

- (d) The Coordinating Committee would most appropriately be located in the headquarters of UNEP so that UNEP's facilities and expertise would be fully used. Thus UNEP itself would play a real central role in effectively coordinating the various activities related to environment and development within the United Nations system.
- (e) The Coordinating Committee would have close ties with the Administrative Committee on Coordination (ACC) of the UN Secretariat, which is chaired by the Secretary-General and is currently responsible for coordination of environmental and developmental activities in the UN system. Thus a better cooperation and coordination could be created and maintained between the Secretariat and its agencies concerned in the field of environment and development.
- (f) With regard to the relationship of the Coordinating Committee and the "Commission/Board on Sustainable Development", the former should function under the supervision of the latter, through which it would report on its work.

5. Other Major Institutional Mechanisms

In addition to the inter-governmental political deliberative mechanism and the interagency coordinating mechanism, certain institutional arrangements may be necessary to substantially strengthen UNEP in the field of peaceful settlement of international ecological disputes.

That UNEP should be further strengthened as the central catalyzing, coordinating and stimulating body in the field of environment within the United Nations system has been widely recognized. Now the question is how to achieve the goal. A number of ideas and proposals have been suggested. It is the view of the AALCC Secretariat that in this regard, the following key elements should be primarily addressed :

- (a) *The mandate of UNEP*, as contained in Resolution 299, should be reaffirmed in the context of UNCED and the need to integrate environment and development. The strengthening of UNEP first refers to strengthening its mandate, purposes and functions. In this respect, we suggest that the mandate of UNEP in the areas of further development of international environmental law, coordinating activities related to environment and development within the UN system and the settlement of international ecological disputes and overseeing the implementation of Agenda 21, these and other responsibilities emanating from UNCED might be strengthened or added.
- (b) *The leadership of UNEP*. To ensure a wider participation of the developing countries, which is crucial to the performance of UNEP's mandate as enhanced in a satisfactory way, the Governing Council

of UNEP should be enlarged and its memberships increased so as to make it more representational at the decision-making level. The new memberships should be allocated on the geographical basis, taking into account the special needs of the developing countries. We also think that the rank of the Executive Director of UNEP should be at the status of the Under Secretary-General of the United Nations.

- (c) *The Financial Basis*. To enable the UNEP to carry out its expanding mandate and responsibilities, it is requisite to call for the strengthening of its financial basis. This goal could be attained by enlarging its budget and opening up other additional financial resources besides voluntary contributions.
- (d) *The Coordinating Mechanism*. To ensure that UNEP is capable of taking the responsibility for coordinating environmental activities within the United Nations system, a more effective and efficient coordinating mechanism should be established, the framework of which has been outlined above.
- (e) *The capacity of UNEP*. Besides above elements, the improvement of UNEP's infrastructure and enhancement of its expertise should be addressed. We agree with the suggestion that UNEP needs greater expertise with respect to the developmental side of environmental questions, so that right from the outset environmental and developmental aspects of an issue could be fully considered.

We do believe that the strengthening both the human and material resources of UNEP would make it better able to assume the responsibilities which the UNCED might entrust it.

With regard to peaceful settlement of international environmental disputes, while we consider a more and effective use of the International Court of Justice, the Permanent Court of Arbitration and other international arbitration institutions very important, it is also worth envisaging a possible special environmental tribunal within the mandate of UNEP or the Commission on Sustainable Development.

IV. Conclusion

One of the important items on the agenda of Working Group III of the UNCED's PREPCOM is the institutional issues related to the UNCED. The forthcoming fourth session of the PREPCOM will substantially examine this item and make recommendations thereon to the UNCED. The AALCC is expected to consider the issue before the fourth session of the PREPCOM and to formulate a possible common stand/position on the subject-matter during its 31st session to be held in Islamabad in January 1992.

In this context, the Secretariat of the AALCC suggests that the Committee's consideration of this item be concentrated on the areas proposed by the Secretariat in Part III of this note. The ideas and proposals contained in

this Note might be regarded by the Member States of the Committee as a useful basis for their consideration.

Finally, it is further expected that the Committee would focus attention on the options for action. The conclusions and decisions made by the Committee would be submitted to the PREPCOM for UNCED so that the Committee may make its further contribution to the solution of UNCED's institutional issues.

