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THE ENVIRONMENT: AN OPPORTUNITY FOR NORTH/SOUTH COOPERATION

Palitha T.B. Kohona*

I. Introduction

There is deepening concern about the serious harm that has been caused to the global environment by human activity and a feeling that urgent action is required to arrest and, if possible, reverse the damage.

The damage to the environment could be traced largely to the methods society, particularly industrialised countries, employed to increase its prosperity. In the past, progress was pursued for its own sake without much consideration for the long term effects on the environment. Surprisingly, even today, despite the mounting evidence, there is visible reluctance to challenge our existing models of development. The problem is aggravated further with more countries now scrambling along the path of development using the existing models. If countries now progressing towards development emulate the industrialised countries, as they are likely to do, further serious and irreversible damage will continue to be inflicted on the global environment.

In the circumstances, there is pressure to modify our model of development on a global basis and, perhaps, adopt an alternative approach which might be costlier, in the interest of the future of humanity. Any change normally arouses fear and the suggestion that an alternative approach to development be adopted has caused some uncertainty. There exists a feeling that it would affect the standards of living in the industrialised world and the development objectives of developing countries which are emulating the model already employed by industrialised countries. Financial constraints in industrialised countries and complex economic difficulties in developing countries will make an alternative model even more difficult to achieve.

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II. The North/South Dimension

Developing countries argue that the major share of the responsibility for the damage to the environment lies with the industrialised countries due to the path to development adopted by them. Therefore, if they themselves are to follow a different path which is less harmful to the environment but possibly more costly, a new cooperative approach to dealing with the problem should be developed between industrialised and developing countries. In their view such an approach would include the transfer of additional resources and new technology from industrialised countries to developing countries to enable them to deal with the problem of the environment while achieving their development objectives. Development remains their primary concern.

It is acknowledged that unless developing countries are closely involved in any initiatives adopted for dealing with the problems of the environment, action taken by industrialised countries alone would be rendered largely ineffective.

Although this argument is difficult to ignore, the irony is that the environment is common to all countries. Should developing countries continue to emulate the example of industrialised countries, the consequences would affect all. In some situations, serious harm would be suffered even by certain developing countries who are least able to deal with the consequences.¹

Despite the potential for confrontation on a North/South basis, the challenge of the environment presents an exciting opportunity for future cooperation. Recent events suggest that countries are making their first tentative efforts towards a cooperative approach. A serious effort has been made to involve as many countries as possible, especially developing countries, in the international discussions on the challenge posed by the environment. International meetings are well attended; funding from international sources is provided for the attendance of developing countries; more and better informed developing country representatives have begun to participate at

1. In the event of sea level rise, small island and low lying coastal states will be seriously affected.

international meetings; a sympathetic approach to developing country concerns prevails and the United Nations has become involved.²

Participants in international discussions now include even non-governmental organisations. International action on the environment will eventually involve international standard setting and the adoption of new international legal norms. If these standards and norms are to be implemented successfully, the widest participation and acquiescence of all countries will be necessary.

Our past and present endeavours have resulted, among other things, in the serious depletion of the ozone layer above the earth, in the rapid extinction of innumerable species, in causing the conditions that are adversely affecting the global climate and generally destroying the natural environment.

III. International Action to Date

The international community has, in the past, taken some measures to address different problems relating to the environment — albeit in areas limited in scope and in an uncoordinated manner.³

For example, countries have concluded a number of international conventions covering specific environmental issues. The Ramsar Convention, 1971, (to protect wet lands); the World Heritage Convention, 1973, (contains provisions which could be employed to protect areas of cultural and/or natural heritage of outstanding universal value); the Whaling Convention, 1946 (to conserve whales); the Convention on the International Trade in Endangered Species of Wild Fauna and Flora, 1979, (to regulate the trade in such fauna and flora); the Convention on the Conservation of Migratory Species of Wild Animals, 1979, (to protect migratory species); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989, (to deal with the movement of hazardous wastes); the Convention on the Prevention of Marine Pollution by Dumping of

2. See UNGA Resolutions 44/207, 44/208 and L 66 of 1990.

3. In the past, the areas that received attention depended on areas of immediate concern. A global approach was not adopted.

Wastes and other Matter (covers aspects of marine pollution); the Vienna Convention on the Protection of the Ozone Layer, 1985, and its Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (to deal with the problem of ozone depletion).

The United Nations Convention on the Law of the Sea, 1982 and the International Tropical Timber Agreement, 1983 "contain provisions which could be used to address some environmental problems."

