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**ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

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# ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

## I. INTRODUCTION

### A. Background

1. The law relating to “Environment and Sustainable Development” constitutes an important item on the work programme of AALCO. The Organization has been following the developments on this topic for nearly four decades now. The present report is on the implementation of the international regime established by the three Rio Conventions namely, the United Nations Framework Convention on Climate Change, 1992 (UNFCCC); Convention on Biological Diversity, 1992 (CBD); and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994 (UNCCD), which is supplemented by the Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002 (WSSD).

2. The present Secretariat Report would provide an overview of the Eighteenth Session of the Conference of Parties to the UNFCCC (COP 18) and Eighth Meeting of Parties to the Kyoto Protocol, (CMP 8) held from 26 November to 8 December 2012 at Doha, Qatar and briefly refers to the subsequent negotiations on climate change held in Bonn, Germany in June and April 2013 and in Bangkok in August 2012. A brief report of the Seminar held on “Climate Change: Post Kyoto Climate Policy” organized by the AALCO Secretariat at AALCO Headquarters, New Delhi on 16 January 2013 would also be dealt with. The next section would deal with Eleventh Meeting of the Conference of Parties to the CBD (COP 11) held from 8 to 19 October 2012 and Sixth Meeting of Parties to the Cartagena Protocol on Biosafety (CPB) held from 1 to 5 October 2012 at Hyderabad, India. The last section of the Report deals with the First Universal Session of the Governing Council/Global Ministerial Environment Forum held from 18 to 22 February 2013 at Nairobi, Kenya. Finally, it offers some comments and observations on the agenda item under consideration for the Fifty-Second Annual Session of the Organization.

### B. Deliberations at the Fifty-First Annual Session of AALCO (18 – 22 June 2012, Abuja, Federal Republic of Nigeria)

3. The agenda item “Environment and Sustainable Development” was a deliberated item considering the relevance of the topic. Dr. Yasukata Fukahori, Deputy Secretary-General (DSG) of AALCO introduced the agenda item “Environment and Sustainable Development” as contained in the Secretariat document AALCO/51/ABUJA/2012/SD/S 10. The DSG said that the Organization had been following the developments on Environment and Sustainable Development since 1975 with the contemporary focus being on the implementation of the three Rio Conventions namely, the: United Nations Framework Convention on Climate Change, 1992; Convention on Biological Diversity, 1992; and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994; and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development, 2002. The present Secretariat report contains developments in the area of International regime on climate change, international

regime on biological diversity, and Follow-Up on the progress in the Implementation of the outcome of World Summit on Sustainable Development.

4. While referring to the Climate Change issues, the DSG said that it was the most prominent issue that the international community faced today. In the year 2011, at the Seventeenth Conference of Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Durban, South Africa, Durban Outcome - a “package deal” was adopted. The focus at the Durban Conference was on post-2012 Kyoto Protocol commitment or second-term commitment period. The hope was that the negotiations would produce more ambitious greenhouse gas emission reduction pledged by developed countries, a second commitment period under the Kyoto Protocol, and a mandate for a new legally-binding agreement. Further, it also wanted the institutions mandated by the 2010 Cancun Agreements to become fully operational and to complete the terms of reference for the review of the long-term global goal for emission reductions.

5. Referring to the Durban Package, the DSG said that the package seemed to fulfil several objectives of countries that were among the most vulnerable to climate change: the Pacific Island Developing States and the larger Alliance of Small Island States. In fact, the Durban Package comprised decisions under both the UNFCCC and the Kyoto Protocol that accomplished many of the Alliance of Small Island States (AOSIS) goals for adaptation, finance, technology transfer, and capacity building. However, there was a shortcoming in terms of mitigation, and the action taken on the Kyoto Protocol’s second commitment period which was mere proposal to formalize pledges made in Cancun in 2012 by developed country Kyoto Protocol parties and does not include major emitting countries. The Durban Outcome dealt with UNFCCC parties agreeing to establish the Ad Hoc Working Group on the Durban Platform for Enhanced Action (“ADP”) which would adopt, a new “protocol, legal instrument or agreed outcome with legal force” by 2015. The new ADP has a mandate to develop proposals on the full range of climate change issues, its focus would clearly be on raising the “level of ambition” with respect to mitigation for all parties.

6. In the field of desertification, he briefly summarized the major decisions adopted at the Tenth Session of the Conference of Parties to the United Nations Convention to Combat Desertification convened in the Republic of Korea in 2011 wherein a high-level segment was held. Those discussions centred around three major concepts: (i) food security, (ii) green economy, and (iii) scientific knowledge. To solve development problems, climate change, desertification and food security, efficient use of renewable energy was an important potential tool. Promoting investment, combined with a renewed synergy of Rio Conventions could produce holistic and robust strategies, strategic partnerships and cooperative frameworks.

7. The DSG mentioned that in June 2012, when the States marked the commemoration of 20 years of the Rio Conference and 10 years of WSSD, it was essential to recall the role and importance of the UNEP. Therefore, 40<sup>th</sup> Anniversary Year of the UNEP was also historic. Since 1972 Stockholm Conference, the environmental summits had played a crucial role in bringing sustainable development on international political agenda. Many of the countries had changed their national policies favouring green economy which would in future be beneficial for protection of environment and ensuring sustainable development for succeeding generations. It

was essential, on those aspects, that countries took adequate efforts for protection of the environment besides safeguarding their national interests with a vision to transform their societies into a green economy which would be less polluting and be environmentally sustainable. The DSG briefly summarized the issues covered in the Secretariat report, that included, the Twelfth Special session of the UNEP Governing Council/Global Ministerial Environment Forum held in Nairobi in February 2012 and the 19<sup>th</sup> session of the UN Commission on Sustainable Development held in New York in May 2011. The themes for the Rio+20 were (a) a green economy in the context of sustainable development poverty eradication; and (b) the institutional framework for sustainable development. The seven priority areas identified were decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans and disaster readiness.

8. The DSG informed that the issues for focused deliberations on the agenda item were:

- (i) Issues for deliberating upon the forthcoming Protocol/legal instrument on second-term commitment of countries in climate change, encompassing the principle of common but differentiated responsibility to be completed by 2015;
- (ii) Importance of Green economy and preparations for the Rio+20 Conference; and
- (iii) Challenges facing environmental sustainability.

9. In the deliberations following the statement made by the DSG, **the Delegate of Nepal** said that it was a coincidence that they were discussing the topic on 'Environment and Sustainable Development' which was being discussed at the Earth Summit, Rio+20 and hoped that all AALCO member states were participating in that Conference. He recalled that at the 50<sup>th</sup> Session of AALCO Member States expected that United Nations Climate Change Conference that took place at Durban, would come up with the ambitious quantified emission reduction targets set for developed countries for second commitment period under Kyoto Protocol and those developed countries that were not parties to the Kyoto Protocol should also take comparable emission reduction commitments after 2012. Instead it just concluded with the extension of tenure of the two Ad hoc Working Groups. Capitalization of Green Climate Fund and decision on future of Kyoto Protocol after 2012 was still not so clear. Sustainable development emphasized a holistic, equitable and far-sighted approach to decision-making at all levels. It emphasized not just strong economic performance but intra-generational and inter-generational equity. It rested on integration and a balanced consideration of social, economic and environmental goals and objectives. The concept of green economy that countries were going to emphasize in Rio, focused primarily on the intersection between environment and economy.

10. Being aware of the human-induced multiple impacts of climate change on mountain ecosystems, goods, and services and implications on livelihoods, health and welfare of the mountain people and environment as serious, there was a need to take urgent, collaborative and effective actions at all levels to address climate induced vulnerabilities and impacts on mountains, coastal zones and other areas for enhancing the well-being of climate vulnerable communities and also strengthening the climate resilience measures by peoples. He said that his delegation wanted AALCO to engage expert-teams in formulating ecological zone-specific strategies that ensured practical solutions to the climate change vulnerability and measures in

ensuring sustainable application of such solutions. He recalled the International Conference of Mountain Countries on Climate Change held in Kathmandu from 5-6 April 2012 wherein it was agreed to enhance cooperation among the mountain countries and countries with mountainous regions for addressing the common problems recognizing that the mountains provide solutions for sustainable development using ecosystem services, in particular, water, biodiversity, energy, and for enhancing food security. He held the view that if AALCO could create a dedicated forum within it for better understanding of the challenges posed by the climate change and possible measures for mutual cooperation among the members that would be instrumental in responding to the global problem. Hence, Kathmandu Call for Action 2012 would be a good initiative to protect the high potentials of mountain ecosystem service to promote green growth strategies and strengthen linkages between mountain ecosystem and other ecosystems to reduce poverty and promote sustainable development which was the prime concern for Asia and Africa.

11. **The Delegate of Japan** stated that Japan considered the Rio + 20 Conference currently underway in Brazil as the most important big event in which the government leaders were participating to discuss the questions relating to economy, society and world environment for the coming 10 years. The delegation hoped that the Conference would achieve its objectives and bring about fruitful results. The delegate believed that in order to realize the sustainable development, it was essential that the world make transition to Green Economy, and would actively endeavor to contribute to making that transition possible, taking into account the importance of sharing knowledge and wisdom and also capacity building. He mentioned about the Great East Japan Earthquake, which occurred in recent years and also referred to many large scale natural disasters that had taken place. He said that coping with such adverse circumstances, Japan had been advocating the innovative concept of city building such as “Environmental Future City Vision”. On the occasion of ongoing Rio + 20 Conference, Japan looked forward to actively share its ideas, knowledge and experiences with the international community in such areas as building of disaster-resilient society and Environmental Future City.

12. The delegate stated that with regard to the climate change, Japan considered that the COP17 held in Durban, South Africa last year had brought about a significant outcome, in line with Japan’s stance, such as clarifying the pathway to the establishment of a new legal framework in which all economies participate. Further, it was made clear that Japan remained committed to tackle climate change, despite immense challenges caused by the Great East Japan Earthquake. Based upon the results of COP17, Japan wished to contribute to the international discussions toward COP18, as to how to build a most desirable future framework, that included the newly set up Ad-Hoc working Group on the Durban Platform for Enhanced Action.

13. The delegate briefly touched upon the question of international regime on desertification. On behalf of delegation, he congratulated the government of the Republic of Korea for successfully hosting and concluding the 10<sup>th</sup> Meeting of the Conference of Parties (COP) to the UN Convention to Combat Desertification in those countries Experiencing Serious Drought and Desertification, Particularly in Africa (UNCCD) held in Changwon, Republic of Korea. He said that the task of combating desertification related closely to the questions of climate change and bio-diversity and it considered that it was very important to deepen and enhance the awareness of necessity of combating desertification by way of strengthening the linkage with the two conventions of climate change and diversity.

14. **The Delegate of People’s Republic of China** opined that sustainable development was closely related to the practical and long-term interests of all countries, especially those of developing countries. The UN Conference on Environment and Development and the World Summit on Sustainable Development provided action plans on sustainable development for individual countries and the international community as a whole. During the past 20 years, such action plans had contributed to the improvement of human welfare. The UNFCCC, the Convention on Biological Diversity and the Convention to Combat Desertification, had made positive achievements in their respective areas.

15. Among all environmental challenges, climate change had attracted much attention and China viewed that, climate change was a development issue, and that sustainable development was both the aim and the right path for its effective solution. In order to address both development and climate change challenges and upheld right to development, the developing countries should, under the framework of sustainable development, take a holistic approach to economic development, poverty eradication and climate protection. The delegate welcomed the outcomes of the Durban Conference, in particular progress related to the second commitment period of the Kyoto Protocol, finance and strengthened implementation of the UNFCCC.

16. He said that many problems were yet to be tackled for the implementation of the Durban outcomes and China hoped that all parties, while respecting and accommodating each other's core concerns, would take into full account both the historical responsibilities of developed countries and the practical needs of developing countries, based on the principles of equity and “common but differentiated responsibilities”, and carry out further discussions on the establishment of a fair and equitable international cooperation regime addressing climate change. China stressed that as a community of shared interests, developing countries must maintain solidarity and strengthen coordination in urging developed countries to fulfil their historical responsibilities and provide financial, technical and capacity-building support to developing countries, which was the only way to truly safeguard long-term and fundamental interests.

17. Commenting upon the ongoing Rio+20 Summit Conference on Sustainable Development, which provided an important opportunity to promote global cooperation on sustainable development, the delegate said that China attached great importance to the conference. Further, the delegation stated that his delegation was delighted to know that an “Action Plan” was to be adopted by heads of States at the conclusion of the summit that would reaffirm the principle of CBDR. It was stressed that the conference adhered to the Rio spirit and principles, especially the principle of "common but differentiated responsibilities", advance the three pillars of economic, social and environmental development in a balanced manner, respect the right of countries to independently choose their mode of sustainable development, and paid special attention to the concerns of developing countries.

18. China was a developing country that confronted pressing issues with regard to environmental protection and sustainable development and fully recognized the severity and urgency of environmental issues including climate change. China, out of a strong sense of responsibility for mankind's long-term development, had resolutely embarked upon the path of sustainable development and taken positive and vigorous policies and measures, towards

contributing to the resolution of environmental issues. It was also mentioned that China's next Five-year Economic and Social Development Plan emphasized to pursue green and low-carbon development, focused on energy conservation and emission reduction, develop a resource-saving and environment-friendly pattern of production and consumption, and enhance capacity for sustainable development.

19. The delegate referred to Premier Wen's observation that China was a staunch supporter of the concept of sustainable development, and an active practitioner of the strategy of sustainable development, and also an energetic promoter for international cooperation in sustainable development. China had been actively engaged in South-South cooperation, earnestly fulfilled the responsibilities commensurate with its capabilities.

20. **The Delegate of Thailand** said that in order to move forward and to respond to the global challenge, it had many priorities like food security, poverty eradication, and sustainable economic development. Nonetheless, Thailand strongly believed that a paradigm shift toward building low-carbon societies was necessary in addressing climate change. Thailand was committed to lowering greenhouse gas emissions through innovative energy conservation and efficiency policies with the aim of reducing the country's Energy Intensity by 25 percent below the current level within 20 years. Even though 70 percent of electricity generation in Thailand currently comes from natural gas, a low-carbon energy source, they still planned to propose and implement progressive policies to promote increased use of renewable and alternative energy in both the industrial and agricultural sectors. It was their ultimate objective to replace 25 percent of the energy generated by fossil fuels with green energy within the next decade. In that regard, the delegate explained certain national initiatives taken to address the issue and as a result of those plans, Thailand would reduce 206 million tons of greenhouse gas emissions by the year 2030.

21. Green economy could serve as an effective implementation tool to move a country towards sustainable development, but should not be a substitute for sustainable development itself. In that regard, Thailand was of the view that the discussion on green economy should be based on the agreed 1992 Rio Principles. Given the vast differences in development stages among countries, Thailand believed that there was no "one-size-fits-all" green economy strategy. Countries should be given sufficient policy space and flexibility to develop their own green economy policies aimed at sustainable development. However, Thailand believed that there were common elements that were essential to improving cross-sectoral coordination and coherence in the implementation of the sustainable development agenda.

22. Referring to the Rio+20 conference, the delegate said that they would work with the international community in its collective actions to advance sustainable development at all levels. On climate change issues, the delegate stressed that it was absolutely essential that Annex I Parties to the Kyoto Protocol committed themselves to the second-term commitment period and ensured the continuity of the legally binding agreement with more ambitious targets. Comparable mitigation efforts were needed in order to measure the emission targets and achievements of the parties effectively. Securing long-term financial commitments from both private and public sources, from developed countries for climate mitigation and adaptation undertaken by developing countries was essential and it was their conviction that, in order to adequately address the need of developing countries, the scale of the commitments must be the

same as that stipulated in the Cancun Agreements – 100 billion US dollars per year. The delegate called for meaningful steps to be taken by developed countries to promote, facilitate, and finance the transfer of or access to, environmentally sound technologies to developing countries, in order to enable them to meet their mitigation and adaptation needs. Reiterating the rights to sustainable economic growth and development of all Parties, the delegate called on all Parties to firmly observe Article 3, paragraph 5 of the Convention, and refrain from adopting any measure, including unilateral ones that constituted a trade barrier or a disguised restriction on international trade.

23. **The Delegate of Republic of Korea** stated that his government viewed that in order to bring about a genuine transformation in the measures against climate change, “common but differentiated responsibilities” were needed and urged the Member States of AALCO to act together to achieve the goal of sustainable development. Also, in order to take appropriate measures against climate change, the Republic of Korea considered that the difference in positions between developed and developing countries should be narrowed in terms of core issues such as the Second Commitment period for the Kyoto Protocol. The delegate supported the two-track negotiation system, which divided developed countries duties and developing countries actions to reduce greenhouse gas emissions.

