

As regards the Climate Change Convention he noted that the same had been ratified by 161 States, 37 of which are Member States of the AALCC. While giving a detailed account of COP-1(1995) and COP-2(1996), he said COP-3 to be held in Kyoto, Japan in December 1997 would be an important Session.

In this regard he spoke of the continuing Ad hoc Group on Berlin Mandate (AGBM) which met for its fifth session in December 1996 to draft a legally binding protocol or any other instrument to reduce greenhouse gases. He said concepts like activities implemented jointly (AIJ), quantified legally binding objectives (QELROS) for specified time frames though supplemental in nature, to commitments by annex I parties under article 4 of the UNFCCC and improved techniques for GHG abatement. He made a mention of Ministerial Declaration which *inter alia*, reaffirmed the principles of equity and common but differentiated responsibilities which called for precautionary approach and endorsed the Second Assessment Report (SAR) of the inter governmental panel on climate change (IPCC) as currently the most comprehensive and authoritative assessment of the science of climate change.

On the Convention on Biological Diversity, he apprised the delegates of COP-3 which met in Buenos Aires in November 1996. The conference considered issues pertaining to clearing house mechanism, financial mechanism, marine and agriculture bio-diversity, intellectual property rights, bio-safety protocol and access to genetic resources as some of the issues considered at COP-3. He also pointed out the Working Group on Bio-safety is expected to finalize the long awaited protocol in 1998.

While elaborating on the coming into effect of the Convention on Desertification on 26 December 1996, he pointed out that 15 AALCC Member States had ratified the same. He further added that the Convention adopted a participatory approach to planning which takes into consideration the socio-economic aspects of desertification. While recalling General Assembly Resolution 47/190 of 22 December 1992, which decided to convene a Special Session on Environment to "Review

and Appraise the Implementation of Agenda 21 not later than 1997", he suggested that Member Governments consider the relevance of the same and direct the Secretariat accordingly.

The Delegates of the Islamic Republic of Iran expressing his sincere appreciation to the Secretariat brief noted that the Government of the Islamic Republic of Iran records high priority to matters relating environment and development. he also stated that his government had completed the procedures for ratification of the climate change, Bio-diversity and desertification Conventions.

Referring to Climate Change Convention he said 'Green house gases' were essentially a refuse created by developed states. Such a situation, his government felt called for increased transfer of technology and technical know-how to developing countries. As regards the Desertification Convention he said international obligations must be converted into realities by vesting the Global Mechanism with power to disburse monies to meet socio-economic needs of countries, especially drought prone areas. The Convention having come into effect the delegate felt should be implemented in true letter and spirit by mobilizing new and additional financial resources as provided in Article 20. On the issue of biological diversity he felt the developing countries being the largest reserves of bio-wealth should be assisted in capacity building, especially infrastructural needs for safe preservation, coupled with transfer of technology and technical know-how.

Highlighting the concept of sustainable development, bearing in mind the special session of the General assembly to review and Appraise the implementation of agenda 21, he called for eradication of poverty which remains a main cause of pollution. In his view this could be done if the developed countries provided the developing world with new resources as a part of their historic responsibility and fulfilment of international obligations in good faith.

The Delegate of Japan expressed his appreciation for the brief of documents prepared by the Secretariat and lent assurances that this Government as the host of the 3rd Conference of parties to the United Nations Framework Convention on Climate Change in Kyoto

in December would make all efforts to ensure the adoption of a protocol or an international instrument which would regulate measures to stabilize global warming effects after the year 2000. With a view to adopting such an effective equitable and realistic instrument he sought the support and cooperation of the delegates of the current Session. Referring to the forthcoming Special Session of the General Assembly as an important occasion stated that his delegation was of the view that a clear priority of the challenges related to environment and development should be identified and an annual work theme of the CSD specified.

The Delegate of Philippines congratulated the Secretariat for the comprehensive background paper on environment. Making a reference to the forthcoming Special Session of the General Assembly on Agenda 21, he hoped that many Heads of Delegation from AALCC Member States would be represented at that Session. He also expressed the desire that AALCC should make a representation, may be in an observer capacity to argue for Member States requirements, especially in the fields of capacity building and supply of additional financial resources.

The Delegate of China thanked the Deputy Secretary General, for a comprehensive presentation on UNCED and its follow-up. The delegate also expressed his appreciation to the Secretariat for providing excellent background documents which play an important role in disseminating information on the latest developments in the field of environmental law.

He pointed out that his government placed great importance on the issue of environment and development and further added that as a developing country his government had a top priority to eradicate poverty by meeting the basic needs of the people. With respect to climate change and bio-diversity he singled out the historic responsibility of developed States to supply adequate financial resources and technology transfer to the developing countries. However, he pointed out that developing countries must enact legislations to implement their international obligation in good faith. Referring to the Special Session of the General Assembly to Review and Appraise the Implementation of Agenda 21,

he hoped that the AALCC would be represented at this Session and speak on the needs and aspirations of its Member States.

