

Note on Drafting of the Earth Charter/Rio Declaration on Environment and Development

1. According to the terms of reference adopted by the Preparatory Committee (PREPCOM) for the United Nations Conference on Environment and Development (UNCED) at its second session (A/46/48, Part I, decision 2/3, sub-paragraph (ii), Working Group III of the PREPCOM was entrusted to examine the feasibility of elaborating principles on general rights and obligations of States and regional economic integration organizations, as appropriate, in the field of environment and development, and to consider the feasibility of incorporating such principles in an appropriate instrument/charter/statement/declaration, taking due account of the conclusion of all the regional preparatory conferences.

2. Working Group III placed the item, "Principles on General Rights and Obligations", on the agenda of its second session, scheduled in August 1991. The Working Group had before it an annotated check-list, prepared by the Secretariat of the conference, of principles on general rights and obligations (A/Conf. 151/PC/78) as well as several documents submitted by delegations (A/Conf. 151/PC/CRP. 8, A/Conf. 151/PC/83, A/Conf. 151/PC/WF.III/4, A/Conf. 151/PC/WG. III/L. 5, A/Conf. 151/PC/WG.III/L. 6), with a view to facilitating the drafting of the proposed Earth Charter/Rio Declaration on Environment and Development.

3. In the course of the discussion certain elements related to preparing the target instrument have been gradually approaching consensus.

- (a) The title of the instrument should aptly reflect the need for the integration of environment and development and the linkage between environment and development. This is indicated by the General Assembly Resolution 44/228. In that context a title that may combine the term the Earth Charter with the Rio Conference on Environment and Development would therefore be preferable.
- (b) The proposed charter/declaration should be in its nature not legally binding as a multilateral convention, but given the fact that it is likely to be adopted at the summit level, it would have the moral authority of the international community.
- (c) The text of the proposed charter/declaration should be short and concise.
- (d) The proposed charter/declaration should be closely linked to Agenda 21. However, there existed diversities on the question whether or not the proposed instrument should simultaneously constitute an organic part of Agenda 21.

- (c) The text of the proposed charter/declaration should be appealing and inspiring with a view to enhancing public awareness of environmental and development issues.
- (f) Its language and style, while ensuring legal precision of commitments, should be easily understood by the general public.
- (g) The proposed charter/declaration should, in a forward looking manner, build on existing principles contained in documents such as the 1972 Declaration of the United Nations Conference on Human Environment.

4. During the deliberations of the last Session in August, a draft decision (A/Conf. 151/PC/WG. III/L. 6), entitled as "Rio de Janeiro Charter/Declaration on Environment and Development" was submitted by Ghana on behalf of the State Members of the United Nations that are members of the Group of 77, which contained a number of principles which should be fully taken into consideration in the elaboration of such document. The Working Group has decided to consider and take proper action on it at its next session.

5. Based on all proposals submitted and the outcome of informal consultations, the Chairman of Working Group III prepared a consolidated draft (A/Conf. 151/PC/WG. III/L. 8/Rev. 1). The Secretary-General of UNCED was requested to update this consolidated draft and to incorporate all proposals from delegations and to reflect the state of discussions at the end of the third session in preparation for further deliberation at the fourth session. The Working Group is expected to take the forthcoming updated consolidated draft as a basis for further discussion at the fourth session of the PREPCOM, without prejudice to further contributions or proposals to be submitted by national delegations or regional groups after the third session.

6. Drafting of an instrument/charter/declaration to contain principles on general rights and obligations in the field of environment and development has therefore entered into its final phase. The fourth session of the PREPCOM, scheduled to be held in New York in March 1992, will hopefully finalize the preparation of the draft text of such document, which will finally be examined and adopted by the Rio Summit in June 1992.

7. To provide as much assistance to its Member States as possible to assist them to make their contribution, the AALCC may wish to address the subject item regarding principles on general rights and obligations in the context of preparation for UNCED.

8. To this end, the Secretariat of the Committee suggests that the Committee may focus its consideration on the following aspects :

- (a) To consider and take appropriate action on the draft decision proposed by the Group of 77, on the guiding principles to be applied to drafting of the proposed charter/declaration on environment and development.

- (b) To examine the Chairman's consolidated draft, with a view to working out its own draft text
- (c) The views, proposals and conclusions on the subject-matter may be submitted to the fourth session of the PREPCOM.

Note on the Survey of Existing Agreements and Instruments, and Further Development of International Environmental Law
(Item 2 of the Provisional Agenda, Third Session, Working Group III).

