

and submitted it for consideration at the second Session of INC-D (U.N. Doc. A/AC.241/12) held in Geneva from 13 to 24 September 1993.

After the conclusion of the second session, the INC-D Secretariat prepared a draft negotiating text contained in U.N. document A/AC.241/15 which was taken as a basis for discussion during the INC-D third session held in New York from 17 to 28 January 1994. Considerable progress was made in identifying the areas where there was a broad consensus. The issues concerning commitments, financial resources and mechanisms and the conclusion of regional annexes were the key issues on which there were divergent views.

The Fourth Session of the INC-D was held in Geneva from 21 to 31 March 1994. The discussion focussed on a revised text of the Draft Convention contained in U.N. document A/AC.241/15/Rev.1.

The Fifth Session of the INC-D was held in Paris from 6 to 17 June 1994. The session marked the final and the most difficult phase of negotiations in formal and informal meetings. Success was achieved when the INC-D was able to narrow down the differences and adopted the final text of the Convention together with the four regional implementation annexes for Africa, Latin America and the Caribbean, Asia and the Northern Mediterranean. The INC-D also adopted two resolutions. The resolution on urgent measures for Africa, called on affected African States to take urgent action including the preparation of regional and sub-regional action programmes. The second resolution outlined the interim arrangements and follow-up measures for the continuance of the INC-D's work until the first session of the Conference of Parties.

The Government of France organised an impressive ceremony in Paris on 14th and 15th October 1994, during which 87 countries and one regional organization signed the Convention.

The General Assembly, at its forty-ninth session by its resolution 49/234 of 23 December 1994, welcomed the adoption of the Convention and its signing by a large number of States. It urged the States that have not yet signed the Convention to do so. It recognised that in conformity with article 33 of the Convention, it will remain open for signature until 13 October 1995. It also urged the signatories of the Convention to proceed to its ratification so that it may enter into force as soon as possible. It decided that the INC-D would continue to function and laid down its tasks as follows:

- (a) To prepare for the first session of the Conference of the Parties to the Convention, as specified in the Convention;

- (b) To facilitate the implementation of the provisions of resolution 5/1 on urgent action for Africa, through the exchange of information and review of progress made therein;
- (c) To initiate measures relating to identification of an organisation to house the global mechanism to promote action leading to mobilization of substantial financial resources, including its operational modalities;
- (d) To elaborate the rules of procedure of the Conference of the Parties;
- (e) To consider other relevant issues, including measures to ensure the implementation of the Convention and its regional annexes.

As for the future meetings of the INC-D, the General Assembly decided that in addition to the Sixth Session of the INC-D scheduled for two weeks in New York from 9 January 1995, another two weeks session will be held in Nairobi from 7 to 18 August 1995. In addition, pending the entry into force of the Convention, further necessary sessions might be held in 1996 and 1997 at such venue and timing as will be recommended by the INC-D.

In another resolution adopted by the General Assembly on 19 December 1994 (Res. 49/115), it was considered that among the ways to promote action to implement the Convention would be to raise awareness at local, national, sub-regional, regional and international levels. It decided to proclaim 17 June as the World Day to Combat Desertification and Drought to be observed beginning in 1995.

The Sixth Session of the INC-D was held in New York from 9 to 18 January 1995. The Session was devoted mainly to discuss the future organisational work and follow-up promotional measures related to the Convention including the implementation of the resolution on urgent action for Africa. After a brief general discussion and informal consultations it was decided to establish two Working Groups.

Working Group I chaired by Mr. Mourad Ahmia (Algeria) would consider the issues which include: initiating measures relating to the identification of an organisation to house the Global Mechanism, making recommendations for the designation by the Conference of the Parties of a Permanent Secretariat and arrangements for its functioning; and financial rules, programmes and budget.

Working Group II chaired by Mr. Takao Shibata (Japan) would consider matters including: Organization of scientific and technological co-operation;

rules of procedures for the Conference of the Parties; procedures on question of implementation; procedures for conciliation and arbitration and procedures for communication of information for the review of implementation of the Convention.

The two Working Groups will begin substantive discussions at the Seventh Session of the INC-D scheduled to be held at Nairobi from 7 to 18 August 1995.

As on 18 January 1995, 97 countries have signed the Convention.* These signatories include:

Algeria, Angola, Argentina, Armenia, Australia, Bangladesh, Benin, Bolivia, Brazil, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Denmark, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, European Union, Finland, France, Gambia, Georgia, Germany, Ghana, Guinea, Guinea Bissau, Greece, Haiti, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Lebanon, Lesotho, Libya, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mexico, Micronesia, Mongolia, Morocco, Namibia, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Saint Vincent and the Grenadines, Senegal, Seychelles, Sierra Leone, South Africa, Spain, Sudan, Sweden, Switzerland, Syria, Tanzania, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States, Uzbekistan, Zaire, Zambia and Zimbabwe.

An Overview of the Convention

The text of the Convention is spread into 26-Paragraphs, a Preamble and 40 articles. The Preamble addresses several issues in general terms. Some of them have been incorporated as specific articles. The set of 40 articles are divided into six parts. Part I entitled 'introduction' contains articles on definition, objective and Principles. Part II containing 'General Provisions' sets out general obligations of all Parties; obligations of affected Country Parties; obligations of developed country Parties and priority action for Africa. Part III stipulates the details concerning action Programmes, scientific and technical co-operation and supporting measures at the national, sub-regional, regional and international levels. Articles 20 and 21 are the two key provisions which deal with financial resources and financial mechanisms. Article 21(4) provides for the establishment of a Global Mechanism which would function under the authority and guidance of

* Earth Negotiations Bulletin, Vol. 4, No. 65, 20 January 1995.

the Conference of the Parties and be accountable to it. Part IV dealing with Institutions provides for the establishment of the Conference of Parties, Permanent Secretariat and a Committee on Science and Technology. Part V is concerned with Procedures. Article 26 elaborates a reporting mechanism by the Parties to the Convention on the measures they have taken for the implementation of the Convention. Part VI sets out the final Provisions. Article 36 provides that the Convention would enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession. Lastly, four annexes set out the details concerning implementation of the Convention regionally in Africa, Asia, Latin America and the Caribbean and the Northern Mediterranean respectively.

General Comments

It will be recalled that during the United Nations Conference on Environment and Development held in Rio in June 1992, the African States forcefully argued for elaboration of an International Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa. The General Assembly at its forty-seventh session by its resolution 47/188 endorsed this proposal and established an Intergovernmental Negotiating Committee (INC-D) and mandated it to complete the elaboration of the Convention by June 1994.

When the INC-D began its work it had the advantage of valuable experience gained in the context of the Convention on Climate Change and Bio-diversity. In addition, since the desertification issues had been discussed extensively for over two decades in the UNEP and other forums, a vast amount of scientific and technical material was in hand. The experience in the implementation of the UNEP 1977 Plan of Action to Combat Desertification provided a useful reference. Against this background, the task of the INC-D was much easier as compared to the Climate Change and Bio-diversity Conventions negotiations. It was, therefore, a correct approach by the INC-D to elaborate the desertification Convention on the pattern of these two Conventions.

The submission of a negotiating draft text by the INC-D at its very first substantive session in Nairobi helped a focussed discussion on relevant issues. By the time, the INC-D held its second session in Geneva, there was a broad consensus on less contentious issues. The divergent views emerged on at least four main issues namely, the commitment of the developed countries, the establishment of new institutional arrangements, the financial resources and mechanisms and the regional annexes. The reluctance on the part of some of the developed countries to accept the

global nature and common concern about the desertification issues marred the progress on several aspects of the Convention. They were neither prepared to support the proposal to establish new institutions nor make any substantial financial commitments to assist the developing countries affected by the menace of desertification and drought. Regrettably the developing countries themselves were divided on the time-table and priority concerning the development of regional annexes. Be that as it may, the successful conclusion of the negotiations at the INC-D fifth session and the adoption of the text of the Convention on 17 June 1994 as mandated by the General Assembly resolution 47/188 is a historic achievement.

