

regularly to the Conference of Parties about its work. Paragraph 2 of the same Article enumerates some of the functions of this body which will include the following:-

- a) Provide assessments of the State of scientific knowledge relating to climate change and its effects;
- b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
- c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
- d) Provide advice on scientific programmes, international co-operation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and
- e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

Article 10

Article 10 provides for the establishment of a subsidiary body for implementation with a view to assisting the Conference of Parties in the assessment and review of the implementation of the Convention. This body would be open to participation by all parties and comprise experts nominated by the Governments. Apart from making regular reports to the Conference of Parties, this body would also consider the information communicated by the parties to assess the overall aggregate effect of the steps taken by the parties and carry out reviews as required by Article 4, paragraph 2(d) of the Convention. Last, but not the least, it would provide appropriate assistance to the Conference of parties in the preparation and implementation of its decisions.

This article has to be read in conjunction with article 12 on communication of information related to implementation. Both the articles together provide for a mechanism on reporting and reviewing. It is a diluted form of 'Pledge and Review' mechanism introduced at the third session of the INC held in Nairobi in September 1991. In view of the strong opposition from the developing countries, an attempt has been made to soften the objective to be pursued in this context and instead of providing a sort of "compliance mechanism", the idea is to advocate and promote co-operative arrangement to ensure effective implementation of the provisions of the Convention.

Article 11

Article 11 deals another core issue concerning financial mechanism. Instead of establishing any separate and independent financial institution or body the Convention only defines the mechanism which would govern the implementation of the Framework Convention. The financial resources, as envisaged in the mechanism would be on a grant or concessional basis. The mechanism would function under the guidance of and be accountable to the Conference of Parties, which would also decide the policies, programmes, priorities and eligibility criteria related to the Convention. There is no scope to create any new institution in future to deal with the financial matters. It is categorically stated that the operation of the financial mechanism "shall be entrusted to one or more existing international entities". The authors of this text did not mention specifically the "Global Environmental Facility" as the entity responsible for the operation of the financial mechanism envisaged in the Convention. However, Article 21 dealing with the interim arrangements, in its paragraph 3 provides that:—

"The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately re-structured and its membership made universal to enable it to fulfil the requirements of Article 11."

Speculation on whether this interim arrangement would become 'final' when the first session of the Conference of Parties meets is not a matter of academic exercise. Much would depend upon the genuine restructuring and democratization of operation of the GEF. Any cosmetic changes in the GEF would further disillusion the developing countries which clamoured so hard during the negotiations in the INC to establish an international climate fund within the Framework Convention.

It is worth recalling that the basic premise on which the GEF was launched three years back was a sort of an *ad hoc* arrangement. This continues to be reflected in the operation of its Pilot Phase which ends in 1994. In view of the great responsibility which has been thrust upon the GEF as the key financial authority to initiate and accelerate the financial support to the implementation of the Framework Convention on Climate Change, the Biodiversity Convention and the Agenda 21 programme, it would be desirable to evaluate its organisational structure, functions and the capacity to play this crucial role. The following observations are made

principally in the context of the Framework Convention on Climate Change.

i) In order to encourage wider participation of the developing countries and to assist them in the implementation of the commitments envisaged in the Framework Convention on Climate Change, the availability of financial resources is of crucial importance. While the Convention also provides for such financial assistance from other sources such as bilateral and regional, the GEF will play the key role.

ii) It may not be practical to draw an exhaustive list of areas where the GEF will be expected to meet the financial requirements of the developing countries. However, broadly, these may include:

- a) to build and strengthen the national infrastructure and the capacity to monitor the climate change;
- b) to establish administrative and legislative framework to implement the Convention;
- c) to prepare national report based on comparative methodologies as agreed;
- d) to take up the measures to mitigate the adverse effects of the Climate Change and to meet costs of adaptation to those adverse effects; and
- e) to reimburse agreed incremental cost incurred in relation to technology and other implementation measures.