Part One : Introduction

In accordance with the terms of reference adopted by the Preparatory Committee (PREPCOM) for the United Nations Conference on Environment and Development (UNCED) at its Second Session (A/46/48, Part 2, decision 2/3), Working Group III of the PREPCOM shall prepare an annotated list of existing international agreements and legal instruments in the field of environment, describing their purpose and scope, evaluating their effectiveness, and examining possible areas for further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries.

Following the preliminary exchange of views at its first session of the Working Group III of the PREPCOM (18 March - 5 April 1991), the Secretariat of the Conference prepared a note (A/Conf. 151/PC/77) for the consideration of Working Group III at its Second Session (19 August-4 September) which contained a draft list of existing agreements and instruments to be evaluated for this purpose, together with a number of draft criteria for their evaluation in view of the further development of environmental law.

Because the Working Group had been entrusted with many important tasks and thus had a heavy agenda at its second session, including the drafts of the proposed Earth Charter/Rio Declaration on Environment and Development, it was generally agreed that in view of the limited period of time available to the working group, not too much time should be spent on the proposed evaluation of existing agreements and instruments.

The general discussion focussed on three issues : the range of agreements and instruments to be reviewed; the criteria to be applied in reviewing; and the expected outcomes of such reviewing.

Although there were some controversies on these issues, the Working Group reached consensus on this agenda item as follows :

- (a) takes note of the report by the Secretariat on the survey of existing agreements and instruments, and criteria for evaluation (A/Conf. 151/PC/77);

- (b) agrees on the expected outcomes of its work on this agenda item;
- (c) requests the Secretary-General of the United Nations Conference on Environment and Development to compile the necessary background information in accordance with the agreed criteria for evaluating the effectiveness of existing agreements and instruments on the basis of a revised list of such agreements and instruments.

It has been agreed that possible areas to be examined in the context of Agenda 21 are :

- (a) Priorities for future law-making at the appropriate level, incorporating environmental and developmental concerns;
- (b) Measures to promote and support the effective participation of developing countries in the negotiation and operation of international agreements or instruments, including technical and financial assistance and other available mechanisms for this purpose;
- (c) Measures for effective implementation and compliance, regular assessment and timely review and adjustment of agreements or instruments by the Parties concerned;
- (d) Measures for improving the effectiveness of institutions and procedures for the administration of agreements and instruments;
- (e) Measures for the resolution and prevention of conflicts, including potential conflicts between environmental and development/trade agreements or instruments, also with ensuring that such agreements and instruments are mutually reinforcing.

As regards the criteria for evaluating the effectiveness of existing agreements and instruments, the agreed criteria (some of the criteria may not be applicable to all agreements or instruments to be evaluated) include :

A. Objectives and Achievement

1. What are the basic objectives formulated in the international agreements and instruments evaluated, and how do these objectives relate to the promotion of sustainable development ?
2. In the case of regional agreements and instruments, what is their actual and potential bearing on global environmental protection and sustainable development ?
3. Do these agreements or instruments take into account the special circumstances of developing countries ?
4. To what extent have the basic objectives (environmental/developmental) formulated in international agreements and instruments been met, and how is goal achievement measured ?

B. Participation

5. Is membership limited or open-ended ?
6. Are reservations possible, and to what extent have they been used ?
7. What is the current geographical distribution of membership in existing environmental agreements and instruments, especially as regards developing countries ?
8. What is the record of actual participation by developing countries in the negotiation and drafting of these agreements and instruments, and in programme activities and meetings organised under these agreements and instruments ?
9. Which incentives (e.g. financial, trade, technology benefits) are available to encourage participation and facilitate implementation by developing countries ?
10. Which factors influenced the participation, especially of developing countries, in the agreement or instrument e.g. :
 - (a) Financial resources required and available for participation in the agreement or instrument;
 - (b) Technical assistance required and available for participation in the agreement or instrument;
 - (c) Scientific assistance required and available for participation in the agreement or instrument;
 - (d) Information on the (operation of the) agreement or instrument to Governments, parliaments, press, NGOs, industries and the general public;
 - (e) Role of parliaments, press, NGOs, industries and the public opinion in general;
 - (f) Availability of reservations.

C. Implementation

11. What are the commitments imposed on parties by these agreements and instruments and how is compliance by parties with their commitments monitored and measured ?
12. How do parties report on their performance in implementing agreements and instruments, and to what extent have they complied with reporting duties ?
13. Which are the specific requirements (if any) of data supply and data disclosure, and to what extent have they been met by the parties ?
14. Which possibilities exist to promote compliance and to follow-up

on non-compliance, and to what extent have they been used ?