The United Nations Convention to Combat Desertification happens to be the first international convention in the post-Rio period. Like the Conventions on Climate Change and Bio-diversity, this Convention also addresses the issues of vital importance in the context of sustainable development, which was one of the basic themes of the United Nations Conference on Environment and Development held in Rio in June 1992. In addition to creating a legal framework for concerted action, the Convention provides for the participatory approach at national, regional and international levels involving Governments, inter-governmental and non-governmental organisations and different sections of people. The most important follow-up work will be to bring the Convention into force. The African States have taken the initiative to implement the Convention provisionally even prior to its entry into force. A similar initiative could be taken by the States of other regions as well.

The pattern of international economic relations has great impact on undertaking effective action concerning environmental issues. The debt burden of the developing countries and the distortion in international trade restrict the ability of developing countries, particularly those experiencing serious drought and desertification to divert their meagre financial resources from other pressing national commitments. The crucial test for the successful implementation of the programmes to combat desertification and mitigation of drought would be the availability of new and additional financial resources.

The financial and technical support for the formulation and implementation of national action programmes is one of the key objectives of the Convention. An integrated approach emphasising the national commitment to ecologically sustainable development issues covering all sectors would help accelerate the achievement of these objectives. Participation of different groups of concerned people and non-governmental organisations in the planning and implementation of national action plans needs to be encouraged.

The developed countries have demonstrated their willingness to consider and appreciate the concern of the developing countries on the priority issues such as poverty eradication, sustainable development, debt burden etc. The Convention reflects this concern in a reasonable manner. However, on the key issue concerning financial resources and mechanism the lack of express commitments by several developed countries, the less said the better. Establishment of an International Fund for this purpose would have evinced keen interest among the developing countries. Instead, in a roundabout manner Articles 20 and 21 of the Convention express the pious resolve to augment the financial resources to meet the challenges posed by desertification and drought.

The focus of restructured GEF would continue on four areas namely climate change, biological diversity, international waterways and ozone layer depletion. As regards the financing for combating desertification, it is envisaged that the agreed incremental costs of activities concerning land degradation, primarily desertification and deforestation as they relate to the four focal areas would be eligible for funding. It is hoped that some ways would be found to broaden the GEF's support to the activities concerning combating desertification and mitigation of drought. The implementation of the Climate Change Convention may be a priority for the developed countries, but the priority for most of the developing countries, particularly in Africa, lies in taking effective action to deal with the desertification and drought issues. The relationship between the climate change and its impact on desertification needs no elaboration. Effective co-ordination in the implementation of the two Conventions would be meaningful only when due recognition is given to their respective objectives and priorities without drawing an artificial line dividing them.

The commitment to environmental and sustainable development issues by the United Nations system has increased significantly. The recent international conventions dealing with ozone layer, climate change, biological diversity, hazardous wastes, marine pollution and toxic chemicals have established a solid framework for collective action at national, regional and international levels. It is hoped that the United Nations Convention on Combating Desertification would receive the requisite ratifications and come into force in the near future. While the legal regimes established by these Conventions would function independently, it would be desirable to harmonize and facilitate the implementation process in such a way that the legislative machinery at the national levels is not over burdened. The lack of infrastructure and the inadequate manpower especially in many developing countries might pose difficulties in achieving this objective. The priority, therefore, should be to strengthen the capacity of the developing

countries by providing financial and technical support, including organisation of training courses and building-up national institutions.

During the consideration of the Report of the INC-D's fifth session, by the General Assembly at its forty-ninth Session, while there was unanimous appreciation for the historic achievements several delegations from the developing countries expressed concern over the lack of enthusiasm on the part of certain developed countries to accelerate the measure to implement the convention's objectives: Any attempt to downgrade the convention in comparison with the conventions on Climate Change and the Bio-diversity should not be encouraged. The sustainable development could be achieved only by an integrated approach.

