

on the developed country Parties. The imperative needs of the developing countries include alleviation of poverty, housing, health, education and infrastructural development, which leave scarce resources to address climate change considerations. Developed countries must endeavour to provide resources for capacity building and sound environmental technologies to enable developing country Parties to cope with the problem.

The COP-2 and the continuing Berlin Mandate call upon Annex I Parties to implement their commitments and accelerate negotiations towards the adoption of a protocol or any other binding instrument at COP-3 to be held in December 1997, Kyoto, Japan.

## Convention on Biological Diversity

### Background

The Convention on Biological Diversity (CBD), negotiated under the auspices of the United Nations Environment Programme (UNEP), was opened for signature on 5 June 1992 and entered into force on 29 December 1993. As of date 161 countries have become Parties to the Convention including the European Union.<sup>1</sup>

The chief objectives of the Convention are: (i) the conservation of biological diversity; (ii) sustainable use of its components and; (iii) fair and equitable sharing of the benefits arising out of the utilization of genetic resources.<sup>2</sup> The other salient features of the Convention, include: (a) the requirement that countries adopt appropriate regulations to conserve their biological resources;<sup>3</sup> (b) the legal responsibility of

<sup>1</sup> As of June 1996, the following AALCC Member States have ratified the convention: Bangladesh, Botswana, China, Egypt, Gambia, Ghana, India, Indonesia, Japan, Jordan, Kenya, Democratic Republic of Korea, Republic of Korea, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Senegal, Sierra Leone, Singapore, Sri Lanka, Sudan, Syria, Tanzania and Yemen Arab Republic.

<sup>2</sup> Article 1 of the Convention

<sup>3</sup> Article 6

governments for the environmental impact in other countries of activities by their private sector;<sup>4</sup>(c) funding to assist developing countries in implementing the Convention to be administered through the Global Environmental Facility;<sup>5</sup> (d) the transfer of technology to developing countries on preferential and concessional terms, bearing in mind the fact that such transfer does not prejudice the intellectual property rights;<sup>6</sup>(e) access and ownership of genetic material as a sovereign right;<sup>7</sup> (f) regulation of biotechnology activity, especially the safe transfer, handling and use of living modified organism (LMO)<sup>8</sup>; and (g) fair and equitable compensation to developing countries for extraction of genetic materials.

The UNEP established an Ad hoc Working Group of Experts on Biological Diversity, which held three sessions between November 1988 and July 1990. On the basis of the Group's final report, UNEP established Working Group of Legal and Technical Experts to negotiate a Convention. This group held two sessions and was renamed the Intergovernmental Committee for a Convention on Biological Diversity (ICCBD)<sup>9</sup>

### Conferences of Parties

The first meeting of the conference of Parties (COP-1), took place in Nassau, Bahamas from 28 November to 9 December 1994. Some of the important decisions taken by COP-1 included: adoption of a medium term work programme; designation of a permanent secretariat;

<sup>4</sup> Article 10 and 14

<sup>5</sup> Articles 20 and 21

<sup>6</sup> Article 16

<sup>7</sup> Article 15

<sup>8</sup> Article 19

<sup>9</sup> The ICCBD held two sessions from 11 to 15 October, 1993 and 20 June to 1 July 1994. The substantive issues discussed included, conservation of biodiversity, financial mechanism, biosafety protocol, ownership and access of genetic resources and clearing house mechanism.

establishment of a clearing house mechanism (CHM) and the subsidiary body for scientific, technical and technological advice (SBSTTA) and designation of the Global Environmental Facility (GEF), as the interim institutional structure for the financial mechanism.<sup>10</sup>

The second session of the COP, met in Jakarta, Indonesia from 6 to 7 November, 1995. Some of the key decisions taken by COP-2 included: designation of the permanent secretariat of the CBD in Montreal, Canada; an agreement to develop a protocol on the safe transfer, handling and use of living modified organism (LMO); operation of the CHM and consideration of substantive issues of marine and coastal biodiversity.<sup>11</sup>

The third Conference of Parties (COP-3), to the CBD met in Buenos Aires, Argentina from 4 to 5 November 1996. One of the main tasks before it, was the implementation of various decisions arrived at COP-2. A Committee of the Whole (COW) was constituted, along with two Working Groups on Agricultural Biodiversity and financial issues, respectively. The COP considered the report of the second meeting of SBSTTA, which had on its agenda complex technical issues which included, monitoring and assessment of biodiversity, economic valuation of biodiversity, access to genetic resources, marine and agricultural biodiversity and biosafety. Delegates felt that SBSTTA should devote more time to scientific aspects, rather than deal with economic valuation.