Climate Change is one of the Programme areas which the GEF is currently financing. However, the success of the implementation of the Framework Convention on Climate Change would very much depend on how the GEF will be able to allocate substantial financial resources to meet the new requirements envisaged in the Convention.

It is encouraging to note that most of the OECD countries have indicated their willingness to commit further financial support to the GEF. In addition, it is expected that various United Nations Agencies and other Inter-governmental and Non-governmental organisations will extend financial and material support to implement the Framework Convention either directly or through the GEF. It would be more realistic and fruitful if an effort could be made to co-ordinate especially in the programme areas of various United Nations Agencies.

As it is structured today, the operating arm of the GEF is confined to UNDP, UNEP and the World Bank. The WMO has done commendable work in the meteorological and climate related areas. It might be worthwhile to examine how WMO could be usefully involved in the operative role of

the GEF, particularly in relation to the implementation of the Framework Convention on Climate Change. The WMO's World Weather Watch, the Global Atmosphere Watch, the World Climate Programme provide a solid base which could be used to launch new co-operative programmes. The national and regional monitoring networks to study climate change established by the WMO could be utilized and further strengthened. Such measures would reduce the financial burden of the GEF and avoid unnecessary duplication.

Article 12

Article 12 entitled "Communication of Information related to Implementation" is one of the late additions to the text of the Convention. During INC Meetings, there was considerable reluctance from the developing countries to support the mechanism of "pledge and review" process. It appears that in order to make it acceptable this 'mechanism' was placed in a diluted form and renamed "communication of information". The article contains differentiated commitments and time-table for different categories of State parties to the Convention.

Under Paragraph 1 each party is required to communicate to the Conference of Parties, through the Secretariat, information on its national strategy to deal with abatement of greenhouse gas emissions. In order to formulate its national inventory, it would use comparable methodologies as promoted and agreed by the Conference of Parties. In addition, the information for communication would include a general description of steps taken or envisaged to implement the Convention and any other relevant information to achieve that objective.

Paragraphs 2 and 3 stipulate specific commitments of developed countries parties included in Annex I and II respectively. The communication by the developed Country Party and each other Party included in Annex I would also contain a detailed description of its policies and measures on the mitigation of climate change and a specific estimate of effects those policies and measures would have by the end of the present decade. Paragraph 3 incorporates additional commitments for State Parties included in annex II. Their communication would also incorporate details of measures taken in respect of their financial commitments and assistance to the developing country parties.

Paragraph 4 makes provision for financial and technical assistance to the developing country parties who wish to seek such assistance. For that, they would submit detailed information on the financing of such a project,

specific technologies, equipment, techniques needed to implement that project and, if possible, an estimate of all incremental costs and an estimate of the consequent benefits.

Paragraph 5 sets a differentiated time-table for the developed and developing country parties for the first communication to be sent after the entry into force of the Convention. Each developed country Party and each other Party included in Annex I would transmit such communication within six months. For parties, which are not so listed the period is three years and that too subject to the availability of financial assistance as envisaged in Article 4, paragraph 3. There is further relaxation in case of parties that are least developed countries. There is no such commitment for them. They would make such communication at their discretion. As regards the frequency of subsequent communications, it is left to be determined by the Conference of Parties, which would take into account the differentiated time-table set out in this paragraph. Paragraph 6 deals with the procedural aspects. The Parties to the Convention would communicate the information to the Secretariat, which in turn would as soon as possible, transmit it to the Conference of Parties and the concerned subsidiary bodies. The Conference of the Parties may consider further streamlining this procedure.

Paragraph 7, contemplates an important role for the Conference of Parties in this Connection. From the very first Session, its endeavour will be to arrange to provide financial and technical support to the developing Country Parties seeking such assistance for compilation and communication of the required information, as well as in identifying technical and financial assistance to carry out related, projects. Further, such support may be extended by other parties, competent international organisations and by the Secretariat itself.

Paragraph 8 envisages joint communication by a group of parties provided prior notification has been made to the Conference of Parties and such a communication includes information on the fulfilment by each of these parties of its individual obligations as party to the Convention. Further detailed guidelines in this respect would be adopted by the Conference of Parties.