VII. Deportation of Palestinians in Violation of International Law, Particularly the 1949 Geneva Convention and the Massive Immigration and Settlement of Jews in Occupied Territories

(i) Introduction

The subject "Deportation of Palestinians in Violation of International Law, particularly the Geneva Conventions of 1949" was taken up by the AALCC consequent upon a reference made by the delegation of the Islamic Republic of Iran at the Twenty-seventh Session of the Committee, held in Singapore in March 1988. The delegate of the Islamic Republic of Iran in his introductory statement pointed out that the Zionist entity (Israel) had deported a number of Palestinians from Palestine as a brutal response to the upheaval by the people in the occupied territory. The deportation, both in the past and in recent times, of people from the occupied territory constituted a severe violation of the principles of International Law and also violated in letter and spirit the provisions of such international instruments and conventions as the Hague Convention of 1899 and 1907, the Charter of the United Nations, 1945 and the Geneva Convention relative to Protection of Civilian persons in Time of War, 1949, all of which either implicitly prohibited deportation as a form of punishment of deterrent factor especially in an occupied territory. The Islamic Republic of Iran's primary interest, appeared to be related to two basic issues viz:

- (i) the enunciation of the duties, commitments and obligations of occupying forces, in accordance with international law; and
- (ii) their violation by the Zionist entity in Palestine.

The delegate accordingly requested the Committee to consider the

item. After a preliminary exchange of views at that Session¹ the Committee called upon the Government of the Islamic Republic of Iran to furnish the Secretariat with a memorandum which it (the Secretariat) might take as a basis to conduct its study and accordingly directed the Secretariat to conduct a study of the matter.

The Islamic Republic of Iran submitted a memorandum to the Secretariat of the Committee² whereby it called upon, *inter alia*, the Secretariat:

- (i) "to study the fact that in accordance with the international law, the deportation of the residents of the occupied territories is illegal and condemned"; and
- (ii) "to examine the violations by the occupation regime of al-Qods of the above case, which had taken place since the very inception of this regime, that has not been recognized by many of the member States of the international community including Iran."

The memorandum also requested the Secretariat to submit "an interim report to the member States before embarking on carrying out its comprehensive studies". A cursory reading of the Memorandum as well as the introductory statement of the delegate of the Islamic Republic of Iran would reveal that the Secretariat was called upon to study the legal consequences of the deportation of Palestinians from the occupied territories.

Thirty-fourth Session: Discussions

The Deputy Secretary-General (Mr. Essam Abdel Rehman Mohammed) stated that the item "Deportation of Palestinians was first placed on the work programme of the Secretariat following upon a reference made by the Government of Islamic Republic of Iran, at the Twenty-seventh Session of the Committee and had been considered thereafter at successive sessions of the Committee. He pointed out that the item had not been included in the agenda of the Thirty-third Session held in Tokyo in 1994 but at the instance of representatives of some Member States a resolution was adopted whereby the Committee requested the Secretary-General of the Committee to continue to monitor the events and developments on the occupied territories and decided to include the item in the agenda of the thirty-

1. For details of the deliberation see the Verbatim Records of the Plenary Meeting of the Twenty-seventh Session of the AALCC held in Singapore, March 1988.

2. The full text of the Memorandum of the Government of the Islamic Republic of Iran drafted in the form of a Report entitled "Deportation of the Residents of Occupied Territories from the stand-point of International Law" may be found in *Deportation of Palestinians in Violation of International Law*, in particular the Geneva Conventions of 1949. Doc. No. AALCC/XXVIII/89/2.

fourth Session. He stated that in view of the recent development and the resolution of the Committee at its Thirty-third Session the Committee may wish to consider whether the Secretariat has exhaustively dealt with the legal aspects of the item referred to it and determine the course of future work of the Secretariat on the matter.

The *Delegate of Uganda* wanted the Committee to go deeper into the topic on refugees and to address the fundamental questions of examining the causes of refugee flows. He wanted the member States to adopt a culture of constitutionalism as a long range solution to the problem. He also pointed out that the model legislation was a temporary measure in dealing with the refugee problem. He felt that there was need in the Afro-Asian States to develop a culture of political accommodation and reconciliation.

