

concise addressing the main causes of desertification and the preventive measures required. A few delegations were of the view that the Convention's objective should be to combat desertification and not drought. Some others, however, stressed the need for an integrated approach, which might lay down specific commitments and a system to monitor and review such commitments.

Structure and nature of commitments were considered as central elements of the Convention. It was suggested that Climate Change and Biodiversity Conventions provided models for the drafting of specific provisions relating to commitments. There was wide support among the developing countries for the proposals submitted by the African Group which set out in details the commitments to be taken at the local, national, regional and international levels. Some delegates stressed that there should be no duplication and overlapping and the commitments should be framed in such a way so that they could be implemented in an effective manner. In that context, the need for financial, technical and scientific assistance by the international community was also emphasised. Most delegations recognised the importance of participation by local population, capacity building and the partnership in the implementation of the commitments.

Issues concerning *National Action Plans and Programmes* were discussed in detail. It was stressed that National Action Plans to combat desertification should be an integral part of the national development programmes. The OAU draft, identified key elements of the National Action Plans which included: popular participation; water resource management; land use planning; soil conservation; land tenure reform and institutional strengthening. It was suggested that National Action Plans should focus on concrete initiatives and practical measures and macro-economic issues should not be linked with it. A few delegations, advocating a cautious approach, considered that it was the responsibility of the Government and not the local people or the international community to draw detailed plans for national action.

With regard to Sub-regional Action Programmes, it was stressed that they should complement national programmes. It was, however, observed that while such programmes may be scientifically based and technologically feasible, many a times they were not implemented because of the political or financial reasons. While recognising the need for increased co-ordination, suggestions were made for the establishment of sub-regional centres to facilitate exchange of experiences. This suggestion was not favoured by most of the developed States who stated that they were opposed to proliferation of institutions. Instead, they supported strengthening of the existing institutions.

Capacity Building was considered to be a corner-stone of the Convention. Some delegations stressed the need for capacity building at the national and

regional levels. Some others recognised the crucial role of local population, especially women and youth and the non-governmental organizations. It was stressed that capacity building should be carried out in conjunction with public awareness and education. African delegations urged for the establishment of an international training centre with its headquarters in Africa which could train scientific, technical and managerial personnel. The need for adopting a public awareness strategy was also recognised by many delegations.

Issues concerning *Financial Resources and Mechanisms* were discussed at length. It was generally agreed that the bulk of financial resources should come from mobilization at national level. Several delegations from the developing countries stressed that the existing mechanisms should be improved qualitatively and quantitatively. While recognising the need for new and additional financial resources it was suggested that the establishment of a special fund, opening a new window at the GEF and debt relief could be some of the measures which need to be considered in this context. The delegations of the developed countries however, neither supported the establishment of a special fund nor recourse to GEF. In their view, it was not the lack of fund but rather proper utilization and co-ordination which was required. Some countries supported a 'package approach' as outlined in paragraph 102 (b)(A/Ac 241/12) envisaging panoply of financial resources involving bilateral assistance, global and regional multilateral assistance and private flow, particularly from non-governmental organisations. A suggestion was made that all affected and donor countries should make an estimate of the resources which can be devoted to combating desertification.

Co-operation and Co-ordination was the last item on the agenda of Working Group I. Some delegations felt that a deliberate attempt was being made to omit the reference to international co-operation and North-South Co-operation and to transfer all the responsibility for combating desertification to developing countries. It was recognised that the INC-D could achieve its goals only when a new type of North-South co-operation based on a spirit of partnership and international solidarity is launched.

Discussions in Working Group II

When Working Group II commenced its work, some delegations proposed that consideration of the article on definitions should be deferred until the INC-D next session. In the meantime, INC-D in consultation with WMO and other competent UN agencies should compile definitions based on the available scientific knowledge.