There are also regional agreements which seek similar environmental objectives. For example, the Convention on Long Range Trans-boundary Air Pollution, 1979 and its Protocols (on the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes, 1988 and the Long Term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long Range Transmission of Air Pollutants in Europe, 1984), the Nordic Convention on the Protection of the Environment, 1974, the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, 1940, the Treaty for Amazonian Cooperation, 1978, the South East Asia Agreement on the Conservation of Nature and Natural Resources, 1985, the South Pacific Convention for Protection of Natural Resources and the Environment, 1986, the African Convention on Conservation of Nature and Natural Resources, 1968, the Convention on the Conservation of Antarctic Marine Living Resources and the South Pacific Regional Environmental Programme.

In addition, there are bilateral agreements between countries addressing environmental issues on a bilateral basis, e.g. Australia/Japan Migratory Birds Agreement.

Some international institutions have been established to promote the conservation of fauna and flora. For example, the International Board for Plant Genetic Resources, the Botanic Garden Secretariat, the International Undertaking on Plant Genetic Resources, the International Union for the Conservation of Nature and the World Wide Fund for Nature.

The World Meteorological Organisation and the United Nations Environment Program (UNEP) established in the early 1970s on the recommendation of the first UN Conference on the Human

Environment (Sweden, 1972) have wide responsibilities for dealing with environmental issues (UNGA Res 94 (xxvii)).

A number of multilateral agencies whose specific responsibilities are in other areas, are now focussing increasingly on environmental aspects. The World Bank, the IMF, the Asian Development Bank, IAEA, WHO, ILO and the FAO are ready examples.

Truly multilateral action to address global environmental issues began to be taken only in the eighties. A range of measures are now being discussed by the international community to meet the challenge of the environment. In time, it is likely that global cooperative measures and binding commitments containing global standards would result.

IV. The Ozone Layer

It is to deal with the question of Ozone depletion that the international community first began to take truly global action in the environmental sphere.

The release of chloroflouro-carbons (CFCs) and halons into the atmosphere has significantly affected the ozone layer and a hole has appeared in it above the Antarctica. There is evidence of ozone depletion elsewhere, e.g. in the Northern hemisphere. NASA models have established that if the hole over the Antarctica were to close by the year 2065, the release of CFCs and halons into the atmosphere should be phased out by 100% by the year 2000. Damage to the ozone layer could have extensive ramifications in a number of sectors, including human health, agriculture and the climate in general. Greater quantities of ultraviolet rays filtering through a depleted ozone layer could result in damage to the human immune response system and in an increase in the incidence of skin cancer.⁴

As a first step to control and phase out the production and release of CFCs and halons into the atmosphere, the Vienna Convention⁵ was

4. The effects of ozone depletion on agriculture and fisheries would have damaging consequences to the interests of a number of developing countries.

5. Vienna Convention for the Protection of the Ozone Layer, 1985 (Vienna Convention).

concluded under the auspices of UNEP. It was a framework convention and lacked specific action oriented provisions. This was left to subsequent instruments to be concluded under the Vienna Convention.⁶

The first instrument to be concluded under the Vienna Convention was the Montreal Protocol.⁷ The Montreal Protocol,⁸ acknowledging the gravity of the situation, made provision for a periodic review of the regime that it established.⁹ The scientific information accumulated since the conclusion of the Montreal Protocol on the rate of emission of CFCs and halons and the rate of depletion of the ozone layer was so overwhelming, that it was decided to conclude the first review in just two years. A ministerial conference to review the Montreal Protocol was held in London in June 1990¹⁰ and a series of additional measures were adopted in the form of amendments to it. It is possible that more stringent measures would be adopted in future reviews.

Article 2 of the Montreal Protocol deals with the levels of CFCs permitted to be produced and consumed by parties. Most industrialised countries acknowledged early the urgent need to restrict the production and consumption of CFCs and halons. However, obtaining the consent of developing countries was a more difficult proposition.¹¹

The Montreal Protocol acknowledged that the production and consumption of CFCs in developing countries is still low. (Less than .3kg per capita per year). In acknowledgement of this fact and as an incentive for developing countries to join the Montreal Protocol regime, a special exemption was granted to those developing countries which joined the protocol — such developing countries are not required to abide by the regulatory provision of Article 2 for a period

6. Article 8, Vienna Convention.

7. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (Montreal Protocol).

8. It has attracted 57 parties so far. China and India have expressed their in principle commitment to join the Montreal Protocol. Both are major producers of CFCs.

