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## Statement By

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*United Nations International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (INCD)*

### I. Introduction

The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Convention),<sup>1</sup> was adopted in Paris on June 17, 1994, by the Intergovernmental Negotiating Committee.<sup>2</sup> In recent years, the problems associated with desertification have risen to a level which merits this global approach to reaching a solution.

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\* Senior Legal Officer, Office of Legal Affairs, United Nations. The views expressed in this statement are those of the author and do not necessarily reflect those of the United Nations. The author wishes to acknowledge the contribution made by Robert M. Wasnofski, Jr. and Glenn E. Friedman in preparation of Chapter II, entitled "Causes of Desertification."

1. *Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification; U.N. Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, U.N. Doc. A/AC.241/15/Rev. 7 (1994), reprinted in 33 I.L.M. 1328 (1994) [hereinafter *Convention*].

2. *Id.*

The Convention defines the term "desertification" by adopting the language of paragraph 12.2 of Agenda 21.<sup>3</sup> According to this definition, "'desertification' means land degradation in arid, semi-arid and dry sub-humid area[s] resulting from various factors, including climatic variations and human activities."<sup>4</sup>

It should be noted, however, there is no commonly agreed single scientific criteria for determining the precise meaning of "serious drought or desertification,"<sup>5</sup> which could present a problem for the effective application of the Convention. Whatever the definition, the problems which arise from desertification are simply those that involve "ecological changes that sap land of its ability to sustain agriculture and human habitation."<sup>6</sup>

The exact extent and probable spread of desertification is not currently known because of the limited availability of evidence upon which to base scientific study.<sup>7</sup> Some studies, however, have estimated that thirty-five percent of the earth's surface is composed of drylands which are at risk of sliding into desert-like conditions.<sup>8</sup> Some areas which are currently threatened by desertification are: "Southern Africa, parts of the Saudi Arabia peninsula and the Middle East, Rajasthan, areas around the Gobi Desert, the former Southern USSR, Australia, USA and Mexico, North-east Brazil and the western side of South America."<sup>9</sup> Most of these problem areas border true or near-true deserts.<sup>10</sup>

Although desertification initially brings to mind an image of a desert slowly encroaching on once-productive green

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3. *Agenda 21*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (1992), reprinted in *AGENDA 21: EARTH'S ACTION PLAN* (Nicholas A. Robinson ed., 1993) [hereinafter *Agenda 21*].

4. *Convention*, *supra* note 1, pt. I, art. 1(a).

5. RIDLEY NELSON, WORLD BANK, TECHNICAL PAPER NO. 116, DRYLAND MANAGEMENT: THE "DESERTIFICATION" PROBLEM (1990).

6. ERIK ECKHOLM & LESTER R. BROWN, *WORLDWATCH*, PAPER 13, SPREADING DESERTS-THE HAND OF MAN 7 (1977).

7. NELSON, *supra* note 5, at 3.

8. Frank Viviano, *U.N. Almost Done With Plan To Save Farmland*, *SAN FRANCISCO CHRONICLE*, June 15, 1994, at A12.

9. NELSON, *supra* note 5, at 3.

10. *Id.*

fields, desertification can "occur [wherever] land is abused regardless of its proximity to true climactically-created deserts."<sup>11</sup> Where such abuse is prolonged, productive fields can turn into stony wastelands or even heaps of sand drifts.<sup>12</sup> The most common effect of desertification, however, is the decline of desirable plants and the rise of less desirable species.<sup>13</sup> Other effects may include the dissipation of soil nutrients and the erosion of the topsoil itself.<sup>14</sup>

## II. Causes of Desertification

Four general views have been advanced on the causes of desertification.<sup>15</sup> The first is a "structural view" where the structure of societal and economic conditions lead to over-exploitation and abuse of the land which ends in desertification.<sup>16</sup> For example, nomadic peoples, who live on the fringes of deserts, rely on milk and milk by-products as their main source of food and require extremely large herds in order to support the family unit.<sup>17</sup> These peoples keep surplus livestock as insurance against loss from drought.<sup>18</sup> These extremely large herds, if unchecked, can overgraze the land leading to desertification.<sup>19</sup> Moreover, nomads usually put a premium on large families to assure an adequate supply of

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11. ECKHOLM & BROWN, *supra* note 6, at 8.

12. *Id.*

13. *Id.*

14. *Id.* An example of the typical sequence of events leading to desertification of an area is the Ethiopian experience. In the first phase, wood is harvested in amounts greater than can be sustained. In the second phase, wood becomes scarce and crop residues and dung are more frequently used for fuel. This in turn has a detrimental effect on the condition of the soil which would have been enriched by the dung and crop residue. In the third phase, trees become almost nonexistent, and dung and crop residue become marketable for cash as the predominant fuel, further increasing the decline of the soil. In the fourth phase, dung becomes the only source of fuel, crop residue is completely used to feed livestock and soil quality deterioration is greatly increased. In the final phase, there is a total collapse of the land most likely triggered by a dry spell or influx of people. NELSON, *supra* note 5, at 3.