BACKGROUND

Thanks to the initiative taken by the Government of Malta, the General Assembly at its forty-third session, while considering the item entitled "Conservation of climate as part of the heritage of mankind", recognised that climate change was a common concern of mankind and determined that necessary and timely action should be taken to deal with climate change within a global framework.¹ Subsequently at its forty-fifth session, the General Assembly, during adoption of the resolution "Protection of Global Climate for present and future generations of mankind" established an Inter-governmental Negotiating Committee (INC) and entrusted it with the task of preparation of an effective Framework Convention on Climate Change, and any related instruments as might be agreed upon. It considered that the negotiations for the framework convention and the related instruments should be completed prior to the United Nations Conference on Environment and Development in June 1992. It authorised the establishment of an *ad hoc* Secretariat and set the tentative time-table and the venue of the meetings of the INC.²

Accordingly, the First Session of the INC was held in Washington from 4 to 14 February 1991. The Committee elected Mr. Jean Ripert (France) as Chairman, Mr. Ahmed Djoghlat (Algeria), Mr. Ion Draghichi (Romania) and Mr. C.Dasgupta (India) as Vice-Chairmen. Mr. Ion Draghichi (Romania) was elected also as Rapporteur. It adopted the rules of procedure and the guidelines for negotiations and established two Working Groups.³

The guidelines for the negotiations, among other things, provided that the funding commitments, mechanisms and means for transfer of technology to developing countries, as well as matters concerning international scientific and technological co-operation should be an integral element in the negotiations. Further, "the final agreement on the Convention should cover in an integrated manner all areas of common concern, including, *inter alia* : (a) emissions, (b) sinks, (c) transfer of technology, (d) financial resources and funding mechanisms for developing countries, (e) international scientific and technological co-operation, and (f) measures to counter the effects of climate change and its possible adverse effect, particularly on small island developing countries, low-lying, coastal, arid and semi-arid areas, tropical regions liable to seasonal flooding and areas prone to drought and desertification."⁴

1 United Nations General Assembly Resolution, 43/53 adopted on 6 December 1988.

2 United Nations General Assembly Resolution, 45/212 adopted on 21 December 1990.

3 Report of the Inter-governmental Negotiating Committee for a Framework Convention on Climate Change, First Session, Washington D.C. 4-14 February 1991 (A/AC. 237/6).

4 *Ibid.*, page 23.

As for the work of the Working Groups, the guidelines provided that it should be inter-related and integrated by the Plenary, and to achieve that, it was envisaged that the Working Groups would report regularly to the Plenary.

The Working Group I which is concerned with matters concerning commitments was requested to prepare a text related to :

- (a) Appropriate commitments, beyond those required by existing agreements, for limiting and reducing net emissions of carbon dioxide and other greenhouse gases, on the protection, enhancement and increase of sinks and reservoirs, and in support of measures to counter the adverse effects of climate change, taking into account that contributions should be equitably differentiated according to countries' responsibilities and their level of development;
- (b) Appropriate commitments on adequate and additional financial resources to enable developing countries to meet incremental costs required to fulfil the commitments referred to above and to facilitate the transfer of technology expeditiously on a fair and most favourable basis;
- (c) Commitments addressing the special situation of developing countries, taking into account their development needs, including *inter alia*, the problems of small island developing countries, low-lying coastal areas and areas threatened by erosion, flooding, desertification and high urban atmospheric pollution; also taking into account the problems of economies in transition.⁵

The task which was assigned to the Working Group II was to prepare a text on mechanisms and related to :

- (a) Legal and institutional mechanisms, including *inter alia* entry into force, withdrawal, compliance and assessment and review;
- (b) Legal and institutional mechanisms related to scientific co-operation, monitoring and information;
- (c) Legal and institutional mechanisms related to adequate and additional financial resources and technological needs and co-operation, and technology transfer to developing countries corresponding to the commitments agreed to in Working Group I.⁶

The Second Session of the INC was held in Geneva from 19 to 28 June 1991. The documents before the Session included a set of 25 informal papers submitted by various delegations including "non-papers", related to preparation of a framework convention on climate change.

⁵ *Ibid.*, page 24.

⁶ *Ibid.*

One of the items on the agenda was the election of the officers of the Working Groups. In spite of hectic consultations, it had not been possible to achieve prior consensus on the designations of the Chairmen of the two Working Groups.⁷ Ultimately, on the proposal of the Chairman, the Committee waived rules 40 to 50 of its Rules of Procedure and as an exceptional measure decided that the Bureau of each Working Group would consist of two Co-Chairmen and one Vice-Chairman. The Bureau of the two Working Groups were as follows :

Working Group I

- Co-Chairmen : Mr. N. Akao (Japan)
Mr. E. de Alba-Alcaras (Mexico)
- Vice-Chairman : Mr. M.M Ould El Ghaouth (Mauritania)

Working Group II

- Co-Chairmen : Ms. E. Dowdeswell (Canada)
Mr. R.F. Van Liecrop (Vanuatu)
- Vice-Chairman : Mr. M. Sadowski (Poland)

Working Group I was allocated the item entitled "Elements related to commitments". Subsequently, issues concerning principles and definitions were also allocated to Working Group I. The Working Group I held extensive discussions on commitments and principles. It was agreed that the principles should be compiled under various headings and a draft proposal by the Bureau entitled "Draft compilation of Principles" was submitted for consideration.