9. Article 6, Montreal Protocol: every four years.

10. It was attended by a large number of government delegations and many non-government organisations.

11. At the London Ministerial Review of the Montreal Protocol, the parties agreed to adopt a more restrictive regime. (Phase out of the production and consumption of CFCs and halons by the year 2000 and methylchlorform by the year by the year 2000).

of ten years from the date of joining the Montreal Protocol,¹² but they are prevented from withdrawing from it for a period of four years once the Article 2 regime has begun to apply. Given the massive gap between industrialised and developing country production and consumption, developing countries have argued that this concession is of little practical effect.

The Montreal Protocol made provision for a non-compliance procedure to be established to deal with non-compliance with its provisions by the parties.¹³ An open-ended Working Group (WG) consisting both of parties to the Montreal Protocol and non-parties finalised this procedure and it was adopted at the London Ministerial Review of the Montreal Protocol in June 1990. The WG recommended a non-mandatory procedure for the resolution of disputes. This is an interesting approach to the question of international dispute resolution. It takes into account the difficulty in the environmental sector of enforcing mandatory compliance and the greater effectiveness of seeking voluntary compliance of countries to the new standards.

Clear differences emerged between industrialised and developing countries on the question of tighter restrictions on the production and consumption of CFCs. A number of developing countries which are knocking on the door to prosperity are reluctant to forego the opportunity that exists through the use of CFCs to acquire items which contribute towards a more comfortable life through readily accessible and cheap technology.¹⁴

This attitude ignores the fact that the continued production and consumption of CFCs is detrimental to all humanity. Developing countries argued strongly at the London Ministerial Review of the Montreal Protocol that they would be willing to accept a stricter regime only if industrialised countries agreed to make available to them advanced and ozone-friendly technologies and provide financing

12. It is expected that the production and consumption of CFCs and halons in developing countries will increase in the short term.

13. Article 8, Montreal Protocol.

14. Countries like India, China and Brazil are technologically capable of increasing the production and consumption of CFCs. There is a rapidly expanding demand for refrigerators, air conditioners, foam insulation etc. in these countries.

for retooling, recycling and adaptation as industrialised countries have been and continue to be largely responsible for the damage caused to the ozone layer by their excessive production and consumption of CFCs and other ozone-unfriendly substances. There is a fear in developing country circles that the proposed global standards would retard their progress towards development unless they are assisted to convert to the new technologies. They have also expressed concern that these environmental standards would be used as new non-tariff trade barriers.

Developing countries pressed for specific commitments to facilitate access to environmentally safe alternative substances and technology despite the undertakings given by industrialised countries under Article 5(2) of the Montreal Protocol and assistance in making expeditious use of such alternatives.¹⁵

The major issues that were addressed in the London Ministerial Review of the Montreal Protocol were the transfer of technology and financial assistance to developing countries. There was general agreement that the industrialised countries bore the major share of the blame for the damage caused to the ozone layer¹⁶ but also that there was a need for cooperative action involving both industrialised and developing countries to deal with the problem. Against the background of this consensus, the initial demands of developing countries for huge sums in assistance was toned down and it was agreed that the quantum of assistance per country would be determined on the basis of country studies. Similarly, the original developing country demand for the transfer of technology on a preferential and non-commercial basis was also abandoned. A fund of US \$160 million was established.¹⁷ Countries would contribute to it according

15. Article 5(3), Montreal Protocol — parties undertook to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to parties that are developing countries for the use of alternative technology and for substitute products. Developing countries complained that this undertaking was too weak and was not translated in to any significant action. Article 10 requires the parties to take into account the particular needs of developing countries participation in the implementation of the Montreal Protocol. UNEP is conducting country studies to determine the extent of the needs of developing countries.

16. 70% of the production and consumption of CFCs take place in industrialised countries.

17. This amount would be increased to US\$ 240 million when India and China join.

to the UN scale. Policy guidelines for the Fund would be provided by an executive committee consisting of seven industrialised countries and seven developing countries.

It is understood that developing country compliance with the protocol would depend on the timely transfer of relevant technology and the provision of financial assistance.

Most industrialised countries agreed to the above compromise without condition, but the United States made it clear that its agreement was without precedent to developments in the other environment related negotiations.¹⁸

There are certain features about the Montreal Protocol and the amendment adopted in June which might be illustrative of present trends. Despite early signs of an emerging North/South confrontation, considerable energy was expended to achieve common ground on the broadest scale.

