

## II. Analysis of the Provisions of the Convention

### *Preamble*

The Preamble is rather lengthy containing 23 paragraphs. In paragraph 1, it is acknowledged that change in the Earth's Climate and its adverse effects are a "common concern of mankind". It would have been ideal to place this paragraph in substantive Article 3 dealing with Principles. The concept of 'Common Concern of Mankind' is gaining currency as one of the legal norms governing the emerging environmental law.

Paragraph 2 expresses concern over the substantial increase in the atmospheric concentrations of greenhouse gases, it is noted that the largest share of historical and current global emissions has originated in the developed countries. It is however acknowledged that since per capita emissions in developing countries are still relatively low, their share of global emissions would grow keeping in view their social and development needs (para 3).

Paragraph 4 recognises the role and importance of terrestrial and marine ecosystems as sinks and reservoirs of greenhouse gases. Paragraph 5 recognises the difficulties in making correct assessment because of the uncertainties in predictions of climate change particularly with regard to the timing, magnitude and regional patterns thereof. Paragraph 6 stipulates one of the most important themes of the Convention. While calling for the widest possible co-operation by all countries and their participation in an effective and appropriate international response to meet the threat of climate change, it recognises that such action would correspond to common but differentiated responsibilities on the basis of respective capabilities of the developed and developing countries, taking into account their social and economic condition. This theme has been further elaborated in Articles 3 and 4 dealing with Principles and commitments respectively.

Paragraphs 7 and 8 recall the pertinent provisions of the Stockholm Declaration of 1972. The closely related cardinal principle of sovereignty of States in international co-operation in matters concerning climate change, is reaffirmed in Paragraph 9. During the negotiations in the INC Sessions, many delegation particularly from the developing countries strongly expressed the view that instead of placing this paragraph in preamble, it should have been included in Article 3 dealing with Principles.

Paragraphs 11 and 12 recall the relevant resolutions of the General Assembly addressed to Climate change. Paragraph 13 recalls the Vienna Convention for the Protection of Ozone Layer 1985, the Montreal Protocol on Substances that Deplete the Ozone Layer 1987 as amended in 1990.

Paragraph 14 takes note of the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990. Paragraph 15 recognises the valuable work being carried out by any States and the contribution of the United Nations and its Agencies such as WMO and the UNEP.

Paragraphs 10, 16, 18, 21 and 22 recognise the important of flexible but integrated approach involving legislative, administrative and other measures to be taken in the context of climate change and lay down general guidelines.

Paragraph 19 recognises the vulnerable situation of low-lying and other small island countries, countries with low lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification and developing countries with fragile mountainous ecosystems. It is an attempt to encompass all special situations in different regions and countries.

Paragraph 20 recognises the special difficulties of those countries whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of any action on limiting greenhouse gas emissions. This is meant to recognize the special situation of oil-producing countries in particular.

Finally, paragraph 23 expresses the determination of the States parties to the Convention to protect the climate system for present and future generations. This is another affirmation of the emerging principle of intergeneration equities.

It should be pointed out that the INC during its negotiating sessions devoted very little time for the consideration of the text of the Preamble. Indeed, it was at the second part of the fifth and final session in New York during which the text was finalized and that too in haste. The result is, it is rather too long and repetitive. Some of the Paragraphs find expression more or less in identical language in other articles of the Convention.

### *Article 1*

Article 1 on use of terms contains a set of definitions of nine terms which are frequently used in various articles in the text of the Convention. Among them, the definitions of "Adverse effects of Climate Change", "Climate change", "Climate system", "Emissions", "Greenhouse gases", "Reservoir", "Sink", and "Source", have been agreed upon in consultation with the Inter-governmental Panel on Climate Change (IPCC) which has been instrumental in providing the best scientific and technical advice on these matters.



The definition of "Regional Economic Integration organisation" has been lifted from the Vienna Convention on Protection of Ozone Layer, 1985. Accordingly, it is "an organisation constituted by Sovereign States of a given region which has competence in respect of matters governed by this Convention or its Protocols and has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned". There are three elements in this definition which deserve close examination. First, the concerned organisation should be constituted by Sovereign States of a region. Second, it should have competence in respect of matters governed by this Convention or its Protocols. Third, it should be duly authorised in accordance with its internal procedures to sign, ratify, accept, approve or accede to the instruments concerned.

