

- (b) a globally agreed programme of work addressing major environmental and developmental priorities for the initial period of 1993-2000 and leading into the 21st century (Agenda 21);
- (c) agreement on the financial resources required for implementing the programme;
- (d) agreement on access to environmentally sound technologies for developing countries;
- (e) agreement on measures to strengthen and supplement existing international institutions and institutional processes; and
- (f) specific legal instruments on climate change and conservation of biological diversity.

4. Pursuant to resolution 44/228, a Preparatory Committee (PREPCOM) for the UNCED was established which held an organisational session and four regular sessions during its preparatory process (March 1990–April 1992). The PREPCOM created three working groups to address the major substantive issues. Working Group I of the PREPCOM concentrated on the issues concerning the protection of the atmosphere, land resources and conservation of biological diversity. Working Group II dealt with the protection of the oceans and all kinds of seas, freshwater resources and environmentally sound management of wastes. Working Group III was allocated the legal, institutional and related matters.

5. In parallel with the preparations launched by the PREPCOM for the UNCED, two Inter-governmental Negotiating Committees (INCs) were established to negotiate a Framework Convention on Climate Change and a Framework Convention on Conservation of Biological Diversity and submit the same to UNCED for signature.

#### *AALCC's role in the preparations for UNCED and its follow-up*

6. The AALCC has had a long history of addressing the environmental issues from the legal perspective. As early as its Tokyo Session held in 1974, the item "Environmental Protection" was included in the agenda of that session, and since then, the topic has been under its consideration. After conclusion of the basic preparatory work and general exchange of views at the AALCC's sessions held in Tehran (1975), Kuala Lumpur (1976), Baghdad (1977) and Doha (1978), an Expert Group Meeting was convened in New Delhi in December 1978 in order to identify areas and issues where efforts were most needed for protection of the environment in the context of the situation and the needs of the developing countries in the Asian-African region. A programme of work which could be meaningfully undertaken by the AALCC to assist its Member States was drawn up by the Expert Group and later approved at the Seoul Session of the AALCC held in early 1979.

7. In the subsequent period, priority was given to the question of protection of the marine environment including the promotion of ratification of or accession to some of the major Conventions in the field of marine environment, and regional seas programmes coordinated by the UNEP which were related to the Asian-African region.

8. At the twenty-eighth session of the AALCC held in Nairobi in February 1989, a new item entitled "Transboundary Movement of Hazardous Wastes and Their Disposal" was inscribed in the environmental law programme of the AALCC. The Secretary-General was mandated to participate at the plenipotentiary conference held in Basel in March 1989 which adopted the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal. In December 1989 and April 1990, the Secretary-General was invited by the OAU to participate in the work of legal and technical experts of the Member States of the OAU on the subject of transboundary movement of wastes in Africa. The Secretary-General actively participated in the preparatory process of the African Convention on the subject. Subsequently, the Bamako meeting in February 1991 adopted the OAU Convention on the Ban of the Import into Africa and Control of Transboundary Movement of Hazardous Wastes within Africa based on the proposals of the Legal and Technical Experts' Group.

9. Following the General Assembly's decision to convene the United Nations Conference on Environment and Development (UNCED) in Rio, Brazil in June 1992, the AALCC at its twenty-ninth session held in Beijing in March 1990 recommended, *inter alia*, that it should involve itself in the preparations for the UNCED and render assistance to its Member States in that regard. Since then, this matter has been a priority item with the AALCC. A special environmental fund was launched to facilitate participation of the Secretariat officials in the meetings of the PREPCOM for UNCED and those of the INCs for Conventions on Climate Change and Biodiversity. While the contributions to this fund were received only from Saudi Arabia (US \$ 25,000) and Turkey (US \$ 5,000), it nevertheless enabled the AALCC Secretariat to actively monitor the developments in the preparatory process of UNCED and negotiations of the Conventions on Climate Change and Biodiversity and to advise its Member States accordingly. The thrust of the AALCC's endeavours has been on (i) Promotion of ratifications of/accessions to the 1982 United Nations on the Law of the Sea and its subsequent implementation; (ii) Transboundary movement of hazardous wastes and their disposal; (iii) Consideration of the issues before the PREPCOM for the UNCED, particularly Working Group III dealing with legal and institutional matters; (iv) Assistance in the preparation of the Framework Conventions on Climate Change and Biodiversity; and (v) Development of legal principles on environmentally sound and sustainable development. The AALCC Secretariat prepared a series of analytical studies and recommendations on these issues so as to assist the Member States to actively participate in the preparatory meetings for UNCED and finally in UNCED itself.