15. What mechanisms are available to deal with disputes over implementation and to what extent have they been used ?
16. Which factors influenced the implementation e.g. :

- (a) Financial resources required and available for implementation of the agreement or instrument;
- (b) Technical assistance required and available for implementation of the agreement or instrument;
- (c) Scientific assistance required and available for implementation of the agreement or instrument;
- (d) Information on the (operation of the) agreement or instrument to Governments, parliaments, press, NGOs, industries and the general public;
- (e) Role of parliaments, press, NGOs, industries and the public opinion in general;
- (f) International supervisory or implementing bodies;
- (g) Obligations to report on compliance and/or to supply and disclose data;
- (h) Non-compliance procedures and procedures for settlement of disputes (including fact-finding procedures).

D. Information

17. In which form and in which languages are the texts of existing agreements and instruments published and disseminated ?
18. How is current information on the operation and implementation of international agreements and instruments made available to governments, to the industries concerned and to the general public ?
19. What additional materials are available to provide guidance for the implementation of international agreements and instruments at the national level ?
20. To what extent is the above information used in international and national training and education programmes ?

E. Operation, Review and Adjustment

21. Which are the institutional arrangements for international administration of existing agreements and instruments ?

22. What are the annual costs of international administration (secretariat, meetings, programmes of agreements and instruments, and how are they financed ?
23. Which are the main benefits and the main cost elements of knowledge and advice taken into account in policy-making decisions under these agreements and instruments ?
24. How do these arrangements and mechanisms ensure the effective participation of (a) national authorities, especially from developing countries; and (b) non-governmental participants, including the industries concerned and the scientific community ?
25. Which mechanisms are available to ensure periodic review and adjustment of international agreements and instruments in order to meet new requirements, and to what extent have they been used ?

F. Codification Programming

26. Which new drafts, or draft revisions of existing agreements and instruments in the environmental field are currently under preparation or negotiation ?
27. To what extent and through which mechanism is drafting coordinated with related work regarding other agreements and instruments ?
28. Which are the remaining gaps that need to be covered by legal provisions ?
29. To what extent are mechanisms other than formal agreements or instruments contributing to the development of international law in the field of the environment ?

The list contained in Document A/Conf. 151/PC/77 was based on the following assumptions :

- (a) The range of existing international agreements and instruments in the environmental field should include formal multilateral treaties at the global and regional level; international technical rules and regulations in sectors having a bearing on environmental protection; and a number of instruments that are not legally binding but because of their adoption at an inter-governmental level may be considered as initial steps in the development of international environmental law.
- (b) The draft list should be essentially concerned with environmental protection against man-made risks, and therefore should not include agreements or instruments that are primarily aimed at natural risks or diseases; nor should it cover the multitude of existing arrangements dealing with bilateral environmental co-operation with shared geographically limited resources, or the internal environmental enactments of regional economic integration organization; the principal

consideration should be the relevance of an agreement or instrument to the further development of international environmental law.

These assumptions and the draft itself were generally accepted by most delegations, with a few proposals in effect to rearrange certain sections, to add some specific agreements or instruments to or delete some from the list, to give representative examples of relevant bilateral agreements regarding shared natural resources and the protection and enhancement of the environment. As a result, a revised list was brought out in the light of these proposals.

Finally, the Working Group decided to put the subject item, in a broader term, "Further development of international environmental law in the light of the need to integrate environment and development", on the provisional agenda of its next (third) session, to be held in March-April 1992.

Part Two : Comments and Recommendations

I. On the Purpose of the Survey

According to the terms of reference adopted by the PREPCOM for UNCED, the item under the consideration of Working Group III has two purposes. The first one is to reflect the present state of existing international agreements and instruments in the field of environment, through describing their purpose and scope, and evaluating their effectiveness. The second is to examine possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries. A lot of work has already been done for the first purpose alike by other organisations or institutions, such as the UNEP. A comprehensive and updated compilation of international treaties and agreements in the environmental field (UNEP G/C. 16/INF. 4) was already available. Therefore the Secretariat of the AALCC is of the view that *the work to be done by Working Group III under this subject item should be largely action-oriented. The stress for the survey of existing agreements or instruments should be on the examination of and search for the ways and means for the further development of the international environmental law in the light of the need to integrate environment and development.* In this context one of the aims should be to find out the real reasons why States, particularly the developing countries did not sufficiently participate in certain multilateral conventions or treaties concerning the protection of the environment, and what could be done to increase their participation.

The AALCC, the membership of which mainly consists of the developing countries, may wish to address itself to these questions, as it has done recently in respect of the United Nations Convention on the Law of the Sea.

II. On the Range and Priority of the Survey

With regard to the range of the survey we agree on the proposal to cover not only legally binding agreements but also a number of instruments not legally binding because of their contribution or potential contribution to the development of international environmental law. We do believe, however, that *in order to avoid overgeneralization of the survey, proper distinction must be made between binding and non-binding instruments, between global and regional agreements.* Bearing in mind the limited time available before the Conference it is *neither necessary nor practical to survey all existing international agreements and instruments under the list. The first priority should be given to certain major global multilateral conventions that have the most significant impact on the protection of the global environment such as the United Nations Convention on the Law of the Sea and Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.* It is further suggested that *different focus should be made on the different categories of the agreements and instruments when they are evaluated. It seems to us the wider participation and more effective implementation might constitute the key elements in respect of the global conventions; in the case of the regional agreements the usefulness of reference to the other regions and the possibility of adopting similar agreements at the global level could be taken into due consideration. As regards the international agreements that have not yet become effective, attention should be paid to the promotion of the ratification and the entry into force of these agreements.*

III. On the Criteria for the Evaluation

The proposed criteria for evaluating the effectiveness of existing agreements or instruments and their overall contribution to the goal of sustainable development might be too extensive and might cause serious confusion between the criteria for the effectiveness of an agreement evaluated which are to be used to determine the extent to which the evaluated agreement is effective and the specific items of the evaluation, that is, the scope of the evaluation. It seems that most of the proposed criteria listed belong to the scope rather than the criteria for evaluating the effectiveness of existing agreements or instruments. Therefore we do not think it is appropriate to use the terms "criteria" to cover all the 30 questions listed thereof. Revision of the items listed may be required.

It is the view of the Secretariat of the AALCC that *the main criteria for evaluating the effectiveness of existing agreements or instruments and their overall contribution to the goal of sustainable development should be :*

- (a) Whether or not and to what extent does an agreement or instrument under the evaluation meet the need to integrate the environment and development and is conducive to the promotion of sustainable development.

- (b) Whether or not and to what extent does the agreement or instrument take into account the special needs and concerns of the developing countries.
- (c) Whether or not and to what extent does the actual participation in the agreement or instrument reach the anticipated target set up by the agreement or instrument itself. In the case of multilateral convention, the extent to which developing countries participate in it and whether or not the convention includes adequate incentives to encourage the participation by the developing countries.
- (d) Whether or not the agreement or instrument is implemented and complied by the participants. Are there appropriate mechanisms for the enforcement of the agreement and mechanisms for the settlement of disputes over the implementation?

IV. On the Further Development of International Environmental Law

In this regard we consider that the suggested possible areas to be examined for the further development of international environmental law would be generally acceptable, with the following observations:

1. *The future law-making should be closely linked with the need to embody the principles contained in the Earth Charter/Rio Declaration on Environment and Development and to effectively implement Agenda 21, taking into account the special needs of the developing countries.*

2. *Benefitting from the past experiences, it is important to avoid the proliferation of new agreements or instruments without making concrete arrangements for their realistic implementation. Much more attention in the future law-making process should be paid to bringing into force the existing international multilateral or regional treaties that have not yet become effective, and to expand the number of contracting parties, particularly the wider participation of the developing countries.*

3. *In considering further development of international environmental law, it would be very useful to make the work of the UNCED associated with the work of the International Law Commission. It should be recalled that at its 43rd Session, held in the Summer 1991, the International Law Commission considered issues to be included in its future agenda and recommended the inclusion of an item entitled "Legal aspects of the protection of the Environment of Areas not subject to a National Jurisdiction (global commons)". We appreciate this recommendation and hope the item will be included in the future agenda of the ILC. The AALCC might also wish to propose the inclusion in the agenda of an item entitled:*

"Further Development of International Environmental Law in the Light of the Need to Integrate Environment and Development"

The Preparatory Committee for the United Nations Conference on Environment and Development might wish to make the following recommen-

