

operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control for the purpose of maintaining or restoring international peace and security., In addition, if the Security Council and the General Assembly consider that there exists an exceptional risk to the safety of the personnel participating in any operation, that operation could also be declared as United Nations operation within the purview of this Convention.

Article 2 of the Convention limits the scope of the Convention. It specifies that any United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces, will not be covered under this Convention. Such operations will be governed by the law of international armed conflicts.

The text of Article 3 on 'identification' which has been borrowed from the Geneva Conventions of 1949 and its two Additional Protocols provides that the military and police personnel, their vehicles, vessels and aircraft should be properly identified. As regards other categories of personnel, their vehicles, vessels and aircraft, it has been left to the judgement of the Secretary-General. If he considers that such an identification would entail risk, the involved personnel may carry only appropriate identification documents.

Article 4, establishes the legal basis for carrying out the United Nations operation. It provides for the conclusion of an agreement between the Host State and the United Nations on the status of the United Nations operation and the personnel engaged in that operation. Such an agreement among other things, would provide for privileges and immunities for military and police components of the operation. It may be mentioned that the officials of the United Nations and experts on United Nations missions are covered by the United Nations Convention on Privileges and Immunities and the Convention on Privileges and Immunities of the officials of the Specialized Agencies. Further, the Vienna Convention on Diplomatic Relations (1961) and Vienna Convention on Consular Relations (1963) contain elaborate provisions concerning inviolability of diplomatic missions and consular premises. The Status of forces Agreement concluded between the United Nations and the host Government provides for the privileges and immunities of armed forces and other personnel deployed by the United Nations. The inclusion of such a provision in this Convention has been considered desirable with a view to strengthen this practice on a firm legal basis.

Article 5 concerning the duty of transit State does not contemplate conclusion of any specific agreement. It only provides that a transit State should facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6 obligates the United Nations and associate personnel to abide by the laws and regulations of the host State and transit State and to perform their duties in an impartial manner. Without elaborating the consequences of any breach of such an obligation, the Convention entrusts the Secretary-General the responsibility to take appropriate measures to ensure the observance of these obligations by the United Nations and associated Personnel.

Article 7 sets forth the general obligations of the States and specific obligations of the host States parties to the Convention. The gist of the provision in paragraph 1 is that it is the duty of all States to ensure that United Nations and associated personnel, their equipment and premises should not be made the object of attack or of any action that prevents these personnel from discharging their mandate. As regards the specific obligation as envisaged in paragraph 2, the State parties to the Convention should take all appropriate measures to ensure the safety and security of United Nations and associate personnel. Further, the State party in whose territory these personnel are deployed should take all appropriate steps to protect them from the crimes listed in article 9 of the Convention. With a view to promote international co-operation for the effective implementation of the Convention, paragraph 3 exhorts State parties to co-operate with the United Nations and among themselves, particularly when the host State is unable to take the required measures by itself.

Article 8 provides that if United Nations and associated personnel are captured or detained while performing their duties and their identification duly established, they should be promptly released and returned to United Nations or other appropriate authorities. Further until their release, they should be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

The thrust of the Convention is found in article 9 which deals with two matters. First, paragraph 1 contains a list of crimes against United Nations and associated personnel, and second the obligation of the State party to make these crimes punishable under its national law by appropriate penalties taking into account their grave nature.

It may be mentioned that this is not a novel provision. Similar provisions

are set out in earlier Conventions dealing with aspects related to suppression of terrorism and punishment of the offenders. Those include: The Convention for the suppression of unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on 16 December 1970, the Convention on the Protection and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14 December 1973 and the International Convention Against the Taking of Hostages, 17 December 1979.

The key elements of article 9 are: (i) it is the intentional act by the offender; (ii) principle of universality for the assertion of jurisdiction; (iii) serious nature of the crimes; (iv) the concept of threat and attempt to commit such crimes; (v) participation of accomplice; and (vi) duty of States to make these crimes punishable under their national laws by appropriate penalties keeping in view their grave nature.

Article 10 deals with the problem of national jurisdiction. It follows the precedents established by the earlier conventions in addressing issues such as concurrent jurisdiction on grounds of territorial effectiveness and active and passive nationality. Any State party which takes appropriate measures to establish its jurisdiction would inform the Secretary-General of the United Nations. Subsequently, if that State party rescinds its jurisdiction, it would inform the Secretary-General accordingly. Paragraph 4 of the article deals with the exercise of jurisdiction by a State party in whose territory the alleged offender is present and it does not extradite such person to another State which has already established its jurisdiction. Lastly, paragraph 5 specifies that this convention does not exclude those already existing under national law.