Paragraph 9 protects the confidentiality of information communicated to the Secretariat by a Party to the Convention. Based on the criteria established by the Conference of Parties, a party may designate any information communicated by it as confidential. The Secretariat would aggregate such information to 'protect its confidentiality before making it available to any of the bodies involved in the communication and review of such information.

Lastly, paragraph 10 provides that any party desirous of making its communication public could do so at any time. The Secretariat is also entitled to make communications by the parties publicly available provided such communications have not been designated as confidential in accordance with the provision laid down in paragraph 9.

In our view article 12 follows a practical approach and its faithful implementation would enhance the credibility of the Convention. So long as it safeguards the national interests of the developing countries and prevents the backdoor entry of the 'pledge and review' mechanism, there is no fear of ~~any~~ intrusion on their national sovereignty. The flexibility, differentiated time-frame and the measures to provide technical and financial support go a long way in meeting the concerns of the developing countries. It is envisaged that the Conference of Parties would lay down further guidelines for subsequent communications, joint communication by a group of countries and the criteria for safeguarding the confidentiality of the information. However, it would be desirable that the Conference of Parties would also lay down the detailed guidelines to provide technical and financial support to the developing country parties. This would avoid undue scrutiny of a State party individually and strengthen the commitments by the developed country parties. A review of national strategy should be confined only to assessment of programmes and measures. If such a review takes a shape of 'control' or 'monitoring', it would create resentment and frustration among the developing country Parties to the Convention.

Article 13

Article 13 entitled "Resolution of questions regarding implementation" is a novel provision. The basic purpose is to provide some measures to deal with a situation where disagreement might arise between the two or more parties on any matter related to the Convention in an amicable way. During the course of the discussion in the INC on this article, most of the developing countries were reluctant to support the idea. The sponsors of this proposal, however, could not substantiate whether it is an alternative to the provision on settlement of disputes or it would be a supplement to the procedure envisaged in Article 14. It is expected that the Conference of Parties at its first session would give consideration to the establishment of a multilateral consultative process which would be available to the parties on their request for the resolution of questions regarding the implementation of the Convention.

Article 14

Article 14 deals with the settlement of disputes. Basically, it is modelled

on the Vienna Convention on the Protection of Ozone Layer. Unfortunately, very little discussion was held on this important article during the INC meetings. The text, as incorporated, envisages that in the event of a dispute between two or more State parties concerning the interpretation or application of the Convention, first an attempt could be made to seek a settlement of the dispute through negotiation or any other peaceful means as determined by the parties in question. Alternatively, it provides for submission of such a dispute to the International Court of Justice or to a specially created Conciliation Commission. It is also envisaged that the Conference of Parties would adopt procedures for arbitration as soon as practicable which could be included as an annex to the Convention.

Final Clauses

As for the final clauses, the Convention follows the established provision in other international Conventions such as the 1985 Vienna Convention on Protection of Ozone Layer or the 1989 Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal. During the INC meetings, there was hardly any controversy on these provisions. The only issue on which there was disagreement was the requisite number of ratifications to bring the Convention into force.

Article 15

Article 15 sets out the procedure for amendments to the Convention. Any party may propose amendments to the Convention. The Secretariat would inform of such a proposal to all other parties at least six month prior to their consideration by the Conference of Parties at its ordinary session. The Conference of Parties would make every effort to adopt the amendment by consensus failing which by a three-fourths majority vote of the Parties present and voting at that meeting. The adopted amendment would be communicated by the Secretariat to the Depository, who in turn would circulate to all Parties for their acceptance. The amendment would enter into force for those parties having accepted it on the ninetieth day after the receipt of acceptance by at least three-fourths of the Parties to the Convention.