A major effort was made to involve as many countries as possible, particularly developing countries, in the negotiations leading up to the adoption of the amendment; there was a clear determination to adopt new standards through consensus; (this is evident even in the new dispute resolution process that has been adopted). A clear objective was to cooperate with developing countries in enabling them to deal with the problem of ozone; the question of facilitating the transfer of financial resources and technology to developing countries to enable them to conform with the new standards adopted under the amendment was handled with extreme sympathy. (One might even argue that the industrialised countries through their agreement to meet the financial and technological transfer requirements of the developing countries implicitly acknowledge their major share of responsibility for the damage caused to the ozone layer.)

18. The Preparatory Committee of the United Nations Conference on the Environment and Development has asked its Secretariat to report on the effectiveness of the financial mechanisms and technology transfer measures agreed in London.

V. Biological Diversity

The rapid depletion of the earth's biological diversity has also begun to cause serious concern. Man's activities could cause a quarter of the world's species to disappear within the next few decades. In addition to the disequilibrium that this could cause in the environment, there could be repercussions of an economic/commercial nature as well. For example, it has been suggested that the disappearance of species could result in the loss of valuable medical source material.

Biodiversity has been lost mainly in industrialised countries. In their progress towards development, largely due to imprudence, the natural environment was sacrificed. Ironically, the natural environment remains undisturbed mainly in developing countries because they did not develop as fast as the industrialised countries.

In 1987 UNEP decided to examine the desirability of an umbrella convention to protect the biological diversity of the earth. The original purpose was to bring a number of particularly important habitats under a broad umbrella.¹⁹ An ad hoc WG of experts on biological diversity from a number of countries was assembled in November 1988 to consider the adequacy of existing measures and the possibility of developing new international legal norms for the protection of biological diversity.

The WG agreed in principle that although existing legal instruments should be utilised in full, they were inadequate and that there was a need for an international convention. As discussions progressed, the scope of the proposed instrument also expanded in response to the concerns of different interest groups and countries. Some developing countries began to emphasise biotechnology as an essential element in a future convention on biodiversity.

Despite significant strides in the thinking on this subject since 1988, major differences remain — not only between developing and industrialised countries but also among industrialised countries themselves. No agreement exists on whether the strategy to be

19. Governing Council decision GC14/26 of 17 June 1987 — Rationalisation of International Convention on Biological Diversity.

adopted to preserve biodiversity should be species or region oriented;²⁰ whether the protection of species should be both in situ and ex situ; whether both wild and domesticated species should be encompassed by the proposed legal instruments. Some countries continue to suggest that existing instruments should be examined further to determine how they could be implemented more effectively before embarking on the negotiation of new instruments.

A number of developing countries have expressed suspicion that a convention on biological diversity would unfairly hinder them in their efforts to develop. Many tropical developing countries, for example, have emphasised the clear need to balance their development objectives and the need to protect biological diversity.²¹ Developing countries have also expressed concern that an international regime on biological diversity, while providing access to the pool of genetic resources in developing countries to industrialised country enterprises, simultaneously would not provide access to developing countries to the results of their research. Therefore they have proposed the inclusion of provisions on the transfer of biotechnology in a future convention on biodiversity.²² Similarly, there is developing country resistance to any effort to include the biological gene pool within the concept of the common heritage of mankind. There is a need to address the question of adequate compensation for countries which forego development opportunities in order to preserve biological diversity.²³ Consideration will have to be given to making available reasonable access to the fruits of research in industrialised countries to developing countries.

In addition to the transfer of financial and technological resources, the specific question of the transfer of biotechnology relating to biological diversity is looming as a major issue in the discussions on the proposed convention on biological diversity. In this connection the

20. An all-encompassing global strategy will be more difficult to design and implement.

21. Tropical rain forests are a valuable economic resource for tropical developing countries and at the same time a large pool of the world's genetic resource base.

22. Industrialised countries, for their part, have not expressed a great enthusiasm for providing unrestrained access to the new technologies developed by them.

23. The adoption of the concept of sustainable development as a guiding principle would enable development and the preservation of biological diversity to go together.

discussion is beginning to focus on certain vital issues — should biotechnology be addressed at all in the context of a convention on biodiversity? If so, should it be restricted only to that part which is relevant to the preservation of biodiversity? What criteria should be used to determine the question of relevancy? What mechanisms should be devised to transfer such technology to developing countries etc.? More work will need to be done to address these matters.²⁴

There is a general feeling that a framework convention with topic-oriented protocols should be developed. A forest protocol and an emissions protocol have been mooted already. Overlap with existing legal instruments should be avoided as far as possible. There appears to be a significant body of thinking which supports the conclusion of these instruments in time for the UNCED in 1992.