15. See NELSON, *supra* note 5, at 18-19.

16. See *id.*

17. ECKHOLM & BROWN, *supra* note 6, at 28.

18. *Id.*

19. See *id.*

manpower to tend herds and to do other chores, putting even more stress on the land.<sup>20</sup>

A second view attributes the cause of desertification to "natural events."<sup>21</sup> A long term shift in rainfall patterns can change the ecological character of a region.<sup>22</sup> The exact extent to which naturally occurring climatic changes is to blame for desertification is subject to much debate.<sup>23</sup> Most analysts believe that the extended periods of low rainfall which have occurred recently are to be expected.<sup>24</sup> One commentator has noted that "droughts should simply be anticipated as harsh facts of life."<sup>25</sup> In any event, the possibility that we are entering into a drier period should not be ruled out as a significant cause of desertification.<sup>26</sup>

A third view on the cause of desertification is the "human error approach."<sup>27</sup> This approach focuses on the poor decisions made by governments, farmers and others with respect to the land.<sup>28</sup> These decisions include livestock choices, planting, water use and other factors which affect the quality of the land.<sup>29</sup>

The fourth view on the cause of desertification is the "population view."<sup>30</sup> According to this view, increases in human and animal populations have led to great demands on the land which cannot be accommodated.<sup>31</sup> Some researchers have estimated that approximately seventy percent of the desertification problem can be attributed to natural climatic

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20. *Id.*

21. NELSON, *supra* note 5, at 18-19.

22. ECKHOLM & BROWN, *supra* note 6, at 16.

23. NELSON, *supra* note 5, at 19.

24. *Id.*

25. ECKHOLM & BROWN, *supra* note 6, at 18.

26. NELSON, *supra* note 5, at 19. Complicating the debate on the extent in which climate changes are to blame for desertification is the theory that the degradation of the landscape (often associated with desertification) may itself have a self-reinforcing impact on the climate prolonging droughts, further increasing the devegetation. ECKHOLM & BROWN, *supra* note 6, at 17.

27. NELSON, *supra* note 5, at 18.

28. *Id.*

29. *Id.* at 19.

30. *Id.* at 18.

31. NELSON, *supra* note 4, at 18-19.

changes and population growth, and thirty percent to structural and human error.<sup>32</sup>

Although the exact cause of desertification is subject to debate, there is no debating the harm done by desertification. Yearly losses in agricultural income from desertification have been estimated by the United Nations Environment Program at \$42 billion.<sup>33</sup> Asia, the hardest hit continent, incurred \$21 billion in annual losses, and Africa followed with an estimated \$9 billion.<sup>34</sup> Close to 10 million people worldwide have been forced to emigrate because of the desertification problem.<sup>35</sup> More dramatic is the estimate that 13 million people, mostly children, die each year due to desertification and its related effects.<sup>36</sup>

### III. Attempted Solutions

#### A. Rio Conference

Realizing the devastation caused by environmental degradation (including desertification), the global community agreed to work together to attempt to combat these problems. More than 170 countries met in Rio de Janeiro, Brazil, from June 3-14, 1992, for the United Nations Conference on Environment and Development (UNCED), also known as the Rio Conference. Agenda 21, an 800-page document which emerged from the UNCED process, laid out in chapter 11 a set of priorities for combating desertification and the means for accomplishing these priorities, as well as addressing the financing of sustainable development.<sup>37</sup> Three more specific documents emerged from the Rio Conference: the Convention

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32. *Id.*

33. Viviano, *supra* note 8, at A12.

34. *Desertification: More Than 100 Countries Agree On Treaty Requiring National Action Plans*, Int'l Envtl. Daily (BNA), June 23, 1994, available in WESTLAW, BNA-IED [hereinafter *100 Countries Agree On Treaty*]. It should be noted that the Asian loss is even more dramatic when it is considered against the fact that 66% of the African continent is desert or arid land, compared with Asia, which is only 46% desert or arid land. *Id.*

35. Viviano, *supra* note 8, at A12.

36. *Id.*

37. *Agenda 21*, *supra* note 3.

on Climate Change,<sup>38</sup> the Convention on Biological Diversity<sup>39</sup> and the Statement of Principles on Forests.<sup>40</sup> In addition, the participating countries agreed to ask the United Nations (U.N.) General Assembly to establish an intergovernmental negotiating committee for a convention on desertification, particularly focusing on the countries of Africa.<sup>41</sup>