With regard to the section on *Research and Development* it was suggested that instead of preparing detailed action plans, the endeavour should be to identify

issues for consideration. A view was expressed that distinction should be made between the desertification and drought. Others, however, reiterated the close link between the two problems. There was however consensus that research and development was necessary in areas such as socio-economic issues relating to drought and desertification, land management system and integration of indigenous knowledge with modern research.

On the section concerning *Information Collection Analysis and Exchange*, the issues addressed included collection of basic information and its utilization for early warning system, and studying socio-economic effects. Some delegations expressed concern over the cost of establishing a system for data collection, monitoring and assessment.

On *Technology Transfer and Co-operation* it was stressed that the convention should enhance the transfer of technology by facilitating access to and transfer of technology and improving capacity, identification and application of joint and collaborative technologies. In that context, it was recognised that Chapters 12 and 34 of Agenda 21 provided valuable guidelines. It was argued that there was no need to elaborate a detailed list of technology transfer and co-operation activities in the Convention. Instead, the Convention should contain a mechanism for technical co-operation and identify a combination of modern and traditional technologies which might be available to the developing countries. While the developing countries recognised the need for the establishment of institutions to facilitate the transfer and strengthening of sub-regional centres for this purpose it was not supported by the delegations of the developed countries.

Other issues concerning *Institutional and Procedural Arrangements and Final Clauses* were also discussed. It was evident from the preliminary discussions that there was general agreement on these issues. The provisions on these issues as set out in the compilation were very similar to the provisions in Climate Change and Biodiversity Conventions. Some delegations however pointed out that it was rather premature to express any final positions on these issues until agreement was reached on the other key provisions in the Convention.

The Working Group could hardly discuss the key issues on the conclusion of regional instruments which remained the focus of discussion in various regional groups and the Informal Plenary. After hectic consultations, the plenary on the last day was able to adopt a draft resolution which would be placed before the Forty-eighth Session of the General Assembly. That resolution sets out the time-frame and the future work plan of the INC-D including the conclusion of regional instruments.

The Non-governmental Organizations participated at the Geneva Session

with full vigour and strength. A significant contribution was the Daily Earth Negotiating Bulletin published by the International Institute for Sustainable Development, a Non-governmental organization based in Canada. The Bulletin provided a very useful source for update information everyday.

On the closing day, i.e. 24th September 1993, the Plenary adopted the report of its Second Session, which also contained the reports of the two Working Groups. This Report would be placed before the General Assembly at its forty-eighth session. In the meantime, the INC-D Secretariat has been entrusted with the task of the preparation of a consolidated text which will be considered at the third session of the INC-D scheduled to be held in New York from 17 to 28th January 1994.

General Comments

The Geneva Session of the INC-D was a step forward towards the goal of completion of the elaboration of a convention by June 1994. The compilation prepared by the INC-D Secretariat with the assistance of the International Panel of Experts helped to focus the discussions on a set of proposals on the relevant issues.

It appears that there will be no disagreement on the format of the convention which will essentially follow the pattern established by the Convention on Climate Change and the Biodiversity. The unanimity reached at the opening of the INC-D Meeting in Geneva on the allocation of work to the two Working Groups was a good omen at the commencement of the negotiating work in Geneva. The two Working Groups during the first week of the Session made remarkable progress in the first round of discussions on the basis of the compilation made by the Secretariat (Doc.A/Ac.241/12). Regrettably during the later part of the second week, the deliberations got derailed over the semantics.

It is however encouraging to note that there is wide consensus on several provisions of the Convention. The divergent views in respect of Preamble, Definitions, Principles, Objectives, Research and Development, Capacity Building, Technology Transfer and Co-operation, Institutional and Procedural Arrangements and Final Clauses will narrow down as the negotiations reach the concluding phase.

There are only three key issues which could keep the INC-D negotiations at tenterhooks. These issues include: the nature and type of commitments, the financial resources and mechanisms and the nature and the time-table of conclusion of regional instruments. At the conclusion of the Nairobi Session it was hoped that especially the issues concerning regional instruments will not pose problems at the Geneva Session. Regrettably, this was not to be.