The *Delegate of India* commenting on the model legislation was of the view that no one model could serve as an answer to particular or special problems faced by any member State. More time was required by States to study the various concepts involved in the model legislation and no purpose would be solved by establishing a Working Group to study this model legislation. A preliminary view of the value of this model should be taken first by member States before deciding on any further action. The concept of safety zone had neither legal sanction in International Law nor moral appeal.

The *Delegate of Syria* referring to the proposed merger of the two topics on the Status and Treatment of Refugees and the Deportation of Palestinians expressed the view that the two items should be dealt with separately. He said that his country had not participated in the Multilateral Peace Conferences. Referring to the large number of Palestinians in Syria he said that this Government gives them all the rights as Syrian citizens, but it does not give them the Syrian nationality because they have their home land and a separate and distinct entity. He emphasized the retention of the item "The Deportation of Palestinians in violation of International Law on the work programme of the Committee.

The *Delegation of Sri Lanka* observed that the creation of a Safety Zone should be subject to the consent of the State of origin and not imposed upon it. Dealing with the internally displaced persons he said that it was the humanitarian mandate of the UNHCR and ICRC. To make it more effective what was required was additional funding rather than mechanisms to deal with this problem.

The *Representative of the UNHCR* clarified that he had not meant in any way to offend the Delegate of the State of Palestine. What he had

said was that a process had begun with regard to solving the Palestinian refugee problem and the UNHCR looked forward to the political process. Referring to the statement made by the Ugandan Delegate, he stated that since 1951 the refugee problem had spread all over the world. There was some improvement after the end of the cold war, but at present there was no indication of this problem ending. The present refugee population of 24 million were the refugees as determined by the definition criteria and what percentage of them were migrants was difficult to ascertain.

(ii) **Decision on “Deportation of Palestinians in Violation of International Law Particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories”**

(Adopted on 22nd April 1995)

The Asian-African Legal Consultative Committee at its Thirty-fourth Session:

Having considered the Report of the Secretary-General contained in Document No. AALCC/XXXIV/DOHA/95/6. and taken cognizance of the hardships suffered by Palestinian refugees.

And having heard the statement of the Deputy Secretary General;

1. *Thanks the Secretary-General* for his report on the Deportation of Palestinians;
2. *Directs* the Secretariat to continue to monitor the developments in the occupied territories from the view point of relevant legal aspects;
3. *Decides* to place the item on the agenda of the Thirty-fifth Session of the Committee and to consider this item in conjunction with the item the Status and Treatment of Refugees.

(iii) Secretariat Brief
Deportation of Palestinians in Violation of
International Law Particularly the Fourth Geneva
Convention of 1949 and the Massive Immigration
and Settlement of Jews in the Occupied Territories

A preliminary study prepared by the Secretariat which among other things, dealt with the customary and codified law relating to occupied territories and outlined the duties of the occupying power was considered at the Twenty-eighth Session held in Nairobi in 1989. That brief concluded that deportation of Palestinians did indeed constitute a flagrant violation of customary international law of armed conflicts as well as contemporary international humanitarian law.¹ The Committee at its Nairobi Session *inter alia*, affirmed that the occupying authorities were acting in flagrant violation of international law in deporting Palestinians from the occupied territories. It also affirmed the inalienable rights of the Palestinian people of self determination and the right to return to their land and directed the Secretariat to undertake a further study including the question of payment of compensation to Palestinians.

Pursuant to that decision the Secretariat study for the Twenty-ninth Session endeavoured to establish that payment of compensation for deportation is both a matter of customary International Law as well as an explicit stipulation of contemporary international law as codified in the Hague Convention of 1907, the Fourth Geneva Convention of 1949 and the 1977 Protocols thereto. The brief of documents prepared by the Secretariat for the Twenty-ninth Session of the Committee *inter alia*

1. See AALCC Brief Deportation of Palestinians in Violation of International Law in particular the Geneva Convention of 1949. Doc. No. AALCC/XXVIII/89/2.