous products and wastes. The Working Groups also adopted the provisional agenda for its second session which is substantially the same.

Other Decisions Adopted by the Conference

The Preparatory Committee took note of various conferences being organised on different aspects of the Environment and urged the Secretariat of UNCED to closely monitor the developments in those meetings. These included the conference being organised jointly by the Indian Government and WHO on Freshwater Resources.

On renewable sources of energy the preparatory committee invited the Committee on the Development and Utilization of New and Renewable Sources of Energy to make available to the Secretary General studies relevant to preparatory work for the 1992 conference and to assist in the area of its competence in the process.

On cross-sectoral issues the Preparatory Committee invited the Commission on Human Settlements, the World Health Organisation and UNESCO to co-operate with the Secretary General of the Conference in their respective fields.

The Secretary General was also directed to prepare a paper on the need to harmonise developmental objectives and sustainability and environmental considerations in deliberations on international economic policy without adding new forms of conditionality of unjustified barriers to trade.

The Preparatory Committee also requested the Secretary General of the Conference to submit at the second session a progress report on the implementation of relevant provisions of General Assembly Resolution 44/228 related to financial resources.

It would be recalled that discussions were held both at the Preparatory Committee held in New York in March and in Nairobi on the possibility of establishment of a Working Group on Legal, Institutional and all Related Matters. At the conclusion of the Conference the Preparatory Committee requested the Chairman of the Preparatory Committee with the assistance of the Secretary General of the UNCED to conduct consultations with delegations during the inter-sessional period on the terms of reference and timing of the commencement of the work of the Working Group on Legal, Institutional and Related Matters. It is hoped that based on these consultations the Preparatory Committee would take a decision on

the establishment of the Working Group during the second session. The Secretariat of the AALCC hopes to maintain contacts with the Chairman of the Preparatory Committee on this issue.

In view of the decision of Government of Brazil to invite Heads of States or Governments to Brazil during the 1992 Conference, and to underscore the importance of that Conference the Preparatory Committee recommended to the General Assembly to decide during the current session that States should be represented at the Conference at the level of Heads of State or Government.

Finally the Conference decided on its future programme of work in preparation for the 1992 Conference. The second session was scheduled from 18th March to 5th April 1991 in Geneva.

(c) Report of the Group of Legal Experts Meeting to Examine the Implications of the "Common Concern of Mankind" Concept on Global Environmental Issues, Malta 13—15 December 1990

In its Resolution 44/207 of 22nd December 1989 the General Assembly endorsed a decision taken by the Governing Council of UNEP directing the Executive Director of the Programme in co-operation with the Secretary General of the World Meteorological Organization to commence the preparations for negotiations on a framework Convention on Climate Change as soon as possible. It is against this background that the Executive Director of UNEP Dr. Mostafa K. Tolba decided to invite a small group of internationally recognised experts to examine the scope and content of the Concept of "Common Concern of Mankind". This concept was first reflected at the initiative of the Government of Malta in the operative Paragraph 1 of the United Nations General Assembly Resolution 43/53 on the subject of climate change and first preambular Paragraph of Resolution 44/207 quoted above.

The purpose of the meeting was therefore to assist the UNEP in its preparation for the proposed framework Convention on Climate Change, the first session of which will take place from 4th to 14th March 1991 in Washington D.C. Invited to this Group of Experts were legal experts from various countries and included a member of the International Court of Justice, Judge Manfred Lachs, as well as two members from the International Law Commission and other experts in the academic and government services.

The meeting was formally opened by the Hon'ble Edward Fenach Adami, Prime Minister of Malta. In fact Malta has played a key role

in the evolution of this concept and the Government extended very generous hospitality to the legal experts who were received not only by the Prime Minister but also by the President of the Republic His Excellency Mr. Tabone and the Minister of Education who is also in charge of the Environment, H.E. Mr. M. Bonnici.

In preparation for this meeting of Legal Experts, the UNEP Secretariat had prepared a very useful analytical note on the subject and the implications of the "Common Concern of Mankind" concept on global environmental issues. This study examined the genesis of the subject and raised a number of issues involved in detailed and thought provoking manner.

During the discussions which were chaired by Dr. Tolba, the experts exchanged views both on the general idea of the concept as well as on the idea of sharing of burden implicit in the concept and environmental responsibility of States. Also discussed was whether this concept is a constituent part of human rights. It was generally agreed that while the concept has not entered into the realm of international law, it has become so widely accepted that it may soon become accepted as part of general international law from which rights and obligations in dealing with the global environmental issues would flow.

