

obtained prior to establishing a safety zone by a resolution of the Security Council.

With regard to the deportation of Palestinians, he noted that the situation had changed since 1989 when the issue was first considered by the AALCC. At present, there was a need to support the peace accords which are under implementation and encourage both sides i.e. Palestine and Israel to do their utmost to achieve peace in the region, and to eschew all acts which directly disrupt the peace process.

The *Delegate of the Arab Republic of Egypt*, commenting on the establishment of safety zones, said that the codification of the concept was premature. He stated that practically speaking, seeking prior consent of the State was not always possible. He observed that many States in Asia and Africa were landlocked States and the establishment of safety zones would deprive the refugees the right of asylum. He proposed the study of the role of regional organizations in this regard as they had both legal and practical experience in dealing with the creation of safety zones. With regard to deportation of Palestinians, he suggested that the Committee continue to follow up the subject and lend moral support to the peace process in the Middle East, as a step forward in achieving just and comprehensive peace in spite of obstacles being faced by the parties concerned.

The *Delegate of Pakistan* expressed the view that the treatment accorded to refugees under the Islamic law was adequate and suggested that the Secretariat undertake a study of the Islamic law and incorporate its salient principles in the Model Legislation on the Status and Treatment of Refugees.

The *Delegate of Thailand* clarifying his delegation's view stated that consent of the State is implied and will be required until the proposed legal framework for establishment of safety zones becomes a principle of international humanitarian law. Once this comes to be recognized as principles of humanitarian law, he said, the consent of the State would become obligatory and hence there would be no need for para 2(2).

The *Hon'ble Minister of Justice of Sudan* stated that there were two kinds of internally displaced, one within the conflict area and the other in the State itself. The Security Council could not either under Chapter 6 or 7 of the UN Charter interfere with the second category of displaced persons. Therefore, consent of the State was necessary prior to any resolution of the Security Council as otherwise it would interfere with the sovereignty of the State.

(ii) Decision of the Thirty-fifth Session (1996) Agenda item : Status and Treatment of Refugees

(Adopted on 8.3.96)

The Asian-African Legal Consultative Committee at its Thirty-fifth Session

Having considered the items "Status and Treatment of Refugees" and "Deportation of Palestinians in violation of International Law particularly the Fourth Geneva Convention of 1949 and the Massive Immigration and Settlement of Jews in the Occupied Territories" as set out in Doc. No. AALCC/XXXV/Manila/96/2;

Having heard the comprehensive statement of the Deputy Secretary-General;

Having heard also the statement of the Representative of the United Nations High Commissioner for Refugees;

Recalling that the current year marks the 30th anniversary of the Bangkok Principles; and

Taking Note that 'an Agreement was signed in Washington on 28th September 1995 between the Palestine Liberation Organisation Leader and the then Israeli Prime Minister;

1. *Takes note* of the proposals advanced by the Representative of the United Nations High Commissioner for Refugees, in particular that of rendering financial and technical assistance to the Secretariat for the purposes of organizing a seminar;

2. *Appeals* to Member States to take all possible measures to eradicate

the causes and conditions which force people to leave their countries and cause them to suffer unbounded misery;

3. *Urges* Member States who have not already done so to ratify and/or accede to the Convention relating to the Status of Refugees, 1951 and the 1967 Protocol thereto;

4. *Requests* the Member Governments to transmit their observations and comments on the Model Legislation prepared by the Secretariat and set out in Part A of Doc. No. AALCC/XXXV/Manila/96/2;

5. *Also requests* the Member Governments to send their comments and observations on the proposed legal framework for the establishment of safety zones for displaced persons in their country of origin prepared by the Secretariat;

6. *Directs* the Secretariat to study further the concept of safety zone in the light of the comments received and to continue to monitor and assess the developments relating to the establishment of safety zones for the internally displaced persons in their country of origin;