Working Group II considered the question of legal and institutional mechanisms, including entry into force, withdrawal, compliance and assessment and review. Issues concerning legal and institutional mechanisms related to scientific co-operation, monitoring and information, additional financial resources and technological needs and co-operation, and technology transfer to developing countries were also considered.

INC Third Session, Nairobi

The Third Session of the INC was held in Nairobi, from 9 to 20 September 1991. Like the earlier two sessions, the Nairobi Session was also attended by a large number of delegations both from the developed and developing States. Among the AALCC Member States which attended the Session included :

⁷ In the course of the discussions in the Working Groups, some delegations had raised the question of designation of Rapporteurs for each Working Group. The Chairman, however, did not consider it necessary.

Bangladesh, Botswana, China, Cyprus, Egypt, Gambia, Ghana, India, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Kenya, Kuwait, Malaysia, Mongolia, Nepal, Nigeria, Pakistan, Philippines, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Singapore, Sri Lanka, Sudan, Thailand, Turkey, Uganda and Yemen.

The representation of the United Nations and its specialized agencies and other Inter-governmental Organisations was less as compared to the Geneva Session. The Asian-African Legal Consultative Committee (AALCC) was the only Inter-governmental Organisation participating from the Asian-African region. The Non-governmental Organisations attendance was in a fairly large number.

At the first plenary held on 9th September, the Chairman of the INC, H.E. Mr. Jean Ripert, in his opening remarks stressed the progress made so far and underscored the need to accelerate the pace of the work during the Nairobi Session. The Executive Director of UNEP, H.E. Dr. Mostafa Tolba, Secretary General of WMO, Professor G.O.P. Obasi, the Deputy Secretary-General of the UNCED Mr. Nitin Desai and the Chairman of the IPCC, Prof. Bert Bolin, also made statements assuring fullest co-operation of their respective organisations to the success of the work of the INC.

The Nairobi Session of the INC marked the beginning of the 'business-like' discussions in both the Working Groups.

Discussions in Working Group I

Pursuant to a request made at the Second Session of the INC, the Bureau of Working Group I prepared new compilations of principles and commitments which were circulated in Document A/Ac. 327/Misc. 6 and 7. Subsequently, the Bureau submitted document A/Ac. 237/Misc. 9 which had been prepared with the aim of simplifying the compilations contained in the above documents. It was agreed that these documents would be considered as co-chairs texts and would be taken up together as a basis for discussion in Working Group I.

During the first week of the Nairobi Session, Working Group I held formal as well as informal meetings and completed first round of discussions on principles, general objectives, general commitments and specific commitments. In the light of views expressed and the amendments proposed by various delegations Co-Chairmen of Working Group I prepared a set of four papers which were circulated as Conference Room Papers (CRP). The document A/Ac. 237/WGI/CRP. 1 set out the texts of Principles; A/Ac. 237/WGI/CRP. 2 and Add 1 dealt with commitments on sources and sinks; A/Ac. 237/WGI/CRP. 3 dealt with the commitments on financial resources and technology; and A/Ac. 237/WGI/CRP. 4 dealt with the commitments related to paragraph 6(c) of the Decision 1/1 of the INC.

During the second week, Working Group I held another round of discussions focussing on these Conference Room Papers. In the light of

amendments and alternative texts proposed by various delegations, the Co-Chairmen further revised these papers which were circulated to the delegations almost before the conclusion of the Nairobi Session.

The Working Group I agreed that the Bureau would further revise these documents and submit them for consideration at the fourth session in Geneva.

Discussions in Working Group II

Working Group II took as a basis for discussion the Single Text on Elements relating to Mechanisms contained in document A/Ac 237/Misc. 8 which was prepared by its Co-Chairmen. It was agreed at the outset that the document would be considered as a "Co-chair's text".

Section A of the Text dealt with the matters concerning Scientific and Technical Co-operation, Exchange of Information, and Research and Systematic Observation. During the discussion, besides drafting changes, suggestions were made to include a separate provision dealing with Education, Training and Public Awareness. It was agreed that the matters concerning exchange of information needed further consideration. It was also recognised that the framework convention envisaged a commitment by the parties on these matters. The issue whether or not a Scientific Organ-Scientific Committee should be established within the Framework Convention, was also raised.