This is in realisation that a threat to the environment is a matter of common concern because it affects all mankind and all sectors of society irrespective of territorial borders and irrespective of whether the states are developed or developing. The threat to the environment also has long term perspective in that such a threat poses a hazard not only to the present generation but also to future generations, thus raising the issues of inter- and intra-generation equities.

A number of issues were identified as arising from this "Common Concern" concept and which calls for international action for the protection of the environment. Such action could be either preventive, in order to arrest any threat to the environment or responsive in order to deal with the existing and accepted dangers whether in relation to the ozone layer or to biological diversity.

The concept itself also involves rights and duties or obligations on all states not only to realise common expectations but also to co-operate at international level to overcome the threats to the environment which result in adverse climate change. It was emphasized that a proper balance between state sovereignty over natural resources

which will continue to be applicable and the interests of the international community particularly in respect to the environment protection. It was pointed out in this context that it would be unacceptable if the "Common Concern Concept" was used to justify imposition of new forms of pressures or conditionalities.

Discussions were also held on the question of equitable or fair sharing of burdens on the basis of the capability of various states and the need to assist the developing countries in meeting their obligations with respect to protecting the environment. The basis for burden sharing was identified as international justice and responsibility for the risk to the environment whether the basis for the burden sharing should be fault attributed to States as a result of their activities or the reaction to the risk involved, and the question of reciprocity versus inter-dependence was also discussed.

Some discussions were also held on whether burden sharing should be based on the historical responsibility of the industrialised countries who are primarily responsible for the present state of the environment through their past practice. Though some participants underscored that this should not be the basis since such activities were not then known to be harmful to the environment others pointed out that even if historical responsibility was discounted, industrialised countries continue to be major source of emission of dangerous substances into this environment. Given their technological capability they have a duty to assist the developing countries who in most cases are the innocent victims of the past and current actions of industrialised countries. There was however insistence on the part of some participants that it will be unnecessary and futile to go into the details about the historical responsibility and action should commence on the basis of the present situation and the need for arresting further deterioration and repairing the damage already done.

It was generally agreed that arising from "Common Concern" concept there is a need for international co-operation even if attribution of liability was to be deemphasised. There was also broad agreement that the special situation of developing countries should be taken into consideration if this concept is to become generally acceptable while global treatment of the problem was imperative, differential treatment of the developing countries could nevertheless be envisaged, given their current development needs and lack of current capability to meet the high standards which may be imposed on their industries to meet the necessary reduction of harmful emissions into the environment which are threatening the ozone layer. In this

context emphasis was put both on intra- and inter-generation responsibility, i.e. responsibility to ensure a healthy environment not only for the present generation but also for the future generations—what has been referred to as generation equities. Some participants urged however that from a legal point of view legal obligations can only be with respect to person or persons and not to future generations. Others however pointed that many legal systems envisaged trust concept with respect to land, water or forests on behalf of members of a community in perpetuity. This for instance is recognised in clan land in Africa. The Indonesian Agrarian Law of 1960 recognize such community clan rights (called ulayat) under which an individual member of the community has the right to use and to benefit from the community's rights as well as the obligation to protect and to maintain it for future generations.

In discussing whether the right of people to environment constitutes an aspect of human rights, most participants cautioned against such an approach since human rights at present have assumed very specific meaning with respect to relation between the individual and the State which may not therefore be either relevant or necessary for meaningful elaboration on the "Common Concerns" concept in relations to the environment.

In his interventions, the Secretary General of AALCC made the following general observations on the common concern of mankind principles.

General Observations on Common Concern of Mankind

1. There is a general consensus that the threat of climate change poses a great challenge. However, in regard to the gravity of this threat, there appear to be no settled views. While a good deal of technical and scientific information has been furnished to stress the impending nature of the problem, the cautious attitude adopted by several delegations, especially from some of the developed States during the recently concluded Second World climate conference in Geneva, and in the first substantive session of the PREPCOM of UNCED in Nairobi in August 1990 indicates rather a 'go slow' approach. The adequacy of scientific evidence in support of global warming has been questioned by many.

2. In order to stress the urgency of action at the international level, the threat of climate change has been projected as a matter of "Common Concern of mankind". The document prepared by the

UNEP Secretariat for consideration at that Meeting, ably attempts to elaborate the significance and the legal validity of the concept. There is no dispute that it is an evolving concept and the evolutionary process is of recent origin. The recognition of this concept in various declarations, more particularly in the resolution of the General Assembly adds to its importance.

3. Like the concepts of "Common heritage of Mankind" in the context of Law of the Sea and the "Common benefit of Mankind" in relation to the Law of the Outer Space, this concept promises to gain currency. Such a concept however cannot achieve the status of a binding legal norm but it can be useful as a basis for working out normative principles in treaty or convention form which could concretize in binding customary international law. This has to be a gradual process. Moreover, climate change is not the only issue of "Common concern of Mankind". There are several other issues where the concern of mankind is of no less urgency.

4. States as subject of international law are however responsible entities and normally they respond favourably to any proposition which is good for their own people and the mankind as a whole. The *laissez faire* attitude is a thing of past. Today, the common concern of mankind has crossed new frontiers and it is growing space in many and different ways. The basic issue is the convincing proof of the impending threat.

5. At least two examples in this context may be given to substantiate this point. The threat of a nuclear holocaust is not an imaginary one. The destruction caused by the two nuclear bombs dropped over Hiroshima and Nagasaki and the subsequent knowledge of the dangers of a nuclear war have worked as a great deterrent. No international convention exists which prevent the use of nuclear weapons, but the concern for survival of the mankind including the principal actors is of no less importance perhaps than any binding legal norm.

6. Recently, a positive and more successful approach was initiated to meet the threat posed by the nuclear reactor accident at Chernobyl. The response of the international community was unprecedented. In a record time two international conventions concerning Early Notification of a Nuclear Accident and Assistance in the case of a Nuclear Accident or Radiological Emergency were concluded. The acceptance by a large number of States of the two conventions and further commitment to build a sound nuclear safety

regime demonstrates the will and the capacity of the international community to face one of the most serious disasters in the history of mankind.

7. As it is known the Washington Meeting scheduled to be held in February 1991 will have before it, the first negotiating text of the framework convention on climate change. The IPCC Working Group has suggested a set of possible elements for inclusion in the framework convention on climate change. It is envisaged that the convention would be ready for adoption at the United Nations Conference on Environment and Development scheduled to be held in Brazil in June 1992. In a period of just eighteen months, however, it would be an extremely difficult and ambitious task to achieve consensus on such a broad range of issues as set out by the IPCC Working Group. Since the fundamental purpose is to adopt a 'Framework' Convention the practical approach appears to be to develop a framework or guidelines which might include the basic obligations of States together with general principles on some of the most relevant issues and to leave technical matters to be elaborated in Protocols. These protocols if feasible, could be formulated either along with the Convention or subsequently at a later date.

8. It has been generally agreed that the framework convention on climate change should follow the broad pattern of the 1985 Vienna Convention on Depletion of Ozone Layer. The 1985 Vienna Convention is a good example of international legislation which has attempted to deal with an emerging issue in a practical and flexible way. Since there are many similar objectives of both the 1985 Vienna Convention and the proposed Framework Convention on Climate Change, it would be desirable to establish a close relationship between the two Conventions. Indeed, it would be a good idea to consider entrusting the implementation of the framework convention to the Secretariat contemplated to be established under the 1985 Vienna Convention. This would avoid duplication and curtail expenditure.

9. In addition to the specific and general obligations of the States including the obligations related to transfer of technology particularly to the developing countries and funding mechanisms, other key issues which have to be addressed in the framework convention on climate change may include commitment to formulate subsidiary instruments such as annexes and protocols to deal with technical matters.

10. It is encouraging to note that there is good deal of attention being given to the participation of developing countries in the preparatory process since any agreements which did not meet the full approval of developing countries through their meaningful participation, and which guaranteed possibility of their performance within their economic possibilities would be an exercise in futility. The establishment of a Trust Fund would help promote that objective.

11. The Washington Meeting in February 1991 will mark the beginning of the actual negotiating phase. It will be followed by several meetings during 1991. A clear time table has to be framed to achieve the goal of the adoption of the Convention at the 1992 Brazil Conference. It would be ideal if such a process could be completed by October 1991 and the text of the draft Convention could be submitted for consideration at the forty-sixth session of the General Assembly. That will give an opportunity to scrutinise the draft convention thoroughly by high level participants. Thereafter in the subsequent months further modifications and refinement could be made by the text of the draft Convention which would be finally submitted for adoption at the 1992 Conference in Brazil.

12. However one of the most basic principles on which the success or failure of either the proposed convention on climatic change or the principle of common concern of mankind will depend is the principle of equitable sharing of burdens. One of these burdens which will be of major importance to developing countries is that of conversion of means of production so as not to emit harmful substance into the environment. This requires technology which they largely don't have and the acquisition of which will involve financial outlays which either they can't afford, or which would be at the expense of other urgent developmental concerns. If they are going to undertake any obligations in this respect, it is absolutely important to obtain the necessary technology transfer at affordable cost. This cannot be achieved under the present approach to technical and financial assistance to developing countries which is woefully inadequate to meet even the most basic development needs. Such transfer of technology at affordable cost can only be realized if developed countries are willing to accept it as a duty emanating from the concept of common concern of mankind with respect to adverse climatic change.

At the conclusion of the meeting it was agreed that the UNEP Secretariat will prepare and publish a report of the proceedings which will be generally distributed. However, at the invitation of the Chairman, one of the participants, Mr. J. Barboza, a member of the International

Law Commission dealing with the subject of Liability for Acts not prohibited by the International Law presented a list of conclusions.

It is however to be understood that while on the whole his conclusions represent a fair presentation of the proceedings, they were not adopted as such by the participants and therefore remain his conclusions. Finally it was agreed that the Executive Director will convene the same group of experts for further discussions after the conclusion of the meeting on Climate Change to be held in Washington.

(d) Work Programme of the Asian-African Legal Consultative Committee in Relation to the Preparation for the United Nations Conference on Environment and Development

The topic of Environmental Protection has been under consideration of the Committee for the Past fifteen years. At the Meeting of the Legal Advisers of Member States held in New York on 23rd October 1990, it was suggested that the AALCC should hold a workshop to discuss the legal issues concerning the UNCED and other related matters.

It was proposed that among the issues which could be the focus of deliberations at the workshop may include :

(i) *Promotion of Ratification of the 1982 United Nations Convention on the Law of the Sea and its Subsequent Implementation*

The successful implementation of this Convention would be very significant with respect to the issues concerning protection of the marine environment.

(ii) *Transboundary Movement of Hazardous Wastes and Their Disposal*

The AALCC's recent involvement with the issues concerning disposal of hazardous wastes is of great importance. It has actively participated in the conclusion of the 1989 Basel Convention and has made useful contribution to the work of the OAU in this regard. At the Beijing Session, it was suggested that the AALCC should initiate similar move in other regions. A programme of work to frame regional conventions in the South Asian and West Asian regions could be taken up by the Committee as a follow-up of the recommendations made at the Beijing Session. It may be noted that, at the recently concluded ESCAP Ministerial level Conference held in Bangkok from 10th to 16th October, 1990 the Conference endorsed such a recommendation. The AALCC could initiate such a move in concert

with the ESCAP Secretariat. The Basel Convention, although with many shortcomings, is an important international instrument. Measures to supplement and complement its basic purpose would further enhance its credibility and acceptance by larger number of States.

(iii) *Assistance in the Preparation of the Framework Convention on Climate Change*

The international community has expressed concern at the emerging evidence that continued growth in atmospheric concentration of greenhouse gases could produce global warming with an eventual rise in sea levels, the effects of which could be disastrous for mankind if timely steps are not taken. The evidence that the emissions of certain substances such as carbon dioxide, chlorofluorocarbons and methane are depleting the ozone layer thereby exposing the earth's surface to increased ultra-violet radiation which may pose a threat, *inter alia*, to human health, agricultural productivity and animal and marine life has convinced the developed and the developing countries that changes in climate have an impact on development. The General Assembly, convinced that climate change affects humanity as a whole and should be confronted within a global framework so as to take into account the vital interests of all mankind, had by its Resolution 43/53 recognised that "climate change is a common concern of mankind, since climate is an essential condition which sustains life on earth". At its following Session the General Assembly had by its resolution 44/207, *inter alia*, urged governments, intergovernmental and non-governmental organizations and scientific institutions to collaborate in efforts to prepare a framework convention on climate in the light of priorities that may be authoritatively identified on the basis of sound scientific knowledge and taking into account the specific development needs of developing countries.

In pursuance of the resolution of the General Assembly adopted at its Forty-fourth Session, and its own work programme on the United Nations Decade of International Law, the Secretariat could assist member States in the preparation of a framework convention on climate change. Such an endeavour would aim at identifying the specific legal principles and development needs of developing countries in the Asian-African region and promote the adoption of a common stance both in the PREPCOM on UNCED as well as the UN Conference on Environment and Development.

In the opinion of the Secretariat of the AALCC States have a duty to prevent any change in the climate and must desist from