#### *Discussions and decisions taken at the Islamabad Session*

10. The endeavours of the AALCC in preparing for the UNCED to be held in June 1992 were reinvigorated during the thirty-first session held in Islamabad in January-February 1992 when it was decided to hold during that session a two-day Special Meeting on Environment and Development. Mr. Jamshed Hameed (Pakistan) and Mr. Rohan Perera (Sri Lanka) were designated as Rapporteurs for the Special Meeting. The Special Meeting held on 25th and 26th of January 1992 debated the matters related to the UNCED, the proposed Convention on Climate Change and the Draft Convention on Conservation of Biodiversity. To facilitate the debate during the Special Meeting, the Secretariat had presented three studies entitled: "Notes and Comments on Major Agenda Items before Working Group III of the PREPCOM for UNCED";<sup>1</sup> "Framework Convention on Climate Change: An Overview";<sup>2</sup> and "Development of a Global Convention on Biodiversity".<sup>3</sup> These studies are reproduced in this Report.

#### *Major items before Working Group III of the PREPCOM for UNCED*

11. The Secretary-General introduced the Secretariat study entitled "Notes and Comments on Major Agenda Items before Working Group III of the PREPCOM for UNCED" and recounted the role played by the AALCC and its Secretariat in preparing for the UNCED. In view of the long-term nature of the environmental protection, he proposed that the AALCC's concern and involvement should continue even after the conclusion of the UNCED. He suggested the following measures and actions to be taken in that regard:

- (1) The general assessment of the outcome of the Rio Conference concentrating particularly on the issues with legal implications;
- (2) Monitoring the on-going process of UNCED at its next stage and follow-up aspects of its new programmes with legal implications;
- (3) The preparation of detailed analyses and comments on the two Framework Conventions on Climate Change and Biodiversity if adopted, monitoring the developments after the signing of the two Conventions, and making recommendations thereon to the Member States of the AALCC in respect of ratification of the two instruments;
- (4) Undertaking studies on the further development of international environmental law. An item, "Legal Aspects of the Protection of

1. Doc No AALCC/XXX/Islamabad/92/1.

2. Doc No AALCC/XXX/Islamabad/92/2.

3. Doc No AALCC/XXX/Islamabad/92/3.

the Environment of Areas not subject to National Jurisdictions (Global Commons)" might be taken up by the AALCC.

- (5) Rendering assistance to the Member States at their request in the field of national legislation concerning the protection of environment; and
- (6) Strengthening co-operation between the AALCC and the UNEP, through the conclusion of a co-operation agreement between the two bodies.

12. The *Delegate of Japan* stated that after three meetings of the PREPCOM for the UNCED to be convened in Brazil in 1992 the negotiations had reached a crucial change, and that the array of tasks awaiting the UNCED was very broad and many issues of vital concern remained to be finalized. He proposed that the PREPCOM take steps to streamline its procedures, concentrate its attention on the most pressing issues and make efforts to reach agreements.

Referring to the cross-sectoral issues, he stated that his delegation was aware of the high priority accorded to commercial resources and the question of transfer of technology and that the concerns and differences had become considerably clear. The PREPCOM, in his view, at its next session needed to fill the gaps by identifying the real needs of the developing countries and devising means of meeting their requirements. He observed that the Global Environment Facility (GEF) had become a focus of attention but its functioning as a funding mechanism required careful examination.

According to him, there had been at the previous session of the PREPCOM, a degree of agreement on some important issues particularly those relating to: (i) the need for effective utilization of existing mechanisms rather than the creation of new institutions; (ii) the importance of coordination among inter-governmental organizations and Secretariats; and (iii) economic and social factors. Admitting that the issue of institutions is complex he expressed the hope that a consensus could be reached if a practical approach that builds the points of agreement was adopted.

Referring to the Earth Charter, the delegate stated that his delegation looked forward to a clear and concise document that articulated key principles and general rights and obligations.