Another issues which evoked a great deal of importance was the role and function of the Conference of the Parties. During the discussion, it was generally agreed that the Conference of the Parties will have the preponderant role in the administration, policy-making and effective implementation of the framework convention. Views were expressed that it might be little premature to enumerate its functions in detail.

A proposal which came to the force was the establishment of an Executive Committee to assist the Conference of the Parties. Since, this issue was raised for the first time during the Nairobi Session, the Co-Chair's text did not include any provisions in this respect. The Working Group II held only preliminary discussions.

With regard to the constitution of a 'Secretariat' as an organ, there appeared to be general consensus. The Conference of the Parties would designate or establish a permanent Secretariat. There were, however, different views in regard to the arrangements for the 'interim' period until the Convention comes into force. Whether an interim Secretariat should be designated or the *Ad hoc* Secretariat established by the INC could continue to function until the permanent one was established by the Conference of the Parties was the issue raised in this connection.

The discussions on final clauses proceeded smoothly. There was general agreement on almost all the provisions, except the one on entry into force. There was, however, no consensus over the number of ratifications required and the criteria of determining the entry into force of the framework

convention. In that context it was felt that the concept of "net emissions" needed further consideration.

Preliminary discussions were held on the issues concerning verification and compliance and the settlement of disputes. Divergent views were expressed on both the issues. Similar divergent approach was discernible with respect to the crucial issues concerning financial and transfer of technology mechanisms.

The Working Group II decided to request its Co-Chairmen to prepare a revised single text taking into account the views expressed by delegations and the various proposals submitted by them during the last three sessions and those which might be received by the Secretariat before 15 October 1991.

The foregoing account of the Nairobi Session briefly describes the progress of the work in the two Working Groups. It may not be out of place to make a couple of general observations on the negotiating process. First, the financial assistance to the participants from the developing countries has certainly encouraged their wider participation in the INC Sessions. However, most of the delegations from the developing States consist of a single person, and since both the Working Groups meet simultaneously, it was difficult for such delegations to follow the discussions closely.

Secondly, on agenda items like commitments and mechanisms, it is not practical to draw a line dividing the issues for consideration in the two Working Groups. Although it has been in accordance with the decision taken at the first INC Session, some ways should be found whereby the discussions could proceed without raising the issue of allocation of items between the two Working Groups. The Co-Chairmen of the two Working Groups have been presenting frequent reports on the progress of the work. That, however, needs to be supplemented by other means, perhaps a joint sitting of the two Working Groups could be arranged to discuss the common issues which may be identified by the Co-Chairmen of the Working Groups. It may take away some precious time of the Session but at least it would ensure a clear understanding of the issues involved and avoid duplicate discussions as noticed during the last two INC Sessions.

General Comments on the issues related to the Framework Convention on Climate Change

1. The seven and half months of negotiations in the INC spread over three sessions have brought into focus the complex nature of the issues involved in the preparation of the Framework Convention on Climate Change. While there is no dearth of sceptic opinion, one should not underestimate the achievements made in such a short span of time. Many International Conferences have had longer history and meagre achievements.

2. Whether the Framework Convention will be ready for signature prior to June 1992 UNCED Summit in Brazil perhaps cannot be predicted even by an astrologer. However, there is hope which must be kept alive until

that time. A realistic assessment of the situation is the need of the hour. The industrialized countries are mainly responsible for creating this problem of climate change which today has assumed a global dimension. That makes it imperative for both the developed and developing countries to find an agreed but effective solution.

3. Discussions during the last three INC Sessions have helped in crystallisation of views on many of the fundamental issues. It appears that undue emphasis is being given to the "Package deal approach". Instead, it might be desirable to follow a "gentlemen's agreement" approach. It would be more productive and promote confidence among all. In essence, the Framework Convention on Climate Change should be wider in scope but general in nature so that, in course of time, it could be strengthened by supplementary instruments.

4. During the last three INC Sessions, no concrete discussion has been held on the structure of the proposed framework convention. However, the INC decision 1/1 and the guidelines thereto indicate a broad pattern. As for the contents of the framework convention, it appears that it might include a wide ranging Preamble, a set of definitions, an article on general objective, a set of basic principles, sections on general and specific commitments, a section on special situation, a set of articles dealing with institutional mechanisms including financial resources and technology transfer and final clauses.

