

## **THE COMMISSION ON SUSTAINABLE DEVELOPMENT: SECOND SUBSTANTIVE SESSION, NEW YORK 16-27 MAY 1994**

### **I. INTRODUCTION**

SET up officially on 12 February 1993 by the Economic and Social Council (ECOSOC) on the recommendation of the United Nations General Assembly at its 47th Session,<sup>1</sup> the Commission on Sustainable Development<sup>2</sup> (CSD) met for its Second Substantive Session in New York from 16-27 May 1994. The CSD's role is basically to monitor progress on the implementation of Agenda 21<sup>3</sup> at the national, regional and international levels. It will also promote the incorporation of the principles of the Rio Declaration<sup>4</sup> in the implementation of Agenda 21.

### **II. SECOND SUBSTANTIVE SESSION**

#### *A. Modality of Discussion*

Like the previous session, the work of the CSD proceeded at two levels, *viz*, the official-level meeting and the high-level meeting. The Second Substantive Session was chaired by the German Minister for the Environment, Nature Conservation and Nuclear Safety, Dr Klaus Topfer. Dr Topfer had been a key figure at the United Nations Conference on Environment and Development (UNCED). He took over from Ambassador Razali Ismail of Malaysia.

At the first plenary meeting of the Second Substantive Session, it was decided for efficiency reasons that two Working Groups (WG) be formed

<sup>1</sup> Resolution 47/191.

<sup>2</sup> For a background to the CSD and its functions, see Foo Kim Boon, "The Commission on Sustainable Development: First Substantive Session, New York, 14-25 June 1993" [1993] SJLS 274.

<sup>3</sup> Agenda 21 is a massive 800-page document outlining the necessary action to be taken by states towards sustainable development. See N Robinson ed *Agenda 21 and UNCED Proceedings*, Vol 1 (1992) xv-lxxxiv.

<sup>4</sup> See generally Foo Kim Boon, "The Rio Declaration and its Influence on International Environmental Law" [1992] SJLS 347.

so as to complete the work at the official-level in time for the high-level meeting (*ie*, of Ministers). WG I was chaired by Ms Savistri Kunandi of India and WG II by Dr Maciej Nowicki of Poland

### B. *Main Issues*

Cross-sectoral issues were dealt with in WG I. These include: (i) Financial Resources and Mechanisms (ii) Transfer of Environmentally Sound Technology, Cooperation and Capacity Building (iii) Major Groups (iv) Work of the Commission (v) Information provided by Governments and Organisations (vi) Decision-making Structures and (vii) Trade, Environment and Development.

Sectoral issues were handled by WG II. These were (i) Human Health (ii) Water (iii) Sustainable Human Settlements and (iv) Toxic Chemical and Hazardous and Wastes.

On any showing, the topics are vast and formidable. This short article will concentrate only on the following topics:

- (i) Financial Resources and Mechanisms
- (ii) Transfer of Environmentally Sound Technology and
- (iii) Trade and Environment.

It will also report briefly on the deliberations of the high-level meeting.

#### 1. *Financial Resources and Mechanisms*

It will be recalled that the subject of financial resources for the clean-up of the world's environmental degradation was highly acrimonious. At Rio, the Group of 77 (G77) countries had lobbied for new and additional resources for financing Agenda 21, as well as a separate "Green Fund." Though they pressed hard, they did not succeed. A somewhat anodyne compromise package was reached. This can be seen from, *eg*, paragraph 33.13 of Agenda 21. It reads:

Developed countries reaffirm their commitments to reach the accepted United Nations target of 0.7% of GNP for Official Development Assistance (ODA) and, to the extent they have not yet reached that target, agree to augment their aid programmes to reach that target as soon as possible and to ensure prompt and effective implementation of Agenda 21.

China and the G77 countries had hoped that the 0.7% target would be reached by 2000. It remains an unfulfilled dream at best. At the First Substantive Session, the hope for more money did not materialise. Since an estimated US\$600 billion is needed to finance the implementation of Agenda 21 – of which two thirds are expected to come from the developing countries themselves – the question may well be asked: how can the developing countries even begin to proceed? On the other hand, there is no more deep pocket. This is the conundrum.

The fears and concerns of developing countries again surfaced at the WG II discussions.