With regard to Agenda 21 viz. the Action Plan relating to the Earth Charter, he stressed that the PREPCOM should refrain from producing an elaborate detailed document and endeavour to reach agreement on a truly action-oriented programme that could be easily translated into government policies and private sector initiatives.

He proposed that the members of the international community should consider ways of improving the situation in which unsustainable production patterns in the affluent societies and environmentally insensitive development and abject poverty in the less privileged countries damaged the environment.



13. *The Delegate of Libya* pointed out that his Government had in matters relating to the protection and preservation of the environment been cooperating with its neighbouring countries since the Stockholm Declaration of 1972. He informed the house that his Government had in recent years ratified or acceded to a total of nineteen international agreements and protocols including the Vienna Convention on the Protection of the Ozone Layer and the Montreal Protocol thereto.

Referring to the steps that his Government had taken to preserve and protect the environment, he stated that a Centre for protecting the Environment had been established to coordinate and supervise the enforcement of environmental legislation.

He further pointed out that his Government was following the OAU decision relating to the Bamako Convention that before ratifying the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal, OAU States should ratify the Bamako Convention first and that his country had planned to ratify the two Conventions. His Government had also adopted other legislation to supervise the production of any dangerous or hazardous chemical substances. It has also imposed taxes on imports of hazardous products.

The Delegate supported the Secretary-General's proposal that the AALCC be represented at the Rio Conference and assist the Member States both in preparing for it and in assessing the final outcome of the Conference.

14. *The Delegate of Kuwait* stated that his Government's concern for the cause of protection and preservation of the environment was underscored by the fact that the State of Kuwait had, among other things, hosted the Gulf Organization for the Protection of the Environment.

Recounting the occupation of the State of Kuwait by Iraq and the events leading to the Gulf War the Delegate pointed out that the wanton and indiscriminate destructive acts of the retreating Iraqi forces had resulted in pollution of the land, air and marine resources of the State. The effect, that this pollution caused by effluence and wastes would have on the health of the people and their hygiene and life style, would require intensive study. The prognosis in the meantime, however, could hardly be said to be good.

The Delegate further stated that his country would like the PREPCOM of the proposed UNCED to study the effects of the wide spread degradation of his country's environment. He pleaded for aid and assistance from the international community for the restoration of his country's environment.

15. *The Delegate of Turkey* stated that her Government attributed great importance to the UNCED process. Turning to the documentation prepared by the Secretariat, she said that the Draft Convention on Biodiversity had not sufficiently elaborated the term "biodiversity". She was of the opinion that a definition of that term should find place in the final text. She proposed that the term should not be limited to those species that are consumed by man and have, thus, an economic value, but should be extended

to species which form a part of the web of life and those that play an important role in supporting life on Earth and in the regulation of the environment of the planet. She felt that only thus can the species that play a significant role in the global life support system be brought under conservation and such species and their habitat etc. protected, restored and conserved.

On the matters relating to the UNCED, she affirmed that the survey work done by Working Group III should be action-oriented and that the examination of, and search for the ways and means for the further development of international environmental law reflecting the understanding of combining environment and development should be emphasized. The new international legal regulation of the environment should, however, address the life support systems that are vital in the self-regulation of the planet and provide for their conservation.

She emphasized also the importance of avoiding the proliferation of new agreements or instruments unless their realistic implementation could be provided for.

She was of the view that the International Law Commission could perhaps, elaborate on the "Legal Aspects of the Protection of the Environment not subject to a National Jurisdiction (Global Commons)". She drew attention to the possibility of forming a connection between the global commons and their effect on climate. In her view, considering the self-regulatory nature of the planet (Earth) a link could be established between the projection of the global commons and the legal regulation of climate change.

As for the Institutional Issues, she stated that her delegation would like to see the revitalization of the ECOSOC and shared the view that the General Assembly should remain in-charge of overseeing global action in the implementation of sustainable development. On the proposal relating to the strengthening of the UNEP and the provision of a new mandate concerning the "settlement of international ecological disputes" she was of the view that the issue needed further study and clarification mainly due to the fact that a classification of "international ecological dispute" did not exist. She, therefore, found it difficult to accept the suggestion of giving the mandate of handling an international dispute of a juridical nature to an administrative organ of the United Nations such as the UNEP.