7. *Requests* the Secretariat to organize in collaboration with and financial and technical assistance of the UNHCR, a seminar in 1996, on the status and treatment of refugees to commemorate the 30th Anniversary of the Principles of Refugees adopted by the AALCC at its 8th Session in Bangkok in 1966;

8. *Takes cognizance* of the hardships suffered by the Palestinian people;

9. *Expresses* the hope that the next round of the peace process will witness the resolution of outstanding issues including the question of the Jewish Settlements in Palestine and the deportation of Palestinians;

10. *Directs* the Secretariat to continue to monitor the developments in the Occupied Territories from the viewpoint of relevant legal aspects;

11. *Decides* to place the item "Status and Treatment of Refugees" on the agenda of its Thirty-sixth Session; and

12. *Also decides* to place the item 'Deportation of Palestinians in violation of international law particularly the Fourth Geneva Convention of 1949 and the massive immigration and settlement of Jews in the occupied territories' on the agenda of its Thirty-sixth Session and to consider this item in conjunction with the item 'Status and Treatment of Refugees'.

VI. United Nations Conference on Environment and Development : Follow-up

(i) Introduction

The item entitled "United Nations Conference on Environment and Development: Follow-up" has been briefly considered by the Committee at its 32nd (Kampala, 1993), 33rd (Tokyo, 1994) and 34th (Doha, 1995) Sessions. The Secretariat studies prepared for these sessions focussed on the developments in regard to the implementation of Agenda 21 in general, and the three International Conventions namely, the Framework Convention on Climate Change (FCCC), the Bio-diversity Convention and the Convention to Combat Desertification, in particular.

The FCCC came into force on 21 March 1994. The first Session of the Conference of Parties (COP) was held in Berlin from 28 March to 7 April 1994. The most important decision adopted at that Conference was the "Berlin Mandate" which provided for launching a process to strengthen the commitments of Annex I Parties in Article 4 para 2 (a) and (b) of the Convention through adoption of a protocol or another legal instrument. A note reviewing the recent developments in this regard has been set out in Section II of the brief, given in this chapter.

The Convention on Bio-diversity came into force on 29 December 1993. Section III contains a review of the Second Session of the COP held in Jakarta in November 1995.

The Convention to Combat Desertification which was adopted on 17 June 1994, has not yet come into force. As of 1st December 1995, it had been signed by 115 States but so far only 16 States have ratified the Convention. Among the AALCC Member States only Egypt and Senegal are parties, to the Convention. The discussions in the Inter-governmental Negotiation Committee have been continuing on organizational and substantive matters. The Eighth Session of the INC-D has held in Geneva

from 5 to 16 February 1996. A note on the outcome of that Session will be prepared by the Secretariat.

Thirty-Fifth Session : Discussions

The *Deputy Secretary-General* Mr. Tohru Kumada introduced the AALCC Document which contained an overview of the recent developments in respect of the Framework Convention on Climate Change and the Convention on Bio-diversity. He recalled that this item had been on the agenda of the AALCC since its Kampala Session in 1993. At that Session, the Committee had directed the Secretariat to monitor the developments related to the implementation of Agenda 21, in particular the three environmental conventions namely, the Framework Convention on Climate Change, the Bio-diversity Convention and the Convention to Combat Desertification. He observed that the Framework Convention on Climate Change and the Bio-diversity Convention had already entered into force and some progress had been made towards their implementation. As regards the Framework Convention on Climate Change, at the first session of the Conference of Parties, which was held in March-April last year, apart from the decisions on the organizational and other substantive matters, the most important decision taken was concerning the adoption of the 'Berlin Mandate'.

There were 144 States parties to the Convention, 30 of them are Members of the AALCC. This means at least 1/3rd of the AALCC Member States had not yet joined the Convention.

The AGBM discussions on the adoption of a legal instrument to supplement the Convention's provisions concerning the commitments of the developed country parties indicated the unresolved issues which needed to be considered. The economic impact particularly for the oil producing countries had been a source of concern. Not much progress had been made in respect of crucial issues such as financial resources and transfer of technology.