VI. Climate Change

A growing and influential body of scientific opinion is suggesting that the global climate is undergoing change. The contribution of human activity to this change is still subject to debate.²⁵ Science suggests that the warming of the globe may be linked to the emission of what are commonly described as "greenhouse gases" — GHGs (carbon dioxide, methane, nitrous oxide, CFCs and ozone). Interestingly, rice cultivation and sheep and cattle rearing are responsible for the release of large quantities of methane into the atmosphere.²⁶ It is believed that global warming will influence weather patterns and cause sea levels to rise by up to thirty centimetres over the next fifty years.

The need for action in this sphere is highlighted by the numerous climate-related political initiatives taken in recent times. For example, London Conference on Climate Change, 1988; Maldives Ministerial Conference on small states and sea level rise, 1989; Hague Declaration on Protection of the Atmosphere, 1989; Langkawi

24. Most industrialised countries are reluctant to include biotechnology in a convention on biodiversity.

25. See the Report of the Intergovernmental Panel on Climate Change (IPCC Report).

26. These activities are economically vital in a number of developing countries.

Declaration, 1989; Dutch Ministerial Conference on Atmospheric Pollution and Climate Change, 1989; World Conference on Preparing for Climate Change, 1989; White House Conference on Climate Change, 1990; Senate Interparliamentary Conference on Environmental Issues (hosted by the US Senate in April 1990); Ministerial Declaration of the Second World Climate Conference, 1990.

These political initiatives have been aimed at focussing public and political attention on climate change and obtaining a broad global consensus involving both industrialised and developing countries on action needed for dealing with the problem. A growing segment of popular opinion now recognises the need for global action. Areas of particular concern are energy consumption and CO₂ emission reduction, preservation and development of carbon sinks,²⁷ sustainable development, and, very importantly, funding mechanisms and technology transfer to enable developing countries to adopt appropriate measures along with industrialised countries to meet the challenge of climate change. Reflecting the current trend, the UN adopted resolutions including on the World Charter for Nature²⁸ and the Protection of the Global Climate for Present and Future Generations of Mankind.²⁹ The United Nations has also acknowledged the possibility of sea level rise.³⁰

In 1988, UNEP and the WMO jointly established the Intergovernmental Panel on Climate Change (IPCC) and charged it with the responsibility of examining the whole question of climate change and recommending appropriate response measures to the international community. The IPCC Report, adopted in Sundsvall in August 1990, contains the results of the work of three working groups. These working groups examined available scientific information on climate change, environmental and socio-economic impacts of climate change response strategies. In addition, a fourth working group examined the question of the participation of developing countries in the IPCC.

27. Including afforestation.

28. UNGA Res 37/7.

29. UNGA Res 43/53, UNGA Res 44/207; also see UNGA Resolutions L88 and L 93 of 1990.

30. UNGA Res 44/206; also see UNGA Res L82 Of 1990.

It was confirmed at the Second World Climate Conference held in Geneva in November, 1990 that negotiations on a framework convention on climate change should begin in February 1992. The general feeling is that the convention should be supplemented by protocols which would address specific issues such as emissions and sinks.³¹ Work on identifying the elements of such a convention is progressing at a gradual pace. Some countries are pushing hard to establish firm stabilisation and emission targets for green house gasses and they are being resisted by others, particularly, by some industrialised countries as well as by developing country producers of fossil fuels.³²

There is a fear that internationally imposed emission targets could affect industry and consequently the living standards in industrialised countries as well as in countries dependent on the export of fossil fuels. Financial and economic measures are preferred by some to regulate emission levels rather than direct government regulation. Among the financial mechanisms being considered are additional taxes on fossil fuels, subsidies for alternative energy sources, tradeable emission permits, etc.³³

It is acknowledged that any action that is taken to meet the challenge of climate change should have universal acceptance both of industrialised countries and of developing countries. The vital importance of active developing country participation was recognised by the establishment of a committee on developing country participation within the IPCC and in the UNGA Res L 66 adopted in December 1990.³⁴ The search for common ground is being pursued relentlessly, through the IPCC, the various ministerial meetings and through other fora.