24. The delegate mentioned that his government had been preparing for the transformation of the GGGI into a new international organization in October 2012 and they appreciated the participation in the GGGI by Japan, Cambodia, Ethiopia, Thailand, the Philippines, the United Arab Emirates and Indonesia; and hoped that other AALCO member states would also participate in the GGGI. Against that backdrop, the delegation informed that the Republic of Korea would be hosting the Ministerial-level COP 18 meeting in 2012 and thanked all the member States of AALCO for extending their support to them while hosting the COP 18 Meeting.

25. **The Delegate of United Republic of Tanzania** stated that the Tanzanian Government attached great importance to the environment and its sustainable development. The focus being protection of the environment and human health from all types of pollutants; efforts had started by putting in place mechanisms to mitigate the impact to climate change, environmental degradation and related matters.

26. In relation to the issue of climate change, the delegate said that Tanzania had already set its priorities including formulation of a National Adaptation Strategy and Action Plan built upon experience in preparing National Adaptation Program of Action (NAPA) as well as putting in place the National Climate change Steering Committee (NCCSC) and National Climate Change Technical Committee (NCCTC) contributing to a greener economic growth.

27. The delegate said that internationally there had been some progress during the climate change conference in Cancun, particularly by bringing back the hope that multilateralism was needed to address a problem of such a global magnitude. However, much remained to be done after Durban especially ensuring that countries commit to emission reduction levels that were consistent with science; unless that was done poor countries would not avoid facing the envisaged challenges of climate change if global temperatures went beyond 1.5 degrees

centigrade. The Cancun agreement offered not only unprecedented opportunities for developing countries to implement their strategies so as to strengthen their national institutional frameworks and capacities, but also made progress on reducing emissions from deforestation and forest degradation REDD.

28. The delegate stated that whilst commending various efforts by the international community in addressing that important issue, Tanzania was of the view that finance and technology to develop cleaner sources of energy were essential. Concerned about the future serious adverse impacts on African and Asian countries, the delegate said many options were available to address these challenges. Some required major investments built upon sound development initiatives which included protecting catchments, promoting diversified livelihoods, expanding water resources and access to water, increasing irrigation, protecting coastal zones and malaria control programmes in highland areas were due to climate change and now rampant with malaria. Integrating climate change in development process and poverty eradication actions would be a continuous and unavoidable undertaking that would require increased financial support to the overall budget of the governments. It was mentioned that the road towards a Greener economy was prone to challenges such as difficulties in protecting forests since they were the only source of energy for the majority of developing countries such as Tanzania. Further, there was an urgency to understand the true implications of climate change to the economy and the people and also provide options to move their economy forward while contributing to global climate change mitigation in a low carbon growth economy in order to establish mechanisms and functional systems to deal with environment sustainability.

29. **The Delegate of Indonesia** reiterated that the achievement of the UN Conference on the Environment and Development 1992 when for the first time the global community got together, took stock of development and environmental challenges, and charted a common path forward. Since then, among many encouraging developments, economic achievements and the environmental agenda had made significant advances. Environmental regimes itself had grown, for example on biodiversity, on climate change and on forestry. These days more nations were adopting green growth strategies. In that regard, Indonesia had actively pursued a policy of 'growth with equity', with 3 basic components, namely pro-growth, pro-poor and pro-jobs. After successfully hosting the UN Climate Conference in 2007 in Bali, they had become very active in global climate diplomacy and expanded their development strategy from not just pro-growth, pro-poor and pro-jobs, but also to pro-environment. Presently, environmental sustainability was at the heart of their long-term development plans, both at the national and local levels, he added.

30. He said it was necessary to redefine modernity, development and prosperity, and move from overconsumption and excessive consumerism. Those steps might support the efforts to move from 'greed economy' to 'green economy'. For Indonesia, green economy was viewed as an economic development approach that no longer relied on overexploited natural resources and environment, but aimed to reach an environment friendly economic development. While ensuring that the world economic problems did not detract or distract from sustainability goals and climate change objectives, it was important to focus on their national commitments and global responsibilities. Therefore, to secure climate future, it was also important to stress the 'common but differentiated responsibility and respective capability' and their delegation believed that developed countries must take lead, along with the increasing role of the

developing countries too. In that regard, Indonesia in the midst of a deadlock in 2009 had made the voluntary decision to reduce emissions of 26% by 2020, or 41% with international support.

31. **The Delegate of India** recalled that at the Durban Conference there was an attempt to shift the climate burden on to developing countries and one of the key demands of the developing countries was an agreement on the second commitment period of the Kyoto Protocol along with the operationalization of the arrangements agreed to at Cancun by the developed countries. However, the developed countries were insisting on new legally binding agreements for all the Parties without any differentiation.

32. The Durban Conference was one of the most significant Conferences on Climate Change since the second commitment period to the Kyoto Protocol was agreed upon for the developed countries (Kyoto Protocol Parties). In addition, the inclusion of Green Climate fund, a key demand for financing the efforts of developing countries in the technology mechanism, etc. had also seen light in the form of an agreed decision by the members. On those notes, she mentioned that upon India's insistence the issue of 'Equity' was brought back to the centre stage of the Climate change debate at Durban. Accordingly, it had been agreed to hold a workshop on the issue of equitable access to sustainable development which would advance the understanding and relevance of the approach in evolving the climate change regime.

33. The delegate stressed that India as a developing country had huge developmental challenges. Around 55% of India's population still had no access to commercial energy. Despite those developmental challenges, India had declared its commitment to keep its per capita emissions lower than the average per capita emissions of the developed countries and had adopted National Action Plan on Climate Change along with National Missions. Those Missions would go beyond mitigation and adaptation and were anchored to overall national prospective of sustainable development.

34. It was stated that the challenges related to all the three pillars of sustainable development should be addressed in a balanced manner. Global development path should recognize the fact that human beings were at the centre of sustainable development. Disproportionate weight to the environmental pillar would lead to unbalanced development and further threaten the abilities of the developing countries to achieve the Sustainable Development Goals (SDGs) and progress in the path of sustainable development. Balancing the three pillars of sustainable development i.e. economic development, social development and environmental protection required integration and coordination between them.

35. Green Economy should be essentially the one which directly related to the overriding priorities of poverty eradication, food security, universal access to modern energy services and employment generation. On that aspect, India believed that Green Economy was a dynamic concept intended to infuse every activity towards poverty eradication with sustainability thereby greening the economy towards developing economically, socially and environmentally. Green Economy could only be in terms of a gradual transition, while remaining firmly anchored within the overarching framework of "sustainable development" and equally important, the sustainability of livelihood. The overriding objective of socio-economic development and poverty eradication in the developing countries could not be diluted by setting new norms for

development. However, Green Economy was not a normative concept and hence, a movement in that direction should be more in the nature of evolution than transition. One should promote sustained economic growth for poverty eradication and should not adversely impact the livelihoods of vulnerable sections of the society like the small and marginal farmers and those employed in small and medium enterprises.

36. Access to environmentally sound/clean technology at affordable cost was crucial for the countries for sustained economic growth and progress towards a green economy. Developing countries need access to cost effective technologies appropriate to their resource endowments and geographical factors to enable them to accelerate the transition to sustainable development. Any approach to Green Economy should facilitate research and development in environment friendly technologies in public domain so that developing countries could be accessed at affordable prices.

37. **The Delegate of Republic of Iraq** stated that her government was working towards favourable investment and food for all investors from different countries which would support their country to be rebuilt and would enhance the opportunities for countries in their economy. Such investments would cover up the lack of labour and increase in their per capita income which would enable them to serve human beings. The delegate further stated that Iraq had signed a number of Memorandum of Understandings (MoUs) with countries and supported all efforts of AALCO for improving sustainable investment.

38. **The Delegate of Malaysia** recalled the Decision 1/CP.17 from COP17 in Durban, South Africa to launch a process to develop a “Protocol”, “another legal instrument” or “an agreed outcome with legal force under the Convention” through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (AWG-DP). It was also decided for a work plan to be launched on enhancing mitigation ambition and exploring options for a range of actions that could close the ambition gap with a view to ensuring the highest possible mitigation efforts by all Parties. In that regard, all participating States were expected to undertake higher Greenhouse Gas emissions cuts, or lower the growth rates of their emissions.