Article 16

Article 16 deals with the adoption and amendments of annexes to the Convention. Annexes would form an integral part of the Convention comprising lists, forms and other material of a descriptive nature covering scientific, technical, procedural or administrative matters. The procedure

for adoption and entry into force of annex is similar to that of procedure for amendments. However, a party may notify the Depository, in writing, of its non-acceptance of the annex. Subsequently upon the withdrawal of such notification, on the ninetieth day, the annex would enter into force for that Party. Lastly, if the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex would not enter into force until such time as the amendment to the Convention enters into force.

Article 17

Article 17 is concerned with adoption of Protocols. The text of any Protocol submitted within six months would be adopted by the Conference of Parties at any ordinary session. Each Protocol would prescribe the requirements for its entry into force. Only parties to the Convention would be parties to a Protocol and only they would take decisions concerning that Protocol.

Article 18

Article 18 provides that each Party would have one vote except in case of regional economic integration organisations which would exercise their right to vote with a number of votes equal to the number of their member States that are parties to the Convention, provided any of their member States have not exercised such right to vote.

Article 19

Under Article 19, the Secretary-General of the United Nations has been designated as the Depository of the Convention and any Protocols adopted subsequently.

Article 20

Article 20 states that the Convention would be open for signature by States Members of the United Nations or any of its Specialised agencies or that are parties to the Statute of the International Court of Justice and by the regional economic integration organisations at Rio, during the UNCED, and thereafter at United Nations Headquarters in New York, from 20 June 1992 to 19 June 1993. It will be recalled that an impressive number of 155 States and the EEC signed the Convention in Rio. An additional State on

29th June signed the Convention. Following is a list of States which have signed the Convention:—

Afghanistan, Algeria, Angola, Antigua and barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Moldova, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, San Marino, Senegal, Seychelles, Singapore, Slovenia, Solomon Islands, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Switzerland, Sweden, Thailand, Togo, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Vanuatu, Venezuela, Vietnam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe and EEC.

Article 21

Article 21 provides for the interim arrangements prior to entry into force of the Convention. The INC Secretariat which was established pursuant to General Assembly Resolution 45/212 of 21 December 1990 would continue to provide secretarial functions as envisaged in Article 8 of the Convention. The Intergovernmental Panel for Climate Change (IPCC) has been requested to respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted for such advice and information. Lastly, the Global Environment Facility (GEF) has been designated on an interim basis as the international entity entrusted with the operation of financial mechanism referred to in Article 11. It has

however, been suggested that GEF should be appropriately restructured and its membership made universal to fulfil the requirements of Article 11.

Article 22

Article 22, paragraph 1 provides that the Convention would be subject to ratification, acceptance, approval or accession by States and regional economic integration organisations. It would be open for accession from 20 June 1993, i.e. the day after the date the Convention is closed for signature. Paragraphs (2) and (3) deal with the matters relevant to regional economic integration organisations in this context.

Article 23

Under Article 23, the Convention would enter into force on the ninetieth day after the deposit of fiftieth instrument of ratification, acceptance, approval or accession. During the INC meetings the views differed in regard to the number of ratifications required for the entry into force of the Convention. The figure 50 was considered by *some* too high and while few delegates suggested that besides the criteria of number, other considerations such as per capita gas emissions should be taken into account.

Article 24

Article 24 rules out making of any reservations to the Convention.

Article 25.

Under Article 25 any party may withdraw from the Convention at any time after three years of its entry into force. A written notification would be effective one year after such notification or on such later date as specified in the notification. Any party which withdraws from the Convention would be deemed to have withdrawn from any Protocol to which it is a Party.

Article 26

Provides that the texts of the Convention deposited with the Secretary-General of the United Nations in Arabic, Chinese, English, French, Russian, Spanish are equally authentic.

III. General Observation

The successful completion of the work of the Intergovernmental Committee on Framework Convention on Climate Change was undoubtedly a significant achievement.

Although the final text represents only a 'package deal' and the Convention as a whole fell short of expectation of several delegations on many counts, nevertheless it is a significant first step. It provides a basis on which other measures have to be built.