31. Some countries hope that the negotiations on these instruments would be completed in time for the UNCED in 1992.

32. The SWCC Ministerial Declaration endorsed the stabilisation measures adopted by some countries.

33. Carbon taxes have been adopted by some countries, e.g. Switzerland.

34. The sole purpose of this IPCC committee was to encourage and facilitate developing country participation.

The positions of some major developing countries on climate change, by and large, tend to have a familiar ring.³⁵ They contend that since responsibility for an overwhelming proportion of GHG emissions rests with industrialised countries, it was for them to bear the cost of rectifying the problem.³⁶ The adoption of measures to curtail GHG emissions was a necessary first step. If developing countries were to participate in any global action designed to limit the emission of GHGs and other measures, then they should be assisted by industrialised countries through adequate additional finances and the transfer of technology to cope with the required changes.³⁷ Finances will be needed notably to convert existing factories, machinery and technologies and also to maintain forest and water areas and natural habitats in their most efficient condition. In the case of some developing countries the problem of opportunity cost also comes into consideration, e.g. a country that forgoes the opportunity to exploit its natural resources like its tropical forests in order to preserve the global environmental balance might have to be compensated for the economic loss it would consequently suffer.

This will be particularly important to the countries burdened by debt.³⁸ In addition to maintaining the forests it will also be necessary to ensure that the ability of the oceans to function as a CO₂ sink is maintained.³⁹ There are new and effective technologies available in some of the industrialised countries to deal with aspects of the question of GHG emissions — but they are costly.

The evolution of thinking on this issue is reflected in the IPCC Report which acknowledged the need for financial and technology transfers to developing countries on a massive scale.⁴⁰ Similar phraseology was used in UNGA Resolution 44/207 and the SWCC

35. It is difficult to discern a common developing country position on climate change.

36. Over 80% of GHG emissions originate in industrialised countries.

37. A major weakness in the developing country position is that unless urgent action is taken to combat the threat of climate change, some developing countries themselves would suffer considerable harm.

38. This was recognised in the SWCC Ministerial Declaration.

39. The role of oceans is not well understood yet.

40. IPCC Report, p. 32 et. seq.

Ministerial Declaration. There is growing sympathy for this view in industrialised countries.

The idea of a forest convention is also gathering momentum. Such a convention would aim to preserve and develop forest areas not only as major carbon sinks but also as a resource base. Some developing countries consider their forest reserves as important economic resource bases.

VII. UNCED

As the various environment related initiatives progressed gradually in the context of specialised fora such as UNEP, WMO and IPCC, developing countries began to express unease because developmental issues appeared to recede to the background. Admittedly, these fora focussed primarily on environmental issues and development was not one of their primary concerns. Given the acknowledged need to fully involve developing countries in the endeavours to meet the challenge of the environment, and in response to a push by developing countries themselves, the UN General Assembly agreed by resolution 44/228 to hold the UN Conference on the Environment and Development (UNCED) in 1992. A Preparatory Committee will manage the lead up to the 1992 Conference. UNCED is intended to be a forum for discussing and if possible agreeing upon future policy approaches to the complex questions of protecting and enhancing the global environment while ensuring continued development.

UNCED will have three major foci: global issues, e.g. protection of the atmosphere natural resources, e.g. deforestation, biodiversity, quality of life, e.g. wastes and toxic chemicals. While addressing these issues, UNCED will be required to provide an impetus to the work on climate change (in the IPCC and in the negotiating body) and biodiversity (in the UNEP Working Group) and provide assistance on related development issues. UNCED is also required to coordinate both regionally and internationally concerted action to deal with environmental issues and promote the further development of environmental law. One of its tasks will be to identify ways and means of providing new financial resources, particularly to developing

countries, for development and for solving major environmental issues.

It is noted that developing countries have consistently pressed in a number of fora the need for additional resources (over and above current levels of development assistance) to assist them in dealing with environmental problems.⁴¹ They have also expressed concern about any attempt to impose conditions with aid (green conditionality) as being an unacceptable infringement of their sovereignty.⁴² These are two issues that UNCED will be required to integrate into its discussions.

UNCED will also examine the role of the UN system in dealing with the environment and possible ways of improving it.

Progress in the UNCED Preparatory Committee has been slow so far. However, it is clear that there is no clear-cut North/South confrontation in UNCED. The major environmental concerns of the industrialised countries are shared to some extent by developing countries and, similarly, the development objectives of the countries of the South are acknowledged by the countries of the North. Given the absence of fundamental and irreconcilable differences between the North and the South, UNCED could provide the forum for the negotiation of approaches that could satisfy both Northern and Southern aspirations.

VIII. The North/South Divide: A Challenge and an Opportunity

With developing countries emphasising the responsibility of industrialised countries for the damage done to the environment,⁴³ industrialised countries are being asked to shoulder the brunt of the

41. Developing countries insist that there be no diversion of existing development assistance funds for the preservation of the environment. This issue involves the question not only of the quality of life, but of life itself.

42. The concept of sovereignty is relied upon to safeguard their right to exploit their national resources as they see fit.

43. This is damage caused mainly by the harmful development models which they adopted since the industrial revolution.

cost of arresting and, if possible, repairing this damage. This in the understanding of developing countries means, in addition to taking appropriate measures within their own borders, providing assistance to developing countries by way of financial and technology transfers to enable them to adopt more environmentally acceptable approaches to development.⁴⁴

Industrialised countries have begun to address the problem of the environment within their own borders and there is great enthusiasm for taking global measures. Given the enormous global dimensions of the problem, there is, in addition, growing popular sympathy for extending a helping hand to developing countries to deal with environmental problems, not only for the sake of developing countries alone but for the world as a whole.⁴⁵ Some have not been slow to stress that at last the South is in possession of an effective lever to use against industrialised countries to obtain concessions in the area of transfer of technology and financial assistance.

The vital need for developing countries to participate effectively in any global measures that are taken to rectify the harm done to the environment is acknowledged. Although the environment affects both industrialised countries and developing countries, due to a higher public awareness of the problem in industrialised countries, at present there is greater pressure in industrialised countries for remedial action to be taken.⁴⁶ Against this background, using public pressure in the North to their advantage, developing countries are in a position to extract more from industrialised countries in a negotiating process. As the debate on remedial measures intensifies, it would become more and more important to ensure that developing countries participate in any global measures taken to deal with the environment.⁴⁷ Some

44. This is the *quid pro quo* for developing countries participating in the new environmental norms.

45. Some of the remedial measures which involve costs have been identified already and a few industrialised countries have stepped in with assistance — these initiatives remain limited in scope.

46. In developing countries the priorities that motivate the majority of the people are different — food, shelter and clothing are their immediate concerns, not the environment.

47. See UNGA Res L93 of 1990. An important consideration is that some developing countries will also suffer considerable harm in the event of climate change and would be less likely to be able to adapt.

industrialised countries have already conceded that the polluter should pay for the cleanup.⁴⁸

This concession favours the developing country approach. The details of this concession have not been articulated. Due to the degree of responsibility of industrialised countries for polluting the environment in the past, a heavy burden could fall on them if they were to be required to rectify the damage. Of course, some others argue, that at the relevant times, the countries concerned were unaware of the consequences of what they were doing and therefore no responsibility could be attributed to them.

There is a growing appreciation in industrialised countries of the need to transfer adequate financial resources to meet the needs of developing countries in complying with the requirements of any multilateral regime(s) established to deal with problems relating to the environment. Originally resisted by most industrialised countries, it is now accepted in principle. A major concession was made by industrialised countries at the London Ministerial Review of the Montreal Protocol and this principle was repeated in the SWCC Declaration. The funding needs of developing countries are complex and will need to be determined on a case-by-case basis.⁴⁹ An argument that was effectively used to oppose the establishment of a mega fund to assist developing countries is that before a new fund is established, existing bilateral and multilateral funding possibilities should be explored to the fullest.

The transfer of technology is the other major point of contention between industrialised and developing countries. Technologies, if applied worldwide, which could have a significant impact on reducing the man-made harm to the environment, are currently available, mainly, in industrialised countries. Some of these were developed relatively cheaply, while others were the result of large investments. Some are readily accessible; others are protected by law. Various legal issues arise when discussing the question of making such

48. The precedent of this concession could have ramifications in other areas of international relations.

49. See SWCC Ministerial Declaration. The World Bank has established an environmental facility mainly to assist developing countries.

technologies available to developing countries. (Developing countries have emphasised the need to have access to these technologies as a pre-condition for their compliance with any new regime(s) that will be established to deal with the problems of the environment.) Some of these technologies are patented and proprietary rights in them belong to companies or individuals.