5. So far no discussions have been held on definitions and the Preamble. The document prepared by the Co-Chairs of Working Group I set out a list of preambular paragraphs. (Document A/Ac. 237/Misc. 9). At the Nairobi Session, during the discussions on Principles, views were expressed suggesting incorporation of certain principles in the Preamble Section. It is hoped that during the INC's Fourth Session in Geneva, there will be some discussion on the preamble and the principles that may be incorporated therein.

6. It is generally recognised that the objective of the Framework Convention is to reduce and stabilize greenhouse gases in the atmosphere at a level which would prevent dangerous anthropogenic interference with the climate and thus minimise the risks to the environment and sustainable development of societies and economies. Further, in line with the comprehensive approach, it has been suggested that the Framework Convention should address all greenhouse gases, sources and sinks, including the adaptation measures. During the Nairobi Session, even after two rounds of discussions on 'general objective' no common text could be agreed upon. The text submitted by Co-Chairmen (A/Ac. 237/WG1.CRP 2.Rev. 1) still contains as many as eight alternative formulations.

7. It may be recalled that during the INC Second Session in Geneva, the Bureau of the Conference prepared a document which set out a compilation of 110 Principles compiled on the basis of informal and non-papers and the views expressed by various delegations during the Geneva Session. The Bureau was further requested to prepare a consolidated compilation of

Principles. Accordingly, the Bureau submitted two documents namely, A/Ac./237/Misc 6 and A/Ac. 237/Misc. 9. The document A/Ac. 237/Misc. 6 contained compilation of texts related to principles arranged under five main headings and a number of subgroups. A/Ac. 237/Misc. 9 contained a more condensed set of Principles.

8. Working Group I took both these documents as the basis for discussion. During the discussion, there were divergent views on the purpose of inclusion of the Principles in the text of the Framework Convention. It was argued that many of these Principles could be accommodated in the Preamble and in the section on commitments. On the other hand, while emphasising the need to include a set of Principles, it was felt that a section dealing with basic Principles would strengthen the commitments and lay the guidelines to implement those commitments.

9. Although there are divergent views in regard to the utility of inclusion of Principles in the text of the Framework Convention, it appears that ultimately an agreement might be reached to that end, and a section containing a short list of basic principles will find a place in the Convention. It should be pointed out that there are precedents where similar Conventions have incorporated a section on Principles. Besides, the Earth Charter under consideration in the UNCED and the draft text of the Framework Convention on Bio-diversity also contemplate inclusion of a section on Principles. Such a section in our view should be in the body of the Convention rather than in the Preamble.

10. The Revised Conference Room Paper (A/AC. 237/WG1/Rev. I) prepared by the Co-Chairs of Working Group I in the light of the two rounds of discussions held during the Nairobi Session of the INC, contains a long list of Principles. Endeavour should be made to identify the principles which command wide support keeping in view their legal nature. Since 'environment' in general and the climate change in particular, are evolving concepts embracing many scientific and technical matters, care ought to be taken when identifying such principles to ensure fairness and their linkage to climate related issues.

11. A tentative list might include such principles as common concern of mankind, sovereignty, equity, common but differentiated responsibility, right to development, sustainable development, precautionary principles, polluter pays principle, non-conditionality, special circumstances, comprehensiveness, liability and flexibility. There is a possibility that the inclusion of some of these principles might be the bone of contention or an agreement might be reached to elevate some as commitments and general principles. That would help shorten the list. While streamlining the texts of the agreed principles, it would be desirable to use precise legal language. The Declaration of the Second World Climate Conference may provide useful guidance in that context.

12. The section on 'Commitments' will form the fundamental part of the Framework Convention. Indeed, the success or failure of the negotiations

on the Framework Convention will largely depend upon how the issues related to commitments will be tackled during the forthcoming INC Session in Geneva and the subsequent one in New York. In spite of extensive and intensive discussions during the last two INC Sessions, divergent views could not be narrowed down.

13. It is generally agreed that the Framework Convention should stipulate two types of commitments, namely (i) general commitments, and (ii) specific commitments. The general commitments should be undertaken by all the parties to the Convention whether they are developed or the developing States. The specific commitments could oblige a group of countries, particularly the industrialised countries.

14. It is evident from the trend of the discussions in Geneva and Nairobi Sessions that it would be difficult to draw a line between the two types of commitments. There may be areas where the obligations envisaged within the general commitments would spill over to specific commitments. There is likelihood that if the specific commitments are framed in a diluted form, they could take the shape of general commitments. In the course of the discussions, interesting concepts such as 'common but differentiated responsibility' and a third category of commitments termed as 'unilateral commitments' have been introduced. These concepts need to be examined in detail. They appear to be simple but translating them into specific legal language and the subsequent implementation of the obligations envisaged in that context, would have implications which may go well beyond the imagination at this juncture of negotiations.

