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REPORT OF THE OAU AD - HOC WORKING GROUP OF EXPERTS MEETING IN OUAGADOUGOU

10 - 15 FEBRUARY 1994

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OPENING SESSION 11 FEBRUARY 1994

I. OPENING SESSION

The morning session was chaired by the representative of CILSS Executive Secretary. The following statements were made:

Welcoming address - CILSS

Statement by the Representative of OAU Secretary General

Statement by the UNDP Resident Representative in Ouagadougou

Formal opening address by the General Secretary, Ministry of Environment and Tourism of Burkina Faso.

1. In his welcoming address, the representative of the Executive Secretary of CILSS emphasized the need for the meeting of the Ad Hoc Working Group of Experts, particularly in light of Africa's experience and performance during the 3rd Session of INC-D. The CILSS representative provided the background that led to the establishment of the INC-D and reminded the participants that the preparatory process begun in Ouagadougou. He commended the efforts being deployed by the OAU in supporting Africa throughout the INC-D process and called for solidarity and unity among the African Group.

2. The representative of the OAU Secretary General traced the historical evolution of Africa's preparatory process from UNCED to INC-D and emphasized the crucial role played by CILSS, and the Government of Burkina Faso. He identified the activities to be undertaken by the Ad Hoc Working Group of Experts and the outputs that are expected, including a consolidated draft implementation annex for Africa; a reference negotiating text and proposals on financial resources and mechanisms.

3. The UNDP Resident Representative in his statement also commended the efforts being deployed by the OAU as well as the joint Secretariat Organizations. He assured the Experts of the support of UNDP/UNSO to the work of the OAU and the Expert Group, and also emphasized those specific areas where UNDP reaffirmed its support to Africa especially in the field of desertification and drought in order to achieve sustainable development.

4. The formal opening address was delivered by the General Secretary, Ministry of Environment and Tourism of Burkina Faso. In his opening address he recalled the various initiatives that have been undertaken in the recent past to bring the problem of

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desertification and drought to the forefront of the developmental issues in Africa, particularly those previous efforts coordinated in Ouagadougou. He stressed the fact that this meeting was timely considering the lessons already learned by African delegations through the last three negotiating sessions of the INCD.

5. The General Secretary pointed out that desertification is a developmental problem which is intricately related to the debt burden of African countries affected by drought and desertification. He underscored the need to accord the problems of desertification and drought the global character in the same way that climate change and biological diversity have received global attention. The twin problems of desertification and drought are hence not local or African only, but they are international in scope. He pointed out that the particularlization of Africa should give impetus to the African Group to succesfully negotiate for Africa's interests in the Convention. The General Secretary also stressed that the political dimensions of the negotiations have taken on a high emphasis on the agenda and they need to be supported with the necessary technical back-up, to ensure Africa's success in the negotiations.

6. After the formal opening of the meeting, it was decided that the Technical Advisor, Ministry of Environment and Tourism of Burkina Faso, Mr Bandré Pierre, would chair the meeting while awaiting for the arrival of Mr B. L. Sonko, the Permanent Secretary, Ministry of Foreign Affairs of the Gambia, who was the Chairman of the OAU Ad Hoc Working Group of Experts, which was held in Nairobi in December 1993.

II. OBJECTIVES OF THE MEETING

7. The purpose of this meeting of Ad Hoc Working Group of Experts was essentially to review the experience and performance of the African Group as well as the issues of contention which emerged during the 3rd session of INC-D. Subsequently, on the basis of this exercise, propose a strategy and undertake the following activities:

a) compilation of views and comments from the African Group and from the 3rd INC-D session with a view to enriching both the implementation annex from Africa and the reference negotiating text;

b) review of all national and sub-regional as well as regional case studies to determine the draft implementation annex for Africa;

c) rationalization and harmonization of the INC-D document on implementation annex with the draft implementation annex for Africa;

d) finalization of the document on financial resources and mechanisms, based on the brainstorming session held in Nairobi in December 1993.