- (a) *Appreciates the recommendations of the International Law Commission, made at its 43rd Session (Summer 1991), to include the item, entitled "Legal Aspects of the Protection of the Environment of Areas not Subject to a National Jurisdiction (Global commons)," in its proposed items which might be asked to take up for consideration in the future;*
- (b) *Requests the International Law Commission to place, as a priority, the proposed item concerning the protection of the environment on its formal agenda, and take it up as a priority item;*
- (c) *Further requests that the consideration of the subject item should be taken in the light of the need to integrate environment and development, and in accordance with the Earth Charter/Rio Declaration on Environment and Development, to be adopted by the UNCED in June 1992;*
- (d) *Requests the Secretary-General of the UNCED to give the International Law Commission the relevant information and materials on the deliberation of the subject by the sessions of the PREPCOM for the UNCED."*

The Secretariat of the AALCC wishes the Committee to examine this proposal at its 31st Session, scheduled to be held in Islamabad in January 1992, and make a decision on it.

4. *It is also strongly recommended to pay due attention to the Montevideo Programme for the Development and Periodic Review of Environmental Law (1981-1991). The programme was largely implemented in the last decade. The formulation of a programme for the development of environmental law during the next decade (1992-2002) is now on the way. For this purpose a meeting of senior environmental law experts and an ad hoc meeting of senior government official experts in environmental law were successively held in July and October 1991. The PREPCOM for the UNCED, therefore, is requested to take into account the results of these meetings when it works out its own working programme on the further development of international environmental law.*

V. Conclusion

The survey of existing agreements and instruments in the field of environment, and the further development of the international environmental law is an important item on the agenda of the third session of Working Group III of the PREPCOM for the UNCED. The AALCC is expected to address this item at its 31st Session, scheduled to be held in January/February 1992. *The proposed topics on which the Committee may focus would include: the purpose, priority of the survey; the basic criteria for evaluating the effectiveness*

of existing agreements or instruments; and the guidelines for the further development of international environmental law in the light of the need to integrate environment and development.

To facilitate the final preparation for the UNCED, the Secretariat of the AALCC suggests that the deliberation of the subject item should be largely action-oriented. The Committee is requested to formulate a common stand on the above-mentioned matters, and to make its own proposals to the Fourth Session of the PREPCOM for the UNCED.

Note on the Institutional Issues

(Item 4, provisional agenda, Working Group III, 4th Session of PREPCOM)

I. The items on the agenda

Among the agenda items which the Preparatory Committee (PREPCOM) for the United Nations Conference on Environment and Development (UNCED) must address is the important issue of institutional arrangements arising from the needs identified in consideration of the substantial issues and related matters. According to the terms of reference adopted by the PREPCOM, this issue has been contained in the agenda item of Working Group III, "other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Groups I and II and the plenary of the Preparatory Committee".

At the second session of the PREPCOM (March-April, 1991), the Secretariat of the Conference prepared a subject document entitled "Progress Report on Institutions" (A/Conf. 151/PC/36), for the consideration of Working Group III. There was, however, little discussion on the contents of this report due to the shortage of time. When the third session of the PREPCOM was held in August 1991, Working Group III had before it a new progress report (A/Conf. 151/PC/80) as an addendum to PC/36. These two reports provided a useful basis for the deliberation on the subject item.

During the August session, Working Group III generally and primarily examined the item. Substantial deliberation was, however, decided to be left to the next session, recognizing that the final agreements on specific institutional arrangements or rearrangements would have to await agreement by the PREPCOM on recommendation regarding the other issues being considered by Working Groups I and II and the plenary which would certainly give rise to a number of institutional proposals. It was also recognized that the extensive range of institutional issues involved in the UNCED process should be considered in the context of the broader need for organisational aspects of the economic and social and related fields of the United Nations system which have been the subject of a great deal of study and dialogue in recent years. In the latest episode the General Assembly at its resumed 45th session on 13 May 1991, adopted by consensus a resolution (A/Res. 45/264) on the subject. The resolution contains basic

principles and guidelines and certain measures for the restructuring and revitalization of the Economic and Social Council (ECOSOC). Issues relating to the composition of ECOSOC and the complex subject of the subsidiary machinery of both ECOSOC and the General Assembly as well as the review of the Secretariat will be dealt with at future sessions of the General Assembly. The Secretary-General was requested to submit a progress report on these matters to the General Assembly at its 47th Session (1992). The General Assembly itself is also scheduled to review in 1993 the whole subject of restructuring and revitalization of the United Nations in the economic, social and related fields. At the same time, it is equally important that the UNCED's recommendation on the institutional issues concerning the integration of environment and development would undoubtedly have a significant impact on the ongoing overall reforms of the United Nations as a whole.