15. The text on commitments submitted by the Bureau of Working Group I prior to the conclusion of Nairobi Session is very elaborate. Section II contains a set of eighteen paragraphs with several alternative formulations for most of the paragraphs. Among other things, these commitments envisage immediate and significant emission reductions, energy conservation, rational use of energy and development, promotion of co-operation by means of systematic observations, research and information exchange. Section III dealing with differentiation of commitments draws a distinction between the developed and developing countries mainly on the basis of economic criteria. Section IV is concerned with specific commitments in respect of all sources and sinks, including preparation of national strategies and programmes.

16. During the discussion, while there were different views on many of these commitments, it was generally recognised that all such commitments should be realistic and strike a balance between environment and economic development. The target and time-table for emission reduction should be flexible. With regard to sinks, it was stressed that while dealing with the question of forests, the relevant measures should take into account the ongoing deliberations in the UNCED. It was also pointed out that since oceans play an important role in the Earth Climate System, their significance as sinks needs to be examined. It was recognised that as the indirect consequences of the measures would vary, there was the need to consider

'special situations' and the degree of vulnerability. The examples of the countries whose economy depended upon the production and exportation of fossil fuels and those countries which were not in a position to find substitutes for fossil fuels were particularly relevant. On the question of the preparation of national strategies and programmes, concern was expressed particularly by the developing countries. On the other hand, it was emphasised by the developed countries that the availability of the financial and technological resources was closely linked to the commitments to be undertaken by the developing States.

17. The commitments on technology co-operation and transfer are crucial elements of the Convention. The General Assembly resolution 44/228 laid down the guidelines for establishing an effective technology transfer mechanism. Further, INC decision 1/1 provided that such mechanism should be an integral part of the Framework Convention. During the last two INC Sessions, Working Group I held discussions on the commitment relating to transfer of technology and its mechanism was discussed in Working Group II. Divergent views on both the issues among the developed and the developing countries appear to be a great stumbling block. It has been suggested that the issues relating to technology transfer should be viewed in a broader perspective and should include technical co-operation as well. Such a notion would promote a 'shared partnership' between the developed and developing countries. No doubt, this is an ideal suggestion. However, the 'ifs' and 'buts' associated with this ideal cannot be overlooked. The developing countries need the support to develop their technological base and the 'best available' 'state-of-art technology' which should be cost effective and environmentally safe and sound. Their primary need is 'soft technology' to build up their own capabilities for climate monitoring and assessment. The Framework Convention must ensure expeditious transfer of the relevant technology on fair and most favourable conditions. How far such terms will be 'non-commercial' would depend on the source. Also consideration might be given to the issues related to Intellectual Property Rights. The UNCED and the INC on Bio-diversity are also engaged in similar discussion. It would be desirable to bring the INC discussion on the framework convention on climate change on similar lines.

18. A proposal has been made for the formation of a study group on technology transfer. It would be desirable to constitute such a group during the forthcoming INC Session in Geneva. The Study Group could identify the basic issues and suggest modalities for a suitable mechanism on this matter.

19. Issues concerning commitments and institutional mechanisms for the provision of adequate and additional financial resources to enable developing countries to meet incremental costs required to fulfil the commitments envisaged in the Convention are of crucial importance. During the INC Second and Third Sessions, discussions on these matters have shown a great divergence of views. Some of the developed countries have expressed general support. However, there is no express commitment in this regard.

20. The first and the foremost consideration, therefore, would be to identify ways and means to provide a new and additional financial resource as it has been realised that the existing financial resources available from the United Nations system and other regional and bilateral arrangements would not be adequate. Suggestions have been made for the establishment of a funding mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies to the developing country parties. Such a mechanism would include a multilateral fund composed of adequate, additional and timely financial resources apart from other means or arrangements of multilateral, regional and bilateral co-operation.

21. Another proposal provides for the establishment of a Climate Fund which would operate under the authority and guidance of the parties to the Convention. It envisages establishment of an Executive Committee consisting of members selected on the basis of an equitable representation of the developed and developing country parties to the Convention. Further, the Climate Fund would be financed by contributions from developed country parties on a grant basis, and according to criteria to be agreed upon by the parties. Its function should be to meet the costs for developing country parties to adapt and mitigate the adverse effects of climate change and the development and transfer of technology and knowledge relevant to scientific and technical research. Finally, the Fund would also meet the expenses concerning the secretarial services and related support costs of the Climate Fund.