On December 22, 1992, the General Assembly granted this request by establishing the Intergovernmental Negotiating Committee (INCD) for the elaboration of an international convention to combat desertification in those countries experiencing serious drought and/or desertification.<sup>42</sup> Adopted as General Assembly Resolution 47/188, it set a goal of finalizing

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38. *Framework Convention on Climate Change*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26, *reprinted in* 31 I.L.M. 849 (1992). This convention, which was opened for signature in Rio, covers all greenhouse gases, not just carbon dioxide. Under this convention, countries agreed to establish a process by which they can monitor and control greenhouse gas emissions and share scientific information and new technologies with each other. See Edith Brown Weiss, *Introductory Note on United Nations Conference on Environment and Development*, 31 I.L.M. 814 (1992).

39. *Convention on Biological Diversity of the United Nations Conference on the Environment*, opened for signature June 5, 1992, U.N. Doc. DPI/1307, *reprinted in* 31 I.L.M. 818 (1992). Also opened for signature in Rio, this convention provides for national monitoring and the development of strategies for the conservation of biological diversity, both in situ and ex situ conservation measures and national reports from parties on measures taken to implement this convention. The United States refused to sign this convention, claiming to be concerned about technology transfer and intellectual property rights, as well as the designation of permanent financial mechanisms. See Weiss, *supra* note 38, at 815-16.

40. *Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/6/Rev.1 (1992), *reprinted in* 31 I.L.M. 881. Representing the first global consensus on forests, this document is simply a non-legally binding authoritative statement of principles; thus, it does not have the legal force of the conventions on Climate Change and Biodiversity. However, it still represents an important step toward the negotiation of a legally binding international forest agreement. See Weiss, *supra* note 38, at 817.

41. *Agenda 21*, *supra* note 3, ch. 12, para. 40.

42. *Report of the United Nations Conference on Environment and Development*, G.A. Res. 47/188, U.N. GAOR, 47th Sess., Agenda Item 79, U.N. Doc. A/47/719 (1992), *reprinted in* 32 I.L.M. 236.

the convention by June 1994.<sup>43</sup> This goal was met as the Convention was concluded on June 17, 1994.

## B. An Outline of the Convention to Combat Desertification

The Convention, which consists of preambles, forty articles and four regional implementation annexes, is designed to provide the framework for an international effort to combat desertification and drought in the affected country Parties.<sup>44</sup> Consistent with the recommendations for action to combat desertification and drought in Chapter 11 of Agenda 21, the main thrust of the Convention is action at the local community level.<sup>45</sup> In addition, commitments in the Convention at other levels support and empower these local efforts.

Part I establishes the objectives and principles of the Convention.<sup>46</sup> They are, however, declarative in nature and do not establish any specific obligations in themselves. Definitions of the terms used in the treaty are also provided in Part I.

Part II outlines the general provisions of the treaty, which includes Articles 4-8. Issues addressed in these articles include general obligations,<sup>47</sup> obligations of affected country Parties,<sup>48</sup> obligations of developing country Parties,<sup>49</sup> priority for Africa<sup>50</sup> and the relationship with other conventions.<sup>51</sup>

Article 4 outlines the general obligations of the Parties and provides some framework for accomplishing the goals. The main thrust of Article 4 is cooperation. The Parties may

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43. *Id.*

44. *Convention*, *supra* note 1.

45. For example, paragraph 12.27 of Agenda 21 lists among the objectives of this program area "to create the capacity of village communities and pastoral groups to take charge of their development and the management of their land resources on a socially equitable and ecologically sound basis." *Agenda 21*, *supra* note 3, at 195.

46. *Convention*, *supra* note 1, pt. I, arts. 2, 3.

47. *Id.* pt. II, art. 4.

48. *Id.* pt. II, art. 5.

49. *Id.* pt. II, art. 6.

50. *Convention*, *supra* note 1, pt. II, art. 7.

51. *Id.* art. 8.

work together whenever they see fit, they may use any existing arrangements or they may create new ones.<sup>52</sup> There is a focus on economic development<sup>53</sup> so that strategies for the eradication of poverty are integrated with efforts to "combat desertification and mitigate the effects of drought."<sup>54</sup> Duplication of efforts is to be avoided and existing financial arrangements and mechanisms are to be used wherever possible.<sup>55</sup> Additionally, developing country Parties are eligible for economic assistance in the implementation of the Convention.<sup>56</sup>

In addition to those described in Article 4, Article 5 specifically outlines the obligations of affected country Parties. Resources are to be allocated based on the circumstances of the party.<sup>57</sup> The strategies for combatting desertification are to be developed "within the framework of sustainable development plans."<sup>58</sup> Article 5 also requires that the plans to address desertification look specifically at the underlying causes of the problem.<sup>59</sup> The affected country Parties are to educate the local population and enlist its participation in combatting the effects of desertification and drought.<sup>60</sup> Finally, the affected country Parties are to ensure that the problem is addressed in legislation that will provide long-term action.<sup>61</sup>

The obligations of developed country Parties are outlined in Article 6. The developed country Parties are to provide support to the affected developing country Parties in an effort to stop desertification.<sup>62</sup> This is to be accomplished primarily through financial support.<sup>63</sup> Developed country Parties are also to assure that affected country Parties, particularly af-

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52. *Id.* art. 4, ¶ 1.