In conclusion of the item, after discussion, the Working Group adopted by consensus the following decisions:

- (a) takes note of the progress reports on institutions by the Secretary-General of the Conference (A/Conf. 151/PC/36), (A/Conf. 151/PC/80) and Corr.1) and comments thereon.
- (b) requests the Secretary-General of the Conference to prepare an updated compilation of institutional proposals made by delegations and others during the third session of the Preparatory Committee, including those made in Working Groups I and II and the plenary as well as the information that may be contained in national reports, regional preparatory meetings, with a focus on option for action.

The Working Group further decided to put the same item on its provisional agenda for its next (final) session, scheduled to be held in New York in March-April 1992.

II. Existing proposals on Institutional Mechanisms

Since the beginning of the preparatory process for UNCED, there have been advanced a number of proposals on the institutional mechanisms for the need to integrate environment and development. Most of them have concentrated on the inter-governmental mechanisms. The following is a summary of the main proposals contained in PC/80, which the PREPCOM may wish to consider:

- The establishment of a "Sustainable Development Commission" to which all United Nations bodies, agencies and programmes as well as "treaty" Secretariats involved in the area of environment and development would be accountable. It would meet annually and examine policies and programmes for promoting global action on environment and development and would be both a political deliberative body and co-ordinating mechanism for the UN system's activities in this area.

- The establishment of a high-level deliberative body at the political level which would provide a forum for overview and policy co-ordination of environmental issues and their integration with other major issues to which they relate in the security, economic, social, humanitarian and common areas. Some suggest that this be done through establishment of an "Environmental Security Council" or a Committee of the General Assembly, supplemented, perhaps by a special committee of the Security Council to deal with the issues which are security related. It is also suggested that these functions could be performed according to the Trusteeship Council a new mandate as the forum in which Member States exercise their trusteeship for the integrity of the global environment and commons.
- The creation of an "Economic Security Council" composed of around 24 members, representing all groups of Member States, as the centrepiece of the "Economic United Nations" parallel and equal to the "Political United Nations". The Council would be supported by an Interdisciplinary Central Secretariat with a large number of highly qualified experts and a number of smaller sectoral Secretariats maintained at the level of each of the agencies. The Council would bring together the competent ministers, depending on the problems on the agenda, and Central Secretariat would be led by a group of independent persons (commissioners).
- The creation of an "International Development Council" within the United Nations to meet as a high-level forum for Member States to discuss development issues and give overall policy guidance for UN operational activities for development.
- The revitalization of the Economic and Social Council. It is suggested that, in principle, most of the functions envisaged for the proposed new inter-governmental mechanisms referred to above could be undertaken by ECOSOC. In order to do so, there would have to be a very significant improvement in its credibilities and strengthening of its effectiveness. The subject of restructuring and revitalization of ECOSOC is now on the agenda of the General Assembly.
- The convening of a World Summit on Global Governance similar to the meeting in San Francisco and at Bretton Woods in the 1940s. To prepare the ground for such a Summit, it was suggested to establish an independent international commission on global governance, composed of individuals functioning in their personal capacities.

In addition to the above-mentioned proposals, there are a number of proposals related to the constructive changes of the Secretariat of the United Nations itself and those of its agencies and programmes. The report of the World Commission on Environment and Development, *Our Common Future*, points to the need for a high-level centre of leadership for the United

Nations system as a whole with capacity to assess, advise, assist and report on progress made and needed for sustainable development. That leadership should be provided by the Secretary-General of the United Nations... who should constitute under his chairmanship a special United Nations Board for Sustainable Development". The principal function of the Board would be to agree on continued tasks to be undertaken by the agencies to deal effectively with many critical issues of sustainable development that cut across agency and national boundaries. In this context proposals have also been made for the revitalization of the Environmental Co-ordinating Board.

During the last August Session, a few more concrete proposals were brought out, and attracted the attention of many delegations. They called for the institutional adjustments, including :

- A possible combination of existing ECOSOC Committees into a single inter-governmental Committee to deal in a comprehensive way with the more political aspects of environment and development;
- An annual joint (or combined) UNDP-UNEP Session on Environment and Development as part of the UNDP Council's agenda;
- A high-level effective coordinating mechanism for UN and related agencies and programmes, co-chaired by the UNDP Administrator and the UNEP Executive Director;
- Regionally and nationally focussed efforts built around or based on the existing UNDP Roundtable/World Bank Consultative Group of Donors and UN agencies.