Chief among their fears was that the lack of adequate, predictable, new and additional financial resources would derail the effective implementation of Agenda 21. Although it is true that the Global Environment Facility (GEF) had just been restructured<sup>5</sup> and re-financed with US\$2 billion for the next three years, this still fell short of expectations. The World Bank has also noticed a shift in borrowing, *ie*, away from industrial projects to environmental projects.

In addition, developing countries continue to shoulder heavy burdens in terms of servicing their debt repayments. This has severely curtailed their sustainable development efforts. There were impassioned calls for more debt reduction operations, debt forgiveness, more debt relief and further innovative schemes. G77 countries urged developed countries to honour their ODA commitments. They also called for more Foreign Direct Investment. Further, the developed countries were urged to consider ways and means of reducing their unsustainable patterns of production and consumption. This litany of woes seems to cast doubt on the political will of nations to truly cooperate in a magnanimous and pragmatic manner to tackle global environmental problems.

Given the current domestic problems of many of the developed countries, it is unlikely that free and easy cash flows will be forthcoming. The developing countries have to realise that there is no such thing called “free aid”. More self-reliance is needed. Indeed developing countries were urged to reap the benefits of trade liberalisation, especially after the Marrakesh Agreement. Developing economies should diversify and plug into the international economy. The Organisation of Economic Cooperation and Development (OECD) countries, in particular, highlighted the need for national policies and priorities among developing countries. Their capabilities and capacities have to be strengthened. In this regard, international financial institutions, such as the World Bank and International Monetary Fund may be able to assist. More private sector lending should also be considered. However, developing countries need to make their economic

<sup>5</sup> See (1994) 24/4 Environmental Policy and Law 142.

and fiscal policies more transparent. Before advancing loans, the private sector obviously wants to have some idea as to the risks.

The Ad-hoc Open-ended Group on Finance<sup>6</sup> set up at the First Session was asked to develop concrete proposals for the CSD's consideration. The CSD recommended that: "it would be useful to develop a matrix of policy options and financial instruments and mechanisms that would facilitate the formulation of optimal financing strategies for the sectors under review. The matrix would also include policies for encouraging a stronger involvement of the private sector in the financing of sustainable development."<sup>7</sup> It remains to be seen whether the Ad-hoc Group can achieve this in inter-sessional consultations.

## *2. Transfer of Environmentally Sound Technology, Cooperation and Capacity Building*

The stand adopted at this session by the developing countries was the same as the First Session. G77 countries were of the view that developed countries had the duty and the resources and know-how to effect the transfer of environmentally sound technology (EST). This is to be done through the Ad-hoc Open-ended Working Group on Technology Transfer. There was also a call for the institutionalization of this Working Group. Not surprisingly, the developed countries took a different attitude. Such transfer of technology should be done by the private sector and on a commercial basis.

Recognising that developing countries faced severe difficulties in promoting and engaging in EST transfer and cooperation because of the lack of financial resources, human resources and institutional capacities, the CSD identified three areas of priorities in facilitating EST transfer. These are (i) access to and dissemination of information on EST (ii) institutional development and capacity building and (iii) financial and partnership arrangements.

While the need for international cooperation was self-evident, incentives were needed, particularly for those in the private sector. Steps must be taken to reduce trade barriers, encourage competition, open markets, reduce corporate taxes and provide other fiscal incentives.<sup>8</sup> The private sector will be nimble enough to respond accordingly.

<sup>6</sup> Chaired by Dr Lin See-Yan of Malaysia.

<sup>7</sup> Draft decision dated 27 May 1994 submitted by Chairman of Ad-hoc Working Group on Finance.

<sup>8</sup> Para 10 of Draft Decision on Item 5 "Transfer of Environmentally Sound Technology, Cooperation and Capacity Building" Rev 1 dated 24 May 1994.

The CSD recognised the importance of “Build-Operate-Transfer” (BOT) arrangements and that their widespread use should be further explored and encouraged. It was necessary for governments to create favourable conditions to encourage the private sector to develop and transfer EST. Technology did not come cheap. Millions of dollars have sometimes to be invested before returns are seen. It is unrealistic to expect that the private sector will transfer such technology at below or no cost. However, what could be usefully done is to promote better links between parties involved in technology transfer and networking of institutional capacities.