16. *The Delegate of the Republic of Korea* stated that the question of environment was a matter of life and death to all mankind because it was obvious that without the health of mother Earth mankind's days would be numbered. He was of the view that while the task of the UNCED was really formidable, it should stop at nothing but to serve as an important vehicle for establishing a concerted strategy in the field of environment and development. He shared the view that for Asian-African nations it was a historical imperative to strike a balance between the developmental needs and environmental priorities without stifling the burgeoning economies of the developing countries.



<sup>4</sup> He was of the view that since the developed countries were responsible for most of the troubles causing environmental changes, they should take the lead in protecting the global environment and to bear more of the responsibilities. He emphasized that the burden sharing of the developing countries should be considered only to the extent that financial support and transfer of the environmentally clean technologies enabled them to do so.

While renewing his Government's commitment to fulfilling its responsibilities for environmental protection, he said that due attention should be paid to the difficult situation of the newly industrializing economies which were virtually caught in the cross-fire of the contradictory demands for development and environmental needs.

Referring to the last session of the PREPCOM before the convening of the Rio Summit, he expressed the hope that the current session of the AALCC would function as a forum for frank assessment of the past achievements and for free exchange of ideas and proposals recommended by the Secretariat of the AALCC enabling it to form a common stand in the preparations for the UNCED.

Emphasizing that environmental regulations should not be used as tools of non-tariff barriers in global trade, he proposed that an additional and comprehensive report on the following areas be submitted :

- (i) Tariff or non-tariff measures provided for both in national legislation for the purpose of environmental conservation and in bilateral or regional agreements; and
- (ii) Possible trade distortions through intellectual property rights of environmental technology.

He believed that the Earth Charter should reflect a high standard of moral and political norms for all States and individuals in pursuing sustainable global development and that Agenda 21 should highlight concrete action plans for an environmentally sound and sustainable development strategy. He also believed that the success of global efforts for the UNCED depended largely on whether progress can be made on cross-sectoral issues like transfer of technology, funding mechanism and institutional framework. Finally, he said that he shared the concern of many environmentalists that the UNCED might end up producing yet another grandiose but empty declaration unless it successfully incorporated the three cross-sectoral issues named above in the Agenda 21.

17. The *Delegate of Pakistan* expressed the hope that the proposed Earth Charter would be prepared by consensus of all the members of the PREPCOM. He stated that while the final document/declaration was still evolving, every effort should be made to come up with a document acceptable to all and not only to a particular group and that the success of the PREPCOM would depend upon the ability of the negotiators to bring about a consensus on different issues.

In his view, the three factors at the heart of the issue of the implementation of the environmental treaties which need to be resolved were :

- (a) the transfer of additional resources and of relevant environmentally sound technologies; the Third World countries must be given the chance to leap-frog the environmentally unsound technologies that have caused so many environmental problems.
- (b) the question of liability and compensation, alongwith the related topics of dispute prevention and resolution; and
- (c) on-site verification.

He believed that the process of negotiations necessarily involved a give and take approach and if all the groups adhered to hard stances, the Rio de Janeiro Declaration would be a statement of good wishes rather than a document containing principles and definite commitments.

His delegation appreciated the work of the Secretariat and agreed with the list of possible areas to be examined in the context of Agenda 21. He agreed with the objectives and achievements and the parameters suggested for participation, implementation, information review and adjustment as well as codification programming.

He further stated that while the AALCC Secretariat had proposed that the work to be done by the Working Group III under the subject item should be action-oriented, it was important to find out why many of the developing countries did not participate in the Conventions or treaties adopted so far. The obvious reason, according to him, was that these either did not address the concerns of the developing countries or they were inadequate in so far as their ability to discharge their commitments under these Conventions was concerned. In his view, the difficulties faced by the INCs in negotiating Draft Conventions on Climate Change and Bio-diversity were due to the fact that many of the developing countries had sharp perception and had developed better understanding of the implications of these international instruments. Consequently they were endeavouring to put forth their points of view more forcefully and to a certain extent with some rigidity.

Turning to the range and priority of the survey, the Delegate observed that it was difficult to agree to the recommendation that attention should be paid to the promotion of the ratification and entry into force of those Agreements that had not yet become effective. In the view of his delegation, it was not possible to agree to some of the provisions of those international Agreements/Conventions unless they addressed the concerns of the developing countries.