39. In respect of the AWG-DP negotiations, Malaysia viewed that priority should be given by the negotiating parties to deliberate on the work plan to enhance mitigation ambition rather than on the form of the outcome document. To that, Malaysia’s position was that such work plan should reflect the principle of “common but differentiated responsibilities” (CBDR) and the options and ways to increase the level of mitigation ambition must be understood in the context of promoting sustainable development, with equal and balanced consideration to the economic, social and environmental sectors.

40. Therefore, in the context of the existing AALCO’s mandate to continue to monitor the progress in the implementation of climate change negotiations, Malaysia proposed for AALCO to establish a mechanism to streamline the AALCO Member States views and positions on that matter and to urge the respective AALCO Member States to bring forth such views and positions in the future UNFCCC negotiations.

41. On the Rio+20 ongoing conference taking place in Rio de Janeiro, the delegate said that the focus was on green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development. Of that, it was envisaged that the positive outcome of the Conference would result in the finalization of the document “*The Future We Want*”.

42. The delegate observed that certain commitments in the outcome document related to international obligations governed by various international legal regimes. In reference to the proposed commitment to establish a more effective wastes management and lifecycle regime, the issues might arise when the disposal of the chemical or electronic wastes involved transboundary movements of such substances which were governed under the export control regime.

43. With regard to the proposed commitments on global marine environment, global program of action for the protection of the marine environment from land-based activities etc., Malaysia was of the view that such commitments must be consistent with the obligations as stipulated in the relevant international legal treaties such as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).

44. Malaysia urged the AALCO Member States to actively participate and express their approaches in particular their positions on CBDR at the forthcoming negotiations on environmental issues.

## **II. INTERNATIONAL REGIME ON CLIMATE CHANGE**

### **A. Background**

45. The United Nations Framework Convention on Climate Change (UNFCCC), 1992 and its Kyoto Protocol of 1997 contains the response of the international community to meet the challenges posed by the threat of climate change. The UNFCCC was concluded on 9 May 1992 and opened for signature at the United Nations Conference on Environment and Development (UNCED) in June 1992. It entered into force on 21 March 1994 and having attained ratification by 195 State Parties Convention, it has reached universality. The Kyoto Protocol (KP) entered into force on 16 February 2005 and currently there were 193 countries and 1 regional economic integration organization (the EEC) that have deposited instruments of ratification, accession, approval or acceptance. The total percentage of Annex I Parties emissions is 63.7 %. However, the largest contributor to the global greenhouse gas emissions, the United States of America, remains outside the Kyoto Protocol.<sup>1</sup>

46. The Conference of Parties (COP) to the UNFCCC and the Meeting of Conference of Parties serving as Meeting of Parties to the Kyoto Protocol (CMP), the supreme decision-making bodies of the Climate Change Convention and the Kyoto Protocol, since the entry into force of these legal instruments have been meeting on an annual basis. As such, until June 2013, eighteen COP meetings and eight CMP meetings have taken place.

47. The international community is presently engaged in negotiations for elaborating on a framework of action after 2012, when the Kyoto Protocol's first commitment period expires. It may be recalled that in December 2007, negotiators meeting at the United Nations Climate Change Conference in Bali had approved the Bali Action Plan (BAP) and Roadmap setting the Fifteenth meeting of Conference of Parties (COP 15) in December 2009 at Copenhagen as the deadline for agreeing on a framework for action after 2012. The plan laid out the four-fold action roadmap for climate change action – mitigation, adaptation, technology and finance. It was essentially a mandate to finalize two things: one, the emission reduction commitments of industrialized countries for the second phase of the Kyoto Protocol, and two, the global goals for long-term cooperative action until 2050. This section shall cover two Bonn Climate Change Conferences held in June and April 2013; Bangkok Climate Change Conference held in August 2012; COP 18 held at Doha, Qatar in November 2012; and an overview of the Seminar organized by AALCO Secretariat at its Headquarters on 16 January 2013 held on the topic "Climate Change: Post Kyoto Climate Policy".

### **B. Bangkok Climate Change Talks (30 August - 5 September 2012, Bangkok, Thailand)**

48. The United Nations Climate Change Conference was held in Bangkok, Thailand from 30 August to 5 September 2012. The Conference included additional sessions of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention (AWG-LCA), the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol

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<sup>1</sup> The status of ratification of these instruments is drawn from the website: [http://unfccc.int/essential\\_background/items/2877.php](http://unfccc.int/essential_background/items/2877.php) (last accessed on 15 April 2012).

(AWG-KP) and the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action (ADP).

49. Under the ADP, parties discussed their vision and aspirations for the ADP, the desired results of its work and how these results could be achieved. Parties also discussed how to enhance ambition, the role of means of implementation and how to strengthen international cooperative initiatives, as well as the elements that could frame the ADP's work. On behalf of Group of 77 and China (G-77/China), it was said that the Durban Platform must ensure strong linkages among mitigation, adaptation and means of implementation, and include the principles of equity and common but differentiated responsibilities (CBDR). The representative of African Group, supported limited use of carbon markets, and highlighted the need for establishing accounting rules and processes for technology transfer, among other measures. The representative of Association of Small Island States (AOSIS), questioned whether adaptation could provide a sufficient solution to the impacts of climate change in small island developing states and whether the Green Climate Fund can afford to pay for such measures, and called for prioritizing mitigation under the ADP. The representative opposed a separate roundtable on principles, noting the principles should guide the work of the two workstreams.

50. On behalf of BASIC (Brazil, South Africa, India and China), it was stressed that the ADP outcome should be in complete accordance with all the Convention principles, particularly CBDR and equity. Speaking on behalf of various developing countries, it was reiterated that all ADP work is under the Convention and must adhere to its principles, and said universality of application is not uniformity of application. He said the ADP should not become the means by which developed countries "jump ship" from their legally binding commitments. He said substantive work by the ADP on issues still being considered by the other AWGs should not be undertaken until the successful conclusion of work of those bodies.

51. Two roundtable meetings on (i) Vision for ADPs and (ii) Ambition were held. During these meetings, many countries reaffirmed the primacy of the Convention in the work of the ADP; and that in no way should the ADP's work involve a rewriting of the Convention.

52. The AWG-KP session was devoted to resolving outstanding issues to ensure the successful completion of the group's work in Doha, Qatar, in December 2012, by recommending an amendment to the Conference of the Parties (COP) serving as the Meeting of the Parties to the Kyoto Protocol (CMP) for adoption. This amendment would allow a second commitment period under the Protocol to start immediately from 1 January 2013. The AWG-KP produced an informal paper outlining the elements for a Doha decision adopting the amendment to the Kyoto Protocol. Many parties welcomed progress made in Bangkok, particularly the increased clarity on options to address the transition to the second commitment period.

53. Speaking on behalf of the developing countries, representative said that the success in Doha would require: an ambitious and legally-binding second commitment period that includes a fair and science-based contribution by Annex I parties to closing the ambition gap; an ambitious agreed outcome under the BAP that ensures comparable mitigation ambition by non-Kyoto parties, financing ambition and addressing other unfinished business under the BAP; and greater clarity on the ADP work.

54. The AWG-LCA continued working on practical solutions to fulfill specific mandates from COP 17 in Durban. The focus was on what outcomes might be needed to conclude the group's work in Doha, how the elements will be reflected in the final outcome of the AWG-LCA, and whether additional work might be required beyond COP 18 and, if so, identifying concrete issues and whether those issues would require technical work or political consideration.

**C. Eighteenth Conference of Parties to the UN Framework Convention on Climate Change and Eighth Meeting of Parties to the Kyoto Protocol (26 November - 8 December 2012, Doha, Qatar)**

55. The Eighteenth Conference of Parties to the United Nations Framework Convention on Climate Change (COP 18) took place from 26 November to 8 December 2012 in Doha, Qatar. It coincided with the 8<sup>th</sup> Meeting of the Parties to the Kyoto Protocol (CMP 8). Since the UNFCCC entered into force in 1994, the COP to the UNFCCC has been meeting annually to assess progress in dealing with climate change, and the CMP reviews the implementation of the Kyoto Protocol, which was adopted in 1997, and takes decisions to promote its effective implementation.