53. *Id.* art. 4, ¶ 2(b).

54. *Convention, supra* note 1, pt. II, art. 4, ¶ 2(c).

55. *Id.* ¶¶ 2(g), (h).

56. *Id.* ¶ 3.

57. *Id.* art. 5(a).

58. *Convention, supra* note 1, pt. II, art. 5(b).

59. *Id.* art. 5(c).

60. *Id.* art. 5(d).

61. *Id.* art. 5(e).

62. *Convention, supra* note 1, pt. II, art. 6(a).

63. *Id.* art. 6(b).

affected developing country Parties, have access to the technology and knowledge that will enable them to address the problem of desertification.<sup>64</sup>

Article 7 assigns a priority interest to Africa. The Parties are to provide aid on a priority basis to Africa without neglecting other affected Parties.<sup>65</sup> This priority is assigned due to the nature of the prevailing situation in Africa.<sup>66</sup>

Article 8 addresses the possible effects of the requirements of this Convention on other conventions. The Parties are to coordinate efforts under this Convention, as well as to any other conventions to which they are Parties.<sup>67</sup> However, the rights and obligations of other international agreements, entered into prior to the Desertification Treaty, are not to be affected by obligations under this treaty.<sup>68</sup>

Part III deals with action programs,<sup>69</sup> scientific and technical cooperation<sup>70</sup> and supporting measures.<sup>71</sup>

Under section 1, Article 9, affected country Parties are to develop and implement national action programmes (NAPs), integrating any existing programs that would help insure success.<sup>72</sup> Support by developed country Parties is to be provided on a priority basis to developing country Parties, particularly in Africa.<sup>73</sup>

Article 10 provides a framework for NAPs. As provided, NAPs are to include the roles of government, local communities and land users.<sup>74</sup> The programmes must outline long term strategies for combatting desertification, emphasizing implementation and sustainable development.<sup>75</sup> Flexibility should be built into the framework so that, as conditions

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64. *Id.* art. 6(e).

65. *Id.* art. 7.

66. *Convention, supra* note 1, pt. II, art. 6(b).

67. *Id.* art. 8, ¶ 1.

68. *Id.* art. 8, ¶ 2.

69. *Id.* pt. III, sec. 1, arts. 9-15.

70. *Convention, supra* note 1, pt. III, sec. 2, arts. 16-18.

71. *Id.* sec. 3, arts. 19-21.

72. *Id.* sec. 1, art. 9, ¶ 1.

73. *Id.* sec. 1, art. 9, ¶ 2.

74. *Convention, supra* note 1, pt. III, sec. 1, art. 10, ¶ 2.

75. *Id.* ¶ 2(a).

change, adjustments can be made at the local level.<sup>76</sup> In addition, preventive measures for lands not yet harmed are to be included in the program.<sup>77</sup> Systems that make it possible to predict the onset of drought conditions should be enhanced.<sup>78</sup>

The NAP seeks to promote cooperation at all levels of government as well as among non-governmental agencies.<sup>79</sup> Along those lines the local populations are included in the "policy planning, decision making, and implementation and review of national action programmes."<sup>80</sup> Article 11 builds on Article 10 by adding regional and subregional action programmes. These programmes are designed to work beneficially with the NAP.

The remainder of Part III, section 1, deals with international cooperation in implementing the NAPs. Financial support is specified, as well as provided through non-governmental agencies at the local level.<sup>81</sup>

Part III, section 2, deals with scientific and technical cooperation, encompassing Articles 16-18. Article 16 focuses on information collection and analysis exchange; Article 17 includes research and development; and Article 18 discusses transfer, acquisition, adaptation and development of technology.

The focus of article 16 is on international cooperation in the collection of information "to understand better and assess the processes and effects of drought and desertification."<sup>82</sup> This is to be achieved through a global network of institutions and facilities that would connect the affected areas with modern capabilities around the world.<sup>83</sup> Within this concept of a global network, the treaty specifies that this exchange of

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76. *Id.* ¶ 2(b).

77. *Id.* ¶ 2(c).

78. *Convention*, *supra* note 1, pt. III, sec. 1, art. 10, ¶ 2(d).

