

forthcoming U.N. Conference on Environment and Development due to be held next June.

24. The *Delegate of Republic of Korea* stressed that reasonable time should be given for phasing out greenhouse gases. In his view, without adequate flow of funds and technology, no success could be achieved. He felt that the Global Environment Facility (GEF) was a good step but it was not enough. It should be supported by additional funds, including the principle of "Polluter pays."

Two other important aspects, in his view, were the training, education and development of human resources and redefinition of intellectual property to balance rights and the need for transfer of technology.

25. The *Delegate of People's Republic of China* observed that since the efforts to deal with the Climate Change issues were closely interrelated with the economic development, energy structure and other fundamental interests of the countries concerned, his country took the Climate Change issue very seriously. In his view, Climate Change was a common concern of mankind, which, in the final analysis, needed the concerted action of all the countries in the world. This concerted action could not be materialized without effective international cooperation based on the principle of equity. In such cooperation, the developed countries should make special contribution and provide the developing countries with requisite financial resources and technologies to enable the latter to participate effectively in international cooperation for dealing with the Climate Change issue without prejudicing their normal economic development.

While advocating the adoption of realistic and practicable response strategies by the developing countries within their capacities and means on the basis of the best scientific knowledge available, he stressed that the Framework Convention should have as one of its objectives the improvement of knowledge in this regard by establishing an organizational mechanism for further monitoring and research so as to provide a scientifically sound basis for the adoption of further measures.

In his view, the Framework Convention should be a Convention that sets forth general principles concerning Climate Change and general obligations for various countries, thereby preparing the ground for the eventual establishment of a legal regime for the protection of the global climate and furnishing the organizational framework for negotiating related protocols containing specific commitments on the basis of the principles enshrined in it. The Convention should :

- (i) Strike a balance between environmental protection and the respect for State sovereignty;
- (ii) Integrate environmental protection with economic development;
- (iii) Recognize the responsibility of the developed countries for human induced Climate Change and their obligations in addressing it;

- (iv) Establish the principle that the international community cooperate on an equitable basis in dealing with the matter and that, in particular, the developed countries provide financial resources and transfer technology to the developing countries to enable the latter's effective participation in related international action; and
- (v) In view of the marked difference in the levels of economic development between developed and developing countries, the Convention should provide that different time-frames be set for execution of relevant measures, depending on varied economic as well as scientific and technological capabilities that obtain in different categories of countries.

#### *Framework Convention on Biodiversity*

26. The *Secretary-General* while introducing the Secretariat study entitled "Development of a Global Convention on Biodiversity" stated that a framework Convention on Biodiversity was being negotiated in the inter-governmental negotiations currently being held under the auspices of the UNEP as part of the on-going preparations for the United Nations Conference on Environment and Development scheduled to be held in Rio in June 1992.

The Secretary-General stated that biodiversity, which was the total sum of life's variety on this planet constituted at the genetic, species and ecosystem levels, was declining at an unprecedented rate as a result of man's activities, and that this loss was irremediable. As a result, there was mounting public awareness and pressure, particularly in the developed countries, about the need to conserve biodiversity. As for the developing countries which happened to be the repository of bulk of biological resources, their main concern was that commercial exploitation of their biological resources was proceeding without corresponding monetary compensation to them. They lacked capacity as well as economic incentives to conserve their biological resources for future generations, but were forced to incur costs including foregone revenues from alternative uses where conservation was attempted.

The Secretary-General pointed out that the irony of the situation was, while the areas of greatest biodiversity or importance were located in the developing countries, they did not have the resources to conserve them and needed substantial help from the developed countries in the form of financial and technical assistance to be able to do so. It was in recognition of these concerns that a global Convention on Biodiversity was being negotiated which was intended to evolve a broad legal framework pulling together a wide range of actions at national and international levels for conservation and sound use of biodiversity which had hitherto been taken on a piecemeal basis.

The Secretary-General further stated that the crucial issues in the current negotiations for a Convention on Biodiversity were, access to genetic resources, transfer of technology including biotechnology and provision of funds and

importance to the rational use and conservation of biodiversity. He supported the formulation of an International Convention on the Conservation of Bio-diversity. He was, however, of the view that the successful formulation of such a Convention would depend on the satisfactory resolution of the following issues :

- (i) respect for national sovereignty over biological resources within national jurisdiction. This principle should be reflected in the Convention by making the access to genetic material subject to measures prescribed by the States concerned.
- (ii) The Convention should be in conformity with the national plans and priorities of developing countries.
- (iii) In the transfer of biotechnology, special and preferential treatment should be given to the developing countries, particularly to those providing the genetic materials.
- (iv) Since the developing countries are the repository of bulk of biodiversity, and for a long time they have expended efforts and expenses for the conservation of biodiversity, such efforts of them should be recognised and compensated by the international community.
- (v) The Convention should establish a fund to provide developing countries with adequate, new and additional financial resources with a view to ensuring the transfer to those countries of the environmentally sound technologies including biotechnology for rational use and conservation of biodiversity to enable the developing countries to implement the Convention.

Finally, the Delegate cautioned that since the negotiations for the Convention had entered the final stage, co-ordination of the developing countries' viewpoint on the various issues was of vital importance to the adoption of an acceptable Convention.