The CSD called for the strengthening of existing environmental technology centres and the creation of new ones, especially in developing countries. In addition, it urged that governments and international organisations collaborate closely with the private sector to make available information on the conditions and modalities of setting up and managing joint-venture funds for certain types of environmentally sound technologies. Given the trade sensitivity and confidentiality of such agreements, it is doubtful whether industries will respond to this call for such information in any meaningful manner.

### *3. Trade, Environment and Sustainable Development*

The topic “Trade and Environment” was, as expected, highly contentious.<sup>9</sup> Perhaps in no other area is the North-South divide so clearly revealed. Developing countries in fact tried to change the subject of the Chairman’s draft text from “Trade and Environment” to “Trade and Sustainable Development.” Their rationale was that sustainable development<sup>10</sup> was a wider and more relevant concept embracing the development needs of developing countries and the “principle of differentiated responsibility” in tackling environmental problems. This was reminiscent of the earlier vociferous debates concerning the Earth Charter,<sup>11</sup> a title though favoured by the developing countries was subsequently abandoned in favour of the Rio de Janeiro Declaration on Environment and Development.<sup>12</sup> At the insistence of the US, the word “environment” was retained and the final compromise

<sup>9</sup> See Thomas J Schoenbaum, “Free International Trade and Protection of the Environment: Irreconcilable Conflict” (1992) 86 AJIL 700.

<sup>10</sup> The World Commission on Environment and Development: Our Common Future (1987) – or Brundtland Report – defined sustainable development “as a process of change in which the use of resources, the direction of investments, the orientation of technological developments, and institutional change all enhance the potential to meet human needs both today and tomorrow.” It clearly has an inter-generational perspective.

<sup>11</sup> See Foo Kim Boon, “Culture, Environment and Development: Towards an Earth Charter” [1992] 1 MLJ ccxxx.

<sup>12</sup> See (1992) ILM 874.

read: "Trade, Environment and Sustainable Development." (A pyrrhic victory for all!)

Developing countries have always been fearful of environmental protection being used as a pretext for restrictive trade measures.<sup>13</sup> On the other hand, developed countries, the US and European Union, for instance, stressed that concern for the environment should not be conveniently shunted on the ground of the fear of protectionist measures. Clearly a balance has to be struck. In the final draft text, such a balance between protectionism and liberalisation of free trade can be seen in the following words adopted by the CSD: "that there is a need to decrease subsidies which have harmful environmental and trade distorting effects. In addition, market opportunities and export prospects could be improved by complementing trade policies through sound domestic economic and environmental policies."<sup>14</sup>

The goal of free trade and economic development is to ensure a higher standard of living for all. Indeed as Principle 1 of the Rio Declaration states: "Human beings are at the centre of concerns for sustainable development ..." Furthermore, with the growing acceptance of environmental protection principles<sup>15</sup> like the "polluter pays", and the "precautionary principle", it is important to see how these integrate with economic concepts, particularly the environmental impact of such policies. The CSD therefore was encouraged by the continuing consultations among various organs in the UN charged with trade matters, *eg*, United Nations Conference on Trade and Development (UNCTAD), the General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO) and United Nations Environment Programme (UNEP). In this regard, the CSD recommended that GATT/WTO, UNCTAD and UNEP continue to provide it with annual reports of their activities on trade and environment.<sup>16</sup>

Another area of concern was the effect that internalisation of environmental costs on the competitiveness and trade earnings of the developing countries. With more stringent requirements, per unit cost of production will increase, leading to higher prices for their products and a reduction in competitiveness. Developing countries are already currently finding it hard to penetrate markets in the developed countries. It was not surprising that they did not unreservedly embrace the somewhat amorphous notion of internalisation of costs.

<sup>13</sup> Principle 12 of Rio Declaration.

<sup>14</sup> Para 4 of the Draft Decision submitted by the Chairman on Item 3: "Trade, Environment and Sustainable Development" 27 May 1994.

<sup>15</sup> See T Iwama, "Emerging Principles and Rules for the Prevention and Mitigation of Environmental Harm" in *Environmental Change and International Law: New Challenges and Dimensions* (EB Weiss ed, 1992) 107.

<sup>16</sup> *Supra*, note 14, para 13.

