

(ii) **Decision on “The United Nations Conference on Environment and Development—Follow-up”**

(Adopted on 22nd April 1995)

The Asian-African Legal Consultative Committee at its Thirty-fourth Session:

Having considered the Document No. AALCC/XXXIV/Doha/95/7 on matters concerning the follow-up on the United Nations Conference on Environment and Development held in Rio in June 1992;

Recognizing the need to monitor the ongoing work in relation to the Convention on Bio-diversity, the Framework Convention on Climate Change, and the United Nations Convention to Combat Desertification;

Recognizing also the importance of the work of the Commission on Sustainable Development towards the implementation of Agenda 21 Programmes;

1. *Invites* the United Nations Environment Programme to collaborate with the AALCC in the follow-up on the United Nations Conference on Environment and Development and to continue to participate actively in the work of the AALCC in the future;

2. *Underscores* the need to participate actively in the relevant meetings on Environment;

3. *Request* the Member Governments to consider ratifying or acceding to the UNCED Conventions;

4. *Urges* Member Governments to make voluntary contributions to the Special Fund on Environment; and

5. Directs the Secretariat to continue to monitor the progress in environmental matters, particularly towards the implementation of Agenda 21 and the follow-up work to the recent Environmental Conventions and submit a report at the Thirty-fifth Session of the AALCC.

(iii) Secretariat Brief

Follow-up of the United Nations Conference on Environment and Development

Major Developments during the year 1994

The year 1994 was an important year as the Framework Convention on Climate Change came into force on 21 March, 1994, the first conference of the Conference of the Parties of the Convention on Bio-diversity was held in Bahamas in November 1994, and on 16 November 1994, the United Nations Convention on the Law of the Sea came into force, which added a new Chapter in the book of Environmental Law Conventions.

The Commission on Sustainable Development at its second session in New York in May 1994 launched its review of first cluster of issues as envisaged in its multi-year programme of work based on 40 Chapters of Agenda 21. This programme covered cross-sectoral chapters 2 (accelerating sustainable development); 4 (consumption patterns); 33 (financial resources and mechanisms); 34 (technology-co-operation and transfer); 37 (capacity building); 38 (institutions); 39 (legal instruments); and 23-32 (role of major groups). In addition, other chapters considered were: Chapter 6 (health); 7 (human settlements); 18 (fresh water resources); 19 (toxic chemicals); 20 (hazardous wastes); 21 (solid wastes and sewage); and 22 (radio-active wastes). The high-level segment, which was held during the last two days of the session, was attended by over 40 ministers. The decisions adopted by the Commission on these matters would accelerate the implementation of Agenda 21.

Another event of great importance was the convening of the Global Conference on Sustainable Development of small Island Developing States at Bridgetown (Barbados) from 25 April to 6 May 1994. The Barbados Declaration and the Programme of Action for the Sustainable Development

of Small Island Developing States adopted at that conference will contribute significantly towards the implementation of Agenda 21, particularly its Chapter 17, Section G. Further, the ongoing work of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks is expected to conclude in August 1995 when the Convention will be ready for adoption. Numerous regional and international meetings were also held on matters relating to the implementation of Agenda 21 at the initiative of individual Governments, United Nations and its Agencies and several non-governmental organisations. A number of governments have launched preparation of national sustainable development strategies and programmes and action plans. While all these measures are important steps towards the implementation of the Agenda 21, however, it is a matter of concern that the availability of financial resources, which is necessary to achieve success, has not been there. The resolution adopted by the General Assembly at its forty-ninth session on 19 December 1994, while considering the Report of the Commission on Sustainable Developments, reflects this view point.

The General Assembly by this resolution, "Expresses its deep concern that the financial recommendations and commitments of Agenda 21, including those regarding official development assistance, despite an increase in private investment in some countries, are short of expectations and requirements and that the current availability of financial resources for sustainable development and the limited provision of adequate and predictable new and additional financial resources will constrain the effective implementation of Agenda 21 and could undermine the basis of the global partnership for sustainable development, in this context, expresses its concern that overall official development assistance has even decreased since the United Nations Conference on Environment and Development" (Para 5, GA resolution 49/11).

CONVENTION ON BIOLOGICAL DIVERSITY

Progress of Implementation at National and International Levels

The Convention on Biological Diversity was opened for signature at the Earth Summit held in Rio de Janeiro (Brazil), on 5 June 1992. The Convention entered into force on 29 December 1993 and as on 21 December 1994 had 108 Parties thereto.*

* From the Afro-Asian region, the States which have signed the Convention but have not yet ratified are as follows: *Asia*: Afghanistan, Bahrain, Bhutan, Iran, Kuwait, Oman, Qatar, Singapore, Syria, Thailand, Turkey and United Arab Emirates. *Africa*: Algeria, Angola, Botswana, Burundi, Cape Verde, Central African Republic, Congo, Gabon, Guinea-Bissau, Lesotho, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Namibia, Niger, Rwanda, Sao Tome and Principe, South Africa, Sudan, Tanzania and Togo.

