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NEGOTIATION OF GLOBAL ENVIRONMENTAL TREATIES : THE ROLE AND INTERESTS OF DEVELOPING COUNTRIES LIKE BANGLADESH

Abstract

The pervasive nature of the global environmental problems makes the participation of developing countries in international initiatives an imperative. The industrialised countries of the North are mostly responsible for the creation of major global environmental problems. Accordingly, equity issues became crucial in developing the relevant response measures at the international level. Negotiations conducted between the countries of the North and the South in the areas of ozone depletion, climate change and bio-diversity destruction with a view to developing regulatory regimes, reveal certain fundamental shifts in the international community's treaty practice. During the negotiations, the South has been relatively in disadvantageous position. This article while reviewing the negotiation strategies, draws certain important lessons for developing countries, in general and for Bangladesh, in particular, which can provide important guidance in shaping their future course of action.

Introduction

The major global environmental problems of ozone depletion, climate-change and biodiversity destruction are the matters of grave concern for all the members of the international community. The

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devastating impacts of these problems transcend national jurisdictions irrespective of the question of who have made what portion of contribution in the creation of these global environmental problems. No single state can individually resolve any of these global environmental problems even making its best effort. A good number of successive treaties were negotiated between the North and the South with a view to resolving these global environmental problems.

Treaty developments in these areas address equity issues raised by developing countries. They provide important guidance as to how to manage non-compliance issues in the regulation of 'global commons'. Contemporary international environmental law scholars have identified most of these treaty developments as 'unprecedented'. This article takes a look on the critical nature of the major global environmental problems besieging the international community. It identifies the recurring trends in the negotiation of major global environmental treaties which can be described as the characteristic features of the environmental treaty negotiation. It also reviews the negotiation history in the relevant areas in order to draw important lessons for developing countries, especially for Bangladesh. Weaknesses shown and mistakes made during these negotiations can provide us with important guidance in shaping the future course of action in relation to green diplomatic matters.

Negotiation on the Reformation of the Montreal Protocol : Role and Interests of Developing Countries

The stratospheric ozone layer is a common property of mankind. Its existence and a balance in its chemical composition are essential for the survival of lives on earth. Ozone layer acts as a filter to limit the entrance of harmful solar ultraviolet radiation into the earth

surface. Without this ozone shield, scientists believe that life on earth would be impossible. The ozone layer comprises a sheet of O₃ molecules in the stratosphere, extending over 6 to 30 miles above the earth's surface¹. Although the ozone occurs naturally in the stratosphere, it is the mankind that has upset the natural balance between ozone creation and destruction by introducing certain manmade chemicals that contain chlorine and bromine². The chemicals such as chlorofluorocarbons (CFCs) and Halons which contain chlorine and bromine can survive intact in the atmosphere for hundreds of years. The very inertness of the CFCs allows these molecules to go up to the stratosphere where they encounter ultraviolet rays that cause them to break down and release chlorine atoms. It is observed that for every chlorine atom released, 100,000 molecules of ozone are removed from the atmosphere.

The effects of ozone depletion are enormous and include increased incidence of melanoma and nonmelanoma skin cancer, eye disorders, and suppression of the immune system. The National Academy of Sciences estimates that a 1% drop in ozone levels could cause 10,000 more cases of skin cancer a year in the U.S. alone, which will be a 2% increase in the incidence of the disease. Ultraviolet radiation is also damaging to some plants and ecosystems. Ozone depletion will reduce the long-term productivity of agriculture and fisheries with a possibility to exacerbate the hunger problem in areas where food shortages already exist³.

¹ John Warren Kindt, and Samuel Pyeatt Menefee, 'The Vexing Problem of Ozone Depletion in International Environmental Law and Policy', *Texas International Law Journal*, 1989, Vol.24, p.262.

² M. Miller, 'The Ozone Layer Protection Regime', Chapter 4 in the *Third World in Global Environmental Politics*, Lynne Rienner Boulder Publications, 1995, p.67.

³ Mustafa K. Tolba, and O.A. El-Kholy, *The World Environment 1971-1992*, London, 1992, p.34.

An Open-ended Working Group (OEWG) was established in the first Meeting of the Parties to the Montreal Protocol in 1989 to consider, *inter alia*, the amendment of the Protocol to accommodate the concerns of the developing countries⁴. The Working Group met several times to remove differences between the developed and developing countries⁵. Participants from developing countries highlighted the inequalities contained in the original Montreal Protocol in the initial meetings. They demanded that a number of Articles of the original Protocol should be amended in order to ensure equal status of the developing countries in the operation of the regime. For example, they argued that developed countries had virtually a veto power under Article 2(9)(c), while taking decision regarding the adjustment of the protocol's control measures. The Article provided that such decision should be adopted by a two-thirds majority vote of the Parties present and voting 'representing at least *fifty per cent of the total consumption* of the controlled substance of the Parties' [emphasis added]. As the developed countries were responsible for more than 'fifty per cent consumption', the existence of the Article would mean that any decision affecting the interests of the developed countries could not

⁴ Report of the Parties to the Montreal Protocol on the Work of their First Meeting, UNEP/PzL.Pro.1/5, 6 May, 1989, Decisions 5 and 13.

⁵ These major demands were put forward by the representatives of the developing countries in various diplomatic meetings under Ozone and Montreal Protocol as well as in the meetings of the Open-Ended Working Group of the Protocol. A joint statement was issued by the members of the Group-77 attending the second session of the third meeting of the OEWG held in Geneva on 9-11 May 1990, in which they reiterated their position. See for details, UNEP, Report of the Second Session of the Third Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, UNEP/OzL.Pro.WG.111(2)/3, 22 May, 1990, paragraph III (19). An account of these arguments raised during various negotiating sessions, is available in Mukund Govind Rajan, *Global Environmental Politics: India and the North-South Politics of Global Environmental Issues*, Oxford University Press, 1997, Chapter 3, pp. 43-58.

be taken without their concurrence even though such decision might appear urgent to avert the ozone depletion problem. Furthermore, there was no such provision in the Protocol to save the interests of the developing countries while taking decision on the adjustment of the Protocol's control measures under Article 2(9)(c).

After a series of consecutive meetings, the North agreed to reform the original Protocol to ensure equal status of the South. It was agreed that decision under article 2(9)(c) would now require 'a two-thirds majority vote of the parties present and voting representing a majority of the parties operating under paragraph 1 of Article 5 and a majority of the parties not so operating present and voting'⁶.

The Protocol did not provide for adequate financial and technical assistance for the developing country parties. Under Articles 5.2 and 5.3 developed countries merely undertook to facilitate 'access to environmentally safe alternative substances and technology'⁷ and 'the provision of subsidies, aid, credits...'⁸

Second and the third meetings of the Working Group concentrated on the issues of financial assistance, technology transfer and financial mechanism. In the negotiation, although the developed countries were willing to provide financial assistance, they were not inclined to commit themselves for the technology transfer. Developed countries argued that they could not guarantee technology transfer as the relevant technologies were privately owned, and it

⁶ *Ibid*, paragraph H.

⁷ Article 5.2, Montreal Protocol, *ibid*.

⁸ Article 5.3, Montreal Protocol, *ibid*.

would not be possible on their part to infringe upon the intellectual property rights of the private sector by forcing it to part with their technologies⁹.

Developed countries, especially United States was willing to provide financial assistance to the developing countries through the World Bank, the existing institution having experience¹⁰. But most of the developing countries refused to accept the World Bank as a financial mechanism, as the same was being dominated by the developed countries¹¹. The fourth meeting of the Working Group, held in London, agreed, as a follow up to its May 1990 meeting in Geneva, to establish a financial mechanism to cover all the agreed incremental costs of the developing countries.

The technology transfer issue could not be solved by the Working Group and continued into the ministerial meeting. However, on the last day, a solution was found. The developed countries agreed to 'take every practicable step' to ensure that 'the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5', and that such transfers 'occur under fair and most favourable conditions'. Thus, after a prolonged diplomatic battle, the North ultimately yielded to most of the demands of the South. Over the first, second, third and fourth meetings of the

⁹ The issue of technology transfer came up for discussion in several meetings of the OEWG. Especially, See, UNEP, the Report of the Second Session of the Second Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, UNEP/OzL.Pro.WG.11(2)/7, 5 March 1990.

¹⁰ White House Deputy Press Secretary Roman Popadiuk said, "we believe it is more sensible to use existing institution and existing financial mechanisms already establishing the World Bank". See, *The Bangladesh Observer*, Dhaka, Friday, 11 May 1990, page 7, column 6.

¹¹ See, UNEP, Report of the Fourth Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, UNEP/OzL.Pro.WG.IV/8, 20-29 June 1990.

Working Group substantial agreement was reached between the representatives of developed and developing countries concerning the amendment of the Protocol as mentioned above¹². These proposals, with the approval of the Working Group, were then placed before the Second Meeting of the Parties to the Montreal Protocol held in London in June 1990 which decided to amend the original Protocol accordingly¹³

Bangladesh was not a participant in the formation of both the Convention and the Protocol like many other developing countries. With less than 2 gram annual per capita consumption of ODS, Bangladesh was mostly disinterested in the formation of these instruments. Although, a strong support was gradually mounting in Bangladesh during 1980s among the various sections both inside and outside the government in favour of global regulation of the use of ODS, Bangladesh could not afford to invest its scare resources to switch over to ozone friendly technologies as needed under the then existing Protocol¹⁴. However, in the post-Montreal period Bangladesh became active. Bangladesh participated with many other developing countries, as an observer in the first meeting of the Conference of the Parties and in the first Meeting of the Parties to the Montreal Protocol held in Helsinki during April and May, 1989 to

¹² See, UNEP, Report of the Fourth Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, UNEP/OzL.Pro.WG.IV/8, 20-29 June 1990, Annex II.

¹³ See, UNEP, Report of the Fourth Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol, UNEP/OzL.Pro.WG.IV/8, 20-29 June 1990, Annex II; UNEP, Report of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, UNEP/OzL.Pro.2/3m 29 June 1990, Annex II.

¹⁴ During 1980s a good number of Seminars, Conferences and Workshops took place in the Country organised by the Department of Environment, Bangladesh Environmental Lawyers' Association and other NGOs.

voice the concerns of the developing countries¹⁵. Its presence in the meetings of the OEWG, especially in the second session of the third meeting and the fourth meeting, was crucial in strengthening the position of the developing countries in the negotiation¹⁶. Due to Bangladesh's active participation with other developing countries, in most of the international ozone negotiations, the 1987 treaty was amended to reflect the concerns of the developing countries. It was, therefore, only on 2nd August 1990 when necessary incentives were created, due to the reformation of the Protocol, Bangladesh acceded to the Convention and the Protocol.

Bangladesh does not produce ODS. It depends for its consumption entirely upon imports from a number of developed and developing countries. By the beginning of 1990 when most of the ODS exporting countries became party to the Protocol or decided to become party to the Protocol, there was practically no way left for Bangladesh except joining the Protocol to ensure continuous flow of CFCs and to achieve international assistance to switch over to ozone friendly technologies. Because of the trade restrictions of the Protocol, trade of ODS was allowed only among the parties to the Protocol.

Negotiation on the Climate Change Convention, 1992 : Role and Interests of Developing Countries

The world is concerned about the 'enhanced greenhouse effect' due to anthropogenic emission of greenhouse gases into the

¹⁵ Report of the Parties to the Montreal Protocol on the Work of their First Meeting, UNEP/PzL.Pro.1/5, 6 May 1989, paragraph 4. UNEP, Report of the Conference of the Parties on the Work of Its First Meeting, UNEP/OzL.Conv.1/5, 28 April 1989, Helsinki, paragraph 4.

¹⁶ Second session of the third meeting was held in Geneva from 9-11 May 1990; the fourth meeting was held in London from 20-29 June 1990.

atmosphere at a rate faster than they can be absorbed by land surface or ocean, leading to increase in mean global surface temperature. Carbon dioxide emission from the burning of carbon-based fossil fuels, land use changes (including deforestation) is considered to be the most significant contributor to the global warming problem. Methane, and Nitrous Oxide emitted from agricultural practices, low-level ozone and CFCs-11 and 12, also play significant role in the creation of the global warming problem.

In a number of successive reports, Intergovernmental Panel on Climate Change (IPCC) has described the various adverse impacts of the global warming problem in general¹⁷. Global warming brings various changes such as, sea-level rise, climate-change, change in production pattern etc. each of which has severe impact on Bangladesh. It has been projected that with only 1 meter rise of sea-level, 17.5 per cent land mass of the country (almost on fifth area of the country) will go under water. This will result not only in the loss of vital agricultural lands due to inundation by saline water but will also give rise to large scale eco-migration problems requiring urgent resettlement programmes for vast population of the country living in those areas.

In December 1990, on the initiative of the developing countries, the UN General Assembly established 'Intergovernmental Negotiating Committee (INC)' for the preparation of an effective framework convention on climate change. The negotiating parties from both developed and developing countries met together in six negotiating sessions to be able to adopt a framework convention before the pre-scheduled UNCED held at Rio in June, 1992¹⁸. In

¹⁷ WMO/UNEP, *IPCC Assessment Reports, 1990,1992,1995*.

¹⁸ An account of these negotiating sessions can be found, in Mukund Govind Rajan, *supra*, Chapter 6, pp. 116-152.

these negotiating sessions, the South broadly put forward certain specific demands which include, *inter alia*, North's acknowledgement of its main responsibility for the creation of the global warming problem¹⁹, allocation of additional financial resources in order to meet the full incremental costs of addressing the global warming problem²⁰, technology transfer to the South on preferential terms rather than commercial terms²¹, establishment of a separate financial mechanism to be regulated by the parties to the Convention in a democratic manner²².

The participants from the developing countries participants from, unlike their concerted role in the negotiation on the reform to the Montreal Protocol, became divided over various issues during the negotiation of Climate Change Convention. Developing countries like Brazil, and some other Latin American countries, were inclined to accept emission reduction obligation but that should be based on the principle of 'common but differentiated responsibility'. However, Bangladesh including other members of the 'Alliance Of Small Island States' (AOSIS)²³, emphasising their vulnerability to climate

¹⁹ See, UN General Assembly, Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of its Fourth Session, Held at Geneva from 9 to 20 December 1991, A/AC.237/15, 29 January 1992; Joint Statement of the Group of 77 made by its Chairman Ghana at the Fourth Session of the INC for a Framework Convention on Climate Change, Geneva, 9-20 December 1991, [n.d].

²⁰ UN, General Assembly, Proposal on the Entire Section on Commitments by 43 Developing Countries, A/AC.237/WG.I/L.7, 18 December 1991, p.2.

²¹ Joint Statement of the Group 77.

²² A/AC.237/15,.10.

²³ In an effort to strengthen their bargaining power, the small island states including Bangladesh, organised the Small States Conference on Sea-Level Rise in the Maldives in November 1989, following which, on an initiative of Trinidad and Tobago the Alliance of Small Island States (AOSIS) was formed. See, WMO, Climate Change: Environment and Development, World Leaders' Viewpoints, Geneva, WMO, 1992, WMO-no.772,pp.67-77. See, also, Pernetta John C, 'Impacts of Climate Change and Sea-Level Rise on Small Island States', Global Environmental Change, vol.,2,no.1,1992, pp.19-31.

change, were keen to have a convention with strong emission reduction commitments by developed countries²⁴. Yet oil-exporting developing countries like Saudi Arabia were opposed to accept any emission reduction cap as that would hurt their economy. Broadly, the target of the United States and the oil-exporting countries in the negotiation appeared to be the same i.e. to avoid a convention with strong emission reduction commitments.

However, at the final session of the negotiation, the Chairman of the INC presented a text for negotiation considering the uncompromising attitude of the US to accept any phase out commitment. The text which prevailed ultimately, ensured for the South many of its expectations²⁵. It ensured that there would be no specific review of its national plans and strategies to deal with climate change²⁶. Its demand for adequate, new and additional financial resources was granted however, the costs approved was not 'full' rather 'agreed incremental costs'²⁷. The South's demand for separate financial mechanism was not met, rather, a reformed GEF was compromised in which a balanced representation of all parties and a transparent system of governance was assured. It was also agreed that the Fund would operate under the authority of the Conference of the Parties that would decide on its overall policies²⁸. Neither there was any commitment on the part of the North to reduce greenhouse gases, nor was any firm commitment to ensure technology transfer to developing countries. It only provided that the North would take all practicable steps to promote, facilitate and

²⁴ Mukund Govind, *supra*, p.123.

²⁵ UN doc.A/AC.237/CRP.1/Add.2,30 April 1992.

²⁶ Mukund Govind Rajan, *supra*, p.143.

²⁷ *Ibid*, article 4, para, 4.

²⁸ UN doc. A/AC.237/CRP.1./Add.6, 30 April 1992, article 11, para. 1,2.

finance as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to the developing countries²⁹.

The IPCC reports and other national studies have revealed devastating consequences of global warming and climate change on large scale for Bangladesh, a low-lying state. According to these reports, the change will have severe adverse impact on several important sectors of the country which would most likely to thwart its sustainable development programme in future. In addition to large-scale inundation and salinity due to sea-level rise, the change will pose increased risk of hunger and famine due to loss of agricultural production. As a low-lying country, Bangladesh will confront greater vulnerability. Frequent storm-surges and flooding, to which the country has already been subjected due to sea-level rise and climate change, can force large-scale eco-migration problems³⁰.

In view of the projected severe adverse impacts of global warming and climate change for Bangladesh, adoption of a Climate Change Convention received significant priority for Bangladesh. It is, therefore, understandable that during the negotiating sessions Bangladesh mostly concentrated its diplomatic efforts through AOSIS on two targets. First, to impose stricter reduction targets for developed countries, and second, to ensure international co-operation to strengthen its response capacity as well as adaptation measures. It participated in all the major negotiating sessions with a view to voice its concern for the global warming and climate change problems, of which it is a worst victim rather than a major contributor. It was also a driving force in the AOSIS to ensure its collective bargaining power in the negotiation.

²⁹ UN Doc. A/AC.237/CRP.1/Add.2, 30 April 1992, article 4, para. 2.

³⁰ IPCC Second Assessment Synthesis Report, section 3.14.

Negotiation on Bio-diversity Convention : Role and Interests of Developing Countries

Destruction of Biological diversity³¹ is one of the priority concerns of international community. Biological diversity is a vital resource for all humankind. The bulk of the world's biological diversity is found in tropical forests, which are located in developing countries³². Scientists have discovered that this invaluable common property is being destroyed by human activities at unprecedented rates. Central to the concern about biological diversity is the shrinking genetic pool. According to one estimate, 20 to 75 species are becoming extinct each day because of deforestation in the tropics.³³ About 17 million hectares of tropical forests, an area four times the size of Switzerland, are being cleared annually and scientists estimate that at these rates roughly 5 to 10 percent of tropical forest species may face extinction within the next 30 years³⁴.

The efforts to conserve the biodiversity at global level began in the 1980s. The world Conservation Union (IUCN) prepared a draft of articles from 1984 to 1989 for inclusion in a treaty. It focused on the *in situ* and *ex situ* conservation and the need to establish a funding mechanism to alleviate the inequality of the conservation

³¹ Biodiversity is defined by the 1992 Convention on Biological Diversity as "the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems." In other words, 'the diverse array of living organisms, whose species, the genetic diversity they comprise, and the ecosystems they constitute add up to what we call Biodiversity' : UNEP, *Global Biodiversity Assessment : Summary for Policy Makers*, Cambridge, 1995, p.6.

³² It is estimated that tropical forests house between 50 and 90 percent of the total 10 million species that live on earth. see, Miller, M., 'The Biodiversity Regime' Chapter 6 in *The Third World in Global Environmental Politics*, Lynne River Boulder Publication, 1995, p.110.

³³ *Ibid.*

³⁴ WRI, IUCN, UNEP, *Global Biodiversity Strategy, Guidelines to Save, Study, and Use Earth's Biotic Wealth Sustainably and Equitably*, 1992, p.7.

between the North and the South.³⁵ In 1987, the UNEP Governing Council established an ad hoc Working Group to investigate 'the desirability and possible form of an umbrella convention to rationalise current activities in this field, and to address other areas which might fall under such a convention.' The first meeting of the *ad hoc* Working Group held in late 1988, concluded that the existing conventions, taken together, did not ensure global conservation of biodiversity. However, by early 1990, the *ad hoc* Working Group had reached a consensus that a new global treaty on biodiversity conservation was urgently needed, in the form of a framework of treaty, building upon existing conventions.³⁶

The Working Group drawing on the draft articles of IUCN and FAO and relevant studies of UNEP, prepared a large number of elements for possible inclusion in a global treaty on biological diversity. Then the UNEP Secretariat assisted by a small group of legal experts, prepared a first draft of the convention. In February 1991, when the formal negotiating process started, the group was renamed the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC).

However, the differences between the North and the South in the negotiations of Biodiversity Convention centred around the following major issues : First, it wanted to establish 'national sovereignty' over the genetic resources. Until the mid of 1980s, genetic resources from the South were largely treated as 'common heritage' and no compensation was paid for taking resources out of

³⁵ Francoise Burhenne-Guilmin and Susan Casey-Lefkowitz, *The Convention on Biological Diversity: A Hard Won Global Achievement*, 3 *Yearbook of International Environmental Law*, 1992, p.44.

³⁶ L. Glowka, F. Burhenne-Guilmin, and H. Synge, in collaboration with J.A. McNeely, and L. Gundling, *A Guide to the Convention on Biological Diversity*, IUCN, p. 2.

their territories³⁷. Second, the South wanted to ensure firm commitment from the North on the transfer of bio-technology on preferential and non-commercial basis³⁸. In this regard, it wanted to ensure that the private multinational companies of developed countries share their technologies with the South³⁹. Third, the South wanted to ensure new and additional financial resources from the North to meet the incremental cost of biodiversity conservation⁴⁰. Fourth, the South wanted to establish a separate multilateral funding mechanism with the compulsory contribution from the North, to be operated under a democratic system of governance⁴¹.

However, developing countries during the negotiations were not interested to take commitments of obligatory nature. They were rather interested to retain flexibility and independence of action in their commitments. Therefore, they inserted in the draft convention words and phrases like 'according to the national law', 'depending on the capabilities of the parties', 'as far as possible and as appropriate'. The proposal for a global list of conservation sites was dropped due to opposition by developing countries on the ground that it could undermine national sovereignty by legitimising international intervention in the management of national

³⁷ Mukund Govind Rajan, *supra*, p.159.

³⁸ UNEP/Bio.Div/WG.2/1/4/Add.1.p.7. Also, Statement of G-77 and China, Nairobi, 27 September 1991.

³⁹ UNEP, Draft Report of Working Group II-Addendum-Draft Articles on Which There is a General Understanding in Working Group II, UNEP/Bio.Div/N4-INC.2/WG.II/L1/Add.1, Nairobi, 1 October 1991, Articles 15.3, p.2.

⁴⁰ UNEP, Report of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity on the Work of Its Second Session, UNEP/Bio.Div/WG.2/2/5,Nairobi, 7 March 1991,p.15. Also, UNEP/Bio.Div/WG.2/3/3, Articles 18.1, p.22.

⁴¹ UNEP,Bio.Div/WG.2/3/3, Article 19.1,p.22.

conservation sites⁴². They also insisted that the fulfilment of their obligations would depend on the fulfilment of the obligation to transfer technology and additional fund by the developed countries⁴³.

On the other hand, the developed countries were interested to (1) ensure easy access to germplasm both domestic and wild, of developing countries (2) establish regulatory regime for the protection of forests and habitats especially in the developing countries. The North was not, however, interested to transfer technology to the South. It argued that governments would not be able to force private sectors to transfer technologies⁴⁴. It was also reluctant to commit itself to the notion of equitable sharing of the costs and benefits of biodiversity conservation⁴⁵. Developed countries like United States of America, Britain, Japan even opposed the idea of mandatory obligation on the Northern states to provide financial resources for conservation activities in the developing countries.

The negotiations between the North and the South proceeded on the basis of a draft convention prepared by a regionally balanced group of senior legal advisors⁴⁶. The delegations amended the draft through additions of language and bracketing of controversial text to

⁴² UNEP, Report of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity on the Work of Its First Session, Addendum, UNEP/Bio.Div/WG.2/1/4/Add.1, Nairobi, 5 February, 1991, p. 36. Also, UNEP, Report of Working Group I, UNEP/Bio.Div/N5-INC.3/WG.I/L.1/Add.1, Geneva, 29 November 1991, p.2.

⁴³ UNEP, Draft Report of Working Group I, UNEP/Bio.Div/N4-INC.2/WG.I/L.1/Add.3, Nairobi, 1 October 1991, Annex II, Article 7, p.3.

⁴⁴ UNEP/Bio.Div/WG.2/1/4/Add.1, p.42.

⁴⁵ *Ibid*, p.7.

⁴⁶ UNEP, Revised Draft Convention on Biological Diversity, UNEP/Bio.Div/WG.2/3/3, Nairobi, 30 April 1991. The Draft was prepared on the basis of various proposals made by states during the first session. UNEP/Bio.Div/WG.2/1/4,p.22.

reflect their respective interests. Starting since November 1990, delegates from the North and the South had reached substantial agreement in May 1992 after seven negotiating sessions to adopt a framework convention on biological diversity. Article 15 of the adopted Convention has established 'national sovereignty' over genetic resources as demanded by the developing countries. It has also provided that "each Contracting Party shall take practicable measures to promote and advance priority access on a fair and equitable basis...to the results and benefits arising from biotechnologies based upon genetic resources" provided by developing country parties on mutually agreed terms⁴⁷. The inclusion of terms like 'promote and advance' has made the commitment weaker. Moreover, due to the requirement of 'mutually agreed terms', the nature and amount of benefit sharing would largely depend on the bargaining power of a particular developing country.

On 'technology transfer', Article 16 of the adopted Convention has made a compromise between the contradictory claims and interests put forward by the South and the North. It provided that 'access to and transfer of technology' to the developing countries' shall be provided and /or facilitated under fair and most favourable terms, but the same has been made subject to 'patents and other intellectual property rights' as demanded by the Northern countries in the negotiations⁴⁸. The demand for new and additional financial resources by the developing countries has been met under Article 20.2. It provides that "the developed country parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of

⁴⁷ *Ibid*, Articles 15.7, 19.2.

⁴⁸ *Ibid*, Article 16.2.

implementing measure which fulfil the obligations of this Convention”⁴⁹. However, no new financial mechanism has been created due to the opposition by the developed countries. The GEF, after restructuring in accordance to Article 21, is to operate as the financial mechanism for the Biodiversity Convention⁵⁰. Bangladesh actively participated in the major negotiating sessions for the adoption of a convention on biological diversity. Its interests reconciled with other developing countries participating in the negotiation. Therefore, one of its primary role in the negotiation was to fortify the collective bargaining power of G-77. Two major interests largely motivated its participation in the negotiation of the Convention. First, to ensure financial assistance for its biodiversity conservation activities. Second, to ensure technology transfer from the North on easy terms for environment friendly conservation especially for improving its *ex-situ* conservation measures.

Bangladesh's location in the tropical region has been conducive to its harbouring a rich variety of flora and fauna. It contributes to the international biodiversity pool in two major ways. First, by its extremely rich genetic pool of rice varieties and second, as a significant site of tiger population.⁵¹ In one estimate, there are nearly 10,000 species of plants, animals and microbial organisms.⁵² Vertebrate fauna of Bangladesh range between 1500 and 2000

⁴⁹ *Ibid*, Article 20.2.

⁵⁰ *Ibid*, Article 39.

⁵¹ C.R. Abrar, “International Agreements and Environmental Management Follow-up in Bangladesh”, in Cameron, J., Jacob Werksman, & P. Roderick, (ed.), *Improving Compliance with International Environmental Law*, Earthscan Publication, London, 1996, p.216.

⁵² M. Anisuzzaman, “Wildlife Biodiversity and Its Resource Potential”, in P. Gain, (ed.), *Bangladesh Environment : Facing 21st Century*, Society for Environment and Human Development (SEHD), Dhaka, p.119.

species. There are about 130 species of mammals, 650 species of birds, 145 species of reptiles, 15 species of amphibians and 783 species of pisces.⁵³

The major causes of the decline of wildlife in Bangladesh are: first, habitat destruction. Conversion of wetlands for agricultural purpose and loss of habitats due to deforestation are the causes of the decline of wildlife species in Bangladesh.⁵⁴ Second, large scale killing or capture for domestic consumption and illegal trade is another cause. Third, lack of proper policy, poor management and ignorance of bionomics are also contributing in the process of decline. The biodiversity Convention has been largely welcome by Bangladesh as this will help the country to adopt large-scale biodiversity conservation measures with the financial and technological support from the North.

Fundamental Shift in International Community's Treaty Practice

In many respects, negotiations of global environmental treaties on ozone depletion, climate-change and bio-diversity conservation show a fundamental shift in international community's treaty practice.

International treaties normally consider 'non-compliance' as a 'breach of the treaty', and considers adjudication as a probable mode of resolution. As the negotiations show, multilateral environmental treaties are more concerned with domestic incapacity of state parties rather than determining the formal breach of treaties. Accordingly, environmental treaties provide for financial and technical cooperation in order to improve their compliance capacity with treaty

⁵³ Id.

⁵⁴ Gain, Philip, (ed), *Ibid*, p.120.

obligations. Parties are encouraged to come back to compliance through formal and informal consultations and peer pressure.

International treaties generally provide for equal obligations for all state parties irrespective of any other considerations. But relying on the 'polluters pay principle', environmental treaties provide for 'common but differentiated responsibility'. As the negotiations show, developing countries have rather flexible and delayed obligations under the major environmental treaties considered in this article.

International treaties do not generally address the issue of domestic incapacity of their state parties. State parties are required to bear their own costs in fulfilling their obligations. In contrast to this, 'equity issues' received priority in the resolution of differences came up during the negotiations of environmental treaties. Environmental treaties have gone to such an extent that they have made the fulfilment of the obligations of developing country parties conditional on the fulfilment of the obligations of developed country parties to provide financial and technical assistance.

Conclusion

Global environmental issues are deeply interwoven with socio-economic and political systems of each state. There is no easy solution to these problems. They require concerted effort as well as comprehensive treatment. Furthermore, equity issues are involved that require large scale financial and technology transfer from the North to the South on favourable terms. This brings the issues of the 'business interests' of multinational private corporations producing these technologies together with the issue of 'intellectual property rights'. For the developing countries they mean a major restructuring of their national policies and laws.

From the aforementioned discussion, it appears that certain themes recurred in the negotiations on ozone depletion, climate change and biodiversity conservation. These are: financial assistance and technological transfer to developing countries, establishment of 'independent financial mechanism' to ensure democratic governance etc. One of the major concerns was to develop effective regimes that would help achieve the objectives of the treaties. To the framers of the treaties, the issue was not only to develop an effective partnership between the North and the South but also to see how that partnership could meaningfully lead to the resolution of the global environmental problems, besieging the international community. More pressing issues were how to develop 'non-compliance' techniques, how to address the issue of the incapacity of the vast majority of the developing countries who had already been overburdened with their basic needs, how to solve the 'free-riders' problem etc. Global environmental treaties mark important development in all these areas and can provide useful guidance in international community's future treaty developments.

In certain respects developing countries were comparatively in disadvantageous position in the negotiations. Their unity was a major issue for the success in the negotiation. Under the Group-77 they maintained a common position during the negotiations on the reformation of the Montreal Protocol. This unity, however, could not be maintained during the negotiations on the climate change convention. Indeed, maintaining a common stand in possible issues is important to increase the bargaining power in negotiations, even though states can maintain opposing views on certain specific issues. In bilateral negotiation, developed countries often dictate the terms of agreement because of their economic and political superiority. Environmental treaty negotiations suggest that developing countries

could become more successful if proceeded collectively. In order to increase the probability of consensus among the developing countries, pre-negotiation sessions could be arranged. Another area of disadvantage for developing countries was their poor command on the scientific knowledge and information in the treaty areas. Adequate possession of information is a prerequisite for effective bargaining. Therefore, it is important that developing countries develop their own information data base in relevant areas.

For Bangladesh, global environmental problems bring severe consequences that are most likely to thwart its sustainable development programme. However, Bangladesh's weak participation in the negotiations indicates that global environmental issues did not receive enough priority in its external relation's agenda. Bangladesh will need to mount its green diplomatic efforts in future, especially in two major areas. Bangladesh is one of the worst victims of the climate change and ozone depletion problems created by the North. Negotiated treaty measures mostly provide for the cost of the substitution of new technologies which would ensure a new dependence on the North. They do not provide for the compensation for the damage already incurred due to these global environmental problems. Bangladesh should strengthen its diplomatic efforts to draw the attention of the world community to its extreme vulnerability to the severe tornado, cyclone, flooding and sea-level rise due to climate change and ozone depletion problems and seek compensation and damages for the adaptation programmes. Second, Bangladesh should make all possible efforts to gain from the bilateral mechanisms like 'Clean Development Mechanism (CDM)', 'Access to genetic resources', established under these treaties. They can provide valuable opportunities to strengthen the country's sustainable development programme.