As expected, a lively debate on the supposed efficacy of cost internalisation in helping developing countries achieve sustainable development took place while delegates were negotiating the Chairman's draft text. As originally worded, the draft text asserted that "the internalisation of environmental costs into prices, taking into account development needs, would have both a positive impact on the environment through increased environmental standards and would contribute to sustainable development through incentives for a strengthened technological cooperation and improved access to technology transfer." The G77 countries pressed for its deletion since there simply was no evidence to that effect. The US, on its part, wanted to delete the phrase "taking into account development needs" because of their concern that the internationalisation of costs should be applied across the board and for all states.

Since more empirical research was called for, the CSD recommended that "the Secretary General, through ECOSOC, seek the views of governments, regional economic integration organisations, the private sector and non-governmental organisations, on an analytical study to be undertaken on the relationship among the protection of the environment, international competitiveness, job creation and development."<sup>17</sup>

Despite the contentious nature of the subject, it was a credit to the German Minister, Dr Topfer, to negotiate successfully a consensus text which was eventually adopted. That the CSD will now be reviewing trade and environment matters on an annual basis is also a positive development.<sup>18</sup>

### III. HIGH-LEVEL SEGMENT

UN Secretary-General Boutros Boutros-Ghali in his opening address stressed that political will was necessary to successfully implement Agenda 21. The CSD has to forge alliances with governments, international organisations and non-governmental organisations too. Sustainable development will only be achievable with such partnership.

The Minister for the Environment, Mr Mah Bow Tan represented Singapore at the High-level Segment<sup>19</sup> held from 25-27 May 1994, in which forty other Ministers of the Environment attended. In his speech, the Minister concentrated on the issue of environmental technology. The key to technological diffusion is partnership between developed and developing countries, and between developing countries. Such cooperation is essential

<sup>17</sup> *Supra*, note 14, para 17.

<sup>18</sup> At the conclusion of the Marrakesh Ministerial Meeting in Morocco in April 1994, the World Trade Organisation had decided to form a Trade and Environment Committee.

<sup>19</sup> Singapore was elected to the CSD on 16 Feb 1993 for a two-year term. Singapore did not seek re-election at the last CSD.

for environmental technology transfer to succeed. The Germany-Singapore Environmental Technology Agency (GSETA) which was formed in 1991 to pool the resources of both states in order to share environmental technology and expertise with other countries, particularly those in South-east Asia and the Asia-Pacific region, was cited as an example of such partnership and cooperation.

At the High-level meeting, the Ministers also did not make any concrete commitments. They did, however, suggest it was necessary to mobilise all possible financing sources, domestic as well as international. Further, there was a need to think of innovative approaches and mechanisms, relevant policy reforms and the creative use of economic instruments. If it was any comfort at all, the Ministers also reiterated the need for increased efforts to implement the financial commitments made at UNCED. Clearly, there was widespread disappointment with the slow progress in this area.

Regrettably, there was not much substantive discussion at the High-level meeting. Most participants made general statements, with the usual bland exhortations. In the Chairman's summary (since there was no negotiated text) of the meeting, the participants noted that: "In the area of finance, despite some positive developments, such as the restructuring and replenishment of the Global Environmental Facility and the increase in private financial flows to some, although not all developing countries, the overall financing of Agenda 21 and sustainable development falls significantly short of expectations and requirements."<sup>20</sup> They urged states, particularly the developed states, to make an extra effort to meet the ODA target of 0.7% of GNP as soon as possible.

#### IV. CONCLUSION

Ever the optimist, Maurice Strong, Secretary-General of UNCED in his opening speech<sup>21</sup> at Rio said: "The Earth Summit is not an end in itself, but a new beginning ... the results of this Conference ultimately depend on the credibility and effectiveness of its follow-up." Two years after the Earth Summit – which saw the largest international gathering of Heads of State and Government – there is a real danger that the momentum and high hopes fostered at Rio will be lost. The problem is not just confined to money – although it is true the so-called peace dividend resulting from an era of peace and tranquility after the end of the Cold War has not materialised – but a lack of political resolve. There is still too much talk, rather than concrete action. To implement Agenda 21, both national and international

<sup>20</sup> Para 6, document (no reference) dated 27 May 1994.

<sup>21</sup> On 3 June 1994. Reproduced in *The Earth Summit: The United Nations Conference on Environment and Development (UNCED)* (Stanley P Johnson ed, 1993), at 49-56.



efforts are needed. It is unproductive for states to point an accusing finger at each other, or make mutual recriminations. The real challenge is for states to get their own house in order.

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