79. *Id.* ¶ 2(e).

80. *Id.* ¶ 2(f).

81. *Id.* art. 13, ¶ 1.

82. *Convention*, *supra* note 1, pt. III, sec. 2, art. 16.

83. *Id.* art. 16(a).

information must take into consideration the local populations and their needs.<sup>84</sup>

Article 17 deals with international research and development and the importance of participation of the local population. In developing technology to deal with drought and desertification, traditional and local knowledge is to be used.<sup>85</sup> Any benefit from the use of this knowledge is to be shared with those who provided it.<sup>86</sup>

Article 18 provides that Parties are to "promote, finance and/or facilitate the financing of transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies relevant to combatting desertification and/or mitigating the effects of drought . . . ."<sup>87</sup> This article allows for the exchange of technology with consideration given to the local knowledge and the ownership of ideas.<sup>88</sup>

Part III, section 3, addresses supporting measures. Section 3 encompasses articles 19-21. Article 19, entitled "Capacity Building, Education and Public Awareness," outlines the need to insure that affected country Parties are able to support the programmes developed to combat desertification and drought.<sup>89</sup> This is to be implemented through local population participation,<sup>90</sup> developing research capability at the national level<sup>91</sup> and providing support through non-governmental agencies to help develop the programmes and technology needed to combat desertification and drought.<sup>92</sup>

Articles 20 and 21 deal with the financial aspects of implementing programmes to deal with desertification and drought. The focus of Article 20 is the mobilization of funds. This is to be accomplished, whenever possible, without in-

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84. *Id.* art. 16(b)-(g).

85. *Id.* art. 17, ¶ 1(c).

86. *Convention, supra* note 1, pt. III, sec. 2, art. 17, ¶ 1(c).

87. *Id.* art. 18, ¶ 1.

88. *Id.* art. 18.

89. *Id.* sec. 3, art. 19, ¶ 1.

90. *Convention, supra* note 1, pt. III, sec. 3, art. 19, ¶ 1(a).

91. *Id.* ¶ 1(b).

92. *Id.* ¶¶ 2, 3.

creased debt for affected developing country Parties.<sup>93</sup> The funding for affected developing country Parties is to be accomplished through consortia and joint programmes. Attempts are also to be made to involve private sector groups in the process.<sup>94</sup>

Article 21 focuses on sources of funding. This includes providing information on availability of money and establishes "national desertification funds" as a specific mechanism<sup>95</sup> and usage of the United Nations system as a tool for supporting funding.<sup>96</sup> Furthermore, it provides for the establishment of a global mechanism for funding to promote "actions leading the mobilization and channeling of substantial resources."<sup>97</sup>

Part IV encompasses Articles 22-25, and addresses the institutions that are to be created to monitor and promote the effectiveness of the Convention. Specific institutional arrangements consist of a conference of the Parties,<sup>98</sup> a permanent Secretariat<sup>99</sup> and a Committee on Science and Technology.<sup>100</sup> The main functions of the Conference will be to review the implementation of the Convention, to promote the exchange of measures adopted by the Parties, to adopt amendments to the Convention and approve a program, and to budget for its activities.<sup>101</sup> The business of the Conference of the Parties will be assisted by the Secretariat, which will perform administrative functions.<sup>102</sup> The Committee on Science and Technology, which is open to all Parties, furnishes the Conference with advice on scientific and technological matters.<sup>103</sup> Additionally, the Committee on Science and Technology will survey and evaluate "the relevant existing

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93. *Id.* art. 20.

94. *Convention*, *supra* note 1, pt. III, art. 20, ¶ 4.

95. *Id.* ¶¶ 1(c), (d).

96. *Id.* ¶ 2.

97. *Id.* ¶ 4. *See also infra* notes 158-160 and accompanying text.

98. *Convention*, *supra* note 1, pt. IV, art. 22.

99. *Id.* art. 23.

100. *Id.* art. 24.

101. *Id.* art. 22, ¶¶ 2(a), (b), (f), (g).

102. *Convention*, *supra* note 1, pt. IV, art. 24, ¶ 2.