This Convention may be regarded as a framework Convention for two reasons. The first one; it leaves up to individual Parties to determine how most of its provisions are to be implemented. The main thrust of the Convention is to place main decision-making at the national level. The second reason is that it is a framework agreement because emphasis is placed on the possibility for the Conference of the Parties (COP) to further negotiate annexes and protocols.

In order to prepare the operational phase of the implementation process, interim mechanisms and measures were called for by Resolution of the Conference for the Adoption of the Convention. This resolution invited the UNEP to consider requesting its Executive Director to convene meetings of an Intergovernmental Committee on the Convention on Biological Diversity (ICCBD) to operate until the first meeting of the COP at the end of 1994. The first meeting of the ICCBD, in Geneva in October 1993, was preceded by the meetings of four experts panels convened by the UNEP Executive Director for preparing recommendations on specific issues for the first meeting of the ICCBD. UNEP also created an interim Secretariat.

The first meeting of the ICCBD was held in Geneva from 11 to 15 October 1993 and it addressed the long list of tasks mandated to it. The ICCBD established two Working Groups. Working Group I dealt with the conservation and sustainable use of biological diversity, the scientific and technical work between meetings and the issue of biosafety. Working Group II tackled issues related to the financial mechanism, the process for estimating funding needs, the meaning of "full incremental costs", the rules of procedures for the COP and technical cooperation and capacity building. Despite several sessions, the Working Groups were not able to produce reports that could be approved. The Plenary adopted only two decisions: the establishment of a scientific and technical committee to meet before the second session of the ICCBD; and a request to the Secretariat to use the unadopted Working Groups' reports as guidance during the intersessional period.

The second meeting of the ICCBD was held in Nairobi from 20 June to 1 July 1994. The issues addressed at this session in preparation for the first meeting of the COP included: institutional, legal and procedural matters; scientific and technical matters; and matters related to the financial mechanism. Progress was made on issues including rules of procedure; the subsidiary body on scientific, technical and technological advice (SBSTTA); and the clearing-housing mechanism. However, on such critical issues as the need for a biosafety protocol, ownership and access to *ex*

situ genetic resources, farmers' rights and the financial mechanism, no headway was made.

The first meeting of the Conference of the Parties (COP) was convened in Nassau, the Bahamas, from 28 November to 9 December 1994. In addition to the organizational matters, the agenda included the following substantive items:

- (i) Policy, strategy, programme priorities and eligibility criteria regarding access to and utilization of financial resources;
- (ii) Institutional structure to operate the financial mechanism under the Convention;
- (iii) List of developed country Parties and other Parties which voluntarily assume the obligations of developed country Parties;
- (iv) Clearing-house mechanism for technical and scientific cooperation;
- (v) Selection of a competent international organisation to carry out the functions of the Secretariat;
- (vi) Financial rules governing funding for the Secretariat;
- (vii) Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA);
- (viii) Preparation for the Third Session of the Commission on Sustainable Development (CSD);
- (ix) Medium-term programme of work of the COP;
- (x) Budget for the Secretariat; and
- (xi) Location of the Secretariat.

Following discussions in the Plenary, three Contact Groups were established to resolve the outstanding issues related to the aforementioned agenda items. Agenda items (i) to (iii), namely policy, strategy, programme priorities and eligibility criteria regarding access to and utilization of financial resources; institutional structure to operate the financial mechanism; and the list of developed country Parties and other Parties, were allocated to a Contact Group chaired by Antigua and Barbuda. The draft decision adopted by this Contact Group stipulated: the Global Environmental Fund (GEF) to continue as the interim financing structure to operate the financial mechanism; the GEF to support the policy, strategy, programme priorities and eligibility criteria as stated in Annex I of the draft decision; the Interim Secretariat to consult with the GEF on the MoU to be considered at the second meeting of the COP; listed in Annex III of the draft decision interim guidelines for evaluation of the GEF and requested the Interim

Secretariat to prepare a report on the financial mechanism and a study on the availability of financial resources additional to those provided by the restructured GEF for the second meeting of the COP; and listed in Annex II of the draft decision the developed country Parties and other Parties that assume the developed country Parties' obligations. There were, however, no countries in the latter category. The draft decision was subsequently adopted by the Committee of the Whole with the understanding that Annex II (list of developed country Parties) will be reviewed and adjusted at COP II.