Global warming poses environmental threat of unprecedented nature. However, the uncertainties in predictions in regard to the timing and magnitude due to lack of adequate understanding of the phenomenon and other material evidence have to be taken into account. The IPCC has made tremendous contribution in establishing the scientific basis of the Convention. It is hoped that the six tasks agreed on at the Fifth Session of the IPCC (Geneva, March 1991) would be completed in time. Such information would be useful in adopting of further measures to implement the provisions of the Convention.

Due to the generous financial assistance provided by the INC, representatives of a large number of developing countries were able to participate at the INC Session. This helped them immensely to increase their awareness and get first hand information about the problems of climate change and the measures to tackle them.

It is heartening to note that as many as 155 States including the EEC have signed the Convention at Rio during the UNCED in June 1992. Some of the States which have not yet signed the Convention have however expressed concern and dissatisfaction over certain provisions in the Convention. Some States have expressed serious reservations regarding the provisions on specific commitments. The fossil-fuel producing countries are concerned that in the implementation of the Convention they might have to pay a price higher than others due to repercussions inherent in the implementation process. Although the provisions dealing with special situations take into consideration this aspect, however, it is not quite satisfactory to them. Much more has to be done to allay their concern and to bring them in the Convention's fold. The first and foremost important thing, therefore, is to win their confidence and make the Convention universally acceptable. It is not the intention to suggest that the Convention should be amended at the very first instance. The present text is flexible enough to accommodate the genuine concerns of many of nonsignatories.

In the present text of the Convention the provisions concerning financial

mechanism and transfer of technology to the developing countries need to be strengthened. The developing countries have lost the battle to secure any firm commitments from the developed countries in respect of these two matters. The vague assurance and feeble attempts would not soothen their feelings.

It is a matter of satisfaction that the resolution on interim arrangements adopted by the INC along with the text of the Framework Convention considered it essential to involve in future negotiations all participants in the INC irrespective of whether they are signatories to the Convention or not. This would avoid any discrimination and leave the doors open for constructive negotiations in the crucial phase of future of negotiations. It is expected that the General Assembly at its forty-seventh Session will endorse the Report of the INC fifth Session and recommend the convening of INC Sixth Session probably in early December this year to initiate necessary arrangements to be made for the preparation of the first Session of the Conference of the Parties as specified in the Convention.

The Convention would come into force on the nineteenth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. Further as provided in Article 7 the first session of the Conference of Parties would be held not later than one year after the date of entry into force of the Convention. The first session of the Conference of Parties would have an exhaustive agenda for consideration. A tentative list of items as deduced from various provisions of the Convention might include :

- (i) Adoption of the rules of procedure of the Conference of Parties as well as those of the subsidiary bodies established by the Convention. These procedures will include decision making procedures for matters not covered in the Convention (Article 7.3)
- (ii) Designation of a Permanent Secretariat and necessary arrangements for its functioning. (Article 8.3)
- (iii) A review of the adequacy of the specific commitments undertaken by the developed country parties
- (iv) Review of the information communicated by the developed countries parties on their policies and measures related to mitigation of climate change (Article 4.2(b))
- (v) Approval of methodologies for calculation of emissions by sources and removals by sinks of greenhouse gases (Article 4.2(c))

The success of the first session of the Conference of the Parties would very much depend on the preparatory work undertaken during the interim

period until the Convention comes into force. It is good that the INC and the IPCC are actively involved in this process. It would ensure continuity and avoid the hassles involved in establishing a new set-up.

The General Assembly at its Forty-seventh Session will consider the necessary arrangements required for continuation of the functioning of the INC, including the financial aspects. It would be desirable if the expenses during the interim period could be met by the resources generated by the implementation mechanism of the convention itself. The United Nations is already facing serious financial crisis. Such a move would lessen the burden on the United Nations.