His delegation shared the views expressed under Part III on the criteria for the evaluation. The suggestion by the Secretariat regarding further development of international environmental law needed to be seen in the light of the concerns expressed by a large number of countries on the proliferation



of agreements and the conditionalities which might be imposed on the developing countries in an effort to integrate environment and development.

On institutional arrangements, his delegation shared the views expressed by the developing countries on the possible proliferation of institutions relating to environmental issues. It was already difficult for many of the developing countries to interface with the existing institutions. Proliferation of institutions would add to their difficulties in effectively participating in the global effort.

18. The *Delegate of the People's Republic of China* stated that the questions high on the agenda of the PREPCOM were how to address the problems relating to the environment and development, what solutions could be found to cover the immense cost of the protection of the global environment and how to realise a fair and rational international cooperation in the aspects of environment and development.

In his view, environmental pollution and ecological damage had become more and more serious and had become the major issues of global character. They constituted a grave threat to the sustainable development of economies and the subsistence of the human beings. The main causes for the issues were, the excessive exploitation and consumption of natural resources and the massive emission of pollutants by developed countries during the long period of their industrialization. They still remained to be the major consumers of the natural resources and the major polluters in the world. As far as the developing countries were concerned, they were under double pressure of both the protection of the environment and development of economies. His delegation favoured the view that the stress for the survey of existing agreements and instruments should be on the "examination of and search for the ways and means for the future development of the international environmental law, in the light of the need to integrate environment and development". The criteria for the evaluation, in his opinion, should first be whether or not the instruments integrating the environmental protection and sustainable development would bring about the participation by as many developing countries as possible or not. The criteria should include whether an agreement or instrument provided for the ways and means to enable developing countries to fulfil the obligations under such an agreement or instrument. Turning to the further development of the international environmental law, he said that the significance of integrating the environment and development ought to be emphasized. His delegation favoured the observation that the development of international environmental law should not lead to the proliferation of new agreements or instruments. If the development of environmental law exceeded the scope of what actually could be accomplished, it might become a burden upon most countries; economic development and result in the difficulty of maintaining the balance between the environmental protection and economic development.

With reference to the institutional issues, he observed that these issues should be discussed in conjunction with the other issues which were and

would be under deliberation in the PREPCOM, and in particular with those issues such as "Agenda 21", funding mechanism and technology transfer. The institutional arrangement would depend on the decisions to be taken by the PREPCOM. However, there was no institution in the UN system to coordinate and take account of the issues of the environment and development in a comprehensive manner. In the view of his delegation, whatever institutional arrangements were made, the following three points should be taken into consideration :

(i) The institutional arrangements should be conducive to strengthening the role of the UN in the fields of environment and development and facilitating the international cooperation in these fields, (ii) it should reach the goal of coordination of the environment and development in accordance with the UN resolution 44/228, and (iii) it should ensure equitable geographic representation and full and effective participation of developing countries and take due consideration of the interests of these countries.

19. The *Delegate of Sri Lanka* stated that the degradation of the environment had emerged as a major global concern and that the General Assembly which by its resolution 44/228 decided to convene a United Nations Conference on Environment and Development had *inter alia* recognised that environment and development were closely interwoven and that environmental issues could not be isolated from their underlying causes.

He expressed the view that the UNCED should take cognizance of the qualitative difference between environmental degradation in the developing and the developed countries. It was pointed out in this regard that while in the developed countries environmental degradation stemmed from the high levels of development consumption, on the other hand environmental damage in the developing countries arose out of conditions of extreme poverty and serious financial resource limitations which thwart economic development. He emphasized in this regard that his Government expected the UNCED to recognize that environmental degradation in the developing countries was in reality a symptom of underdevelopment and that the developing countries, in the contemporary international order, were unable to mobilise the resources that were needed to extricate themselves from their state of underdevelopment.

In the view of his delegation, it was imperative to recognise that while the protection of the environment was the common responsibility of the international community, the main onus lay on the developed countries where the main sources of environmental pollution had originated. Besides, he added, the developed States had the necessary capabilities and resources to take corrective measures. He further pointed out that the environmental standards applicable to developed States might involve excessive unwarranted economic or social costs for the developing countries.