At present, the European Economic Community (EEC) is the sole regional organisation which enjoys this status. However, there are other regional organisations such as the Organisation of African Unity (OAU), the League of Arab States, the Organisation of American States (OAS) and the Organisation of Petroleum Exporting Countries (OPEC) which might also fall in this category in the future. Environment is an important agenda in their programme of work. The representatives of these organisations have actively participated in the UNCED and INC Negotiations. The AALCC Secretariat is of the view that the Principal Consideration to judge the competence of any organisation to claim the status of a regional economic integration organisation as defined in Article 1 paragraph 6 of the Framework Convention on Climate Change should be whether the constituent instruments and the internal procedures of that organisation contain such authorisation. This question will assume greater importance in the practical implementation of the Framework Convention on Climate Change. The Convention contains several provisions which directly or indirectly envisage co-operation and crucial role for the regional organisations.

In this context, it may be pertinent to quote the Declaration made by the delegation of Egypt at the time of the adoption of the Final Act of the Conference of Plenipotentiaries on the Protection of Ozone Layer on 21st March 1985. The Declaration *inter alia* relating to the definition of "Regional Economic Integration Organisation" provides that "While concurring with the consensus on Article 1 of the Convention, the delegation of Egypt understands paragraph 6 of that article as being applicable to all regional organisations, including the Organisation of African Unity and the League of Arab States, provided they fulfil the conditions laid down in that article, namely, that they have competence in respect of matters governed by the

Convention and have been duly authorised by their member States in accordance with the internal rules of the procedure."

## Article 2

Article 2 stipulates the long-term objective of the Convention. It provides that the ultimate objective of the Convention and any related instruments adopted subsequently by the Conference of Parties is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. There is no indication about the time-frame within which this objective should be achieved. However, it is understood that while aiming to achieve such a safe level sufficient time would be necessary to (i) allow ecosystems to adapt naturally to climate change; (ii) ensure that food production is not threatened; and (iii) to enable economic development to proceed in a sustainable manner.

The text of this article is borrowed from the Declaration of the Second World Climate Conference held in 1989. During the discussions in the INC, there was hardly any controversy on this article. At the Second part of the INC fifth Session in New York at the instance of the United States delegation the word 'Principle' was replaced with 'Provisions' in the text submitted by the Chairman.

As for the substantive aspects, issues relating to sustainable development are of vital importance. The close relationship between environment and development is well recognised and it finds ample expression in the Agenda 21 adopted by the United Nations Conference on Environment and Development held in Rio in June 1992. The objective of the Framework Convention on Climate Change cannot be achieved independently without taking these factors into consideration.

## Article 3

During the INC Sessions, the very idea of inclusion of an article on 'Principle' was questioned by some of the developed countries. On the other hand, the developing countries considered it as an essential part of the Convention, which while it may not create legally binding norms, would nevertheless establish the guidelines to follow in the implementation and subsequent development of the Convention. At the initial stage of negotiations, there was a long list of principles. At the final stage the list was brought down to five and that paved the way for general agreement to place them in the text of the Convention. Article 3 of the Convention which



sets out the five principles is in effect a compromise between the developed and developing countries and to achieve this, the developing countries had to accept deletion of several important principles such as reference to sovereignty, right to development and 'polluter pays' principle.

The Chapeau of Article 3 states that in their actions to achieve the objective of the Convention and to implement its provisions, the parties to the Convention would among other things, be guided by these five Principles.

Principle 1 subsumed three fundamental elements. Firstly, inter-governmental responsibility to protect the climate system for the present and future generations of human kind. Secondly, common responsibility of all parties to protect the climate system and the differentiation between those responsibilities for the developed and the developing country parties. Thirdly, the developed country parties should take the lead in combating climate change and the adverse effects thereof. It would be noticed that the first two elements find place in the Preamble as well. As regards the third one, it is the basic approach which is further elaborated in Article 4 of the Convention.