8. The objective of these activities, as agreed by the joint Secretariat Organizations, is to produce the following ouputs for the Geneva Session.

i) a consolidated draft implementation annex for Africa;

ii) a reference negotiating text;

iii) a paper containing concrete and innovative proposals on financial resources and mechanisms for the implementation annex for Africa and the Convention.

III. PROCEEDINGS

9. The Secretariat had proposed a composition of three working groups as follows:

WG I Topic : Elaboration of the Implementation Annex for Africa.

WG II Topic: Elaboration of the reference negotiating text for the African Group during the 4th INC-D Session.

WG III Topic: Identification of national, sub-regional and regional issues to be incorporated in the Implementation Annex for Africa.

10. After an exchange of views, it was agreed that the Working Groups be limited to 2. It was also agreed that the Working Groups begin work on Saturday morning, the 12th of February. The work of former WGIII would be distributed and merged with the agenda of WGI.

IV) DOCUMENTATION

11. To produce the three major outputs the meeting use the following documents:

i) Revised Negotiating Text of the Convention Document A/AC.241/15/Rev.1

ii) Possible format and elements of a Regional Implementation Annex Doc./AC.241/17

iii) ECA's contribution to the OAU Ad Hoc Working Group meeting Ouagadougou, Burkina Faso, 10 - 15 February 1994, Doc. ECA/ENV/INCD/AF.

iv) African Regional Case Study Doc.ECA/INCD/CASE/DRAFT/Rev.1.

v) Draft format for a Regional Protocol for Africa: Contribution by the French Delegation to the 3rd Session of the INCD.

vi) Synthesis/Symposium of the Case Study of Mali prepared with the support of the INC-D Secretariat.

vii) Synthesis/Symposium of a Case Study for the UMA countries, prepared with the support of the INC-D Secretariat.

viii) Report on IGADD Sub-regional Case Study for the INC-D.

ix) UNSO's Contribution to the meeting of the OAU Ad Hoc Working Group of Experts in Ouagadougou 10 - 15 February 1994.

x) Plenary Report of the meeting of the OAU Ad Hoc Working Group of Experts, Nairobi 14 - 18 Dec. 1993, Doc.OAU/INCD/EXP.PLE/Report/Rev.2

xi) Reference Negotiating Text: Africa's Drafting Proposals, Doc.OAU/INCD3/NY/94/Rev.1

xii) Report of the OAU Ad Hoc Working Group of Experts on Financial Resources and Mechanism for the Convention and the Implementation Annex for Africa, Doc. OAU/Exp.Gr/Rep/Fin.Res/1993.

xiii) Indicative Conference Programme (1994 - 1995) Combating Poverty and Environmental Degradation. 5th Session of AMCEN, 22 - 27 November, Addis Ababa, Ethiopia.

xiv) Draft Discussion Paper on the INC-D Contribution to the OAU Intitiative, Doc. ECA/INRD/ENv.INCD/1

xv) Inputs for the African Expert Consultative Meeting (Nairobi 13 - 17 December 1993, DOc.ECA/ENV/INCD/Africa.

xvi) United Nations Conference on Desertification 29 August - 9 September 1977 Round-up Plan of Action and Resolution.

12. The Expert Group examined these documents with a view to enriching the Implementation Annex for Africa Document OAU/INCD/1993/Rev.1 and to produce a revised Reference Negotiating text: Africa's Drafting Proposals as well as the formulation of concrete, new and innovative proposals on

Financial Resources, Financial Mechanism and Institutional Arrangements.