Quite a few proposals focussed on the strengthening of the UNEP, which *inter alia* suggested :

- that UNEP be strengthened in its own right as the central agency in the UN system on matters of environment and development. Its operations should be strengthened and enhanced by provision of additional funds, recruitment of experts and improvement of its infrastructural arrangements;
- that an inter-agency linkage be strengthened through the creation of coordinational offices at the UNEP Headquarters for all UN agencies;
- that the membership of the Governing Council be increased to make it more representative at the decision-making level in accordance with UNEP's new status;
- that UNEP's role be strengthened in coordinating regional environmental centres to enable them respond to issues of development both in the developed and developing countries;
- that a mechanism for the prevention and peaceful settlement of

ecological disputes be established under UNEP and be located at its headquarters.

Deliberation on the subject continues. All the proposals mentioned above, however, need to be carefully examined.

III. Preparation for the AALCC's Common Stand

1. Dimensions and emphasis of the issue

As stipulated by the Statute of the AALCC, one of the main purposes of the Committee is to exchange views and information on matters of common concern having legal implications and to make recommendations thereon if deemed necessary. The Committee may, therefore, wish to consider this subject item of institutions related to UNCED, which is on the agenda for Working Group III of the PREPCOM, and to make efforts to form a common stand thereon. This would render valuable assistance to its Member Governments in preparing for the UNCED at its final stage.

It is the suggestion of the Secretariat that general dimensions and the emphasis in the Committee's consideration of this item would be placed on the following substantive aspects which seem to be the key elements for the complex institutional issues :

- (a) Basic principles and guidelines to be applied to deal with the institutional mechanisms arising from the need to integrate environment and development;
- (b) Framework of inter-governmental mechanism for the political deliberation and policy guidance in the field of environment and development;
- (c) Framework of inter-agency coordinating mechanisms within the United Nations system; and
- (d) Other major institutional arrangements such as strengthening of the UNEP and settlement of ecological disputes.

2. Basic Principles and Guidelines on Institutions

It should be recalled that the General Assembly, at its resumed 45th Session, adopted resolution 45/264 on the subject of restructuring and revitalization of the United Nations in the economic, social and related fields. The resolution contains 7 basic principles and guidelines for action. They are :

- (a) Restructuring is primarily the responsibility of member States;
- (b) Political will is an essential prerequisite for reform;
- (c) The exercise should aim at achieving greater complementarity between the bodies and organs of the United Nations with the General Assembly;

- (d) The preservation of the "democratic principles" in the decision-making process of the United Nations;
- (e) The need to preserve and strengthen transparency and openness;
- (f) The most efficient and effective use of the financial and human resources of the United Nations system in the economic, social and related fields; and
- (g) Importance of the ongoing revitalization of ECOSOC.

We are convinced that the above principles and guidelines are of direct relevance to UNCED. They could be applied not only to the restructuring and revitalization of ECOSOC but also equally to the institutional arrangements of UNCED. AALCC may thus wish to request the PREPCOM to comply with these principles and guidelines in considering the institutional issues related to the UNCED.

In the context of the sixth principle on efficient use of financial and human resources as mentioned above, we further suggest that the PREPCOM should ensure that no proliferation of new institutions will take place. First of all, it should concentrate on the improvement and strengthening of existing institutional mechanisms in the United Nations system, and on enhancing their better cooperation and coordination. We, therefore, stand firmly by the idea that no new inter-governmental bodies should be set up, except by combining or transferring resources from existing bodies. It would be the most logical and efficient way to meet the need for the institutions by making full use of the existing financial and human resources.

Based on the above-mentioned guidelines, the AALCC may wish to call attention to ECOSOC and UNEP.

At the higher level, without prejudice to the jurisdiction of the General Assembly, the focus could be on the restructuring and revitalization of ECOSOC so that it may be enabled to serve as an inter-governmental forum in the field of environment and development, and under the authority of the General Assembly, to play a central role in policy deliberation. It is true that most, if not all, of the functions so far envisaged for the proposed new inter-governmental mechanisms referred to above are within the scope of ECOSOC, and could be undertaken by it if the necessary restructuring would be completed. So the importance of ECOSOC in the context of the UNCED should be underscored.