It is interesting to note that many of the developed countries purport to advocate that this should be a 'strong' convention. However, if the views expressed at the Geneva Session on crucial issues such as commitments and the financial mechanisms are any indication, the Convention when it emerges in the final form would perhaps be among the *weakest* on this field of environment and development. The differences of opinion on a single word "globalisation" substantiates this observation. For the climate change issues, the developed countries had vital stakes and therefore they were prepared to cajole and to go to some length to seek support and participation of the developing countries in that process. It may be too harsh to express the opinion that in some quarters, it is felt that 'desertification convention' is a "charitable convention". Such a view would be a travesty of the whole international co-operation system currently in vogue. The semantic differences over the character of the issue and whether it is 'global' or not should not be the yard-stick to judge the importance of the international convention to combat desertification.

It has been further suggested that the convention should be 'realistic' and should not deal with issues which are not relevant in the context of the desertification convention. Nobody would dispute that point. However, the word "realistic" has to be interpreted in the context of overall approach, both by the developed and developing countries. It has been recognised that 'desertification' and 'drought' are two distinct issues and accordingly different types of commitments should be elaborated to deal with them. Drought has been defined as "a sustained period of water deficit in particular areas, perhaps lasting a few months or many years". Does it mean that one has to wait for many years to identify any particular situation whether it is 'drought' or 'desertification' and provide any assistance accordingly? In the context of desertification, it has been further suggested that the proposed Convention should deal with 'preventing' further desertification and not with the problems of 'reclamation' of degraded land. If the objective is to adopt an 'integrated approach' such different categories of situations, involving different types of commitments does not seem to hold logic. There cannot be a dividing line separating these issues. As and when the Convention comes into force, the Conference of Parties (COP), the highest body designated to oversee the implementation of the Convention, should consider the specific situation in the light of scientific information available and take a decision as to what type of technical and financial assistance would be necessary to deal with that type of situation. If the Convention is to be realistic, it must be *flexible* in its approach on this issue. Instead of arguing for drawing a fine distinction, it should be left to the Conference of Parties to determine the specificity of each situation and act accordingly.

It has been suggested that the Convention should strictly deal with the issues

which are relevant in the context of desertification issues. The very mention of 'biodiversity' or climatic issues has not been recognised as relevant, as they are being dealt with other international Conventions. Similarly since the sensitive issues such as mitigation of debt or removing distortions in international trade belong to other international forums, it has been argued that they should not cast their shadows in the negotiations on desertification convention. These issues are not directly related to this exercise, but there is no doubt that they are relevant and could be mentioned albeit in a very general manner perhaps either in the preamble or in the article relating to 'Principles'. Nobody is seeking solution of the debt problem in the context of desertification but debt burden of developing countries is a reality which is hampering their development process and unless it is seen in a broader perspective no meaningful achievement could be made on any front including combating desertification and drought.

In the context of relevance of issues, a couple of observations may further be made. At some quarters it is felt that the Convention should not fail to refer to 'good governance' and the virtue of democratic form of government. Some veiled charges were also made in identifying the reasons why the past efforts and financial assistance provided to developing countries could not yield the desired result. It is unfortunate but true that democracy while crucial is not the panacea for all the ills of today's world. There are examples where supposedly democratic governments have systematically exploited their own people and involved in all types of corruption and also where in some instances the authoritative regimes have done best for the welfare of their people and lead to phenomenal developments. In the context of desertification, it is not the type of government which matters. Each situation should be judged by the performance and the way that commitments at the national level have been implemented by the Governments. The Convention should not attempt to impose a "Charter for good governance" and dictate the national budgetary process and other matters lying in the national domain. Respect for sovereignty and freedom for independent action should be one of the element in granting international assistance to deal with such problems as desertification which are essentially within national jurisdiction of States. Such an approach only would make the Convention *realistic*.