Some of the important issues considered by COP-3 were: (a) clearing house mechanism; (b) financial mechanism; (c) agricultural biodiversity; (d) access to genetic resources and transfer of technology; (e) intellectual property rights; (f) biosafety; (g) Ministerial Segment and; (h) statement from CBD to the Special Session of the UN General Assembly to review the implementation of Agenda 21.

<sup>10</sup>For details of COP-1 see, *UNCED: Follow-up*, Doc.No. AALCC/XXIV/DOHA/95/7 pp.6-11

<sup>11</sup>For details of COP-2 see, *UNCED: Follow-up*, Doc.No. AALCC/XXXV/MANILA/96/4, pp.8-11

### (a) Clearing House Mechanism

Article 18 of the CBD calls for the creation of a CHM, designed to promote and facilitate technical and scientific cooperation. No unanimity could be reached on the role of a CHM. Opinions ranged from providing scientific know-how to capacity building and transfer of technologies. They expressed concern that CHM should exclude information on traditional knowledge, until the issues of access and benefit sharing are decided. Having considered the Report of SBSTTA-2, they felt that the GEF should support the CHM for increased capacity building in taxonomy and biosafety in developing countries.

### (b) Global Environmental Facility (GEF)

As regards the designation of a permanent financial mechanism, some delegates felt it was too premature, as this decision would call for a detailed review of the effectiveness of the GEF. They were of the view that: (a) the GEF must indicate the amount due, by way of new and additional funding, contributed in the GEF Trust fund; (b) the GEF should operate the financial mechanism on an interim basis, and be accountable to the CO ;and (c) the COP alone is empowered to determine shall determine the policy, criteria and the access to financial resources.

### (c) Agricultural Biological Diversity

On substantive matters, the COP-3 decided that the recommendations of SBSTTA-2, would be the guiding basis to address the issue of agricultural biodiversity. An open ended Working Group on Agro biodiversity was established. However, delegates expressed concern on a number of issues that included: the impact of pesticides and chemical agents, the impact of subsidies on sustainable agriculture and international trade, the global plan action adopted at the Fourth International Technical Conference on Plant and Genetic resources, the FAO Commission on Plant Genetic Resources for Food and Agriculture (PGRFA), *ex-situ* collection acquired prior to the entry into force of CBD, IPR life forms and farmers rights. A major contentious issue arose, wherein, the developing countries presented an alternative draft report and did not accept SBSTTA-2 recommendations. A drafting

group was set up which consolidated the text of SBSTTA-2 and the one presented by the developing Parties. The Working Group on Agrobiodiversity, was able to arrive at a decision on most issues, except those of ex-situ collections acquired prior to the entry into force of CBD, and the relationship between IPR legislation and sovereignty over PGRFA and Farmers Rights.

#### (d) Access to Genetic Resources

On the issue of access to genetic resources as provided by Article 15 of CBD, COW discussed issues relating to national sovereignty, prior informed consent (PIC) and mutually agreed terms for facilitating access for use. However, delegates expressed divergent views on benefit sharing of these resources', which included: the FAO to be the appropriate organization for development of a multilateral framework on ex-situ agricultural genetic resources, access consideration should include ex-situ collections made before the CBD came into force; signing of a protocol on access; the role of indigenous communities in the control of genetic resources, capacity building and participation of the private sector. The decision taken therein, recognised the need for implementation of TRIPS, including various approaches of managing access to genetic resources, linkage of CBD with World Trade Organization (WTO) and the revision of the UNEP International Undertaking with regards to ex-situ collections acquired, prior to entry into force of CBD. A decision was also arrived at, that took into consideration, the need for an inventory of transferable technology, that involved an integrated and sectoral approach.

#### (e) Intellectual Property Rights

A background documentation on IPR's was introduced by the CBD Secretariat. The discussion reflected different opinions, calling for a strong linkage between IPR's and CBD implementation; a study on the disclosure of origin in patent application policies; voluntary disclosure; recognition of traditional knowledge and; collaboration between World Intellectual Property Organization (WIPO) and CBD. The final decision taken encouraged conducting case studies on IPR impact on CBD objectives, technology transfer and benefit sharing. Other

decisions included the establishment of a database on new IPR regime; requesting help from WIPO in capacity building in developing countries and placing an application before the WTO's Committee on Trade and Environment, for granting observer status.