103. *Id.*

networks, institutions, agencies and bodies willing to become units of a network."<sup>104</sup> The Committee will then make a recommendation as to which units are the most appropriate for networking.<sup>105</sup>

Part V, which consists of Articles 26-32, deals with the procedures to be followed by the Parties. Article 26 provides for communication between the Parties regarding measures taken pursuant to NAP programmes.<sup>106</sup> Additionally, developed country Parties are to report on their actions to assist the affected country Parties in the preparation and implementation of action programmes.<sup>107</sup>

Article 28 addresses dispute resolution. The Parties are to use peaceful means to resolve Convention disputes such as negotiation.<sup>108</sup> Under article 30, the procedures for proposing and adopting amendments to the Convention are established. Amendments to the Convention require, in principle, an adoption by consensus at an ordinary meeting of the Conference of the Parties or, if this is not possible, by a two-thirds vote of the Parties present and voting at the meeting.<sup>109</sup> An amendment enters into force for those Parties having accepted it on the ninetieth day after the date of receipt of such instrument of ratification by the Depositary.<sup>110</sup>

In contrast, adoption and amendment of annexes to the Convention is facilitated by a more simplified procedure. Article 31 provides that approval of the adoption and amendment of annexes, while still subject to Article 30 procedures, shall enter into force for all Parties six months after the Depositary informs them of its adoption, unless the Party notifies the Depositary within that period of their non-acceptance.<sup>111</sup> The adoption of an additional regional implementation annex or amendment to any regional implementa-

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104. *Id.* art. 25.

105. *Id.* art. 25, ¶ 3.

106. *Convention*, *supra* note 1, pt. V, art. 26, ¶¶ 1, 3.

107. *Id.* ¶ 5.

108. *Id.* art. 28, ¶ 1.

109. *Id.* art. 30, ¶ 1.

110. *Convention*, *supra* note 1, pt. V., art. 30, ¶ 4.

111. *Id.* art. 31, ¶¶ 1, 2.

tion plan is somewhat more intricate. A majority, provided under Article 30, must include a two-thirds vote of the present and voting Parties of the region concerned.<sup>112</sup> Thereafter, any such annex or amendment that has been so adopted enters into force for all Parties in the same general manner as other annexes or amendments.<sup>113</sup>

Part VI sets out the final provisions of the Convention. In accordance with Article 33, the Convention is open for signature on October 14-15, 1994, by State members of the United Nations, its specialized agencies, Parties to the International Court of Justice and regional economic organizations.<sup>114</sup> Article 34 sets forth the requirements of ratification and the method of ratification by states and regional economic integration organizations for the entry into force of the Convention.<sup>115</sup> Article 35 allows for the duties of the Secretariat to be carried out on an interim basis until the end of the first session of the Conference. Under Article 36, the Convention is effective on the ninetieth day after the date of its acceptance by the 50th party. Parties may withdraw from the Convention after it has been in effect for three years, with the withdrawal taking effect one year after the Secretariat has received notice.<sup>116</sup> Finally, the Convention is to be deposited with the Secretary-General of the United Nations.<sup>117</sup>

Annex I addresses the unique considerations that are to be given to Africa in implementing the Convention, due to the special conditions there. The Parties are to give priority to affected country Parties in Africa.<sup>118</sup> The remainder of the Annex outlines the formulation of the NAP as it relates to affected country Parties in Africa.<sup>119</sup>

Annex II relates specifically to Asia. Unlike Africa, Asia has no special provision for priority. The remainder of the

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112. *Id.* art. 31, ¶ 1.

113. *Id.* art. 34, ¶ 4.

114. *Convention*, *supra* note 1, pt. VI, art. 34.

115. *Id.*

116. *Id.* art. 38.

117. *Id.* art. 40.

118. *Convention*, *supra* note 1, annex I, art. 5.

119. *Id.* arts. 6-19.

Articles address the establishment of NAPs for the affected country Parties in Asia.<sup>120</sup> Annexes III and IV outline similar provisions for Latin America, the Caribbean and the Northern Mediterranean.

#### IV. Remaining Issues of Contention

The main issues of contention concerning the Convention which remained to be settled at the fifth session of the INCD were: a) the priority to be accorded to specific regions in providing support for the implementation of the Convention; b) the categorization of country Parties eligible for assistance in the implementation of the Convention; and c) the obligations of developed country Parties to provide technical and financial assistance.

##### A. According Priority to Different Regions

As discussed above, the Convention is supplemented by regional implementation annexes for Africa,<sup>121</sup> Asia,<sup>122</sup> Latin America and the Caribbean<sup>123</sup> and the Northern Mediterranean.<sup>124</sup> The exact geographical boundaries of those regions are not defined in the Convention. In the case of the Northern Mediterranean, however, the subregion is understood to cover Portugal as well as four riparian States of the Northern Mediterranean, namely France, Greece, Italy and Spain. The existence of those annexes raised two issues. The first was the issue of allocating priority among the four regions in order to support the implementation of the Convention. The second issue concerned the treatment of other regions, which may suffer from serious drought or desertification but for which no special regional implementation annexes had been prepared.

On the issue concerning priority, the African group sought special recognition in the Convention for their region.

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120. *Id.* annex II, arts. 3-8.

121. *Id.* annex I.

122. *Convention, supra* note 1, annex II.

123. *Id.* annex III.