As regards the progress on the implementation of the Bio-diversity Convention, COP 2, which was held in Jakarta in November 1995, had registered progress on several issues of great importance for the smooth implementation of the Convention.

He mentioned that the General Assembly would hold a special session in 1997 to carry out an overall review and appraisal of the implementation of Agenda 21.

The format, scope and organizational aspects of the special session were considered at the fiftieth session of the General Assembly. He urged

the Member Governments to consider and direct the Secretariat about its future work in this direction.

The Delegate of the *Islamic Republic of Iran* observed that the Rio call for a "New Global Partnership" to address environment and development in an integrated manner was far from being a reality. He stressed the urgent need for the developed countries to implement their commitments contained in Agenda 21, particularly by providing new and additional financial resources and environmentally sound technologies on concessional and preferential terms. In his view, the tendency to impose various unrealistic standards and requirements on the industries and products of developing countries, as well as adoption of financial policies and instruments detrimental to the economic and social development of developing countries under the pretext of environmental protection was inconsistent with the spirit and provisions of environmental agreements, including the Framework Convention on Climate Change.

He emphasised that the chances of achieving the objective of the Framework Convention on Climate Change would remain slim as long as the Annex I parties to the Convention failed to meet their commitments in a comprehensive manner which takes into account fully the social and economic aspects of the Climate Change. In that context, setting of quantified limitation and reduction objectives, without considering their negative economic impacts on those developing countries to which the Convention gave special attention, could not be regarded as a comprehensive approach for the implementation of the Convention.

The Delegate of *Ghana* stated that some of the commitments undertaken by the developed countries had not been honoured, whilst in developing countries funding of major projects by multinational financial institutions had been made contingent upon certain environmental conditionalities. Moreover, developing countries had not received new and additional financial resources and transfer of technology as envisaged under the Framework Convention on Climate Change and the Convention on Biological Diversity. That failure had gone a long way in undermining the painstaking work done before, during and after Rio. Emphasising that all countries, developed and developing, alike should contribute towards the untangling of the problems related to environment and development, he supported the view, nonetheless, that the principle of common but differentiated responsibility should be the basis of any global response to environmental issues. The application of environmental standards by the developing countries should, therefore, be in accordance with their respective capabilities and responsibilities.

He informed the meeting that the process of ratification of the Convention to Combat Desertification by his country was underway.

With respect to the future work by the Secretariat in the field of environment, he suggested that it continue to prepare studies on important international environmental conventions with a view to promoting their wider adherence by the AALCC Member States.

The Delegate of *India* recognised that environment was a matter of "common concern". She, therefore, strongly supported international co-operation in the field of environment, which manifestly required a concerted multilateral approach. She emphasised that environmental protection could not be isolated from the general issues of development. In her view, decisions regarding development strategies in pursuance of sustainable development were a matter of national decision-making. The role of international co-operation should be to support and supplement, and not supplant, such national efforts. Hence, review of national policies or plans by external agencies, or imposition of mandatory guidelines in sectors such as forestry or energy would not be acceptable. Further, the integration of environmental concerns into policies and programmes concerning economic development should be carried out without introducing a new form of conditionality in aid or development financing, and should not be used as a pretext for erecting new trade barriers.

She stressed that regulatory approaches, where agreed to, should incorporate measures on funding and transfer of technology which would enable developing countries to adjust smoothly to international regimes meant to tackle environmental problems not of their creation. Multilateral funding institutions or mechanisms to tackle environmental problems should be democratically administered, and not donor dominated.

The Delegate of *Sudan* said that the issues concerning environment were of great importance and related to right of development. It would benefit the developing countries to join the environmental conventions. He expressed his concern about the inability of the AALCC Secretariat to strengthen its environment programmes due to lack of funds. He appreciated the voluntary contributions made by the Governments of Saudi Arabia and Myanmar to the AALCC's Special Fund on Environment.