Items (iv), (vii) and (viii), namely the clearing-house mechanism, SBSTTA and preparation for the third session of the Commission on Sustainable Development (CSD) respectively, were allocated to the Contact Group chaired by Canada. The Group agreed that the Interim Secretariat would prepare a study to assist the COP in the establishment of a clearing-house mechanism. SBSTTA, the Group chose the priority items from the draft medium-term work programme as the basis for the SBSTTA's first meeting which was to be held in Paris from 4 to 8 September 1995. The matters selected for advice from the SBSTTA for the second meeting of the COP (6 to 17 November 1995) included: the components of bio-diversity under threat and the action to be taken; ways and means to promote technology transfer; scientific and technical information to be contained in national reports regarding implementation; contribution of the Convention to the preparation of the 1996 International Technical Conference on the Conservation and Utilization of Plant Genetic Resources; and conservation and sustainable use of coastal and marine biological diversity. As regards agenda item (viii), preparation for the third session of the CSD (11 to 28 April 1995), it was agreed to refer to the relationship between poverty and bio-diversity and to contribute to discussions in the CSD on forest principles. The draft decisions on these items were subsequently adopted by the Committee of the Whole.

Items (v), (vi), (ix) and (x) of the agenda, namely, selection of a competent international organisation to carry out the secretarial functions, financial rules governing funding for the Secretariat, medium-term programme of work of the COP and budget for the Secretariat respectively, were allocated to the Contact Group coordinated by Mauritania. On agenda item (v), the Group favoured continuation of the Interim Secretariat until the permanent Secretariat was established. There was also near unanimous agreement that the UNEP was best suited to take on the permanent secretariat role. On agenda item (vi), financial rules for funding the Secretariat, there were protracted negotiations on the unresolved issue of the scale of contributions. As for agenda item (ix), viz. the medium-term programme

of work of the COP, it was agreed to develop the same on the basis of standing and rolling issues. Standing issues were to include matters relating to the financial mechanism, report from the Secretariat on the administration of the Convention and budget for the Secretariat; report from, and consideration of recommendations to the SBSTTA; reports by the Parties on implementation of the Convention; report on assessment and review of the operation of the clearing-house mechanism; relationship of the Convention to the CSD and bio-diversity-related conventions, other international agreements, institutions, and processes of relevance to agenda items of the COP. The rotating agenda was to be developed in a flexible manner, in accordance with the decisions of the COP, the SBSTTA and any working groups established by the COP. On the basis of the recommendations made by the Contact Group and subsequent deliberations thereon in the Committee of the Whole, the financial rules governing the funding of the Secretariat were adopted as also the Secretariat's budget with the scale of contributions for 1995 being included in an appendix to the budget. The medium-term work programme for the period 1995 to 1997 was also endorsed.

On agenda item (xi), i.e. location of the Secretariat, no decision was taken. The draft decision submitted by Kenya, Spain and Switzerland, each of which has offered to host the Secretariat, proposing that the decision be taken at the COP-II, was adopted. However, a positive note has been that UNEP has been chosen to host the Secretariat. Although this represents a welcome demise of the suggestion that a consortium of international organisations should provide secretariat services for the UNCED Conventions and related agreements, the idea of a 'co-location' in Geneva is still under consideration as there are significant similarities between the Bio-diversity Convention and the 'Greenhouse' Convention. This premise is, however, not convincing. The latter Convention deals with the global commons—the atmosphere—and obviously needs global action strategies to be implemented primarily by industrialized countries. The Bio-diversity Convention, on the other hand, deals with resources under the sovereign control of States requiring national action, especially by developing countries.

Another important decision taken at COP-I was that 29 December is to be observed as the International Day for Bio-diversity, every year.

An Overview of Conference of Parties (COP)-I

The Conference of Parties (COP-I) achieved some accomplishments as also setbacks. On the plus side, despite an onerous agenda, COP-I has been able to lay the necessary groundwork for proceeding with the

implementation of the conservation of bio-diversity and sustainable use of its components. This is reflected in some of the key decisions taken by it. A medium-term work programme has been put in place to guide the work of the COP over the next three years. The Interim Secretariat has been transformed into a permanent body entrusted with important work in advance of COP-II. Way has also been paved for the establishment of a clearing-house mechanism, although the scope of its operations is yet to be given a final shape. The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) has been given a clear mandate and work programme to deal with such issues as identification of threatened bio-diversity; technology transfer; national reporting; coastal and marine bio-diversity; and the FAO initiative on plant genetic resources. SBSTTA is expected to provide important objective scientific inputs including definitions, criteria, indicators and guidelines into the political decision-making process.