Principle 2 draws attention to the specific needs and special circumstances of developing country parties, especially those that are particularly vulnerable to the adverse effects of climate change. In addition, it recognises the need to give full consideration to the situations faced, especially by those developing country parties which would have to bear a disproportionate or abnormal burden under the Convention.

Principle 3 is concerned with the precautionary approach and its relation with the cost-effectiveness. The parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. The lack of full scientific certainty should not be used as a measure to defer their action, but the policies and measures so determined either individually or in co-operation with other parties should be cost-effective and comprehensive, based on different socio-economic conditions, comprising all economic sectors and relevant sources, sinks and reservoirs of greenhouse gases and adaptation.

Principle 4 besides recognising the right to promote sustainable development, lays down that policies and measures to protect the climate system should be an integral part of the national development programmes and should take into account specific conditions of each Party.

Principle 5 focusses on the link between measures to control climate change and international trade. In advocating promotion of an open international economic system, it cautions against any measures taken to

combat climate change, including unilateral ones, which would lead to arbitrary or unjustifiable discrimination or disguised restriction on international trade.

#### *Article 4*

Article 4 is the principal article dealing with commitments. During the INC negotiations discussion on matters concerning commitments was focussed on three separate articles namely (i) general commitments, (ii) specific commitments and (iii) special situation. In the final text, all the three articles were combined and put together under Article 4 entitled 'Commitments'. However this amalgamation has not changed the pattern followed earlier.

Paragraph 1 contains commitments for all Parties to the Convention. Such commitments would be based on their common but differentiated responsibilities and take into account their national and regional development priorities, objectives and circumstances.

Sub-paragraph (a) deals with the commitment concerning preparation of national inventories. In order to have an assessment of the situation, it would be essential for the States Parties to prepare their national inventories of anthropogenic emission by sources and removals by sinks of all greenhouse gases except those controlled by the Montreal Protocol. It is expected that prior to the convening of the first session of the Conference of Parties, a comparable methodology to serve as a guide would be ready for adoption at the Session. Article 12 lays down the time schedule within which the developed and developing countries are required to submit their national inventories to Conference of Parties. Further, it is envisaged that the Parties would periodically update their national inventories and make it available for publication.

Sub-paragraph (b) is a follow-up of the preparation of national inventories. The Parties to the Convention would prepare and regularly update their national strategies containing programmes and detailed measures to mitigate, facilitate and adapt to climate change. Such programmes would also include measures for their implementation. Where appropriate, a group of states from a region could consider formulating regional programmes. Like the national inventories, the Parties also agree to publish their national strategy.

Apart from above two commitments at the national levels, there are other commitments which basically underscore the importance of co-operative action. Sub-paragraphs (c) to (i) envisage commitments by the Parties to



the Convention to promote and co-operate in areas such as:

(i) the development, application and diffusion, including transfer of relevant technologies in the energy, transport, industry, agriculture, forestry and waste management sectors (sub-paragraph c)

(ii) conservation and enhancement of sinks and reservoir of all greenhouse gases, including biomass, forests, oceans and other terrestrial, coastal and marine ecosystems (sub-paragraph d)

(iii) Adaptation to the impacts of climate change and development of appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought, desertation and floods (sub-paragraph e).

(iv) Formulation of impact assessments with a view to minimizing adverse effects on the economy, public health and environment of projects and measures undertaken to mitigate or adapt to climate change (sub-paragraph f)

(v) Scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effect, magnitude and timing of climate change and the economic and social consequences of various response strategies (sub-paragraph g)

(vi) Full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to climate system and climate change (sub-paragraph h)

(vii) Education, training and public awareness related to climate change (sub-paragraph i)

It is evident from the above account that the Convention sets out a comprehensive strategy for promoting co-operation among the parties to the Convention. Since the majority of the developing countries do not have the capacity and the financial resources to initiate and actively participate in such co-operative programmes, it would be essential to provide them assistance to implement their commitments.

Paragraph 2(a) deals with the specific commitments of the developed country Parties. It provides that the developed country parties and other parties named in Annex I would undertake specific commitments to adopt national policies and measures on the mitigation of climate change by limiting the emissions of greenhouse gases and enhancing greenhouse gas sinks and reservoirs. It is envisaged that such policies and measures would

demonstrate their resolute efforts towards taking a first step either individually or jointly with other parties in modifying longer term trends in those emissions and achieving to return by the end of the present decade to earlier levels.

Paragraph 2(b) refers to the commitment of the developed country parties on reporting to the Conference of Parties within six months of the entry into force of the Convention detailed information on their policies and measures, with the aim of returning individually or jointly to their 1990 levels. The Conference of Parties would review such reports at its first session and periodically thereafter as determined by it at that Session.

Paragraph 2(c) provides that while calculating emissions by sources and removals by sinks of greenhouse gases account would be taken of the best available scientific knowledge, including the effective capacity of sinks and respective contributions of such gases to climate change. The Conference of Parties at its first session, would consider and agree on the methodologies for these calculations and review them regularly.

Paragraph 2(d) further elaborates the task of the Conference of Parties in this regard. At its first Session, the Conference of Parties would review the adequacy of abovementioned commitments in the light of the best available scientific information and assessment on climate change and its impact, as well as relevant technical, social and economic information. If it is considered necessary, the Conference of Parties may adopt appropriate amendments effecting the commitments of the developed country parties. A second review would be carried out not later than 31 December 1998 and thereafter at regular intervals as determined by the Conference of Parties, until the objective of the Convention are met.

At its first session, the Conference of Parties would also decide the criteria for joint implementation as stipulated in sub-paragraphs (a) and (b).

Under paragraph 2(e), each of these parties would, as appropriate, co-ordinate with other parties in developing relevant economic and administrative instruments to achieve the objective of the Convention. It would identify and periodically review its own policies and practices to encourage activities leading to reduction of emissions of greenhouse gases at greater levels.

Paragraphs 2(f) and 2(g) deal with matters concerning annexes I and II as set out in the Convention. Annex I contains a list of countries which includes 28 OECD countries (including the European Community) and the eleven countries that are undergoing the process of transition to market economy. These are: Belarus, Bulgaria, Czechoslovakia, Estonia, Hungary,



Latvia, Lithuania, Poland, Romania, Russian Federation, Ukraine, Annex II contains the list of OECD countries including the European Community. Paragraph 2(f) provides that the Conference of Parties would review the two lists in the light of available information. Such review would be done before 31 December 1998. After such a review, the Conference of the Parties, if necessary, would consider appropriate amendments to the two annexes. Such amendments however, would be done with the approval of the Party concerned.

It may be of interest to note that the strict legal interpretation of sub-paragraph (f) might lead to some anomalous situation. Article 16(1) provides that annexes to the convention would form an integral part of the Convention. Accordingly, annexes I and II could only be amended in accordance with the procedure laid down in Article 16. In an hypothetical situation, a party desirous of deleting its name in one of the annexes might seek such amendment as provided in sub-paragraph (f) and other parties might not support such a move. What would be the position in that situation? It may be recalled that during the INC negotiations many developing countries did not favour such an artificial categorisation of states which might create difficulties in the implementation of the Convention. The inclusion of two annexes in the Conventions text became widely known to most delegations at the very last stage of the INC meeting. It is hoped that in the implementation of the Convention, there will be no such practical problems which might defy solution even before the Convention witnesses the light of day.

Paragraph 2(g) opens another door for the amendment of Annex I of the Convention. Annex I contains a list of 35 countries. Any Party which is not among these countries, and is desirous of accepting the obligations envisaged in paragraphs 2(a) and 2(b); may notify the Depositary of its intention either at the time of submitting its instrument of ratification, acceptance approval or accession, or subsequently. The Depositary would inform the other signatories and parties of any such notification. Would such notification by implications be only a proposal for amendment to annex I? And, if so, should it be treated in the light of the provisions laid down in Article 16 of the Convention, or should it be taken as an automatic amendment to the Annex? These are some of the issues left hanging in the Convention.

Paragraph 3 stipulates one of the key commitments. It provides that the developed country parties and other developed parties included in Annex II would provide new and additional financial resources to meet the agreed full costs incurred by developing country parties in complying with their obligations concerning communication of information envisaged in Article

12, paragraph 1. Further, it is envisaged that these Parties would also provide such financial resources including for the transfer of technology, needed by the developing country parties to meet the agreed full incremental costs of implementing measures stipulated in Article 4, paragraph 1 and Article 11. The last sentence of this sub-paragraph contains three important elements which should be taken into account in the implementation of these commitments. First, the financial resources provided by the developed country parties should be adequate. Second, there should be predictability in the flow of such funds. And third the importance of appropriate burden sharing among the developed country parties should be recognised.