124. *Id.* annex IV.

The other regional groups, however, resisted a special reference given only to Africa. Accordingly, the Convention provides: "In implementing this Convention, the Parties shall give priority to affected African country Parties, in the light of the particular situation prevailing in that region, while not neglecting affected developing country Parties in other regions."<sup>125</sup>

Regarding the second issue of other non-African regions which also suffer droughts, Russia and some of the central Asian republics of the former USSR fought for a specific reference in the Convention to the problem of drought and desertification in their respective regions. At the last plenary session, a compromise text was adopted for inclusion in the preamble section of the Convention which "*Express[ed]* concern over the impact of desertification and drought on affected countries in central Asia and TransCaucasus."<sup>126</sup>

## B. Categories of Parties

In addition to the several categories of Parties referred to in the Convention, namely, "affected country Parties,"<sup>127</sup> "developing country Parties,"<sup>128</sup> "developed country Parties"<sup>129</sup> and "affected developing country Parties,"<sup>130</sup> the earlier draft of the Convention provided an additional category of "affected developed countries" to specifically exclude them from receiving financial resources under the terms of the Convention for activities they undertake to combat desertification. In the final text of the Convention, that category of countries as well as the above mentioned provision, was deleted at the insistence of the so-called Northern Mediterranean countries in

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125. *Id.* pt. II, art. 7.

126. *Convention, supra* note 1, preamble, ¶ 19.

127. "'Affected countries' means countries whose lands include, in whole or in part, affected areas." *Id.* pt. I, art. 1, ¶ i. "'Affected areas' means arid, semi-arid and/or dry sub-humid areas affected or threatened by desertification." *Id.* para. h.

128. The term "developing country" is not defined in the Convention. *Id.*

129. "[D]eveloped country Parties' means developed country Parties and regional economic organizations constituted by developed countries." *Convention, supra* note 1, pt. I, art. 1(k).

130. The term "affected developing country" is not defined in the Convention.

exchange for a new provision of paragraph 3 of Article 4. This specifically provides that affected developing country parties are eligible for assistance in the implementation of the Convention.

### C. Financial Assistance

The obligation of developed country Parties to provide financial assistance proved to be the single most contentious issue of the Convention. Negotiations on this issue were confounded by the fact that the developing country Parties themselves were divided on this issue.<sup>131</sup> Due to the importance of funding the actions needed to combat desertification, several sections of the Convention deal with financial provisions.<sup>132</sup>

Taken as a whole, these provisions create little or no additional sources of funding for the implementation of the Convention. Such sources are limited, by the terms of paragraph 2(b) of Article 20, to resources available from the Global Environment Facility. The text of such provision reads:

[D]eveloped country Parties . . . undertake to . . . promote the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal areas, in conformity with the relevant

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131. The divide between the developing countries resulted from a demand by African countries that they receive "commitments and obligations" from developed country Parties to combat their desertification problems. *100 Countries Agree On Treaty*, *supra* note 34, at D3. African countries argue that the industrial countries have a duty to fund the efforts, and those efforts should be specifically targeting Africa. Viviano, *supra* note 8, at A12. Predictably, countries of Asia and Latin America opposed any agreement that would not require equal efforts to combat their own desertification problems and to address each of the regions specific needs. *Id.*

132. See *Convention*, *supra* note 1, Preamble, (recognizing the need to fund affected developing country parties); *Id.* art. 6, ¶ b (delineating the obligations of developed country parties); *Id.* pt. III, art. 9 (outlining the basic approach for action programmes); *Id.* pt. III, art. 13 (creating measures to support the action programmes); *Id.* pt. IV, art. 20 (financial resource section); *Id.* pt. IV, art. 21 (financial mechanisms section); *Id.* pt. IV, art. 22, ¶ 2(g) (relating to the approval of a budget for the conference of parties).

provisions of the Instrument establishing the Global Environment Facility.<sup>133</sup>

The Instrument Establishing the Global Environment Facility<sup>134</sup> provides for the financing of the agreed incremental costs of activities concerning desertification only relating to climate change, biological diversity, international waters and depletion of the ozone layer.<sup>135</sup>

Paragraph 2(b) of Article 20 was adopted subject to the reservations of India and Ethiopia. Those two countries objected particularly to the inclusion of the word "agreed" in the fifth line. India and Ethiopia also reserved their positions on paragraphs 3 and 4 of Article 21 which reads:

3. Affected developing country Parties shall utilize, and where necessary establish and/or strengthen, national coordinating mechanisms, integrated in national development and programmes that would ensure the efficient use of all available financial resources. They shall also utilize participatory processes involving non-governmental organizations, local groups and the private sector, in raising funds, in elaborating as well as implementing programmes and in assuring access to funding by groups at the local level. These actions can be enhanced by improved coordination and flexible programming on the part of those providing assistance.