56. The conference also included meetings by five subsidiary bodies: the thirty-seventh sessions of the Subsidiary Body for Scientific and Technological Advice (SBSTA 37) and the Subsidiary Body for Implementation (SBI 37), the *Ad hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 17), the *Ad hoc* Working Group on Long-term Cooperative Action under the UNFCCC (AWG-LCA 15), and the *Ad hoc* Working Group on the Durban Platform for Enhanced Action (ADP 1).

***Importance of the COP 18***

57. The COP 18 held at Doha, was of particular importance due to the recent publications drawing attention to various pressing environmental issues. These include the publications of a report that global carbon emissions are at an all time high,<sup>2</sup> a United Nations Environment Programme report that the gap in emissions is growing wider,<sup>3</sup> and the World Bank analysis reiterating the warning of potential catastrophic impact of continued global temperature increase.<sup>4</sup>

58. The main areas requiring the attention of COP 18 included the need for transparency in the measuring and reporting of countries emissions-reduction commitments and actions; addressing equity in negotiations around the 2015 international climate agreement; negotiating a work-plan to meet the deadline of 2015 set by the Durban Platform; the future of global carbon

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<sup>2</sup> Peters, Andrew, Boden, Canadell, Ciais, Philippe, Le Quere, Marland, Raupach, Wilson, "The challenge to keep global warming below 2° C", Nature Clim. Change, 2012/12/02/online, Nature Publishing Group, a division of Macmillan Publishers Ltd.

<sup>3</sup> UNEP Emissions Gap Report as cited by Jennifer Morgan, Director, Climate and Energy Program, World Resources Institute.

<sup>4</sup> "Turn the Heat Down: Why a 4°C Warmer World Must be Avoided", report by Potsdam Institute for Climate Impact Research and Climate Analytics, commissioned by The World Bank.

markets; adopting a second commitment period under the Kyoto Protocol and concluding the two *Ad hoc* Working Groups (AWG-KP and AWG-LCA); and, making progress on long-term funding to support action in developing countries, which is supposed to reach a level of US\$100 billion a year by 2020, as agreed in Copenhagen in 2009 at COP 15.<sup>56</sup>

### ***Major Outcomes of the Doha Conference***

59. The Parties agreed to a Doha Climate Gateway, which amended the Kyoto Protocol, the only existing and binding agreement under which developed countries undertake quantitative commitments to cut greenhouse gases. Specifically: Governments decided on an 8-year second commitment period, which started on January 1st 2013. The legal requirements that would allow a smooth continuation of the Protocol were agreed, and the valuable accounting rules of the Protocol were preserved. Countries that are taking on further commitments under the Kyoto Protocol agreed to review their emission reduction commitments at the latest by 2014, with a view to increasing their respective levels of ambition. The Kyoto Protocol's Market Mechanisms – the Clean Development Mechanism (CDM), Joint Implementation (JI) and International Emissions Trading (IET) – would continue. Access to the mechanisms remains uninterrupted for all developed countries that have accepted targets for the second commitment period. A key element was added to the measurement, reporting and verification (MRV) framework for developed countries with the adoption of the tables for the biennial reports known as common tabular format, thereby strengthening transparency and the accountability regime.

60. The UN Secretary General, Ban Ki-Moon announced that he will convene world leaders in 2014 to solidify the “political will” to help ensure the 2015 deadline is met for the adoption of the next climate change treaty. European Union retains the Kyoto Protocol's fourth mechanism 'bubble' to fulfil jointly within member states the emission reduction commitment. Canada, Japan, Russia, US and New Zealand reaffirm non-ratification status of second commitment period.

61. Surplus assigned amount units (AAUs) can be carried over without limit from the first to the second commitment period of the Kyoto Protocol by Parties included in Annex I that have a target for the second commitment period, but with restrictions on the use of these carried-over AAUs for the second commitment period and quantitative limits on how many of these units may be acquired from other Parties.

### ***Ad-hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP)***

62. The AWG-KP was established at CMP 1 in Montreal in 2005 to address industrialized countries' commitments for the post-2012 period under the Kyoto Protocol. The first

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<sup>5</sup> Jennifer Morgan, Director, Climate and Energy Program, World Resources Institute, available at: <http://insights.wri.org/news/2012/11/issues-watch-doha-climate-negotiations-cop-18>, last accessed on 21 December 2012.

<sup>6</sup> Earth Negotiations Bulletin, Vol. 12 No. 567, Published by the International Institute for Sustainable Development (IISD), 11 December 2012, available at <http://www.iisd.ca/climate/cop18/enb/>, last accessed on 21 December 2012.

commitment period set the target for industrialized and EU countries to achieve average emissions reductions of 5 percent from their 1990 levels by the period of 2008-2012. However, some of the key Kyoto Protocol parties such as Japan, Canada, New Zealand and the Russian Federation refused to take on commitments in the second commitment period contending that certain developing countries who are also major emitter's in the world must undertake commitments.

63. Despite this, the Doha Conference was able to deliver the AWG-KP mandate with parties agreeing on the second commitment period being provisionally applied, from 1 January 2013 onwards, with a target of an average of 18 percent emission level reduction from 1990 levels by Annex I parties - the industrialized and EU nations - in the period of 2013-2020. While the AOSIS lobbied for a 5-year commitment period, Annex I parties preferred a longer commitment period due to their internal legislation already in force and due to a desire to avoid a gap between the second commitment period and the new regime expected to enter into force in 2020.

64. Important decisions were also taken with regard to excess Assigned Amount Units (AAU). Limitations were placed on the capacity of State-parties to carry-over excess AAUs from the first commitment period to the second and on the capacity of parties to sell excess AAU's to other states. This decision followed much debate on whether allowing the parties to use excess AAU's was counter-productive to emission-mitigation efforts and whether disallowing its use was in fact a penalty imposed on countries that had exceeded their emission-mitigation targets.

#### ***Ad-hoc Working Group on Long-term Cooperative Action under the UNFCCC (AWG-LCA)***

65. The AWG-LCA was established when the Bali Action Plan (BAP) was adopted at COP 13 in Bali in 2007. At COP 13, a two-year process aimed at finalizing a post 2012-regime by Copenhagen in December 2009 had been agreed upon. This was meant to address some of the shortcomings of the Kyoto Protocol, "particularly the US refusal to join a treaty that did not require emission reductions from major developing country emitters". The Bali Action Plan was lauded for being progressive, in that it introduced the notion of "developed" and "developing countries," under the Convention as opposed to "Annex I" and "non-Annex I parties." This created the possibility of differentiation according to levels of economic development among developing countries. However, after a failure to conclude the AWG-LCA at COP 15, it was extended at both COP 16 and 17 before it was finally concluded at COP 18.

66. As part of the conclusion of AWG-LCA, the Standing Committee on Finance and the Adaptation Committee was established, a United Nations Environment Programme-led consortium was confirmed as the host of the Climate Technology Centre, and Songdo, Republic of Korea, was endorsed as the Green Climate Fund's host. Developed countries were also encouraged to provide finance between 2013 and 2015 at the same levels as provided during the fast-start period between 2009 and 2012. The agreement also extends the mandate of the work programme on long-term finance by one year.

#### ***Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP)***

67. The ADP was created at COP 17 in 2011 in Durban to be entrusted with negotiating new legal instrument which would be applicable to and be agreed upon by all parties to the UNFCCC and have legal force under the Convention. The deadline for this working group to complete its mandate was no later than 2015 in order to allow the implementation of its instrument by 2020. The importance of the ADP is pertinent to the shortcomings of the AWG-KP and AWG-LCA and the ADP was meant to negotiate an instrument that would surmount the obstacles that the AWG-KP and AWG-LCA had difficulties with. COP 18 saw the decision made to continue and streamline its work and reaffirming its continued commitment towards completing a negotiating text by May 2015.

68. With the increasingly grim realities surrounding ongoing climate change issues, the implementation of the UNFCCC and Kyoto Protocol continues to gain importance. While the Doha Conference itself saw little substantial change in the status quo of the parties to the UNFCCC, it served as an incremental step towards the eventual resolution and mitigation of the climatic issues and the implementation of a truly functional and catastrophe-averting environmental regime.