Referring next to the need to meet the immediate requirements of the developing countries for the mobilization of new and additional financial resources and the transfer of environmentally sound technology on a concessional and preferential terms as well as the provision of assistance of manpower training and strengthening of institutional capacity, the Delegate observed that continued deprivation will not only cause degradation of the environment but also cause turmoil and disruption in the social fabric of the expectations of a new generation.

He stated that while it is true that each nation had to make an equal contribution towards resolving the problems related to environment and development, it was, however, of paramount importance that the principle of common but differentiated responsibility of States constitute the basis of any global response to environmental issues. The application of environmental standards, in his view, by developing countries should be in accordance with their respective capabilities and responsibilities.

The Delegate stated that his Government expected the aforementioned basic tenets to guide the nations at UNCED in addressing themselves to the declaration of an Earth Charter embodying the "basic principles for the conduct of nations and peoples in respect of environment and development." He stated further that his Government expected the UNCED to go beyond a formal declaration of broad intentions and to draw up a specific agenda for action. The agenda for action should focus on areas of major global concern relating to the conservation of the climate and preservation of the earth's bio-diversity. His delegation also desired that the UNCED should focus on areas of concern pertaining to the developing countries where environmental issues have to be addressed mainly through the pace of economic development. While developing countries should pledge to incorporate environmental safeguards into their development programmes, the developed countries should pledge to promote economic development of the developing countries through a reduction of external debt and the amelioration of economic circumstances currently prevalent in these countries. Narrowing the gap between the developed and the developing countries was a vital necessity in dealing with economic issues, he added. Finally, he recounted the efforts being made by the SAARC to protect and preserve the environment.

20. The *Delegate of Sudan* expressed his grave concern about the constant and steady degradation of the environment. He was of the firm conviction that both the PREPCOM and the UNCED should take into consideration the endeavours of the AALCC to develop and codify international environmental law.

21. The *Delegate of Egypt* underscored the relationship between poverty and degradation of the environment. In his view, protection and preservation of the environment called for active international cooperation. His delegation favoured the appointment of an international supervisory authority to administer and coordinate activities and programmes aimed at the further prevention

of the degradation of the environment. He called upon the Secretariat to undertake further studies as well as to report to the Member Governments the outcome of the present Special Meeting as well as the forthcoming fourth and final session of the PREPCOM. He also favoured the convening of a meeting of legal and technical experts of the Member Governments of the AALCC either just before or during the meeting of the UNCED in Brazil in June 1992.

22. The *Delegate of India* observed that environment was a matter of common concern for all and his delegation favoured international cooperation and a multilateral approach in facing the challenges posed by the degradation of the environment. He expressed the hope that the environment would not become an instance of the North-South dialogue as sustainable development was the central theme.

His delegation was against any conditionalities being attached to the aid or financing or the erection of new trade barriers against the developing countries. The proposed regulatory approaches should enable the developing countries to tackle the environmental problems that were not of their own creation. He cautioned against the transfer of clean production technologies becoming a matter of commercial profit for the developed States.

He expressed the view that the AALCC as an exclusive legal body had a specific role in identifying issues involved on behalf of the Member States as well as for the UNCED. In the view of his delegation, the hard-core legal issues involved were (i) the common concern or common heritage of mankind; (ii) the responsibility of States; (iii) liability; (iv) the settlement of disputes; and (v) the nature and status of the proposed Declaration to be adopted at the end of the session. He further stated that closely related to these hard-core issues were certain other issues which were close to the heart of not only the Member States of the AALCC but all developing countries. Under this rubric, he spelt out and enumerated the following viz. (i) the right to a safe and clear environment; (ii) the right to sustainable development; (iii) the transfer of technology; and (iv) funding.

Amplifying on the hard-core legal issues that he had identified, the Delegate said that while these require a close look both by the AALCC and the UNCED, the concepts themselves were not new as they had been recognized and debated upon by UNCLOS III. In his opinion they were generic concepts.

Finally, on the question of drawing up of a final statement or a declaration, he stated that while his delegation agreed with the notion of a final document, it did not have the necessary brief to do so at the present session.