With regard to UNEP, as pointed out in paragraph 7, PC/80, it is widely recognized that an important result of UNCED is expected to be substantial strengthening of the mandate and capacity of the UNEP, which is mandated to be the coordinator of the environmental activities of the United Nations system. The Secretariat of the AALCC is of the view that the building of a better coordinating mechanism in the field of environment and development should take the UNEP as its core, and such mechanism should be designed on the basis of strengthening UNEP. In principle, UNEP

should play a central role in overseeing the implementation of Agenda 21 and in coordinating the various activities of the UN system as a whole in the field of environment and development.

3. *The Framework of Inter-governmental Mechanism*

The framework of an inter-governmental political deliberative mechanism could be constituted in a two-fold process.

At the first primary process, the General Assembly, which has the broadest membership of States and to which ECOSOC, UNEP, UNDP and other parts of the United Nations system report, should remain in charge of overseeing global action in the dimension of sustainable development as suggested in resolution XX/228's description of the General Assembly as the appropriate political forum for discussion of international environmental policy. It is also the appropriate body where new global initiatives can be taken. For this purpose the principal function of the General Assembly in the political deliberation and policy guidance related to environment and development should be further enhanced and reinforced. In this context we suggest that a main Committee of the General Assembly be designated to be responsible.

Various ideas have been raised with regard to a further strengthening of the inter-governmental cooperation at the highest level. It has been suggested that a regular high level meeting, preferably at the Ministerial level, be instituted, which would give general policy guidance to the implementation of the objectives and action proposals of the UNCED and which would consider possible gaps. In our opinion, it is not necessary to create such a regular meeting at Ministerial level. It is better to leave the matter of a Ministerial meeting to the discretion of the General Assembly in the light of importance of the issues to be dealt with and the feasibility of convening such a meeting.

Under the General Assembly, a forum for more focussed deliberation may also be needed. That is to be the second-fold process. ECOSOC which is able to devote indepth discussion to the thematic issues, and in which most of the time environment and development aspects play a dominate role could be considered in this context. One idea that has been suggested is that a number of existing Committees of ECOSOC dealing closely with related matters could be combined into a more comprehensive Committee to deal with environment and development. Reference could be made in this regard to the Committee on New and Renewable Sources of Energy, the Committee on National Resources and the Committee on Science and Technology for Development. The task of monitoring and reviewing the implementation of UNCED's results, including Agenda 21, could be entrusted to this Committee. We consider the idea as a positive one. We also underscore the importance of wider involvement and participation of the developing countries, and the democratic principle of decision-making in the proposed Committee. The proposed combined Committee could have

the title of "The Commission/Board on Sustainable Development".

Furthermore, to facilitate the deliberation of the more technical aspects of environment and development, a special advisory group could be established under the direction and supervision of the proposed "Commission on Sustainable Development". The advisory group would be composed of a number of individual experts, mainly drawn from the human resources of UNEP and UNDP, the main tasks of which would be to consider, from the technical perspective, the questions referred to it by ECOSOC and its responsible Committee, and make recommendations thereto, as appropriate.

In short, the basic framework of the inter-governmental mechanism would be formed with a two-fold structure. At the first level, the General Assembly itself and one of its main Committees as well as a possible irregular higher-level meeting at the Ministerial level are envisaged. At the second level, ECOSOC in general, the "Commission on Sustainable Development" a new more comprehensive inter-governmental Committee which would be a restructured combination of several existing Committees of ECOSOC, in particular, and a subordinate advisory experts group would serve as the Centre for the regular inter-governmental policy deliberation in the field of environment and development, and for overseeing the implementation of Agenda 21.

4. *The Framework of the Interagency Coordinating Mechanism*

To establish a more effective and efficient interagency coordinating mechanism in the field of environment and development is undoubtedly crucial in the implementation of Agenda 21 and other outcomes of UNCED.

In keeping with the guidelines mentioned earlier, the Secretariat of the AALCC should like to make the following proposals :

- (a) The coordinating mechanism should cover not only UNEP and UNDP but also other relevant agencies or programmes involved in the environment and development, namely, all the related activities within the United Nations system.
- (b) The coordinating mechanism should be formed with the UNEP as its core making full use of its facilities.
- (c) A steering interagency Coordinating Committee might be created under the chairmanship of the UNEP's Executive Director, who should have the rank of Under Secretary-General of the United Nations, or under the co-chairmanship of the Chiefs of UNEP and UNDP, or other appropriate joint management arrangement. The Committee would be composed of the responsible high ranking officers from UNEP, UNDP the Secretariat of UN, the World Bank and other UN bodies involved in the area of environment and development.