Another set of provisions which would be the yardstick to measure the success of the Convention are the financial commitments and the related mechanism to implement the Convention. Perhaps Geneva during the INC-D second session did not provide the right atmosphere to discuss seriously the financial commitments to ameliorate the conditions of millions who are struggling for survival from the menace of desertification far away. The views expressed during the consideration of this item in Working Group I do not appear to be encouraging. There is so far little indication from many of the developed

countries of their desire to reach the target of 0.7 per cent of their G.N.P. in response to the fervent appeal made just a year ago during the Rio Summit. There is little inclination to support the establishment of a separate and special fund within the context of the desertification Convention. On the contrary, there is strong opposition to open a fifth window at the Global Environment Facility (GEF) specifically for desertification issues. It has been suggested that 'desertification' may attract GEF Fund in specific situation which may fall under the four programme areas covered under the existing scheme. Although, the discussions on restructuring of GEF is still going on and any clear view on this issue would emerge only after GEF's December 1993 session, there is not much hope of breaking any new ground.

Against this background, it would not be surprising if the fate of discussion on crucial issue of 'new and additional financial resources' will hang on the balance until the last moments of the negotiating process. The negotiating history of the Climate Convention provides a precedent in this regard. The Convention on desertification, however, must address this issue in a pragmatic or innovative manner which will pave the way for any realistic Convention.

Another difficult issue, which remained unresolved at the INC-D first session in Nairobi and continued to haunt the deliberations in Geneva is the conclusion of regional instruments. The General Assembly Resolution 47/183 of 22 December 1992 mandated the INC-D to elaborate an international convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, with a view to finalising such a Convention by June 1994. The absence of any clear guidelines and the determined time-frame have resulted in a difficult situation and a variety of interpretations.

One view is that the resolution only refers to the conclusion of an international Convention by June 1994. It does not specify elaboration of any regional instrument within this time. The other view, stressed by many delegations, particularly the African States, is that the text of a regional instrument for Africa must be completed within the stipulated time along with the Convention. The third view, advocated by the States from the Asian, Latin American and the Northern Mediterranean regions, seeks simultaneous elaboration of similar regional instruments for their respective regions.

It is our considered view that, it may not be feasible to complete the entire work of the elaboration of the Convention together with all the regional instruments by June 1994. The Chairman of the INC-D initially put forward a proposal which proposed to seek from the Forty-eighth Session of the General Assembly an extension of the mandate of the INC-D until August 1995. The obvious implications would have been additional financial commitments by the United Nations and the

countries which are supporting the INC-D negotiating process by making voluntary contributions for the Special Fund and the Trust Fund established by the General Assembly (Res. 47/188, Paragraph 13, 14 and 15).

Subsequently, the Chairman submitted another draft on 21st September 1993. In this revised paper, the extension time sought is until January 1995. The marked reluctance of some countries who are contributing for these funds and the continuing financial squeeze of the United Nations may pose some difficulties. However, it is presumed that the Chairman through his skill and persuasive manner will succeed in his mission when the General Assembly takes up the item on report of the INC-D for consideration. At this juncture, one can only speculate whether even with this extension it would be feasible to complete the entire process.

Apart from the time-frame, the nature of regional instruments raise several difficult legal issues. Two kinds of legal instruments could be elaborated, protocols or annexes. It appears that the general view at the Geneva Session is in favour of annexes. Adoption and integration of protocols with the main Convention is a complex process. However, a similar complexity may arise in the context of annexes. The protocol and annex are integral parts of the Convention. Generally, protocols deal with more substantive legal matters and annexes are concerned with the technical, administrative and procedural matters. In the event, the INC-D contemplates to elaborate annexes as the regional instruments, presumably, there will be at least four annexes representing four different regions, i.e. Africa, Latin America including Caribbean, Asia including the Central Asian region and Northern Mediterranean respectively.