23. The *Observer for Sweden* stated that following the adoption of the Stockholm Declaration in 1972 and the establishment of a special UN body, the UNEP, some 80 agreements, global and regional, had been adopted by the international community. In addition, a whole host of ministerial declarations and other 'soft law' instruments abounded the field of international



environmental law. Even as new legal instruments were being negotiated in various fora, he stated, older conventions were under review to bring them in line with the latest available technical and scientific developments.

The environment was today a concern and responsibility of everyone and it was against this backdrop that the development of environmental law should be seen, he stated.

Referring to the UNCED, he said that it had been mandated *inter alia* to :

- (i) promote the development of international environmental law taking into account the special needs and concerns of the developing countries; and
- (ii) elaborate a document, an "Earth Charter" spelling out the fundamental principles, rights and obligations of Governments, organisations and individuals in the field of environment.

He then focussed on some issues of relevance in discussing the methods to improve international cooperation.

Some problems, such as the depletion of the ozone layer and the global warming needed to be tackled globally. Although the effectiveness of international cooperation depended on the widest possible participation of States, however, not many international conventions attracted enough adherence to make them efficient instruments for cooperation.

The financial aspect was, in his view, the crucial one which will have a direct impact on the result of the negotiations on the Conventions on Climate Change and Bio-diversity.

Another means that had been tried in order to enhance a broad participation was the use of differentiated obligations for contracting parties. Such an approach made it possible to take into account specific needs and circumstances of developing countries.

Most conventions lacked precise and clear provisions with regard to obligations and commitments. The use of more precise and concrete language in the defining of obligations would facilitate monitoring and compliance control so as to make cooperation more efficient.

Most international conventions also lacked provisions with regard to responsibility for environmental harm and compensation in case of environmental damage. The efforts to fill this lacuna had so far not been successful. Instead new approaches had emerged, such as the application of the "precautionary principle", the use of environmental impact assessment etc. placing emphasis on preventive measures to anticipate, prevent and attack the causes of environmental degradation.

Provisions relating to dispute avoidance and settlement and compliance

and control were either too general or lacking. There was neither a mechanism for effective enforcement or dispute resolution nor was there a machinery of sanctions for non-compliance.

The "Earth Charter" was the document in which fundamental principles and rights and obligations of governments, organisations and individuals would be laid down. The need to elaborate yet another instrument of this kind could be questioned given the number that already exists, although Sweden had actively supported the idea of such an instrument.

#### *Framework Convention on Climate Change*

21. The *Secretary-General* while introducing the Secretariat Study on this topic stated that he was, however, happy to note that wide recognition had been given to the fundamental principle of differentiated obligations as an integral part of the Framework Convention although there still existed divergent views in regard to the content and interpretation of such an obligation envisaged for both the developed and developing countries. This aspect needed more attention and clarification during the next INC session scheduled to be held in New York from 19 to 28 February 1992. He recognised that there were notions such as equity, special situations, vulnerability etc. which formed part and parcel of the proposed Framework Convention and had important bearing in elaborating the concept of differentiated responsibility.

In view of the continuing scientific uncertainties in regard to the causes and impacts of global warming, he expressed the view that the Framework Convention ought to be flexible in fixing targets and time-frames. What was more important was the commitment to initiate and develop firm measures to stabilise and reduce emissions, particularly of carbon dioxide. A similar flexibility in the context of preparation of national reports and its review procedure would remove some of the hurdles being placed in the smooth negotiations of the Framework Convention.

He appreciated the UNEP initiatives to conduct impact assessment studies in the various regions and to evaluate the needs of developing countries in the context of their participation in the Framework Convention on Climate Change. Similarly, the involvement of the International Panel on Climate Change (IPCC) in the preparation of studies on technical aspects of the economic implications of climate change would help the negotiating process for a Climate Convention.

He recognised that the issues on which there still existed fundamental differences between the developed and developing countries were mainly concerned with the commitments in regard to the financial resources and the transfer of relevant technology to the developing countries. Discussions in the third session of the PREPCOM of the UNCED and the fourth session of Inter-governmental Negotiating Committee on Bio-diversity had also highlighted problems of a similar kind.



He stressed that a real breakthrough in the next session could be achieved only by mutual understanding and accommodation of the interests of both the developed and developing countries. The cost of the omissions on the part of the developed countries in the past had been pretty high. Although the cost in accepting the universal commitments to be undertaken presently to safeguard the future generations could not be underestimated, there was no alternative.