32. The *Delegate of the Philippines* stated that his country supported the efforts of the AALCC to contribute to the deliberations within the process of UNCED as well as the negotiations on the Framework Conventions on Climate Change and Biodiversity with the general aim of addressing global concerns over environmental degradation and the developmental requirements of the developing countries. His Government also supported the work of the AALCC in regard to the Working Group III of the PREPCOM of UNCED. He reiterated his Government's preference for naming the proposed Earth Charter as the Rio Charter or Declaration on Environment and Development which should be a clear and concise document with no legally binding effect and reflecting international solidarity. He was also of the view that the two Conventions in order to be effective must reflect the following two central issues of importance to the developing countries : (i) transfer of environmentally sound technology on concessional, non-commercial

and preferential terms; and (ii) Financial resources—developed countries should provide new, adequate and additional resources to cover full incremental costs involved in addressing environmental issues and in implementation of relevant commitments derived from international legal instruments.

33. After the conclusion of the general debate, in the course of which several members and observer delegations had voiced their concern over the growing degradation of the global environment and stressed the necessity of evolving a common position amongst the Member States of the AALCC on the UNCED matters, it was *inter alia* decided that the AALCC should make its views known to the PREPCOM of the UNCED scheduled to meet in March 1992. To that end, the AALCC appointed an open-ended Working Group with a core group comprising the delegations of the Arab Republic of Egypt, China, Ghana, India, Japan, Kenya, Libyan Arab Jamahiriya, Pakistan and Sri Lanka to identify and formulate the common acceptable principles of international environmental law for adoption by the AALCC and later transmission to the PREPCOM for UNCED. The Working Group held a total of four meetings between the 28th and 30th of January 1992 under the joint chairmanship of Mr. Jamshed Hameed (Pakistan) and Mr. Amrit Rohan Perera (Sri Lanka). Following a series of formal and informal exchange of views, the Working Group recommended the following draft text for adoption by the AALCC.

#### "STATEMENT OF GENERAL PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

*The Asian-African Legal Consultative Committee,*

after an exchange of views on legal aspects of environment and development, affirms :

- (i) that the environment is the common concern of mankind and that the environment and development are intrinsically and inextricably linked;
- (ii) that the principle of sustainable development shall be given due effect and development shall not be pursued in a manner as would endanger the environment;
- (iii) that all members of the international community shall ensure that no appreciable or significant harm is caused to the environment and that the environment does not suffer severe and irreversible degradation;
- (iv) that the responsibility of Member States of the international community shall be [common but differentiated] [differentiated] and the application and enforcement of environmental standards by the developing countries shall be in accordance with their respective capabilities and responsibilities;

- (v) the need to protect inter-generation equities within the context of the progressive development and codification of international environmental law;
- (vi) that the developed countries in the interest of the common future of mankind and the protection and preservation of the environment, seriously consider making available to the developing countries [new] [adequate] and environmentally sound technologies on a [preferential and non-commercial] [fair and most favourable] basis;
- (vii) that the developed countries, international and regional organizations and financial institutions consider, explore and, where necessary, make provisions for [new] additional and adequate financial resources to the developing countries to meet the objectives of sustainable development and the protection and preservation of the environment;
- (viii) that the UNCED should accord priority to the improvement and strengthening of the existing institutional mechanisms relating to environment and development in the United Nations system and to enhancing their cooperation and coordination; and
- (ix) that any instrument to be adopted by UNCED should include appropriate provision for the peaceful settlement of disputes."

34. The above 'Statement' was formally approved by the plenary meeting of the AALCC and later submitted to the fourth session of the PREPCOM for the UNCED held in New York in March 1992. The Statement was circulated as an official document in all the working languages of the United Nations under the agenda item – "Principles on General Rights and Obligations" of Working Group III.

35. As for the future work of the AALCC related to the follow-up action to be taken after the conclusion of the UNCED, the AALCC adopted a series of decisions which are as follows :

**Decisions on Further Working Programmes of AALCC on Environment after the Conclusion of UNCED at Rio in June 1992**

In view of the long-term nature of environmental protection, the AALCC's concern and involvement should continue even after the conclusion of the Rio Conference in June 1992. The AALCC might wish to re-invigorate its endeavours and to further its environmental programmes. Its suggested measures and actions to be taken in this regard may include :

1. Preparation of a general assessment of the outcome of the Rio Conference concentrating particularly on the issues with legal implications;

2. Continue to monitor the on-going process of UNCED at its next stage and follow-up aspects of its new programmes with legal implications;
3. Preparation of detailed analysis and comments on the two Framework Conventions on Climate Change and Biodiversity, if adopted, and monitor the developments after the signature of the Conventions, and make recommendations to the Member States of the AALCC in respect of ratification of the Conventions respectively as deemed appropriate;
4. Make studies on the further development of international environmental law. An item, "Legal Aspects of the Protection of the Environment of Areas not subject to a National Jurisdiction (Global Commons)" might be taken up by the AALCC. The topic will hopefully be included in the future work programme of the ILC;
5. Render assistance to the Member States at their request in the field of national legislation concerning the protection of environment; and
6. Strengthen the co-operation between AALCC and the UNEP through the conclusion of a co-operation agreement between AALCC and UNEP.