It is hoped that the INC-D will complete the elaboration of the Convention by June 1994 and possibly the text of the annex for Africa. The Convention, together with the African annex should be adopted by the General Assembly at its Forty-ninth Session and thereafter be open for signature by member States of the United Nations. If other annexes are concluded thereafter, how will they be integrated with the Convention? Would a State which signs the Convention at the first instance be expected to sign the subsequent annexes? If for any reason, it chooses not to do so, what will be the legal effect of subsequent annexes *vis-a-vis* that State? To stretch this question further, would any State have the option to pick and choose one of the annexes and declare not to be bound by other subsequent annexes if it chose not to ratify/accede to them. These are just a few legal issues which would need to be considered in this context.

The AALCC Secretariat is of the view that a Convention accommodating the situations in different regions and specifying particular measures to deal with situations in Africa would have been the ideal approach. However, this may not

be acceptable to African countries as it would not fully meet their aspirations. The alternative is to elaborate a general convention together with separate regional instruments for different regions. In our view these regional instruments should not seek to establish additional commitments beyond those envisaged in the Convention for the parties which do not face any desertification and drought problem. Other Contracting Parties, facing such a situation, may commit themselves to initiate and implement such measures which would be necessary in the context of their respective regions. Since the idea of 'annex' as the regional instrument is gaining ground, it would be desirable to identify the common elements and elaborate administrative and technical details corresponding to specificity of each region. As for the time-frame, since all the annexes would be identical in terms of their legal effects, it would not matter which is elaborated first. The IMO has evolved a very practical system of 'tacit acceptance' of annexes. Such a provision could also be considered in the context of this Convention. This would do away with the problem of integration of annexes with the main Convention.

Another interesting example which may be relevant in this context is the 'Implementation Agreement' relating to the implementation of Part XI and related provisions of the United Nations Convention on the Law of the Sea of 1982 currently under discussion in the Informal Negotiations initiated by the UN Secretary-General. The initiative of the UN Secretary-General to hold consultation on the outstanding issues on the Law of the Sea Convention is intended to lead to Implementation Agreement which would facilitate universal participation in the Convention. Article 2(2) of the Implementation Agreement now under discussion envisages that the provisions of Part XI and the Implementation Agreement would be read and interpreted together as one single account. Under Article 3, this Agreement would be "...open for accession by those States and other entities referred to in Article 305 of the Convention which have ratified or acceded to the Convention or which are simultaneously ratifying or acceding to the Convention and this Agreement". Further, Article 4 provides for a simplified procedure. A State or entity which is a Party to the Law of the Sea Convention prior to the adoption of the Implementation Agreement, "...would be considered to be a party to this Agreement unless it notifies the Depository within 12 months of the adoption of the Implementation Agreement that it would not have recourse to the simplified procedure as set out in Article 4."

The AALCC Secretariat is of the view that a combination of 'tacit acceptance' and 'simplified procedure' could provide a solution to the difficulties which might arise in the context of the conclusion and implementation of regional annexes to be adopted after the conclusion of the Convention. While the 'tacit acceptance' could promote expeditious entry into force of the regional annexes,

the simplified procedure might help in sorting out the legal problems raised in relation to the implementation of annexes.

Lastly, the fourth ACP-EEC Convention, popularly known as Lome IV Convention, signed in Lome on 15 December 1989 will be a very useful precedent. It deals with Environmental Matters (Articles 33 to 41) and specifically with Drought and Desertification Control (Articles 54-57). The procedure for the Implementation Agreements and promotion of regional co-operation are the two key features which may guide the INC-D in its work.

DRAFT TEXT OF THE UNITED NATIONS CONVENTION ON COMBATING DESERTIFICATION AND MITIGATION OF DROUGHT

(As prepared by the Secretariat of the Asian-African
Legal Consultative Committee)

Title of the Convention

So far, no discussion has been held in the INC-D about the title of the Convention. The AALCC Secretariat is of the view that this is an important matter which deserves due consideration at an early stage. Since this Convention is elaborated in accordance with the mandate given by the General Assembly Resolution 47/188 of 22 December 1992, it would be appropriate if the title reflects that status. The title suggested by the AALCC Secretariat "The United Nations Convention on Combating Desertification and Mitigation of Drought" is based on that consideration.