The Delegate of *Singapore* stressed that environment and development were inextricably linked. Further, sustainable development was the key to a more secure and prosperous future. Principle 1 of the Rio Declaration recognised that human beings were at the center of environmental concerns. As regards the work of the Commission on Sustainable Development, he was of the view that progress had been slow, especially in the areas of

the provision of new and additional financial resources and the transfer of technology. While urging the redoubling of efforts, he suggested that ways and means should be identified to solve environmental problems at the local and municipal levels, in particular and also through bilateral, regional and international co-operation to implement Agenda 21.

The Delegate of the *Philippines* said that his government had established a Philippine Council on Sustainable Development with the task to ensure integration of environmental considerations in the development strategies. A draft of Philippine Agenda 21 was also in the completion stage. This would guide implementation of Agenda 21 at national level. He said that the Philippines had ratified both the Framework Convention on Climate Change and the Bio-diversity Convention and was committed to their implementation.

On Bio-diversity, he expressed his particular concern about the issue of access to genetic resources and bio-safety. At the national level, his country had also pioneered innovative approaches to bio-diversity conservation using the protected areas approach and community-based strategies.

As regards the work programme of the AALCC in the area of environmental protection, he supported the suggestions made by the Secretariat.

The Delegate of *China* observed that the efforts made by the international community, especially by the developed countries were not enough in comparison with the requirements of the effective implementation of various decisions of the UNCED. Instead of taking substantive actions, the developed countries have obviously retrogressed from their original commitments made at the UNCED. It was a matter of deep concern that the financial commitments of Agenda 21 including those regarding official development aid were short of expectations and requirements and that the current availability of financial resources for sustainable development and the limited provision of new and additional financial resources would constrain the effective implementation of Agenda 21 and could undermine the basis of the global partnership for sustainable development.

He said that one new development with respect to the issue of Climate Change was the convening of the first meeting of the Conference of the Parties to the UN Framework Convention on Climate Change in Berlin last year. This symbolized a new and important step forward by the international community in combating Climate Change. The conference adopted the Berlin mandate which started the process of negotiating a legal instrument in order to strengthen the commitments undertaken by

the developed country parties to reduce the emission of green-house gases. While fully supporting this process, he was of the view that this process should strictly comply with all the principles set in the Convention and that the Berlin mandate and its outcome should in no way impose new commitments upon the developing country parties.

As regards the conservation of biological diversity, the Convention on Biological Diversity had established the legal framework for international co-operation. He said that as an interim financial mechanism, the GEF should take appropriate steps to expedite the process of the project approval and implementation and increase the funds used for the Convention in order to meet the requirements of the Convention. With regard to the bio-safety issue, it was necessary to formulate a protocol under the Convention. He suggested that an open-ended working group should be established first by the Conference of the Parties to consider the elements and modalities of the proposed protocol so as to lay the foundation for future negotiations. The proposed protocol should mainly cover the transboundary movement of living modified organisms (LMOs) and all States should strengthen their domestic legislations to govern the use and handling of LMOs with a view to supporting the international action in this field.

With regard to combatting desertification, the UN Convention to Combat Desertification had set up the international cooperation framework within which the developed country parties would help the developing country parties, especially those in Africa to combat desertification and would facilitate the international cooperation in this field. However, it should be pointed out that the rights and obligations provided in the Convention were uneven, because the developed country parties did not undertake any substantive obligations to implement the Convention, particularly in terms of financial resources and mechanism.

The Delegate of *Nepal* observed that peace, development and environmental protection were interrelated and indivisible, and his country's activities and efforts towards environment conservation were primarily guided by this very norm.

Nepal had become a party to several conventions on environment and assumed responsibility to adopt administrative, legislative and judicial measures to pursue the effective implementation of these conventions. It had been sincerely considering to make a comprehensive code on environmental protection with a view to bringing national efforts and mechanism in perfect harmony with the international norms and principles governing environment and its protection. In his view, to implement the Agenda 21, the first, crucial and effective step should begin at the national

level. Each government should identify its environmental problems and establish its own priorities. The UN system and the regional organizations should supplement, coordinate and wherever necessary, initiate measures to assist the governments in implementing those programmes.

He informed the Meeting that his country's 8th Five-Year Plan (1992-1997) encompassed the policies on environment which mainly included institutional development programmes, Environmental Impact Assessment Programme, Integrated Land-use System, Preservation of Nature and Cultural Heritage, Environmental Pollution Prevention Programme, and Public Awareness Raising Programmes. He said that a high-level Environment Protection Council had been set up under the Chairmanship of the Prime Minister in order to boost up the activities and the programmes *vis-a-vis* environment.

The Delegate of *Pakistan* was of the view that as regards the work programme on environmental matters was concerned, since environment and development covered wide areas and the AALCC lacked adequate funds, the focus should be on legal issues.

(ii) Decision of the Thirty-fifth Session (1996)
Agenda item : The United Nations Conference on
Environment and Development—Follow up

(Adopted on 8.3.96)

The Asian-African Legal Consultative Committee at its Thirty-fifth Session

Having considered Document No. AALCC/XXXV/Manila/96/4 on matters concerning the follow-up to the United Nations Conference on Environment and Development held in Rio in June 1992;

Having heard the comprehensive statement of the Deputy Secretary-General;

Recognizing the need to monitor the ongoing work in relation to the Convention on Biodiversity, the Framework Convention on Climate Change, and the United Nations Convention on Combating Desertification;

Recognizing also the need to participate actively in the meetings of the Conference of Parties of these conventions;

Mindful of the importance of the work of the Commission on Sustainable Development towards the implementation of Agenda 21;

1. *Invites* the United Nations Environment Programme (UNEP) to collaborate with the AALCC in the follow-up on the United Nations Conference on Environment and Development and to continue to participate actively in the work of the AALCC in the future;

2. *Calls upon* Member States to participate actively in the Conference of Parties and meetings convened by UNEP.
3. *Requests* the Member Governments which have not already done so to consider ratifying or acceding to the Convention on Biodiversity, Framework Convention on Climate Change and the Convention to Combat Desertification;
4. *Appreciating* the voluntary contributions made by the Governments of Saudi Arabia and Myanmar to the AALCC's Special Fund on Environment, *urges* Member Governments to make voluntary contributions to that Fund; and
5. *Directs* the Secretariat to continue to monitor the progress in environmental matters, particularly towards the implementation of Agenda 21 and the follow-up work to the recent environmental conventions and submit a report thereon at its Thirty-sixth Session.

(iii) Secretariat Brief United Nations Conference on Environment and Development : Follow-up

United Nations Framework Convention on Climate Change (UNFCCC) : An Overview of the Recent Developments

(i) Background

The General Assembly by its resolution 45/212 adopted on 21 December 1990 established an Intergovernmental Negotiating Committee (INC) for a Framework Convention on Climate Change and mandated it to prepare the text of an effective Framework Convention on Climate Change. The INC, at its fifth session on 9 May 1992, adopted the United Nations Framework Convention on Climate Change (UNFCCC). The Convention was open for Signature from 4th to 14th June 1992 at the United Nations Conference on Environment and Development (UNCED) held in Rio. 166 States had signed the Convention by that date. The Convention received the requisite 50th ratification on 21 December 1993 and entered into force after 90 days on 21 March 1994. There are 144 States parties to the Convention.¹

Article 7.4 of the Convention envisaged that the first session of the Conference of Parties (COP) should be held in one year after the entry into force of the Convention. Further, with regard to interim arrangements, Article 21(1) mandated the INC Secretariat to carry out that function until the completion of the first session of COP.

1. 30 AALCC Member States are parties to the Convention. They are : Arab Republic of Egypt, Bangladesh, Bahrain, Botswana, China, Gambia, India, Kuwait, Kenya, Democratic Republic of Korea, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Sudan, Thailand and Uganda.

The General Assembly, at its forty-eighth session, endorsed the offer of the Government of Germany to host the first session in Berlin from 28 March to 7 April 1995.²

(ii) Berlin Conference (COP. 1)

The Berlin Conference was held in two segments. The first one from 28 March to 4 April 1995 at the senior officials-level to continue negotiations on unresolved issues and the second one at the Ministerial-level from 5 to 7 April 1995 for the adoption of decisions. During the Conference, hectic negotiations were held particularly on the key issue concerning adequacy of commitments. The most important decision adopted by the Conference was the Berlin Mandate.³

(a) Berlin Mandate

The COP having reviewed Article 4, paragraph 2(a) and (b) of the UNFCCC concluded that the Commitments contained in these sub-paragraphs were not adequate and agreed to begin a process to enable it to take appropriate action for the period beyond 2000, including the strengthening of those commitments of Annex I parties through the adoption of a protocol or another instrument. Berlin Mandate is elaborated in three Sections.

Section I envisages that the process would be guided, *inter alia*, by the following:

- (a) The provisions of the Convention, including Article 3, in particular the principles concerning inter-generational equity and common but differentiated responsibilities;
- (b) Specific needs and concerns of developing country parties referred to in Article 4.8; the specific needs and situations of least developed countries referred to in Article 4.9 and situation of parties, particularly developing country parties referred to in Article 4.10 of the Convention;
- (c) The legitimate needs of the developing countries for the achievement of sustained economic growth and eradication of poverty as well as recognizing that all parties have a right to, and should promote sustainable development;
- (d) The fact that the largest share of historical and global emissions of greenhouse gases originated in developed countries and the per capita emission in developing countries was still relatively

2. General Assembly Resolution 48/189 adopted on 21 December 1993.

3. The text of the Berlin Mandate and other Decisions of the COP are contained in Document FCCC/CP/7/Add. 1.

low and their share would grow to meet their social and development needs;

- (e) The promotion of widest possible co-operation and participation by all countries in accordance with their common but differentiated responsibilities and social and economic conditions;
- (f) Coverage of all greenhouse gases, their emissions by source and removals by sinks and all relevant sectors;
- (g) The need for all parties to co-operate in good faith and to participate in this process.

Section II provides that the process would aim at strengthening the commitments of Annex I Parties both by elaborating policies and measures as well as setting quantified limitation and reduction objectives of emissions process within specified time-frames such as 2005, 2010 and 2020. It would not introduce any new commitments for non-Annex I parties but reaffirm existing commitments in Article 4.1 and continue to advance the implementation of those commitments with a view to achieving sustainable development. It would consider co-ordination among Annex I parties in respect of relevant economic and administrative instruments and provide for exchange of experience on national activities and a review mechanism.

Further Section III provides that the process would be carried out in the light of the best available scientific information and assessment of climate change and its impacts including those available from the IPCC reports. It would include an analysis and assessment and identify possible policies and measures for Annex I parties.

The protocol proposals of the Alliance of Small Island States (AOSIS), which contained specific reduction targets and was formally submitted earlier in accordance with Article 17 of the Convention, along with other proposals would be included for consideration in the process.

Lastly, while stressing the urgency on this matter, it established an open-ended *ad hoc* group of parties and mandated it to ensure completion of the work as early as possible in 1997, with a view to adopting the results and the third session of the COP.

(b) Other Decisions

At its tenth plenary meeting, on 7 April, the COP adopted 21 decisions on various agenda items which *inter alia* provided for establishment of a pilot phase for implementation of joint projects, location of the Permanent Secretariat in Bonn (Germany), establishment of two subsidiary bodies namely, Subsidiary Body on Scientific and Technical Advice (SBSTA) and