69. The COP 19/CMP 9 would be held in Warsaw, Poland from 11 to 22 November 2013.

**D. Report on the Seminar on “Climate Change: Post Kyoto Climate Policy” (16 January 2013, AALCO Headquarters, New Delhi, India)<sup>7</sup>**

70. Post-Kyoto Climate Policy holds great significance to developing countries as many of them form part of Non-Annex – I Parties of the Kyoto Protocol. In view of the recent developments, the adoption of Doha Climate Gateway during the Eighteenth Conference of Parties in November 2012, AALCO Secretariat considered it imperative to convene a Seminar on “Climate Change: Post Kyoto Climate Policy” on 16 January 2013 at AALCO Headquarters. It was attended by more than twenty-five participants and Liaison Officers of few AALCO Member States had also attended. The primary focus of the aforementioned Conference was to review the discussions on key areas of climate change issues post-Eighteenth Conference of Parties to the UNFCCC (COP-18) was held from 26 November – 7 December 2012 at Doha, Qatar. The Objectives of the Conference was to raise awareness of the need for Post Kyoto Regime and Second Commitment Period to be adopted by the States, in an inter-disciplinary form wherein the themes would entail discussions upon science and economics of Climate Change regime, Legal and Policy responses, Politics of Climate Change Negotiations; and Post-Doha Conference review. In that regard, the Secretariat looked forward for presentations and viewpoints that would cater to the needs and concerns of countries from Asian and African region in terms of marching towards concrete Post Kyoto International Climate Policy.

71. H. E. Prof. Dr. Rahmat Mohamad, Secretary-General of AALCO gave welcome remarks and said that The issue of climate change has become very important, post Doha Conference of Parties, which witnessed urgent need to advance the Durban Platform. Series of United Nations Climate Change Talks, had taken place on the issue as to how to deal with the second commitment period of Member States Post-Kyoto Protocol. In order to have a varied perspective

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<sup>7</sup> Verbatim Record of the Seminar on “Climate Change: Post Kyoto Climate Policy” on 16 January 2013 at AALCO Headquarters would be circulated during the Fifty-Second Annual Session.

on the issue of climate change, AALCO thought it imperative to host the Seminar. The Keynote Address was delivered by H. E. Prof. Chia Jui CHENG who currently serves as the Secretary-General of Xiamen Academy of International Law, and also a Professor at the School of Law, Soochow University, Taipei, China. Prof. Cheng dealt with the topic “International Trade Implications and Climate Change”. Prof. Bharat H. Desai, Professor of International law, Centre for International Legal Studies, Jawaharlal Nehru University (JNU) and who also holds the Jawaharlal Nehru Chair in International Environmental Law, delivered the Inaugural Address. The topic was “Making Sense of Post-2012 Climate Change Regulatory Process: Some Reflections”. Dr. Hassan Soleimani, Deputy Secretary General of AALCO gave a vote of thanks at the inaugural session of the seminar.

72. The First Session of the Seminar was on Science and Economics of Climate Change, which was chaired by Mr. Narinder Singh, Secretary-General, Indian Society of International Law, New Delhi. The eminent speakers for the session were Dr. Archana Negi, Assistant Professor, Centre for International Politics, Organization and Disarmament (CIPOD), JNU; Dr. Yasukata Fukahori, Deputy Secretary General of AALCO; and Dr. Anwar Sadat, Assistant Professor, Indian Society of International Law (ISIL), New Delhi. The topics were very interesting as Dr. Negi gave an overview of Post-Kyoto Regime and Second Commitment Period, Dr. Fukahori dealt with the Science and Economics of Climate Change and Dr. Sadat explained about the Green Climate Fund from developing country’s perspectives.

73. The Second session was chaired by Mr. Feng Quinghu, Deputy Secretary-General of AALCO, addressed the Legal and Policy Response issues. The distinguished speakers were Ms. Shannu Narayan, Legal Officer of AALCO; Mr. Shiju M. V, Lecturer, Department of Policy Studies, The Energy Resource Institute (TERI), New Delhi; and Dr. Luther M. Rangreji, Assistant Professor, Faculty of Legal Studies, South Asian University (SAU), New Delhi. The speakers addressed the International Legal Framework on Climate Change, Role of IPCC and scientific Assessment; and Post-Doha Conference: An insight into Legal and Political Dialogues. The Sessions were followed by Question and Answer session.

74. It was observed that though the Kyoto Protocol gets an eight-year second commitment period, no enhanced mitigation commitments over what had already been agreed to in Durban were made. Kyoto Protocol’s emissions reduction objective by Annex I parties revised to at least 18 per cent below 1990 levels in the commitment period from 2013 to 2020. Though the amendment urges Annex I parties to provisionally apply the amendment pending its entry into force to ensure legal continuity between commitment periods, yet major Annex I Parties have not undertaken any further commitments. In spite of the clause that Annex I parties not agreeing to a second commitment period won’t be able to trade in the CDM CERs for the purposes of compliance with UN emissions reduction pledges, it was highly an unrealistic target.

#### **E. Bonn Climate Change Talks (29 April - 3 May 2013, Bonn, Germany)**

75. The second session of the *Ad Hoc* Working Group on the Durban Platform for Enhanced Action (ADP 2) was held in Bonn, Germany, from 29 April to 3 May 2013. It may be recalled that at the COP 18, it was decided that the ADP would consider elements for a draft negotiating text by COP 20 in 2015, with a view to making available a negotiating text before May 2015.

ADP 2 was structured around workshops and roundtable discussions, covering the ADP's two workstreams on the 2015 agreement (Workstream 1) and pre-2020 ambition (Workstream 2).

76. The objective of the workshop was to provide an opportunity for Parties to engage with experts and stakeholders and to discuss the scope, structure and design of the 2015 agreement, including aspects related to the application of the principles of the Convention, ways of defining and reflecting enhanced action, and experiences and lessons learned from other processes. Part 1 of the workshop focused on the design aspects for an ambitious, durable and effective 2015 agreement that mobilizes national action. Part 2 of the workshop focused on the application of the principles of the Convention in the 2015 agreement. Parties viewed the principles as being embodied and operationalized in the provisions of the Convention, its structure and commitments and that they should guide the scope, structure and design of the 2015 agreement. They considered that the focus should be on the implementation of existing commitments instead of renegotiation, and that there was no need for a new regime, rather for enhanced implementation.

77. It was stated that the Convention represents the most innovative environmental law in the world and a model to which other regimes are looking; rather than building "dreams of designing differentiation". Some Parties held that developed countries have not implemented their commitments, and that a lack of clarity in relation to support hinders action by developing countries. It called for a spectrum of commitments to be based on equity and historical responsibilities, and for predictable and adequate support, and identified several dimensions of equity, including historical responsibility, social dimensions, capacity to adapt, capacity to mitigate, and the structure of economies. Absolute commitments for Parties included in Annex I to the Convention (Annex I Parties) and relative contributions for Parties not included in Annex I to the Convention. Equity should be reflected in emission reduction commitments as well as in goals for adaptation and finance, with several Parties noting that historical responsibilities, while also evolving, needed to be the starting point.

#### **F. Bonn Climate Change Talks (3 - 14 June 2013, Bonn, Germany)**

78. The United Nations Climate Change Conference was held in Bonn, Germany from 3 to 14 June 2013, which comprised the 38<sup>th</sup> Session of the Subsidiary Body for Implementation (SBI) and Subsidiary Body for Scientific and Technological Advice (SBSTA). The resumed session of the Ad Hoc Working Group on Durban Platform for Enhanced Action (ADP 2) was also convened. The SBSTA and ADP 2 completed their agendas in a timely manner and most of the recommendations were adopted by state parties to provide a pathway forward to try and 'ease' the decision making processes at the forthcoming COP 19 in November 2013. This effort however was undermined by the fact that the work of the SBI couldn't be launched at this 38<sup>th</sup> session of the Subsidiary Bodies.

79. Some key issues which were discussed included developed country mitigation; guidelines for domestically supported mitigation actions of developing countries; agriculture; framework for various approaches, including markets and non-market approaches; international aviation and maritime emissions; adaptation related matters etc. While the SBI never even started its substantive work, the SBSTA made progress on a number of agenda items and the ADP

continued a “conversation” structured around outlining the contours of a possible agreement and enhancing ambition for the pre-2020 period, which was met with mixed reviews. The ADP invited the incoming Co-Chairs to propose, drawing upon submissions by Parties and observer organizations, a balanced, focused and more formal mode of work for consideration by the ADP at its meeting to be held in Warsaw, Poland, in November 2013.