22. The *Delegate of Japan* recognised that since economic activities of individual countries transcended national borders and given the deepening interdependence in the international community, global environmental problems could not be tackled by the efforts of a single country. Since environmental damage progressed gradually over a long period of time, it might be too late to take action by the time the damage became visible. In addition, since any remedy generally would take long and cost much, effective preventive measures must be devised at an early stage. Enhancement of scientific knowledge was required for this. It was imperative for all the countries to cooperate in tackling global environmental problems. Not only the industrialized countries, but also the developing countries must take active part in solving the problems. Toward that goal, it was necessary to give due consideration to the particular situation of the developing countries, based on the concept of "sustainable development". Japan had the experience of overcoming the problem of industrial pollution while maintaining high economic growth. Using the knowledge and technology on environmental preservation accumulated in that process, Japan was more than willing to contribute positively to the preservation of the global environment.

The Delegate stressed the importance of implementing all feasible measures without delay to prevent global warming, while endeavouring to expand scientific knowledge and information, given that some areas were yet to be scientifically evaluated. Moreover, a legal framework agreed upon all over the world was necessary for an overall solution of the problem, based on a comprehensive global strategy with a long-term perspective.

She observed that in order to reach an agreement in the June 1992 meeting of the United Nations Conference on Environment and Development, it was important to elaborate a Framework Convention on Climate Change on the basis of a general agreement of all the countries including both developed and developing ones. Only in this way the Convention would lead to solutions acceptable to all nations.

As for the preservation of biological diversity, Japan attached great importance on the issue as one of the main concerns of the environmental problem. She stressed that there was a need for an international legal instrument for the conservation of biological diversity on the basis of *in situ* conservation and concrete measures must be included in the Convention. Furthermore, the protection of intellectual property rights was essential for the transfer of technology.

23. The *Delegate of the Islamic Republic of Iran* stated that the document on the Convention on Climate Change provided comprehensive information regarding the various aspects of the Convention. The Nairobi Meeting of AALCC member countries held during the third INC meeting at the initiative of the AALCC Secretariat, in which he had the honour to represent his country, indicated the sense of responsibility on the part of the AALCC towards this crucial matter.

He was of the opinion that the main responsibility for climatic changes on the Earth, that gave rise to the need for adoption of this Convention—although still with a lot of scientific ambiguities—lay heavily on the developed countries. During the previous meetings, the industrialized countries obviously tried to overlook their responsibility. They also tried to ignore the fact that the trend of industrialization caused widespread pollution in the world and the industrial progress in the industrialized countries had been achieved at the expense of a lot of natural resources on the Earth. He believed that the developing countries have the right to develop, and the dangers arising from climatic changes, even though very important, should not appear as an impediment on the way of economic development in these countries. Nevertheless, the developing countries in the course of their economic development must take proper measures to contribute to the improvement of the environment. He recognised that the transfer of technology to and provision of financial resources for the developing countries for their commitments towards the Convention on Climate Change were among the most important issues that have been repeatedly raised and discussed during the four meetings of the INC. There was no doubt that implementation of such a convention dealing with this matter will not be possible without preparing the groundwork for the financial assistance of the developed nations to the developing world and transfer of sound and advanced technology to this group of countries. He stressed that particular situation of the developing countries, especially those whose economies heavily depended on fossil fuels exports, must be taken into consideration. In this respect, the Convention should make provisions for some industrialized countries that are the largest producers of greenhouse gases to reduce the production of such gases.

He observed that the INC meetings, particularly the last one in Geneva, demonstrated how divergent were the differences of opinion on the content of a Convention on Climate Change. For instance, during the sessions of Working Group II of the fourth INC meeting responsible for adoption of a document on legal and organizational matters of the Convention, twenty-three articles and four annexes were discussed. However, with the exception of two non-substantive articles, no agreement was reached on other articles, such as those dealing with scientific cooperation, research work, exchange of information, conference of the parties, settlement of disputes, amendment of the Convention provisions, and the Convention's entry into force. The intensity of these differences convinced some participating delegations that the present trend of talks would not be conducive to the realization of the predetermined goal of adopting the draft of the Convention before the