Even though the commercial purchase of these technologies is a theoretical possibility, it is doubtful whether their owners would wish to sell their rights to every aspirant purchaser. In order to meet the developing country demands, at some stage it might become necessary to compel owners to sell their rights to developing country purchasers where simple commercial incentives prove inadequate. It has also been suggested that industrialised countries could compulsorily acquire technologies which are of public interest and make them available to developing countries as aid. This, of course, gives rise to other fundamental questions such as the sanctity of private property in free enterprise societies. Consideration will also have to be given to the question of reasonable and adequate compensation for the owners of the technology and the criteria for determining what is reasonable and adequate. Furthermore, it would become necessary to identify the entity or entities which would be responsible for determining the level of compensation. Not all developing countries would be eligible to receive such transfers of technology or funding assistance. The sources of funding is also a crucial issue. It is necessary to keep in mind that existing incentives for private enterprise to develop environmentally-friendly technologies should not be snuffed out.

The London Ministerial Review agreed on the need for the transfer of technology. The SWCC Ministerial Declaration went the same way. A similar approach would be helpful in other areas of the environment. Of course, the details will take a long time to be worked out.

IX. Comment

What is emerging gradually is a growing realisation that the challenge posed by the environment requires cooperative action

involving both industrialised and developing countries. Such cooperative action would involve norm setting on a global scale with universal participation and not through majority imposition. The participation of developing countries would be vital. This would be the only effective means of setting global norms to deal with the problem of the environment. There is also a growing appreciation that the damage to the environment was largely caused by the nature of the development model employed by industrialised countries in the past and, consequently, they need to bear the major share of the cost of the world adopting a different model of development. This, in addition to the cost that they would incur in their own countries, would involve transfers of financial resources and technology from industrialised countries to developing countries to assist the latter to comply with the new global standards and follow a new model of development. There is significant movement already in the direction of industrialised countries agreeing to provide the necessary financial and technological resources to developing countries to assist them to meet the challenge of the environment.

X. Postscript

A number of major framework agreements and arrangements on the environment are now in place. For example, the Framework Convention on Climate Change, Conventions on Biological Diversity and Desertification, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Rio Declaration on Environment and Development, Agenda 21, and the Statement of Principles on Forests. Negotiations are by no means at an end. Intense international activity is continuing in relation to forests, corral reefs, responsible fishing in the high seas, and on other initiatives resulting from Agenda 21. The Global Environmental Facility (GEF) has been established (restructured in 1994) as the interim financial mechanism for the Montreal Protocol, the Framework Convention on Climate Change, the Convention on Biological Diversity, and for issues relating to the high seas. Activities under the

Desertification Convention and those relating to deforestation will also be covered as they relate to the four focal areas. Further negotiations relating to the areas covered by the main framework conventions are continuing with a view to giving greater substances to them.

A major outcome of the above negotiations is the clear acknowledgement that development does not need to follow the traditional model nor does development assistance need to be provided to support traditional development models. The cooperative approach to development, consistent with the needs of the environment which emerged from negotiations, was to a considerable extent due to the efforts of developing countries themselves.

The impetus for conserving the environment came initially from developed countries. They were encouraged by the massive pressure exerted by domestic environmental lobby groups. Although environmental concerns existed in developing countries, the priority was development. The challenge was to produce a result which broadly met the concerns of both developed and developing countries.

In the negotiations on the various environmental initiatives, developing countries successfully managed to combine their development objectives with the environment concerns of the major developed countries. In the process, they succeeded in obtaining commitments from developed countries for new and additional funding for those aspects of their development which were intended to preserve the environment. These commitments were in addition to what developed countries already provided by way of development assistance. New sources of funding to meet environmental needs were explored and agreed upon while the traditional commitments intended for purely developmental purposes were maintained.

Developing country efforts were assisted by the realisation that whatever developed countries did under pressure from their domestic pressure groups to preserve the environment, would be rendered ineffective unless developing countries were also made parties to the process.

The first major compromise on funding and technology having been achieved in the context of the Montreal Protocol (on ozone depletion) in 1990, similar approaches were adopted in the negotiations on the Framework Convention on Climate Change and in

the Convention on Biological Diversity. Under these conventions, developed countries committed themselves to provide the agreed full incremental costs of implementing the conventions.

Agenda 21, in Chapter 33, further established the commitment of developed countries to provide new and additional financial resources to developing countries to meet the challenge of the environment.

The key role of the GEF is beginning to be more clearly defined. Although designated as an interim financial mechanism, it is gradually acquiring a more permanent role for itself.

In the process of concluding the negotiations on the major environmental agreements, the international community may have developed a new cooperative approach between developed and developing countries, which would not only facilitate development but also development consistent with the objective of environmental protection.