4. In order to increase the effectiveness and efficiency of existing financial mechanisms, a Global Mechanism to promote actions leading to the mobilizations and channelling of substantial financial resources, including for the transfer of technology, on a grant basis, and/or on concessional or other terms, to affected developing country Parties, is hereby established. This Global Mechanism shall function under the authority and guidance of the Conference of the Parties and be accountable to it.<sup>136</sup>

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133. *Id.* art. 20, ¶ 2(b).

134. *Instrument for the Establishment of the Restructured Global Environment Facility*, The United Nations Development Programme (UNDP), The United Nations Environment Programme (UNEP), and the World Bank (1994), reprinted in 33 I.L.M. 1273 [hereinafter *Instrument*].

135. *Id.* ¶ 3 of the Basic Provisions.

136. *Convention*, *supra* note 1, at ch. 22.

Specifically, Ethiopia's objection to paragraph 4 concerned the exclusive reference to "existing financial mechanisms."<sup>137</sup>

In order to meet the concern of the Group of 77,<sup>138</sup> and in particular that of the affected African countries, Article 18 was adopted. This article recommends as a priority the establishment of partnership arrangements to facilitate the coordination of activities at the national level in the affected African countries.<sup>139</sup>

These arrangements are to be initiated by the individual African country involving the relevant developed countries, intergovernmental regional economic organizations and non-governmental organizations, as well as representatives of the affected local populations.<sup>140</sup> Finally, paragraph 7 requests the developed countries and the international and multilateral agencies and programmes make available enabling funds to support the partnership arrangements.

#### V. Assessment of the Convention

The Convention officially opened for signature on October 14, 1994, at the headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris, France.<sup>141</sup> During a two day ceremony, October 14-15, 1994, the Convention was signed by 87 countries.<sup>142</sup> However, before going into effect, the Convention must still be ratified by at least 50 countries. This is expected to take place sometime after 1996.

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137. *Id.*

138. The Group of 77 is the caucus of developing countries affiliated with the United Nations Conference on Trade and Development. It includes a balanced representation from Africa, Asia, Latin America, and the Caribbean. See *International Monetary Fund: Group of Ten Report on the Functioning of the Monetary System, reproduced from IMF Survey*, Volume 14, Supplement on the Group of 10 Deputies' Report (July 1985), reprinted in 24 I.L.M. 1685.

139. *Convention*, *supra* note 1, annex I, art. 18.

140. *Id.*

141. *Desertification Treaty On The Way*, 146 SCIENCE NEWS 303 (1994).

142. *Id.*

The Convention as a whole represents the international community's awareness of the devastation that will result from desertification.<sup>143</sup> More importantly, though, it represents the commitment of the international community to the promotion of concerted international and national efforts to combat the problems causing desertification.

For those developing countries affected or threatened by desertification, however, the Convention provisions fell far short of their expectations. Particularly, developing countries were disappointed that they were unable to secure "a commitment from donor states for [technical assistance] . . . and additional financing earmarked for anti-desertification projects."<sup>144</sup> While representatives of the developing countries feel the Convention set up "good guidelines for implementing national action programmes," without the funds to implement the programmes, they think the guidelines are not helpful.<sup>145</sup>

On the other hand, the prevailing view among developed countries is that the problem of desertification is essentially a national and regional one. Therefore, the problem should not claim the same level of international support as the problem of climate change or that of the depletion of the ozone layer. Moreover, developed countries believe the purpose of the Convention was to restructure existing aid programmes, not to offer new funds.<sup>146</sup> Developed countries stress that by assuring efficient and effective utilization of already existing funds and future funds availability in bilateral and multilateral aid, they are actually "creating new and additional funding."<sup>147</sup>

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143. The United Nations Environment Program (UNEP) estimates that the welfare of up to 900 million persons may be in jeopardy from desertification . . . [due to the] drying out of the . . . land that now feed[s] them." *Id.*

144. *100 Countries Agree On Treaty*, *supra* note 34, at D2.

145. *Id.*

146. *See id.* at D1-2.

147. *Id.* The U.S. Agency for International Development has identified about \$500 million which will go to support efforts of the Convention. France, which now allocates \$181 million (U.S.) to fight desertification, announced that it will " earmark another \$80 million (U.S.) for projects meeting Global Environmental Facility (GEF) objectives." *Id.* at D1-2. Canada announced that it has

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earmarked at least \$74 million (U.S.) over five years to combat desertification. *Id.* at D2. Direct contributions towards the implementation of the Convention so far have been made only by Japan, which has provided \$700,000 (U.S.) to the interior Secretariat of the Convention. Information provided by member of the Japanese Delegation to the Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification.