

32. After six rounds of inter-governmental negotiations, the provisions of the Convention still pending further negotiations and settlement include the Preamble, Article 1 on Objectives; Article 2 on Use of Terms; Article 3 on Fundamental Principles; Article 4 on General Obligations; an unnumbered article on Co-operation; Paragraph (2) of Article 5 on Implementation Measures; Paragraphs (d), (g), (k) and (i) of Article 7 on *in-situ* Conservation; Paragraph (e) of Article 8 on *ex-situ* Conservation; Article 9; Article 11 on Incentive Measures; Paragraph (b) of Article 12 on Research and Training; Paragraphs (a), (e), (f) and (g) of Article 14; Article 15 on Global Lists; the references in Article 16 on Access to Genetic Resources to States of origin of genetic resources or States supplying those materials; the terms on which access to and transfer of technology is to be provided and the question of patents and other intellectual property rights in Article 17; the references to States of origin or States supplying genetic materials in Article 20; Paragraph (2) of Article 21 on Financial Resources; Article 22 on Financial Mechanisms; Article 23 on Relationship with other International Conventions; Paragraph 4(b) of Article 24 on the Conference of the Parties; Article 25 on Procedure for Global Lists; Paragraphs 1(b) and (c) of Article 26 on Secretariat; Article 27 on Scientific and Technical Committee; alternative provisions in Article 30 on Settlement of Disputes; and Article 40 on Reservations.

33. However, the crucial points in the on-going negotiations appear to be access to genetic resources (Article 16), access to and transfer of technology (Article 17) and financial resources and financial mechanisms (Articles 21 and 22). There is an intrinsic interlinkage between access to genetic resources and transfer of technology since the value of genetic resources depends on the technology to use them. For the most part, genetic resources are concentrated in developing countries and access to them has hitherto been relatively unrestricted whilst the technologies needed to exploit them are mainly with the industrialized countries which are protected by intellectual property rights. Intellectual property rights and commercial profits are more than mere concepts related to transfer of technology. They, in fact, represent a certain philosophy of life and the way the free market economies are organised. In view of the obstacles posed by the intellectual property systems to the diffusion of technology, the main fear of the developing countries has been that the developed countries want them to conserve their genetic resources in order to enable the developed countries to continue to exploit them. The developing countries have, however, become aware of the enormous value of this resource and would like to have a trade-off with the developed countries so that in return for providing access to this resource they are able to secure relevant technologies so as to be able to build their own capability to maintain *ex-situ* collections including the use of technologies such as cryogenics (freezing techniques) and biotechnology. Biotechnology has tremendous potential for contributing to improved health care, food

production, environmental problems and industry in developing countries. In a broader context, developing countries today require transfer of technology for four major purposes: They are for cleaner and more efficient production, minimising energy requirement, waste and pollution, implementation of obligations under specific conventions or agreements and for mitigation of adverse impacts of environmental damage caused by the industrialized world, specially concerning waste disposal and management. If protection of the Environment is the supreme need of the hour, the concepts of intellectual property rights and commercial profits will have to yield place to professional, concessional and non-commercial terms to enable the developing countries to make the technological transition.

34. Another issue of vital importance relates to financial resources (Article 21) and financial resources mechanism (Article 22) for the application of the Convention nationally and internationally. While the developing countries want the developed countries to provide adequate, new and additional financial resources to enable them to achieve the objectives of the Convention, the developed countries are only willing to provide financial resources to meet the agreed incremental costs to developing countries of fulfilling their obligations under the Convention. The expression 'agreed incremental costs' has a dubious connotation in that it might imply supervisory role for certain developed countries in the management of the environment which the developing countries are bound to resist.

35. In so far as the proposed multilateral fund is concerned, while the developing countries would wish such a fund to be funded only by the developed countries, developed countries propose that such a fund to be contributed by both the developed and developing countries with the narrowed objective of meeting the agreed incremental costs to the developing countries of complying with the provisions of the Convention and managed by the Global Environmental Facility established by the World Bank about two years ago. The GEF provides grants or highly concessional resources to developing countries to meet the costs of well appraised conservation projects. The developing countries have, however, expressed apprehensions about the operations of the GEF. The negative features pointed out about the GEF operations are that the UNEP has refused to put projects to GEF because it does not have clear environment assessment criteria; that a panel of experts to help with environment assessment has been put in place, but developing countries do not have confidence in the panel—they are good scientists but have little knowledge of development; and that the World Bank seems to consider grants of less than US \$ 5 million not to be worthwhile, whereas a lot could be done with smaller amounts of money. However, the positive feature about the GEF is that at least a mechanism has been set up and countries are contributing money. If GEF is to become the funding mechanism for the implementation of the Convention, it would be crucial to make it more transparent and specific.

36. Something seems amiss with the negotiating strategy adopted to tackle the issues arising from the Draft Convention. Parts of the Draft

Convention have been assigned to two Working Groups for negotiations. While Working Group I has been assigned almost two-thirds part of the Draft Convention, the crucial issues like access to genetic resources, access to and transfer of technology and financial resources and financial mechanisms have been assigned to Working Group II. Since progress in the Working Group II has been slow on account of the contentious issues before it, the progress of work in Working Group I has also been adversely affected. Moreover, since the Draft Convention itself suffers from being structurally haphazard with some of its provisions being duplicative, overlapping and misplaced, it has quite often resulted in shuffling of the draft provisions from one Group to another entailing waste of precious time. Furthermore, simultaneous negotiations proceeding in the two Working Groups has posed a problem especially for developing countries with a limited number of expert personnel which could mean not being able to be involved in some of the crucial negotiations.

37. Since the forthcoming session of the INC is the last opportunity to hammer out an acceptable Convention, it is felt that stage has now been reached when negotiations should proceed in a single forum so that the required momentum could be generated to finalize the Draft Convention before the June 1992 deadline. A single forum would quicken the pace of negotiations on the outstanding issues since negotiators would have an integrated look at the overall Draft Convention and a better perspective of the outstanding problems so as to be able to find the corrective solutions. This, of course, does not obviate the need for active Bureau which should be able to propose concrete compromises when consensus seems to be emerging on some of the outstanding issues. The time available for the final session is indeed very limited and the luxury of rehashing well known old positions cannot be afforded. If success on this Framework Convention, which seems to be desired by both developed and developing countries, is to be achieved, it is necessary that a spirit of genuine accommodation is adopted by all participants.

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