Preamble

Recalling the United Nations General Assembly Resolutions 32/172 of 19 December 1977, 44/172 of 19 December 1989, 44/228 of 22 December 1989 and other relevant resolutions, as well as decisions adopted by the United Nations Conference on Environment and Development held in Rio de Janeiro in June 1992, in particular the recommendation by which the Conference invited the General Assembly to establish, under its auspices an Inter-governmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/ or Desertification, particularly in Africa;

Recalling also the General Assembly Resolution 47/188 of 22 December 1992 by which it established the Inter-governmental Negotiating Committee for the Elaboration of a Convention to Combat Desertification with a view to finalizing such a Convention by June 1994;

Reaffirming the validity and relevance of the decisions adopted at the United Nations Conference on Environment and Development regarding measures to combat desertification and mitigate drought, and especially Chapter 12 of Agenda 21 "Managing fragile ecosystems: Combating desertification and drought";

Taking into account past experience particularly the efforts to implement the 1977 United Nations Plan of Action to Combat Desertification;

Appreciating the measures already taken or underway by States and organisations such as the United Nations Environment Programme, the United Nations Development Programme, the Food and Agriculture Organisation, the United Nations Educational, Scientific and Cultural Organisation, the World Meteorological Organisation, the United Nations Sudano-Sahelian Office, the International Fund for Agriculture Development at various levels to understand and address the problems of desertification and drought;

Considering that measures to combat desertification should be planned in the framework of sustainable development, with dynamic interaction between all development activities, and that measures to combat desertification must therefore form an integral part of the overall economic and social development strategies of the countries concerned;

Conscious of the adverse effects, including socio-economic, of land degradation in dryland areas, which affects a significant portion of the earth's surface and population and the need for proper management, utilization and conservation of resources and prevention of mass exodus and migration of populations;

Noting that economic and social developments and eradication of poverty are priority concerns of countries experiencing drought and desertification, particularly in Africa;

Determined to make concerted efforts to combat desertification and mitigate drought, for the benefit of present and future generation;

Recognising the responsibility of countries affected by desertification to make necessary policy changes in their land tenure systems with a view to promoting sustainable land use practices and encouraging participation of rural communities and indigenous people in the development process;

Recognising also that in view of the widespread nature and complexity of the problems relating to desertification and/or drought and of the particular conditions affecting each region;

Stressing the need for promotion of sub-regional, regional and international co-operation to combat desertification;

Stressing also the need for effective international co-operation in the field of research and development and for applying ecologically sound technologies to combat desertification and mitigate drought;

Recognising the need to make available further and additional financial resources to countries affected by drought and desertification, particularly in Africa;

Recognising also the vital role played by the local people, particularly the women in combating desertification and affirming the need to ensure that they participate fully and effectively in planning and implementation of measures to combat desertification and mitigate drought;

Decides to conclude an international convention on combating desertification and mitigation of drought as well as appropriate instruments adapted to the specific needs of different regions;

Explanatory Note

Since the discussion concerning section on Preamble will continue until the late stage of negotiations, the AALCC draft text on Preamble sets out only a tentative list, which may be further shortened or elaborated as need be. There are issues such as poverty eradication, mitigation of debt etc., which could find place in the Preamble.

Article 1

Definitions

- (a) 'Desertification' is a process of land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variation and human activities.
- (b) 'Drought' refers to a sustained period of water deficit in particular areas, perhaps lasting a few months or even many years and can be classified according to a number of criteria involving several variables used either alone or in combination such as meteorological drought, agricultural drought and hydrological drought.
- (c) 'Combating desertification' means all activities aimed at halting and reversing the process of desertification as defined in this Convention.
- (d) 'Drought mitigation'
- (e) 'Regional economic integration organisation' means an organisation constituted by sovereign states of a given region which has competence in respect of matters governed by this Convention, its Protocols or