V) OBSERVATIONS

13. During the exchange of views the following observations were made:

i. The necessity to identify points of weakness was recognized and the need for the African Group to develop consensus and reaffirm its commitment to those issues that are of crucial importance to successful negotiations in the convention and the implementaiton Annex for Africa.

ii. An imperative need to maintain the cohesion within the African Group was recognized. Lack of cohesion enabled our negotiating partners especially from the developed countries to manage to draw a wedge between various African delegations. This hindered the African Group's effective response to the problems faced at the level of the G77.

iii. African solidarity was greatly compromised during the 3rd Sesion bears testimony to the dire need for constant consultations and consensus building among the African Group to ensure their interests are well catered for.

iv. The disappointments that emerged during the 3rd Session are blamed on various causes, among them;

a) Deficiency in the strategic approach of the African Group; a weak-kneed negotiation, strategy, lacking in discipline especially while putting Africa's views on the floor.

b) Lack of a clear steering core team of spokesmen in the African Group.

c) Inconsistencies in the composition of African delegations to the negotiations;

d) Improper briefing of some African delegations resulting in some aspects of (f) below.

e) The failure to convene an intergovernmental meeting (proposed to take place in Algiers) prior to the 3rd Session to concretize the African Group position.

f) The vulnerability of some African delegations to the dangerously divisive strategies of their adversaires from the developed world resulting in "rather stage-managed" confusion of some of the delegations. Individual delegates had been well targetted.

g) Deliberate interference from the developed country partners to the negotiations, even those that had been avowed allies to the cause of Africa in the desertification problems. Divisions through linguistic lines found a weak point in the shaky ones among them. Those divisions were embarassingly successful. In the same breath, it was firmly decided that any divisive elements from whatever quarters should not deter informal contacts among delegations in order to realign and articulate Africa's goals and objectives for the Convention.

h) Deficiency in documentation.

i) Draft propositions for rapid back-stopping response during the negotiations were lacking in the 3rd Session.

iv. There was general lack of preparedness on the part of the African Group as a result issues such as Scope, Principles and Articles were not clearly understood as would have been expected.

v. There was an imminent lack of a negotiating spirit in the African delegation taken as a whole in New York, and this cast a shadow on the consciousness of the urgent need to protect and support Africa's interests in the negotiation process.

vi. It was clear the African delegations were not quite sure on the linkages on the issues to be included in the body of the Convention, such as trade, development, poverty, etc.

14. The experts therefore focussed on the following issues:

i) the need to identify what elements that should be used in the Convention and those that go into the Annex;

ii) the need to ensure that the elements elaborated in the implementation annex draw their inspiration from the Convention.

iii) each group was encouraged to decide on modalities for presenting the issues of interest to Africa.

iv) the need to ensure that the implementation annex is discussed during the first week of the 4th INC-D session.

v) the need to ensure that the annex is not considered as a more information document.

vi) the need to ensure that the annex contains programmes that are operational and bankable.

vii) the need to ensure that national sub-regional and regional inputs are reflected in the Annex.

viii) the need to ensure that the implementation Annex for Africa adequately reflected the problems of Desertification and Drought.

ix) the need to develop a strategy to ensure that issues of trade, International ecocomic relations, debt are adequately Covered either in the Convention or in the implementation Annex for Africa which c) ever is more acceptable to our negotiating partners.

x) the need to develop strategic fall-back positions through well articulated alternative drafting proposals.

xi) the need to ensure effective co-ordination of the OAU Ad Hoc Working Group of Experts during INCD session so that the experts can provide the necessary technical back-stopping to the African Group.

xii) the need for prompt and regular sharing of information within the African Group on the thinking, orientation and strategy of our negotiating partners.

xiii) the need to avoid over dependency on assistance from our negotiating partners which might compromise Africa's interest during negotiations.

xiv) the need to encourage African Governments to increasingly take-up the cost of travel and DSA for the African Delegations to the INCD.

xv) the need to creat an enabling environment to avoid capital flight from Africa.

xvi) the need to establish tne meaning behind the concept of new and additional resources as currently being used by our negotiating partners, especially with reference to the notions of "those who are in position to provide assistance, and additionality within the existing resources.

xvii) the need for flexibility without compromising the strategic interests of the region.

xviii) the need to ensure that promises made by our negotiating partners aimed at dividing the African delegation are totally disregarded at national and sub-regional levels.

xix) the need to recognize that the negotiations are increasing becoming more political than technical and therefore the need for diplomatic skill in the negotiations has increasingly become apparent.

xx) the need to continuously identify the strategies being used by our negotiating partners and design the appropriate approach against such strategies.

15. Subsquentely, the Group of Experts focussed on the following recommendations:

i. A pertinent recommendation made concerning future action plans for the African Group was that an Intergovernmental meeting be held in Geneva for the purposes of preparing the Group for the 4th Session of the INC-D. It was proposed that delegations be informed early enough to avail themselves in Geneva from the 15th of March and to endeavour to avoid other conflicting and somewhat strategically convened meetings which tend to concide with the INC-D negotiations.

ii. It was agreed that in order to avoid pitfalls experienced in earlier sessions, and to strengthen the African Group's cohesiveness, a diversification of responsibility be devised such that various issues be distributed among known individuals as spokesmen. For

instance, political matters should be handled by a different individual from those of a legal or technical nature.

iii. There should be a clearly defined structure of a possible fall-back position for the whole of the African Group.

iv. Regarding the attendance of the Inter-governmental meeting in Geneva prior to the 4th Session, it was suggested that the OAU catalyse the commitment of governments by reminding them of their roles in supporting delegations to attend the meetings, since the purpose of the meeting is to equip and better prepare the delegations for the negotiations.

v. The meeting was informed that the 59th Session of the OAU Council of Ministers adopted a resolution requesting the Secretary General of the OAU to establish a contact group at a ministerial level to intercede on behalf of Africa with a view to pursuading the developed countries which have displayed a negative attitude towards Africa's interests during the INC-D negotiations, to change their positions in favour of Africa. In this regard the meeting was of the view that in designating members of the contact group the Secretary General of the OAU may wish to take into consideration those Ministers who have regularly and actively participated in the INC-D deliberations. To this end the participants were of the view that the Minister of Environment of Kenya as the current Minister Coordinator for IGADD, Minister of Environment of Burkina Faso, representing CILSS and the Minister of Environment of Tunisia, representing UMA, could constitute such a Contact Group. Additionaly the Minister of Environment of Senegal could also join the group.

In view of time constraint and given the wide divergence of views as manifested during the 3rd Session of INC-D, the Expert Group was of the view that the Contact Group should begin its activities after the 4th INC-D Session in Geneva. Furthermore the Expert Group proposed that the Contact Group should be supported by experts familiar with the relevant subject matter and from the OAU Secretariat.

vi. With regard to the Implementation Annex, the Expert Group was concerned that there were still some legal ramifications to be sorted out. They were of the view that the issue as to whether there should be an Annex or Annexes should be explored further. For instance, in some countries, Parliamentary Procedures do not allow for ratification of a legal instrument which the country has not seen or had access to. This therefore

casts doubt on the legal status of those Annexes which will not have been completed by June 1994. Additionnaly, even if it were possible to grant equal status to all the Annexes, the question of superiority as inherent in the notion of the particularlity given to Africa's, would also have legal implications.

v. It was the view of the Expert Group that even if Principle of Provisional Entry into Force was to be accepted, there are still some legal technicalities that would have to be overcome in the context of the Viena Convention on treaties.

16. Participants recognized the need to ensure that the elaboration of the Implementation Annex for Africa draws inspiration and benefits from national, sub-regional and regional case studies already prepared either by the national govenments or sub-regional organizations. In addition, the Implementation Annex for Africa should also draw inspiration and benefit from existing programmes in the area of environment and development already negotiated in various continental fora such as AMCEN. In this regard, Working Group I was requested to explore the possibility of incorporating the relevant AMCEN programmes to the programme activities of the Implementation Annex for Africa.

17. The Expert Group agreed on the terms of reference of the two working groups as follows :

WGI. - Implementation Annex for Africa. Terms of reference :
i. Design a structure, format and orientation of the Implementation Annex for Africa;
ii. Identify strategic elements that should be incorporated in the Annex;
iii. Review and examine the national, sub-regional and regional case studies and identify specific elements to be incorporated in the Annex;
iv. Establish the list of priority programmes to be incorporated in the Annex.

WG II. - Revised reference negotiating text : Africa's Drafting Proposals .

Terms of reference :
i. Elaborate Africa's Draft Proposals for the 4th Session of the INCD ;
ii. Elaborate fall-back positions to be used by the African Group during the 4th Session of the INCD;
iii. Identify modalities and design strategy for dealing with the brackets in the main text of the Convention;

iv. Ensure the reference negotiating text is in line with the Implementation Annex for Africa and the Convention.

18. Following this decision, the experts began their respective delibirations in the two working groups.

19. In view of the complexity of the negotiations and the need for Africa to be effectively represented and participate in the 4th session as well as facilitate the work of the Experts Group, the Secretariat was requested to undertake a following activities:

i. Immediate request of the French version of the following documents -
- DOC. A/AC.241/17 on the Possible Format and Elements of a Regional Implementation Annex for Africa;
- DOC. A/AC. 241/15/Rev.1 Revised Negotiating Text of the Convention; and
- the Regional Implementation Annex for Africa prepared by the INCD Secretariat.

20. Additionnaly, the Secretariat was requested to :

i. Explore the possibilities of convening an Inter-governmental meeting of experts in Geneva three days before the Substantive Session of the INCD. The dates proposed were 15 to 17 March 1994;

ii. Make proposals on the composition of the technical core group that will support Africa initiatives during the 4th Session of the INCD;

iii. Explore the possibility of including the Minister of Environment of Cape Verde in the Contact Group that is to be established by the Secretary General of the OAU. In making this recommendation, the Expert Group recongnized the need for gender sensitivity and balance.

21. The following experts participated in the meeting :

1. Mr. Rogatien Biaou
First Consellor of Permanent
Mission of Benin to the UN
New York

2. Mr. Bolong L. Sonko *
Permanent Secretary
Ministry of Foreign Affairs
The Gambia

3. Mr. Ntsama Jean Dieudonné
Head of the Legal Department
Ministry of External Relations
Cameroon

4. Mr. Mustapha Sar
DCPAC/UNEP
Nairobi

5. Mr. Moulaye Diallo
Ministry of Environment
Bamako/Mali

6. Ms Doris K. Mwinga
Ministry of Envrironment
Lusaka/Zambia

7. Mr. Luscas Tandap
ECA
Addis Ababa/Ethiopia

8. Prof. C.A. Johnson
Cabinet/OAU

9. M. Tijan Jallow
Technical Advisor
UNSO/New York

10. M. Samuel Nyambi
Director a.i.
UNSO/New York

11. Mr. R. Sinange
IGADD/INCD/Djibouti

12. Mr. Ndegwa Ndiangui
c/o UNDP/UNSO
Kenya

13. Prof. Paul Stephen Maro
Technical Advisor
SADC
Environment and land Management
Sector
Maseru/Lesotho

14. Mr. Gaoussou Traore
Coordonnateur Scientifique et Technique
Institut du Sahel (INSAH)
Bamako/Mali

15. Mr. Bandré Pierre
Technical Advisor
Ministry of Environment and Tourism
Burkina Faso

16. Mr. Delmi Boudjemaa
Director Multilateral Relations
Ministry of Foreign Affairs
Algeria

17. Mr. Mounkaila Goumandakoye
Director of Environment
and Hydraulics
Ministry of Environment
Niamey/Niger Fax 732784

18. Mr. Wawa Leba
ESCAS/OAU

19. Mr. Ablassé Ouédraogo
Chief
UNSO Regional Office
Nairobi/Kenya

20. Mr. Louis Armand M. Ouali
Consultant CILSS
Ouagadougou/Burkina Faso

21. Dr. Taye Bezuneh
Director of Research
SAFGRAD/OAU

22. Mr. Moise Akle
UNEP/OAU

23. Mr. Mamadou Diouf
Directeur des Applications
Agrométéorologiques
Centre AGRHYMET
Niamey/Niger

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