#### (f) Biosafety Protocol

Another contentious issue discussed, was the adoption of a protocol on Biosafety: The COW, considered the report of the First Meeting of the Open Ended Ad hoc Working Group on Biosafety (BSWG) and the progress report on the elaboration of a protocol on Biosafety. The COW had before it the work of BSWG-1, which had considered the domestic legislations on safe transfer, handling, use and disposal of living modified organisms and recommended the setting up of a ten-member Bureau, which would hold two meetings in 1997. The developing country Parties expressed concern calling for liability measures, risk assessment structures and capacity building. Although, accepting and endorsing the pioneering work done by UNEP International Technical guidelines for safety in biotechnology, delegates felt this was only an interim mechanism, which should not prejudice efforts for a future protocol. The final decision of the COP, hoped that the BSWG shall complete its work by 1998 on developing a protocol and also endorsed the need for added financial support and institutional support for developing countries.

#### (g) Relationship with other Conventions

The COP also addressed issues pertaining to inter-institutional co-operative arrangements with the Ramsar Convention on Wetlands, the Bonn Convention on Migratory Species (CMS) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

#### Ministerial Declaration

The Ministerial Segment, in its Declaration called upon country Parties to bear in mind: (i) need for additional resources and transfer of technology by developed country Parties; (ii) simplified procedures for

availing of GEF funding; (iii) a review of the work of multilateral agencies to enable improved investments; (iv) capacity building, especially, in Africa and the least developing countries; (v) sharing of information, bio prospecting and recognising the local knowledge, innovation and practices of indigenous people; (vi) the developed countries demand for a free access to genetic resources as a necessary corollary to supply biotechnology and additional finances; (vii) a biosafety protocol, guaranteeing, adequate information sharing and advanced informed agreement; and (viii) the concerns of the small island developing states (SIDS), who stressed the importance of marine and coastal issues, and for an integrated management of coastal zones and marine environment and sustainable use of coral reefs and reef ecosystem.

### **AALCC's Views and Comments**

The Convention on Biological Diversity and its objectives represents a challenge to the international community to abide by the well established principle of sustainable development. The largest cover of bio-reserves are in the developing world. A meaningful and equitable sharing of resources, calls for increased supply of financial resources and transfer of technology, where such transfer is not, prejudicial to IPR protection in developing country Parties. The work of the COP-3 should be complemented, especially on substantive issues of agro biodiversity and IPR'S. A right move in this regard, is the communication to WIPO requesting it to recommend an international copyright protection for scientific databases. Though it may be argued that one may not be able to change the basic IPR rules as established under the TRIPS regime, it is always possible, that the CBD frames its views on the environmental and sociocultural aspects of patents.

The tasks ahead, before COP-4 to be held in Bratislava, Slovakia from 4 to 15 May, 1998 are many, a few important ones include, a first time review of the national implementation of the Convention and the effectiveness of the financial mechanism, the Global Environmental Facility.

## **United Nations Convention to Combat Desertification (UNCOD) in those countries Experiencing Serious Drought And/or Desertification, Particularly in africa.**

### **Background**

According to the United Nations Environmental Programme (UNEP) around 900 million people are threatened by desertification, which amounts to 25 per cent of the Earth's land area. The causes for degradation of fragile drylands include overgrazing, overcropping, poor irrigation activities, deforestation and climate variations. However, this process is contributed by the ever-growing imbalance between population, environment and development. Looking at the problem from a socioeconomic view point and not as a scientific or technological issue, It calls for an emphasis on eradication of poverty and development of sustainable patterns of livelihood.

The United Nations Conference on Desertification (UNCOD) was held in Nairobi from 29 August to 9 September 1977<sup>1</sup> which adopted a plan of action, to combat desertification (PACD)<sup>2</sup>. However, the PACD met with limited success on account of the inability of developing countries to cope with desertification due to lack of finances, lack of local community participation and the desertification programmes had failed to address socioeconomic needs of the people.

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<sup>1</sup> General Assembly resolutions 3202 (S-VI) of 1 May 1974 and 32/172 of 19 December 1977 ; Also see ECOSOC resolution 1878 (LVII) of 16 July 1974.