The Global Convention on Biological Diversity

I. Background

Bio-diversity or biological diversity can be defined as the total sum of life's variety on this planet, expressed at the genetic, species and ecosystem levels.¹ According to scientists, this variety is now declining at an unprecedented rate as a result of man's activities. Estimates of the rate of loss are uncertain, but in the case of certain species of animals, recent projections indicate a loss of between 20 and 50 per cent of species by the year 2025 if the present trends continue.²

The reasons for growing international concern about this loss include : (1) the recognition of the moral imperative for the other species to co-exist with man as in no case man can exist in isolation from the rest of the natural world: (ii) bio-diversity is perceived as having an enormous value, both actual and potential: (iii) the rate and extent of loss is uncertain, but appears to be very rapid: and (iv) the loss is irremediable. As a result, there is mounting public awareness and pressure in the developed countries about the need to conserve bio-diversity which is reflected in higher political priority being attached to conservation issues. Insofar as developing countries, who happen to be the repository of bulk of the biological resources, their chief concern is that the commercial exploitation of their biological resources is proceeding without corresponding monetary compensation. They lack capacity as well as economic incentives to conserve biological diversity for

1. U.K. Department of Environment. *Conserving the world's Biological Diversity : How can Britain Contribute?* (June 1991)
2. U.K. Department of Environment and the Department of Trade and Industry. *Conservation of Biological Diversity-The Role of Technology Transfer* (London, Touche Ross, July 1991)

future generations, but are forced to incur costs including foregone revenues from alternative uses where conservation is attempted. It is ironic that the areas of greatest biological diversity or importance are located in the developing countries and in areas threatened by population pressure or instability.

The developed countries can help themselves, but the developing countries need substantial help in the form of financial and technical assistance if they are to be able to conserve their biodiversity. Moreover, the resources needed to tackle such a stupendous task are concentrated in Europe and North America, which together have roughly 78 per cent of the world's ecologists and 78 per cent of the world's insect taxonomists. Only 5 per cent of active researchers are found in Africa and South America and around 5 per cent in the Oriental tropics—all areas of great terrestrial biodiversity³. In view of this situation, the conservation of biodiversity has become a key planetary responsibility.

It was in recognition of this international concern that the UNEP Governing Council, in its decisions 14/26 and 15/34, stressed the need for concerted international action to conserve biodiversity by *inter alia* formulation of a comprehensive international legal instrument, possibly in the form of a framework Convention. The Governing Council, accordingly, established an *ad hoc* Group of Experts on Biological Diversity which held its first session in Geneva in November 1988. The second session of the *ad hoc* Group was convened in Geneva in February 1990 to advise further on the content of a new international legal instrument, with particular emphasis on its socio-economic context. The Group requested the Executive Director to begin a number of studies as a means of responding to specific issues in the process of developing the new legal instrument. These studies covered: biodiversity conservation needs and costs: current multilateral, bilateral and national financial support for biological diversity conservation: and analysis of possible financial mechanisms; the relationship between intellectual property rights and access to genetic resources; and biotechnology issues. The results of these studies were presented to the *ad hoc* Group at its third session which was held in Geneva in July 1990. At that session, the *ad hoc* Group advised further on, *inter alia*, the contents of elements for a global framework legal instrument on biological diversity. The Group agreed that in dealing with the issues of costs, financial mechanisms and technology transfer, the broad estimates of costs involved should be accepted. However, the Group maintained that the complex issues involved in biotechnology

3. Clark and Juma. *Biotechnology for Sustainable Development-Policy Options for Developing Countries* (African Centre for Technology Studies, Nairobi, 1991)

transfer required further expert examination before the set of elements covering the issues could be agreed. Accordingly, an expert meeting of the open-ended Sub-working Group on Biotechnology, which was held in Nairobi in November 1990, discussed issues relevant to biotechnology transfer, mainly the scope of biotechnologies to be included in the proposed Convention and ways and means for their transfer to developing countries.