### **III. INTERNATIONAL REGIME ON BIOLOGICAL DIVERSITY**

#### **A. Background**

80. The international regime on biological diversity consists of mainly three multilateral agreements, namely; Convention on Biological Diversity, Cartagena Protocol on Biosafety, and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. The Convention on Biological Diversity (the Convention or CBD) entered into force on 29 December 1993 and as of 15 April 2011 it has 193 State Parties and 168 signatories. The CBD was adopted as a framework for realizing three objectives of conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of the genetic resources. As per the language of the Convention, the term “equitable sharing” includes appropriate access to genetic resources, as well as appropriate transfer of technology, taking into account all rights over those resources and to technologies, and by appropriate funding.

81. After the Convention has been adopted, there have been eleven sessions of the Conference of Parties (COP) and two Extraordinary sessions of the COP to the CBD. The Second Extraordinary Meeting of the COP in January 2000 adopted the Cartagena Protocol on Biosafety (CPB). The Protocol addresses the safe transfer, handling and use of living modified organisms (LMOs) that may have an adverse effect on biodiversity by establishing an advanced informed agreement (AIA) procedure for imports of LMOs for intentional introduction into the environment. It also incorporates the precautionary principle and mechanisms for risk assessment and management, and establishes a Biosafety Clearing House (BCH) to facilitate information exchange. The Protocol entered into force on 11 September 2003 and as on 15 April 2011 has 160 State Parties. At the tenth session of the COP in 2010, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Nagoya Protocol) was adopted after seven years of negotiations.

#### **B. Eleventh Meeting of the Conference of Parties to the Convention on Biological Diversity (CBD) (8 - 19 October 2012, Hyderabad, India) and Sixth Meeting of Parties to the Cartagena Protocol on Biosafety (CPB) (1 - 5 October 2012, Hyderabad, India)**

82. The eleventh meeting of the Conference of the Parties (COP 11) to the Convention on Biological Diversity (CBD) was held from 8-19 October 2012, in Hyderabad, India, following the sixth Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP 6). COP 11 addressed issues such as capacity building, technology development and transfer, the adverse effects of climate change on developing and least developed countries, and several financial and budget-related issues, including guidelines to the Global Environment Facility (GEF), which serves as the Convention’s financial mechanism.

- Developed countries agreed to double funding to support efforts in developing states towards the meeting
- The internationally-agreed Biodiversity Targets, and the main goals of the Strategic Plan for Biodiversity 2011-2020.

- (CBD COP 11) included new measures to factor biodiversity into environmental impact assessments linked to infrastructure and other development projects in marine and coastal areas.
- Funding was decided using a baseline figure of the average annual national spending on biodiversity between 2006 and 2010, developed countries said they would double biodiversity-related international financial flows by 2015.
- The COP also set targets to increase the number of countries that have included biodiversity in their national development plans, and prepared national financial plans for biodiversity, by 2015. These targets, and progress towards them, will be reviewed in 2014.
- UNEP's Economics of Ecosystems and Biodiversity (TEEB) Initiative also presented a series of practical guides for governments at COP 11 for integrating the economic, social and cultural value of ecosystems into national biodiversity plans.
- The Conference welcomed the establishment of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) and recognized the potential contribution it could make to enhance the effectiveness of the Convention.

83. CBD COP 11 adopted 33 decisions and the meeting addressed the status of the Nagoya Protocol on access to genetic resources and benefit-sharing (ABS); implementation of the Strategic Plan 2011-2020 and progress towards the Aichi biodiversity targets; and implementation of the Strategy for Resource Mobilization. Deliberations also focused on: issues related to financial resources and the financial mechanism; cooperation, outreach and the UN Decade on Biodiversity; operations of the Convention; and administrative and budgetary matters. Delegates also addressed: ecosystem restoration; Article 8(j) (traditional knowledge); marine and coastal biodiversity; biodiversity and climate change; biodiversity and development; and several other ecosystem-related and cross-cutting issues.

84. At the High-Level Segment of the Eleventh Meeting of the COP was convened on four main themes, (i) status of biological diversity, (ii) activities relevant to the conservation and sustainable use of biological diversity, (iii) implementation on strategic plan on biodiversity, and (iv) status on the ratification of Nagoya Protocol on Access to Genetic Resources and benefit sharing. On the theme of status of biological diversity, it was recognized that biological loss led to livelihood loss resulting in persistence of poverty. Parties indicated the progress made in achieving Aichi Biodiversity Targets through increase in the forests, coastal and marine protected areas. They also outlined the threats faced by various ecosystems. On the theme of activities relevant to the conservation and sustainable use of biological diversity, participants noted the special programmes and projects initiated at national, subnational and regional level and observed the need to document the wealth of traditional knowledge among indigenous and local communities. In-country initiatives for protection of biodiversity within a legal framework, development of community oriented programmes and activities for awareness and capacity-building have been undertaken to educate stakeholders. There is a need to undertake precautionary approach while adopting biotechnological innovations. On the theme of implementation of the strategic plan on biodiversity, the need to implement biodiversity activities at different levels of governance within a country and the need to ensure substantial financial resources from developed to developing countries, particularly least developed countries and small-island developing States and mobilization of domestic resources were

underlined. Countries indicated aligning their national plans with Aichi Biodiversity Targets and the need to conserve biodiversity in the context of sustainable development and poverty eradication. Gender equity was identified as a cross cutting issue in biodiversity related efforts. Parties viewed that valuation of ecosystem services is an important tool in mainstreaming the biodiversity conservation, priorities in the programmes and activities. On the theme of status on the ratification of Nagoya Protocol on Access to Genetic Resources and benefit sharing, participants urged greater political commitment to expedite the process of ratification and the need for new and additional financial resources and technical support for capacity-building initiatives, including innovative financing.

#### **IV. FOLLOW-UP ON THE PROGRESS IN THE IMPLEMENTATION OF THE OUTCOME OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT (WSSD)**

##### **A. Background**

85. The debate on the linkages between the environment protection and development, paved the way for recognition of the concept of ‘sustainable development’. The 1972 Stockholm Conference on Human Environment recognized the need of protecting environment and adopted an Action Plan for Human Environment and Stockholm Declaration consisting of 26 principles as a guide for the development of environmental law. United Nations Environment Programme (UNEP) was established as a follow-up to coordinate the environment activities of the UN agencies. In 1992, United Nations Conference on Environment and Development was held in Rio de Janeiro. It adopted Rio Declaration and Agenda 21, a comprehensive programme of action. The Conference also established the Commission on Sustainable Development (CSD). An evaluation of the implementation of the Agenda 21 was carried out at the Special Session of the General Assembly in 1997.

86. The 2002 World Summit on Sustainable Development, held at Johannesburg provided another opportunity to make an appraisal of the implementation of the Agenda 21. *Johannesburg Declaration on Sustainable Development* and the *Johannesburg Plan of Implementation* (JPOI) were the substantive outcome of the Summit. The Plan of Implementation had dealt with poverty eradication; changing unsustainable patterns of consumption and production; protecting and managing the natural resource base for economic and social development; sustainable development in a globalising world; health and sustainable development; sustainable development of small island developing states; sustainable development for Africa; means of implementation; and institutional framework for sustainable development.

##### **B. Twenty-Seventh Session and the First Universal Session of the UNEP Governing Council/Global Ministerial Environment Forum (18 - 22 February 2013, Nairobi, Kenya)**

87. The 27<sup>th</sup> session of the United Nations Environment Programme (UNEP) Governing Council/Global Ministerial Environment Forum (GC27/GMEF) and the first universal session of UNEP GC/GMEF took place from 18-22 February 2013, at the UN Office at Nairobi, Kenya. The delegates adopted 13 decisions, on *inter alia*: the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES); coordination across the UN system, including the Environment Management Group (EMG); oceans; sustainable consumption and production; the green economy in the context of sustainable development; advancing justice, governance and law; state of the environment; and chemicals and wastes.

88. The GC adopted a decision on institutional arrangements that, *inter alia*, invited the UN General Assembly to rename UNEP’s governing body as “UN Environment Assembly,” and provided that the body “will ensure” the active participation of all relevant stakeholders and explore new mechanisms to promote transparency and effective engagement of civil society in its work and that of its subsidiary bodies, *inter alia*, by: developing by 2014 a process for stakeholder accreditation and participation that builds on the existing rules of procedure and

takes into account the inclusive modalities of the Commission on Sustainable Development (CSD) and other relevant UN bodies.