Article 11 envisages promotion of co-operation among State parties in the prevention of crimes against United Nations and associated personnel by way of taking all practical measures to prevent preparations in their respective territories the commission of those crimes within and outside their territories and exchange of information in this regard.

Article 12 provides that information regarding commission of a crime listed in article 9 should be promptly sent to the Secretary-General of the United Nations.

Article 13 is based on the provisions incorporated in earlier conventions such as The Hague and the Montreal Conventions. Any State party to the Convention is obliged to take appropriate measure under its national law alleged to ensure that alleged offender does not escape from its territory.

Article 14 obligates any State party in whose territory the alleged offender is present, if it does not extradite that person, to initiate promptly prosecution proceedings in accordance with its national law.

Article 15 dealing with the extraditions of alleged offenders follows the precedents established by the earlier conventions. It imposes no obligations and leaves the question of extradition to be governed by national law. The State parties however, undertake to include the crimes listed in article 9 as extraditable offence in their future extradition treaties. If any State party receives a request for extradition from another State party with which it has no extradition treaty, it may consider this convention as a legal basis for extradition.

Article 16 envisages co-operation among State parties in connection with criminal proceedings brought in respect of the crimes set out in article 9.

Article 17 guarantees fair treatment, a fair trial and full protection of rights of the alleged offender at every stage of the proceedings.

Under Article 18, the State parties would communicate to the Secretary-General of the United Nations the final outcome of the proceedings.

Article 19 provides for the wider dissemination of this convention, and inclusion of its provisions in the programmes of military instruction.

Article 20 entitled "Saving clauses" provides that this Convention would not affect: (a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards; (b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories; (c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operations; (d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or (e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21 recognizes that this Convention would not be construed in such a way as to derogate from the right to act in self-defence.

Article 22 dealing with settlement of disputes concerning application

or interpretation of the convention provides for recourse to arbitration and subsequent reference to the International Court of Justice. However, it also considers the possibility of entering reservation by a State party to such a reference to the International Court of Justice.

Article 23 envisages convening of a meeting of the State parties to review the implementation of the Convention and any problems encountered with regard to its application.

Articles 24 to 29 contain final clauses dealing with signature, ratification, accession, entry into force, denunciation and authentic text.

This convention is open for signature by all States, until 31 December 1995 at the United Nations Headquarters in New York. It will come into force thirty-days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

General Comments

Over the last few years, there has been increasing involvement of the United Nations in dealing with crises and conflict situations. There are as many as 16 peace-keeping operations where the United Nations has deployed nearly 75,000 personnel both civilian and military. The number of violent attacks and commission of other types of crimes against these personnel have increased manifold.

The Convention on the Safety of the United Nations and associated personnel provides a useful legal framework.

The Convention would apply to any operation mandated by the United Nations whether it is peace-keeping or humanitarian. It would extend its coverage to the different categories of United Nations personnel, including military personnel, police personnel and civilian personnel. Such a broad coverage is in line with the increasing involvement of the United Nations in various kinds of operations. The involvement of non-governmental organizations and its personnel in any United Nations operations should be carefully executed.

It is the established practice to seek consent of the host State prior to the beginning of any United Nations operation in the concerned State. The problem, however, would arise where because of the circumstances, the host government may not be in full control of the situation. Similarly, whether the conflict situation is one of an international character, or a non-international armed conflict would also pose difficulties in obtaining such a consent.

The States which agree to send their military personnel to join the UN operation do it on a voluntary basis. The provisions of the United Nations Charter impose no such obligation. It has been the practice of the United Nations to conclude bilateral agreements with the concerned states on the basis of status-of forces agreement. Of late, it has been a model for concluding bilateral agreements for the deployment of civilian personnel as well. It is for consideration whether the personnel deployed pursuant to a mandated United Nations operation should remain under the command and control of the United Nations. While it is recognized that there is certain distinction between the direct operation by the UN and UN authorized operations, however, the recent events have shown that unilateral withdrawal of the military contingents by certain States put the entire United Nations operation in jeopardy. Such a situation would pose grave risk for the safety and security of other United Nations personnel engaged in that operation.