It may be noted that this key provision is not free from ambiguity. It stipulates crucial commitments for the developed country parties and other developed parties included in Annex II. As for the developed parties included in Annex II, the list is clear since all of them are members of the OECD. It is however not clear which are the other developed country parties. It is regrettable that such a key provision is reflected in such a vague and casual manner.

Paragraph 4 stipulates additional commitments of these parties to assist developing country parties which are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects. These include the small island developing countries which are threatened by the sea level rise need special assistance to develop a strategy for adaptation. The Inter-governmental Panel for Climate Change (IPCC) has done valuable work in highlighting the need for taking urgent and effective measures. That would require a sound planning and adequate financial resources to implement those measures. Thanks to the initiatives of countries like Australia, France, Japan, the Netherlands, the United Kingdom and the United States which have sponsored, on a bilateral basis, more than two dozens case studies in such developing countries, the experience gained would provide a good basis for planning effective strategies for adaptation.

Paragraph 5 contains another key element, particularly relevant to the developing country parties to the Convention. It deals with 'transfer of technology' or 'technology co-operation'. The developed country parties and other developed parties included in annex II commit themselves to take all practicable and appropriate steps to promote, facilitate and finance the transfer of, or access to, environmentally sound technologies and know how to other parties, particularly developing country parties to enable them to implement the provisions of the Convention. In addition, these countries would also support the development and enhancement of endogenous



capacities and technologies of developing country parties. Lastly, other parties and organisations in a position to do so, may also assist in facilitating the transfer of such technologies.

This short paragraph is loaded with many issues which are of vital importance to the developing countries. It may be recalled that the twin issues—the availability of financial resources and technology transfers, were the barometers for measuring ups and downs in the INC Negotiations. Unlike the financial resources, which happily finds a separate place in Article 11 in the text of the Convention, the placing of issues relating to transfer of technology in such abbreviated paragraph has fallen far short of the expectations of the developing countries. While attempt has been made to meet their concerns, it leaves much to be done in the implementation of the Convention.

The basic issues governing the transfer of technologies in preferential and non-commercial terms has not been spelt out. It mainly deals with the commitments in respect of promotion of technology co-operation. The omission of the word 'safe' in between 'environmentally sound' was regretted by many developing countries at the INC Sessions. The development of both the indigenous and endogenous capacities of developing countries is the prime objective of the Convention. How far it would encourage and facilitate such development will be the crucial factor in the successful implementation of the Convention. As for the transfer of technology, certain extraneous issues which crept in during the INC negotiations but which have not been spelt out in this paragraph. But their invisible role can not be underestimated. While the agenda of the Conference of Parties for its first session includes several issues, it would be in the fitness of things if some initiative could begin, to prepare a Protocol on technology transfer which would elaborate the provision of paragraph 5 and bridge the gaps left in the text of the Convention. Such an initiative would encourage the developing countries and enhance the credibility of the developed countries on their eagerness to promote the concept of co-operative framework.

Paragraph 6 is in line with the flexible approach followed in the convention. In order to accommodate the interests of the parties included in Annex I which are undergoing a process of transition to a market economy, the Conference of Parties would allow a certain degree of flexibility while reviewing the commitments of those countries specified in paragraph 2, particularly in respect of historical level of emissions chosen as a reference.

Paragraph 7 contains an element of crucial importance. It is not a commitment but a consequence arising from the implementation of the commitments undertaken by the developed country parties. It provides a

litmus test to determine whether the developed country parties have effectively implemented their commitments related to financial resources and technology transfer. Based on such determination it would be judged, to what extent the developing country parties should effectively implement their commitments keeping in view their priorities in areas such as poverty eradication, economic and social development.