89. The first universal session of the GC was termed “historic,” and it was noted that the Rio+20 outcome had reaffirmed UNEP as the leading global environmental authority by adopting several decisions to strengthen and upgrade UNEP. It was also highlighted that there was a need to articulate an environmental agenda that addressed issues such as energy, employment and poverty. Further, that the Rio+20 outcome had moved that agenda forward, there was a clear mandate from the UN General Assembly to implement the outcome’s paragraph 88 provisions on strengthening and upgrading UNEP and to decide how the newly mandated governing body of UNEP would function. The contributions of the UNEP over the years were outlined that included the Rio+20 discussions on green economy, its work on black carbon as a complement to climate action, the finalization of a mercury treaty, and improved synergies in the chemicals and wastes cluster.

90. The Global Ministerial Environment Forum consultations that took place during the first universal session, focused on emerging policy issues under the overall theme “Rio +20: from outcomes to implementation” and their indissoluble link to the strengthening and upgrading of UNEP as a central piece of the environmental dimension of sustainable development. The ministerial consultations included the following activities:

- (a) Ministerial plenary session entitled “Rio +20: from outcomes to implementation”;
- (b) Parallel ministerial roundtable discussions on responsiveness to country needs; the science-policy interface; secure, stable, adequate and increased financial resources to fulfil the mandate of UNEP; stakeholder participation; future ministerial engagement and institutional arrangements;
- (c) Parallel ministerial roundtable discussions on environmental challenges within sustainable development and the UNEP contribution to sustainable development goals; and promoting sustainable consumption and production;
- (d) Executive Director’s dialogue on the green economy in the context of sustainable development and poverty eradication; and
- (e) Ministerial consultations with the Executive Director on key issues.

91. On Rio+20 From Outcome to Implementation, and the implementation of paragraph 88 of “The Future We Want,” ministers recognized the need to advance towards a participatory and effective UNEP focused on implementation. They stressed the importance of focusing on deepening impact and ensuring better processes and systems. Ministers called for:

- ensuring secure, stable, adequate and increased financial resources for the implementation of paragraph 88 of the Rio+20 outcome, General Assembly resolutions 66/288, 67/203 and 67/213, and the UNEP programme of work;
- strengthening the science-policy interface, in part, by coordination of existing scientific institutional arrangements and dissemination of information;
- strengthening UNEP’s regional, sub-regional and national presence to enhance its responsiveness to country needs and demands;
- better integrating the environmental dimension of sustainable development and to enhance the contribution of UNEP to the UN development agenda; and

- providing more focus on capacity building and technology transfer for the implementation of the Bali Strategic Plan for Technology Transfer and Capacity-building, and in support of multilateral environmental agreements (MEAs) and internationally agreed goals.

92. On green economy in the context of sustainable development and poverty eradication, it was urged to involve all government ministries to drive the transformation towards a green economy; address barriers such as lack of skills and knowledge gaps about possible policy instruments, technological barriers, perceptions of higher costs of clean technology and inadequate financing; reform perverse subsidies that distort price signals and efficient resource allocation; and consider green economy as providing new investment and business opportunities. On environmental challenges within sustainable development and UNEP's contribution to the Sustainable Development Goals (SDG) process, UNEP should play an important role in promoting environmental sustainability into SDGs and in the post-2015 development agenda. SDGs need to promote economic transformation in developed and emerging economies and in encouraging innovative approaches for poverty eradication; and the 10-year Framework of Programmes on sustainable consumption and production to build on existing work and international agreements.

## V. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

93. Climate Change negotiations have recently centred on adopting a second commitment period for the states. Studies reveal steady increase in temperature as a result of increasing emissions of greenhouse gases which has serious impacts on economic well-being and on the ecosystems. With the expected increase in the intensity and frequency of extreme weather events such as floods and droughts, and their devastating effects, climate change needs continued urgent attention. Governments worldwide are engaged in constructive dialogue aimed at finding and implementing practical and efficient solutions to address the global problem of climate change. Addressing Climate change issues at global level with specific commitments within the framework of the established climate change regime namely; UNFCCC, Kyoto Protocol and Bali Road Map remains significant. The previous negotiations saw developing countries base their contentions on the principle of “equity” and “common but differentiated responsibilities” for adopting second commitment period post 2012. The Durban Outcome had emphasized on the need for an effective legal instrument for second-term commitment post-2012 by 2015. The recent Doha Conference which led to the drafting of Doha Climate Gateway speaks of amendment to the Kyoto Protocol. The Amendment suggests for an 8-year commitment plan since January 2013 for countries that has serious implications if not complied. However, adoption and ratification of the Doha Amendment remains way ahead as major Annex-I Parties have been reluctant to adhere to this Amendment. These talks and conferences recall the threat posed to the planet Earth by climate change. The protocol/legal instrument should be based on concepts such as historical responsibility, justice, equity, principle of common but differentiated responsibility, as well as the effective implementation of developed countries commitments and support for developing countries. The negotiations at Bonn and Bangkok focus on Ad Hoc Working Group on Durban Platform for Enhanced Action (ADP) which speaks of an ‘instrument of legal form’ replacing the Kyoto Protocol.

94. The conservation of biological diversity and combating desertification etc, have been continued concerns of the international community. The Biological Diversity COP encouraged special programmes and projects at national, subnational and regional level that would document the wealth of traditional knowledge among indigenous and local communities. Aichi Biodiversity Target must be addressed at different levels of governance within a country and there is a need to ensure substantial financial resources from developed to developing countries, particularly least developed countries and small-island developing Countries. It is urged that states parties may expedite the ratification process of Nagoya Protocol on Access to Genetic Resources and benefit sharing and the need for new and additional financial resources and technical support for capacity-building initiatives, including innovative financing. It is highly appreciable to acknowledge the active participation of AALCO Member States in all the major environmental negotiations especially in the Climate Change talks. AALCO recognizes the important role of UNEP in the environmental sustainability issues and AALCO Member States could transform its economy towards green economy that would provide new investment and business opportunities. Sustainable development goals need to promote economic transformation in developed and emerging economies and in encouraging innovative approaches for poverty eradication.

**ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**  
*(Deliberated)*

*The Asian-African Legal Consultative Organization at its Fifty-Second Annual Session,*

**Considering** the Secretariat Document No. AALCO/52/HEADQUARTERS (NEW DELHI)/2013/SD/S 10;

**Noting with** appreciation the introductory statement of the Deputy Secretary-General;

**Having followed** with great interest the deliberations on the item reflecting the views of the Member States on the agenda item “Environment and Sustainable Development”;

**Deeply concerned** with the deteriorating state of the global environment through various human activities, and unforeseen natural disasters;

**Reaffirming** that environmental protection constitutes an integral part of sustainable development;

**Recalling** the Nairobi Resolution on Environmental Law and Sustainable Development adopted by the Forty-Fourth Session of AALCO in 2005;

**Underlying** that climate change is one of the greatest challenges of our time;

**Emphasizing** that strong political will to combat climate change in accordance with the principles of the United Nations Framework Convention on Climate Change, especially the principle of common but differentiated responsibilities and respective capabilities is essential;

**Recognizing** the importance of the on-going Bali Road-Map negotiations for stronger international cooperation on climate change for the period beyond 2012;

**Considering** the Doha Climate Gateway adopted at the United Nations Climate Change Conference held at Doha, Qatar in December 2012 that amended the Kyoto Protocol agreeing for 8-year commitment period since January 2013;

**Conscious** of the importance of the conservation of biological diversity for evolution and maintaining life-sustaining systems of the biosphere;

**Affirming** the importance of the United Nations Convention to Combat Desertification:

1. **Urges** Member States to actively participate in the on-going Bali Road-Map negotiations and consider ratifying the Doha Amendment to the Kyoto Protocol agreeing for 8-year commitment period since January 2013.
2. **Directs** the Secretariat to follow the Climate Change negotiations and Durban Outcome processes for stronger international legal instrument on climate change for the period beyond 2012.
3. **Further directs** the Secretariat to continue to follow up the progress in the implementation of the outcome of the Johannesburg Summit as well as follow up the progress in the implementation of the United Nations Framework Convention on Climate Change, Convention on Biological Diversity, and the United Nations Convention to Combat Desertification, and
4. **Decides** to place this item on the provisional agenda of the Fifty-Third Annual Session.