22. Another interesting proposal provides for the establishment of a clearing house system based on a bilateral agreement between countries and regional agreement between several countries. Accordingly, a clearing house would appraise and select projects for reducing emissions according to their cost-effectiveness and co-ordinate the funding of these projects. The net reduction in emissions resulting from any specific project would be credited to the country that contributes to the funding of the project and deducted from its national commitments. Thus, the transfer of financial resources between countries would be integrated in the system and would also facilitate co-ordination with other financial mechanisms. Another suggestion is that the recent initiative jointly undertaken by the World Bank, UNEP and the UNDP in establishing the Global Environment Facility (GEF) provides an innovative financing mechanism to help developing countries to meet their financing requirements to an extent.

23. During the discussions at the Nairobi Session, broadly two sets of views emerged and they represented the different viewpoints of the developing and the developed States on the financial mechanism to be incorporated in the framework convention on climate change. The developing countries insisted on the establishment of an independent fund democratically operated under the guidance and supervision of the Conference of the Parties. As for the sources constituting the fund, it was stressed that adequate, new and additional financial resources should be provided to the developing countries to meet their obligations as envisaged in the Convention.

24. The developed countries, on the other hand, considered that the GEF operated by the World Bank, UNDP and UNEP would provide the suitable mechanism. The GEF was a three year pilot programme which could be improved both in terms of augmenting its resources and governance structure by enhancing the role of developing countries in its decision-making. There was agreement to commit adequate and additional financial resources to enable developing countries to meet incremental costs required to fulfil their commitments. However, views differed on whether it should be 'full' or 'agreed' incremental costs. It was stressed that the concept needs to be defined in a clear and comprehensive manner.

25. Suggestions were made to examine the concept of an insurance scheme and 'Polluter Pays Principle' taking into account relevant precedents and the development of international law in these areas.

26. Working Group II has been discussing issues related to legal and institutional mechanisms, including *inter alia*, entry into force, withdrawal, compliance, assessment and review. With regard to scientific assessment and exchange of information there are fairly convergent views. A suggestion was made for the establishment of a Scientific Committee. In that connection, it may be pointed out that the basic foundation of the Framework Convention is the scientific assessment of the factors related to climate change. The Inter-governmental Panel on Climate Change (IPCC) which was established in 1988 jointly by the WHO and the UNEP has provided valuable guidance and support to the work of the INC. This fact was also recognised by the General Assembly when it constituted the Inter-governmental Negotiating Committee for the Framework Convention on Climate Change. It is not yet clear what role the IPCC would play after the completion of the work of the Framework Convention. It is, however, generally felt that till the Framework Convention comes into force, there will be need for assistance from the IPCC. Irrespective of such transitional arrangements, the need for a Permanent Scientific Organ cannot be overemphasised.

27. Consideration should also be given for the establishment of a specialised body like GESAMP, which is an advisory body consisting of specialized experts nominated by the sponsoring agencies (IMO, FAO, UNESCO, WMO, WHO, IAEA, UN, UNEP) which provides authentic scientific advice on marine pollution problems. Perhaps IPCC could be made more broad based and could be thought of assuming such a task. In both cases, the structure, role and functions of the two bodies would have to be considered in detail.

28. Preliminary discussions on verification and compliance indicate the sensitive nature of the issues involved. While there is a clear understanding that the thread of common but differentiated responsibility should run through various commitments envisaged in the Framework Convention on Climate Change, there are divergent views with regard to the achievement of this objective. The over-emphasis on compliance mechanisms may delay and perhaps defeat the very purpose for which such a mechanism is being advocated. The commitment to establish a national reporting system, sub-

mission of periodic national reports, subsequent review by a supra-national authority and sanctions for any infringement of the commitments, all viewed together pose problems of many and different kinds. The lack of infrastructure to prepare the national inventory and collation of relevant information would deter the developing countries to undertake the commitment to make a report at regular intervals. What would be the worth of the national report if there is no substantive information to present? Would it not be a cause for complaint? This may sound negative but certainly not illogical.

29. Views have been expressed outlining the compliance procedure and ways to deal with the complaints. Suggestions have been made that recourse should be considered to refer the disputes to the International Court of Justice or to an Arbitration Tribunal. Non-resolution of a complaint would not necessarily give birth to a dispute for which recourse ought to be made compulsorily to the highest judicial organ. Any compulsive dispute settlement procedure has remained an idealistic goal for long. The Framework Convention on Climate Change is not the kind of international instrument where such an idea could be translated into action. There is some gap in establishing the scientific credibility of the Climate Change Convention. It would be far from reality to think of filling that gap with legal firmness. The 1985 Vienna Convention on the Protection of the Ozone Layer follows a practical step by step approach in regard to the matters concerning dispute settlement. Consideration may be given to incorporating a similar provision in the text of the Framework Convention on Climate Change. It would save time and close the discussion on a crucial issue.