Paragraph 8 deals with the Special situations which need to be considered in the context of the implementation of the commitments. Although, it is addressed to all the Parties to the Convention, the developed country parties are however required to take the lead. It is envisaged that full considerations would be given to develop necessary measures including funding, insurance and the transfer of technology to meet the specific needs and concerns of developing country parties arising from the adverse effects of climate change and/or the impact of the response measures especially to the categories of countries, such as:

- a) Small island countries;
- b) Countries with low-lying coastal areas;
- c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
- d) Countries with areas prone to natural disasters;
- e) Countries with areas liable to drought and desertification;
- f) Countries with areas of high urban atmospheric pollution;
- g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- h) countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- i) landlocked and transit countries.

Details as to how these considerations would be effected are however not elaborated. This is another area where further efforts could be exerted before the Conference of Parties.

Paragraph 9 urges all the parties to the Convention to take full account of the specific needs and special situations of the least developed countries in their actions specially in regard to funding and transfer of technology.

Lastly, paragraph 10 draws attention to the serious difficulties being faced by those countries in switching to alternatives, whose economies are



highly dependent on income generated from production, processing and export, and/or consumption of fossil fuels and associated energy intensive products and/or the use of fossil fuels. The situation of these parties would need to be taken into consideration in the implementation of the Convention.

Generally speaking the text of article 4 as a whole is lengthy and repetitive. Because of the last minute push, it could not be properly streamlined. As for the substance, paragraph 2(a) on specific commitments in particular is a big set back to the whole process of negotiations of the Framework Convention on Climate Change. From the very start of the INC negotiations, the objective set was to arrive at specific commitments from the industrialized countries on time-tables and targets for limiting emissions of greenhouse gases. Instead of any binding legal commitments, the Convention provides for what can only be considered as a 'Code of ethics' couched in such a loose and ambiguous manner that it has lost its teeth. No wonder, it was described by the delegate of India as a "linguistic striptease". The Secretary-General of the AALCC in his statement at the Rio Conference observed-"The final text fell short of expectations of developing countries particularly in respect of each of the commitments of the developed countries on the core issues of stabilization and reduction of emission of greenhouse gases and the financial resources to support the implementation of the objective of the Convention. In these aspects the Convention can hardly be regarded as anything more than a code of conduct upon which hopefully more binding commitments can be established"

It may be recalled that according to the Inter-governmental Panel on Climate Change (IPCC) stabilising greenhouse gas concentrations would require reduction of 60 percent in global emissions of carbon dioxide. Even at the second part of the INC's fifth session, the European Economic Community Members and Japan were willing to undertake commitments to stabilize carbon dioxide emissions at 1990 levels by the year 2000. However, the United States consistently took a different approach. Their view was that carbon dioxide stabilization would be expensive. They could achieve the similar objective without fixing any target and would prefer to follow the measures currently envisaged by themselves. Ultimately, the United States view prevailed. The Convention only contains obscure phrases indicating the desire to achieve the objective of CO<sub>2</sub> stabilization at a certain period of time.

It is, however, interesting to note that the delegations of several European countries and Japan at the Rio Summit, reiterated their policy intention to reduce and stabilise CO<sub>2</sub> emissions at 1990 levels by the year 2000.

#### Article 5

Article 5 entitled "Research and Systematic Observation" is an elaboration of Article 4, paragraph 1(g). It recognises in particular the role of the Inter-governmental and International Non-governmental Organisations in developing programmes and networks aimed at defining, conducting, assessing and financing research, data collection and systematic observations. Such co-operation is considered desirable to minimize duplication of effort. It envisages that there would be increasing support to develop and strengthen the capacities and capabilities of the developing countries in these activities. It calls for promotion of access to and the exchange of data and analyses obtained from areas beyond national jurisdiction. Lastly, it draws attention to the particular concerns and needs of developing countries and recognises the need to promote co-operation in improving their endogenous capacities and capabilities to participate in such activities.

#### Article 6

Article 6 entitled "Education, Training and Public Awareness" envisages that the parties to the Convention would promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with their national laws and regulations, and within their respective capacities, educational and public awareness programmes related to climate change and its effects. They would also endeavour to promote public participation, arrange training programmes and provide public access to information on climate change and its effects. In this regard, they should also seek to promote, at the international level, such programmes and measures and strengthen the national institutions. Lastly, they should promote exchange or secondment of personnel to train experts in this field, in particular for developing countries.