Another positive note has been that there has been a tentative agreement on the designation of the GEF as the interim financial structure to operate the financial mechanism envisaged in the Convention. In the beginning, there was a great deal of controversy on whether the GEF should be selected as the interim or permanent institutional structure for the financial mechanism under the Convention. Industrialized countries argued that since GEF had been adequately restructured, it should be retained as the permanent financial mechanisms. Developing countries, however, felt that the restructuring did not meet their concerns. They were also concerned about the limited ability of the COP to influence the GEF project decisions. They were of the view that the restructured GEF instrument only mentioned guidance and accountability but was silent on the issue of authority of the COP. It was stressed that the financial mechanism must function under the authority and guidance of, and be accountable, to the COP. It was, nevertheless recognised that the GEF, although far from perfect, could play a significant role in funding bio-diversity projects, and that any delay in that respect could affect its future replenishments. It was, therefore, agreed that in the best interests of the Convention, a concrete relationship needed to be forged between the COP and GEF so that the COP could exert a positive influence on GEF decision-making.

On the minus side, it needs to be pointed out that there has been lack of adequate attention being paid to such important issues as the biosafety protocol, indigenous issues, financing of the medium-term work programme and the forest principles. Although COP I did provide for the establishment of an *ad hoc* Working Group for the adoption of a protocol on biosafety, no provision for its funding from the general budget was made and it was

left to operate on the basis of voluntary funds. Lack of financial support could adversely affect the work of this Working Group.

Indigenous issues have been deferred in the medium-term programme of work until 1996. Such delay is not appropriate.

A notable concern relates to the financing of the medium-term programme of work on account of the inadequacy of the budget therefor. The budget does not reflect the enormous workload given to the Secretariat in the medium-term work programme and it also does not provide for preparatory work for the SBSTTA. Yet another disquieting feature is that despite the COP's intended input on forest principles to the third Session of the CSD, the medium-term work programme contains no reference to the forest principles. The consideration of forests in the context of terrestrial bio-diversity has been delayed until COP-II in 1996. This is problematic because COP-III will be meeting about 1½ years after the forest issues will have been considered by the CSD and the initiation of the negotiating process for a Forest Convention.

The challenges that await COP-II in November 1995 include the biosafety protocol, the location of the Secretariat, the GEF and other important issues related to the Convention's implementation, namely, implementing Article 6 (national plans and strategies); action on bio-diversity components under threat; implementing Article 8 (*in situ* conservation); coastal and marine bio-diversity; access to genetic resources and benefit-sharing; access to and transfer of technology (Articles 16 and 18); study on financial resources (additional to GEF); national reports-frequency and context/scope; progress by FAO on the International Technical Conference on the Conservation and Utilization of Plant Genetic Resources scheduled to be held in 1996; and FAO's progress on dealing with *ex situ* genetic resource collections.

THE UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA

Background

The General Assembly, at its forty-seventh session by its Resolution 47/188, adopted on 22 December 1992, established an Intergovernmental Negotiating Committee (hereinafter called INC-D) for the elaboration of an International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.

It decided that the INC-D, in addition to an organisational session in New York, should hold five substantive sessions. It laid down the guidelines for the work at the organisational and first substantive session. It requested the Secretary-General to establish an *ad hoc* Secretariat to assist the INC-D in its work. It also decided to constitute a multidisciplinary panel of experts to assist the *ad hoc* Secretariat and to provide necessary expertise in the scientific, technical, legal and other related fields, making full use of the resources and expertise within and available to Governments and/or organisations of the United Nations system dealing with drought and desertification. Finally, it provided for the establishment of a special voluntary fund to promote participation of developing countries in the INC-D meetings and a Trust Fund to meet the cost of the negotiating process.

The INC-D held its organisational session in New York from 26 to 29 January 1993. During that session, it adopted the rules of procedure and tentative schedule of five substantive sessions. It constituted two working groups and elected the members of the Bureau. Mr. Bo Kjellen of Sweden was elected as Chairman.

The first substantive session of the INC-D was held in Nairobi from 24 May to 3 June 1993. The first half of the session was devoted to technical evaluation of the available information on causes, extent of desertification and drought and the experience with international, regional, sub-regional and national programmes to combat desertification and mitigation of drought.

During the second week of the session, the discussion focussed on the possible structure and essential elements of the proposed International Convention to combat desertification. The INC-D Secretariat, in consultation with the Panel of Experts established by the General Assembly Resolution and the international organisations engaged in this field had prepared a document entitled "Format and Possible Elements of the Convention" (U.N. Doc. No. A/AC.241/7). Discussion on these matters was general in nature. It was agreed that concrete proposals should be submitted to the INC-D Secretariat by 1 July 1993. The Secretariat was mandated to prepare a compilation of those proposals.

As many as 30 Governments and Organisations submitted written proposals. The Organisation of African Unity (OAU) submitted a complete draft text of the proposed Convention. The INC-D Secretariat in consultation with the International Panel of Experts considered all these proposals and also taking into account the views of delegations expressed at the Nairobi Session, prepared a comprehensive compilation running into 85 pages