30. The question of submission of national reports and its review would also need to be considered in a more flexible way, particularly in the context of the developing countries. The cart cannot be put before the horse. It is encouraging to note that there is great enthusiasm to support the developing countries in the preparation of country-studies and the creation of necessary national infrastructure which would enable them to undertake any commitment to this effect. A suggestion has been made that as an alternative to 'Pledge and Review', unilateral commitments could be undertaken by the parties to the Convention. The intention to chase out the twin ghosts which haunted the Nairobi meeting from its very first day is laudable. However, one cannot rule out the possibility that these ghosts might enter Geneva in a different shape.

31. It has been suggested that apart from the general and specific commitments or obligations, the Convention could envisage a legal framework for States to assume unilateral obligations. Such unilateral obligations would be 'additional' and could be related to the availability of financial and technical assistance particularly for those developing countries which are not in a position to fully implement unilateral commitments without such assistance. Although it has not been stated categorically, it is amply clear that such financial and technical assistance could be given preferably to those countries which are prepared to undertake 'unilateral' commitments to prepare and submit national reports which will be subject to review by an international review body.

32. It may be a little premature to make any specific comments on the concept of unilateral commitments at this juncture. However, at least two general observations may not be out of place. First, it has been noticed that during the discussions on the commitment with regard to the financial and technical resources, developed countries have zealously conveyed their hesitancy in making any specific commitments. It would be interesting to note if they will be prepared to make any express unilateral commitments in that respect. Secondly, the developing countries, indeed the Group of 77 as a whole, have made it very clear, leaving no ambiguity, that their national strategy could not be the subject of review by an international body. The fear of the twin ghosts entering the Conference Room in Geneva from the back door is not imaginary but real. May be, on the eve of Christmas, an angel enters from the front door and saves the Geneva Session from the impending deadlock on this issue.

BACKGROUND

Bio-diversity or biological diversity can be defined as the total sum of life's variety on this planet, expressed at the genetic, species and ecosystem levels.¹ According to scientists, this variety is now declining at an unprecedented rate as a result of man's activities. Estimates of the rate of loss are uncertain, but in the case of certain species of animals, recent projections indicate a loss of between 20 to 50 per cent of species by the year 2025 if the present trends continue.² The reasons for growing international concern about this loss include: (i) the recognition of the moral imperative of the other species to co-exist with man as in no case man can exist in isolation from the rest of the natural world; (ii) bio-diversity is perceived as having an enormous value, both actual and potential; (iii) the rate and extent of loss is uncertain, but appears to be very rapid; and (iv) the loss is irremediable. As a result, there is mounting public awareness and pressure in the developed countries about the need to conserve bio-diversity which is reflected in higher political priority being attached to conservation issues. In so far as developing countries, who happen to be the repository of bulk of the biological resources, their chief concern is that the commercial exploitation of their biological resources is proceeding without corresponding monetary compensation. They lack capacity as well as economic incentives to conserve biological diversity for future generations, but are forced to incur costs including foregone revenues from alternative uses where conservation is attempted. It is ironic that the areas of greatest biological diversity or importance are located in the developing countries and in areas most threatened by population pressure or instability. The developed countries can help themselves, but the developing countries need substantial help in the form of financial and technical assistance if they are to be able made to conserve their bio-diversity. Moreover, the resources needed to tackle such a stupendous task are concentrated in Europe and North America, which together have roughly 78 per cent of the world's ecologists and 78 per cent of the world's insect taxonomists. Only 5 per cent of active researchers are found in Africa and South America and around 5 per cent in the Oriental tropics—all areas of great terrestrial bio-diversity.³ In view of this situation, the conservation of bio-diversity has become a key planetary responsibility.

- 1 U.K. Department of Environment. *Conserving the World's Biological Diversity: How can Britain Contribute?* (June 1991).
- 2 U.K. Department of Environment and the Department of Trade and Industry. *Conservation of Biological Diversity—The Role of Technology Transfer* (London, Touche Ross, July 1991).
- 3 Clark and Juma. *Bio-technology for Sustainable Development—Policy Options for Developing Countries* (African Centre for Technology Studies, Nairobi, 1991).