The main thrust of the Convention is to establish the duty of States to take all appropriate measures to ensure the safety and security of the United Nations personnel. The host State, in particular, would assume the responsibility to protect United Nations personnel who are deployed in its territory from attacks or other acts of violence. The host State should give due respect to the international character of the United Nations operation, respect privileges and immunities of the United Nations operation, and immunities of the United Nations Personnel and take all necessary measures to ensure safety and security of the personnel deployed to carry out that operation.

Article 105(1) of the United Nations Charter stipulates that "The organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". Further, the General Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly on 13 February 1946 and the Convention on Privileges and Immunities of the Specialized Agencies approved on 21 November 1947 elaborate provisions dealing with the privileges and immunities of the United Nations and the Specialized Agencies respectively. The 'Status of forces' agreement incorporate relevant provisions from these Conventions and provide for certain privileges and immunities of the military and civilian personnel deployed in the United Nations operations. Further, as regards the civilian contractors and non-governmental organizations and their personnel who are engaged in United Nations operations through contractual or other arrangements, it may be pointed out that the Security Council in its resolution 868 of 29 September 1993, decided that the safety and security arrangements undertaken by

the United Nations or the host country should extend to all persons engaged in operations authorized by the Security Council (A/AC.24/21). A word of caution is necessary in this regard. Extension of privileges and immunities to such a wide category of people may open the door to its abuse. Identification of such personnel and keeping their track record will not be an easy job, especially when they are engaged in humanitarian operations. If proper measures are not taken, there might exist a certain risk of undermining the rights of sovereign states. The host government may not agree to extend privileges and immunities to locally employed or to any non-governmental organizations whose credibility is questionable.

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

(i) Introduction

The General Assembly at its Forty-seventh Session by its resolution 47/190 adopted on 22 December 1992, endorsed the Rio Declaration on Environment and Development, Agenda 21 and the Non-legally Binding Authoritative statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all types of forests as adopted at the Rio Summit on 14 June 1992.

At the AALCC's Kampala Session held in early 1993, the Committee took note of the outcome of the Rio Summit and the subsequent developments at the 47th Session of the General Assembly. It directed the Secretariat to continue the follow-up work on certain areas which included, the Work of the Commission on Sustainable Development, particularly in relation to the implementation of Agenda 21. The follow-up of the successful conclusion of the Framework Convention on Climate Change and the Convention of Bio-diversity was considered another priority area on which the AALCC's work should be focussed.

At the AALCC's Thirty-third Session held in Tokyo in January 1994, the Committee directed the Secretariat to continue monitoring the developments in these areas and submit a report for the consideration of the Member Governments at the Doha Session. It also took note of the progress in respect of the negotiations on the Convention to Combat Desertification and asked the Secretariat to work in co-operation with the Organisation of African Unity (OAU) in the preparation of a study on this Convention. The Secretariat study for Doha Session contains a brief Note on the major developments during the year 1994 and detailed Notes on three Environment Conventions namely, the Framework Convention

on Climate Change, the Convention on Bio-diversity and the Convention to Combat Desertification.

Thirty-fourth Session : Discussions

The Assistant Secretary-General (Mr. Asghar Dastmalchi) introduced this topic and recalled that the item 'Environmental Law' had been on the agenda of the AALCC over the last two decades. From Stockholm Conference of 1972 to the Rio Conference of 1992 the AALCC's work programme had kept pace with the development of Environmental Law. It had been the endeavour of the AALCC Secretariat to prepare studies and reports on major environmental law conferences with a view to assist Member Governments in their effective participation in those Conferences.

The Rio Summit of 1992 heralded in a new era of international co-operation in the field of environmental matters. The successful conclusion of three recent environmental law Conventions namely the Framework Convention on Climate Change, the Convention on Bio-diversity; and the United Nations Convention to Combat Desertification provided for new legal regimes in their respective areas. He recognized that the Environmental law in general and the Implementation of Agenda 21 including the legal regimes established by recent environment convention were of great importance. How far these new legal regimes have met with the expectations of the developing countries needed to be considered.

He drew attention to the Secretariat Document No. AALCC/XXXIV/Doha/95/7 which contained Notes on the outcome of the first meeting of the Conference of the Parties of the Bio-diversity Convention held in Bahamas from 28 November to 9 December 1994 and the progress made subsequent to the adoption of the Convention to Combat Desertification. He said that the Secretariat had not prepared any study on the Framework Convention on Climate Change as the first meeting of the Conference of Parties to the Climate Change Convention was held recently in Berlin from 28 March to 7 April 1995.

Mr. Dastmalchi observed that on two crucial issues namely, the financial mechanism and the transfer of technology to the developing countries, much remains to be done. The AALCC Member States have vital stakes in the implementation of these three Conventions. The Doha session provided a good opportunity to identify the issues which were of key importance and arrive at common position among the Member States.

Turning to the AALCC's Work Programme, the Assistant Secretary-General stated that during the year 1995, because of the financial constraint, the AALCC Secretariat could not participate in any environmental meetings.

He hoped that the Member Countries would find ways to strengthen and support the AALCC's Work Programme in this field. It was an area where the AALCC has a great potential role. The United Nations Environment Programme (UNEP) was keen to join the AALCC in its initiatives and provide expertise. Other United Nations Agencies, International and Non-governmental Organizations were equally keen to lend their support. How the Committee should utilize this opportunity was for the Member Governments to reflect and direct the Secretariat accordingly.

The *Delegate of Philippines* gave an account of the outcome of the first conference of the parties to the Framework Convention on Climate Change held in Berlin recently. Among the substantive matters taken up by the conference included, adequacy of commitments, joint implementation, financial mechanism and transfer of technology. With regard to adequacy of commitments, the conference decided to issue a mandate to start the process of strengthening commitments of developed country parties. It established a pilot phase for joint implementation activities among the developed country parties and on a voluntary basis for the developing country parties. It underscored the importance to developing countries of technology transfer and financial resources. He informed the meeting about his country's initiatives to deal with the effects of climate change.

The *Delegate of Sudan* recognized the crucial role which the AALCC could play in assisting Member States in the environmental matters, especially in the follow-up to the implementation of the recently adopted environmental Conventions. He gave an example of the reservations inserted by several countries in the context of ratification of the Bio-diversity Convention. The AALCC Secretariat could examine these reservations and advise the Member States about their validity. It could thus play a key role in promoting wider acceptance of the environmental conventions among the AALCC Member States.

The *Delegate of China* observed that there was consensus that resources and environment should be harmonized with economic development so as to bring the society and economy onto a path of sustainable growth. It was against this background that the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro in June 1992.

While recognizing that since Rio Summit, the World community and the International Organizations concerned have made a lot of efforts in carrying out various resolutions of the UNCED, the delegate expressed the view that the efforts made by the international community, especially

by the developed countries were not enough in comparison with the requirements of the effective implementation of various decisions of the UNCED. Instead of taking substantive actions, the developed countries have obviously retrogressed from their original commitments made at the UNCED. He hoped the developed countries would fulfill their commitments of providing new and additional financial resources and transferring environmentally sound technology under most favourable terms to developing countries.

Climate Change was a major environmental issue confronting the world community. The United Nations Convention on Climate Change was a legal instrument concluded by the international community after 18 months of hard negotiations. It identifies the objective of "Stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system", and stipulated that the developed country Parties should take the lead in combating climate change and the adverse effects thereof. It also forged the global partnership, i.e. the developed countries have the responsibility to provide financial and technological assistance to the developing countries in order to help them comply with their obligations. Regrettably, one year after the entry into force of the Convention, the developed countries have not adequately complied with their obligations, and they have failed to honour their commitment of providing new and additional financial resources and transferring technology. He stressed that practical and effective compliance with the obligations as set out in the Convention was the top priority.

With regard to the issue of "joint implementation" provided for in Article 4, 2 (a) and (d), it applied only to the developing country Parties. In his view, no developing country Party has any limitation commitment under the Convention; a developing country Party may participate in the pilot joint implementation activity on a voluntary basis, but the developed country Parties should not shift their emission limitation commitments onto the developing country Parties by means of joint implementation. Further joint implementation could only be regarded as an auxiliary means for the developed country Parties to implement the Convention. They should fulfil their commitments of reducing the emission of greenhouse gases mainly by adopting measures in their domestic departments. The fund and technology used by the developed country Parties in a project of joint implementation could not be taken as part of the obligations they should fulfil in terms of providing fund and technology. He stressed that joint implementation should be carried out on a voluntary and equal basis of all the parties and should fully respect the sovereignty of the developing

countries. It was a means in which the developing country Parties help the developed country Parties to implement the Convention.