The outcome of the three sessions of the expert group and the Sub-Group on Biotechnology showed that there was an urgent need for an international instrument for the conservation of biological diversity encompassing it at three levels: intra-species, inter-species and ecosystems, including both *in situ* and *ex situ* conservation. It was clarified that certain issues might need to be considered in separate protocols and that, if possible, these protocols should be negotiated concurrently with the Framework Convention. It was agreed that the proposed Convention should contain firm funding commitments. Biotechnology transfer was recognized as an important element in the planned instrument, with a potential to contribute to improved conservation and sustainable utilization of genetic diversity. The experts also agreed that the access to genetic resources should be based on mutual agreement and full respect for the permanent sovereignty of States over their natural resources and that an innovative mechanism that facilitated access to resources and new technologies should be included in the legal instrument.

Subsequently, the UNEP Governing Council by its decisions 15/34 and SS. II.5 appointed an *ad hoc* Working Group of Legal and Technical Experts with a mandate to negotiate an international legal instrument for the conservation of biological diversity. At its first session held in Nairobi from 19 to 23 November 1990, the group focussed on the elements for possible inclusion in a global framework Convention on Biological Diversity. On the basis of its consideration of these elements the session requested the UNEP Secretariat to prepare a draft Convention on Biological Diversity which was presented to the second session of the *ad hoc* Working Group held in Nairobi from 25 February to 6 March 1991 (UNEP/Bio. Div./WG/2/2/2). The second session discussed parts of the draft Convention and identified a number of issues for further clarification with the help of notes to be prepared by the UNEP Secretariat. It made recommendations to the Secretariat on the revision of the draft Convention. The Session also requested the Executive Director to convene a meeting of a regionally balanced group of lawyers (Lawyers' Meeting) to review the draft Convention as revised by the Secretariat. The session also made important decisions on procedural and organizational matters; adopted its rules of procedures; and

elected its officers; established two sub-working groups assigning each group with specific parts of the draft Convention.

The UNEP Governing Council, at its sixteenth session, by decision 16/42 renamed the *ad hoc* Working Group of Legal and Technical Experts on Biological Diversity as the *Intergovernmental Negotiating Committee (INC) for a Convention on Biological Diversity* clarifying that the change of name did not mean a new negotiating body nor affect the continuity of the process of elaborating the Convention. The INC was split into two working groups. Working Group I was assigned almost two-third part of the Draft Convention. Working Group II was allotted specific draft articles which constituted the heart of the Draft Convention. The successful elaboration of the Convention depended upon agreement being reached on the issues which were being tackled by Working Group II. Those included access to genetic resources; access to and transfer of technology including biotechnology; and financial resources and funding mechanisms.

The first session of the INC was held in Madrid from 24 June to 3 July 1991; the second session in Nairobi from 23 September to 2 October 1991; the third session in Geneva from 25 November to 4 December 1991; the fourth session in Nairobi for 6 to 15 February 1992, and the fifth and final session in Nairobi from 11 to 19 May 1992 at which the text of the Convention on Biological Diversity was eventually finalized. Subsequently, the Convention was put up for signatures at the United Nations Conference on Environment and Development (UNCED) held in Rio (Brazil) where it was opened for signatures from 5 to 14 June 1992. The Convention is now open for signatures at the United Nations headquarters in New York until 4 June 1993.

As of 29 June 1992, the Convention had received 157 signatures. From amongst the Member States of the AALCC, 35 States have signed the Convention. These are as follows:

Arab Republic of Egypt, Bangladesh; China; Cyprus; Gambia; Ghana; India; Indonesia; Iran; Japan; Jordan Kenya; DPR Korea; Republic of Korea; Kuwait; Malaysia; Mauritius; Mongolia; Nepal; Nigeria; Oman; Pakistan; Philippines; Qatar; Senegal; Sri Lanka; State of Palestine; Sudan; Tanzania; Thailand; Turkey; Uganda; United Arab Emirates; Yemen; and Botswana.

The non-signatory AALCC member States are Iraq; Libya; Saudi Arabia; Sierra Leone; Singapore; Somalia; and Syrian Arab Republic. Significantly, the USA, the largest economy in the world, did not sign the Convention. Lack of patent protection is stated to be the main reason for which the USA