#### Article 7

Article 7 provides for the establishment of the Conference of Parties as the supreme body of the Convention and entrusts it with the overall responsibility of the effective implementation of the Convention and any related legal instruments that may be adopted subsequently. Paragraph 2, contains a detailed list of functions of the Conference of Parties. The Conference of Parties is the major decision-making body. Periodic examination of the obligations of the Parties and the establishment of necessary institutional arrangements to implement the Convention are its



key functions. In order to carry out these functions, it has been given tools to review and assess the information furnished by the Parties to the Convention and the reports submitted by the subsidiary bodies. In addition to its 'Watch-dog' functions, the Conference of Parties has been entrusted with the promotional role in the areas such as exchange of information furnished by the competent international organizations and the measures adopted by the parties to the Convention including comparable methodologies for the preparation of inventories of greenhouse gas emissions by sources and removals by sinks. Unfortunately, the financial authority of the Conference of Parties is rather limited. There are no clear provisions to have its own financial resources. The Conference of Parties is only authorised to "seek to mobilize financial resources" as provided in Articles 4 and 11 of the Convention.

Concerning the organizational functions, Paragraph 3 provides that the Conference of Parties shall at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention. This procedure will cover decision-making procedures, including specified majorities required for adoption of particular decisions. The first session will be convened by the interim Secretariat referred to in Article 21 within one year after the entry into force of the Convention. Thereafter ordinary sessions will be held every year.

Paragraph 5 makes provision for convening Extraordinary Sessions of the Conference of Parties as and when necessary. Such an initiative has to come from a Party to the Convention duly supported by at least one third of the Parties.

Finally, Paragraph 6 lays down the guidelines to determine the participation of the observers not party to the Convention. The United Nations, its specialised agencies and the International Atomic Energy Agency, as well as any State Member thereof or observers thereto may be represented at sessions of the Conference of Parties as observers. Any other body or agency whether National or international, governmental or non-governmental which is qualified in matters covered by the Convention and desires to be represented, may be so admitted unless at least one-third of the Parties present, object.

It is not clear whether the 'observer' will be admitted to participate at the meetings of the subsidiary bodies as well. Keeping in view the reluctance on part of many Governments to support the open participation especially by the non-governmental organizations in the sensitive meetings, it may be necessary to put some restrictions. This matter might be taken up by the Conference of Parties when it meets at its first session to consider adoption

of its own rules of procedure and the rules of procedure of its subsidiary bodies.

#### Article 8

Article 8 paragraph 1 provides for the establishment of a Secretariat. Apart from the administrative functions such as the arrangements for the sessions of the Conference of Parties and its subsidiary bodies, and co-ordination with the Secretariats of other relevant international bodies, it is envisaged that the Secretariat shall compile and transmit reports submitted to it and facilitate assistance to the Parties, particularly the developing countries parties, in the compilation and communication of information required to be submitted by them. The Secretariat would function under the overall guidance of the Conference of Parties and submit reports on its activities to that body.

It may be observed that the functions of the Secretariat as stipulated in Article 8 will need to be further elaborated by the Conference of Parties. During the INC negotiations some consideration was given to the idea of the constitution of an Executive Committee. This however was dropped at the last stage of negotiations. Since the Conference of Parties would normally meet once a year, there will be the need to create a system for expeditious decisions on executive matters. How far these powers could be delegated to the Secretariat would have to be explored. It is also not clear what would be the designation of the head of the Secretariat and how he will be elected or appointed.

It is interesting to note that as stipulated in paragraph 3, the Conference of the Parties at its first session will designate a Permanent Secretariat and make arrangements for its functioning. The establishment of a separate Secretariat perhaps it could be decided at that time or the Secretariat of any existing International Organization might be designated to assume that function.

#### Article 9

Article 9 envisages establishment of a subsidiary body for scientific and technological advice, which would provide the Conference of the Parties and its other subsidiary bodies with timely information and appropriate advice on scientific and technological matters relating to the Convention. This body would be multidisciplinary and open to participation by the representatives designated by each State party to the Convention. It would carry out its activities under the guidance of the Conference of Parties drawing upon the existing competent international bodies. It would report