<sup>2</sup> Earlier anti desertification initiatives include: FAO/UNEP Project on Ecological Management of Arid and Semi-Arid Rangelands (EMASAR) in Africa and Western Asia. 1975; UNEP's Global Environmental Monitoring System (GEMS), started in 1912; UNESCO/MAN and the Biosphere Programme, 1968. This was subsumed with PACD. (UNEP, Desertification Control, 21. Nov. 1992). A Desertification Control Programme and Activity Centre, DC/PAC was established, which provided a Secretariat for Inter-Agency Working Group on Desertification. (IAWGD), established by the General Assembly. The Consultative Group on Desertification Control (DESCON) was also established in 1978. The UN Economic and Social Commission for Asia and Pacific (ESCAP) , established the Desertification Control in Asia and Pacific (DESCONAP), with the help of UNDP in 1985.

Desertification having emerged as a global issue, the United Nations General Assembly included it on the agenda of UNCED, 1992<sup>3</sup> and invited the Governing Council of the UNEP to contribute substantially to the discussion on desertification at UNCED, especially, the implementation of the PACD<sup>4</sup>. The Rio Conference, however, witnessed countries linking the need for a forestry convention to the adoption of a desertification convention. Thereafter, the General Assembly, at the request of UNCED, established an intergovernmental negotiating committee to elaborate an international convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa.<sup>5</sup> The Inter-governmental Negotiating Committee on Desertification (hereinafter, ICND) was established in 1993.<sup>6</sup>

ICND-10, was a landmark session, as it met after the Convention came into force on 26 December 1996.<sup>7</sup> The Session successfully concluded the Convention before the five year mid-term review of Agenda 21, the programme of action adopted by UNCED. Working

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<sup>3</sup> See General Assembly resolutions 44/172 of 19 December 1989 and 44/228 of 22 December 1989. It was characterized as a serious issue and UNCED was to accord high priority to desertification control and consider all means necessary, including financial, scientific and technological resources, to halt and reverse the process of desertification with a view to preserving the ecological balance of the planet.

<sup>4</sup> General Assembly resolution 47/172 of 19 December 1989

<sup>5</sup> General Assembly resolution 47/188 of December 1992

<sup>6</sup> For work of ICND, see United Nations Conference on Environment and Development: Follow-Up Doc.No. AALCC/XXXIV/DOHA/95/7, pp. 15-27  
As of 15 January 1997 sixty-two countries, have ratified the Convention including 15 AALCC Member States, which are shown by italics. They are: Afghanistan, Algeria, Argentina, *Bangladesh*, Benin, Bolivia, *Botswana*, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Denmark, Ecuador, Egypt, Eritrea, Federated States of Micronesia, Finland, Gabon, *Gambia*, *Ghana*, Guinea-Bissau, Haiti, *India*, *Israel*, *Jordan*, Lao Peoples Democratic Republic, Lebanon, Lesotho, *Libya*, Malawi, Mali, Mauritania, *Mauritius*, *Mexico*, *Mongolia*, *Morocco*, *Myanmar*, *Nepal*, Netherlands, Niger, Norway, Oman, Panama, Paraguay, Peru, Portugal, *Senegal*, *Spain*, *Sudan*, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkmenistan, United Kingdom, *Uzbekistan*, *Yemen* and Zambia.

Group I had issues relating to designation of a permanent secretariat; financial rules, identification of an organisation to house the Global Mechanism and; programme and budget on its agenda. Working Group II issues included, organisation of scientific and technical co-operation, procedures for communication of information, and rules of the Conference of Parties.

As regards the financial machinery, namely Global Mechanism, despite protracted negotiations, the ICND-10 could not agree on ways to mobilize funds along with the substantive question of functions of the Mechanism. However, the ICND-10 adopted a Text, under which the International Fund for Agricultural Development (IFAD) and the United Nations Development Programme (UNDP) were invited, to submit to the Interim Secretariat by 1 May 1997, revised versions consisting of any new elements to their offers, to house the Global Mechanism. Working Group II was successful in organising the scientific and technical cooperation for the Convention. The ICND-10 recommended the Interim Secretariat to draw up a list of organisations willing to support the implementation of the Convention; maintain a roster of experts; and establish an open ended consultative process to assist the Committee on Science and Technology. The importance of development of education, training and information programmes to help implementation of the Convention, was also highlighted. It was also decided to accredit twenty three non-governmental organisations, bringing the total number to 286, that had participated in the implementation of the Convention before it came into force.

Having achieved this, the Chairman of ICND-10, Bo Kjellen, suspended the session. However, the committee agreed to reconvene from 18 to 22 August, 1997 before the first meeting of the Conference of Parties scheduled for Rome, beginning on 29 September 1997.

### Salient features of the Convention

The Convention born out the need to implement Chapter 12 of agenda 21, builds upon UNCED's sustainable development paradigm, to provide a balanced legal framework for increased international