With regard to the Convention on Biological Diversity he said that the developed country Parties should provide new and additional financial resources to enable the developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention. In his view, the amount of the fund needed by the Convention should be decided by the Conference of Parties according to the requirements of implementing the Convention, and should be raised by the future financial mechanism in accordance with its replenishment procedure. The developed country Parties should honour their obligations under the Convention through the future replenishment procedure of the financial mechanism. As an interim financial mechanism, GEF should set the ratio of the fund used for the Convention and take immediate measures to make sure that it will obtain the fund in order to implement the Convention. He informed the meeting that his country has formulated the action plan on biological diversity and formulating the country studies with the help of the UNEP.

As regards the United Nations Convention to combat Desertification in those Countries Experiencing serious Drought and/or Desertification, Particularly in Africa it will facilitate the international cooperation in this field. He pointed out that the rights and obligations provided under the Convention were uneven, because the developed country Parties did not undertake any substantive obligations to implement the Convention particularly in terms of financial resources and mechanism. He appealed to the world community especially the developed countries to fulfil their commitments made at Rio Summit and provide fund and technology to the developing countries. Only in this way could the global desertification be halted for the benefit of the mankind.

"The *Delegate of the Republic of Korea* drew attention to the fact that there seems to be no problem about the transfer of technology in the public domain and the transfer of privately-owned technology, although the latter would raise intellectual property rights issues. However, in case of the publicly-owned technology such as the ones owned by the government poses special problems. He suggested that the AALCC could identify these problems and prepare a framework and certain guidelines to help transfer of such technology. This could be useful for the countries in this region and facilitate the transfer of needed technology.

The *Delegate of Kuwait* referred to Principles 15, 23 and 24 of the Rio Declaration on the Environment and Development. She recognized

that Agenda 21 represented a work programme for the next century and addressed the environmental issues within a developmental framework. She informed the meeting that the Environment Protection Council, the Agency responsible for the environmental matters in Kuwait, established a sub-committee to review and assess her Government policies and legislations concerning environment protection in the light of recommendations made in Agenda 21. She said that her country actively participated in the meetings of the Inter-governmental Negotiating Committee for Climate Change, including the recent Berlin Conference. Among the issues stressed by her delegation included the constitution of the Members of the Bureau which should include a representative of the developing oil producing countries to protect the interests of this small vulnerable group; adoption of protocols by consensus, joint implementation strictly between developed countries and implementation of the current commitment by the developed countries.

The *Delegate of Sri Lanka* said that there was a global consensus that environment and development were closely interwoven. In his view, while the high level of consumption was the main cause of environment degradation in the developed countries, poverty, under development and lack of resources resulted in environmental degradation in the developing countries. Further, while there was common responsibility of the international community, the developed countries should share the greater responsibility in taking corrective measures to protect the environment.

The *Delegate of India* recognized that the UNCED established the importance of sustainable development which enveloped the two concepts of development and environmental protection. It also forged the foundations of a global partnership for environmental protection based on the fact that the environment of the entire world was common and both the developed and developing countries had a responsible role to play in ensuring sustainable development.

He observed that developing countries found it difficult to adequately pursue concerted approach to development in situations where protectionism was rising, the debt burden was increasing, terms of trade were continuing to deteriorate and reverse financial resource flows were taking place. Moreover, unless widespread poverty in developing countries was tackled head-on, we would be avoiding at our own peril tackling an important cause of environmental degradation in the developing world.

He said that decisions regarding development strategies in pursuance of sustainable development were matter of national decision-making. The role of international cooperation should be to support and supplement,

and not supplant, such national efforts. Review of national policies or plans by external agencies, or imposition of mandatory guidelines in sectors as forestry or energy would not be acceptable.

Environmental standards applicable to developed countries may have inappropriate and unwarranted social or economic costs in developing countries and harmonized or uniform global environmental standards may not, therefore, be applicable.

In his view the integration of environmental concerns into policies and programmes concerning economic development should be carried out without introducing a new form of conditionality in aid or development financing. It should also not be used as a pretext for erecting new trade barriers.

Moreover, provision of adequate, new and additional funding to developing countries would by itself not suffice; the transfer of environmentally sound technologies to countries which do not possess them would have to be ensured.

Lastly, multilateral funding institutions or mechanisms to tackle environmental problems should be democratically administered, and not donor dominated.