The Delegate of the Republic of Korea requested the permission of the Chair, to draw the attention of the Member States to an attempted transfer of radioactive wastes from one exporting party in North East Asia to the Northern part of The Korean Peninsula, which is a densely populated area with a single unitary eco-system.

Reflecting on this issue the delegate cited customary law and conventional safeguards for the safe management and disposal of radioactive wastes. He recalled the mandate of Rio Charter, especially Principle 19, which calls for prior consultation procedures and precautionary approach to be followed.

Reaffirming faith in building an international consensus for prohibition of transboundary environmental harm, he called upon AALCC Member States to take note of a memorandum prepared by the Foreign Ministry of Korea.

(ii) Decision on “United Nations Conference on environment and Development Follow up”

(Adopted on 7.5.1997)

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

Having Considered Doc. No. AALCC/XXXVI/Tehran/97/S. 14 on matters concerning the followup 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 United Nations Convention on Biological Diversity, the United Nations 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 toward the implementation of Agenda 21;

Urging to be mindful of the violations to international standards and obligations under International Law on environment including transboundary movement of radioactive wastes with a view to ensuring strict compliance with the same;

Recalling General Assembly Resolution 47/190 of 22 December 1992, which decided to convene a Special Session on Environment from 23-27 June 1997 for the Purpose of an Overall Review and Appraisal of 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 Biological Diversity, Framework Convention on Climate Change and the Convention to Combat Desertification,

4. *Appreciates* the voluntary contributions made by the Governments of Saudi Arabia and Myanmar to the AALCC's Special Fund on Environment, and urges Member Governments to make voluntary contributions to that Fund to enable the Secretariat to explore the possibility of formulating joint programmes with UNEP and other international organizations;

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-seventh Session.

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

Protection of Global Climate for Present and Future Generations

Background

The climate change issue has come a long way, from the stage of individual scientific efforts to recognition as a global problem, supported by the United Nations General Assembly resolution when it determined that "climate change is a common concern of mankind"¹. With continued support from the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO), the General Assembly established a single intergovernmental negotiating committee (INC), for a Framework Convention on Climate Change (INC/FCCC).² The INC held five sessions, where upon the text of the United Nations Framework Convention on Climate Change (UNFCCC), was adopted in May 1992. The Convention was opened for signature at the Rio Conference from 4 to 14 June 1992 and thereafter, at the United Nations Headquarters until 19 June 1993. It came into force on 21 March 1994, ninety days after receiving its 50 ratification.³

¹ See UN General Assembly resolution 43/53, 1988. For relevant literature on climate change, see Philippe Sands, Principles of International Environmental Law (Manchester University Press, Manchester and New York 1995), pp. 271-274; Daniel Bodansky, "Prologue to the Climate Change Convention" in Irving Mintzer and J.A. Leonard (eds), Negotiating Climate Change: The Inside Story of the Rio Convention (Cambridge University Press, Cambridge, 1994), pp. 45-74.

² UN General Assembly resolution 45/212 of 21 December 1990.

³ There are 161 country Parties to the Convention, of which the AALCC Member States are:

Bahrain, Bangladesh, Botswana, China, Egypt, Gambia, Ghana, India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kenya, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Senegal, Sri Lanka, Sudan, Sierra Leone, Syrian Arab Republic, Tanzania, Thailand, Uganda, United Arab Emirates, Republic of Yemen.

Recalling its earlier resolutions⁴ and resolution 50/115 of 20 December 1995, the General Assembly included in its provisional agenda for the 52 session, an item entitled "Protection of Global Climate for Present and Future generations of Mankind."

The Convention, as the name suggests, is a framework agreement, which provides for (a) an overall and long term objective to stabilize atmospheric green house emissions at a safe level, within a time frame, thereby ensuring adaptation by ecosystems, guarantee food production and sustainable growth⁵. (b) a detailed set of "principles" which would act as a guide for future action.⁶ (c) a financial mechanism, which includes commitments by certain developed country Parties;⁷ (d) an institutional mechanism, that includes the Conference of Parties (COP) being the highest decision making body and two subsidiary bodies, namely, the Subsidiary Body for Scientific and Technological Advice (SBSTA) and⁸ the Subsidiary Body for Implementation (SBI) and a Secretariat; and (e) novel means for implementation of commitments.⁹

Conferences of Parties

The main achievement of the first Conference of Parties (COP-1) which met in Berlin can be summarized as follows:

⁴ General Assembly resolutions 45/212 of 21 December 1990, 46/169 of 19 December 1991, 47/195 of 22 December 1992, 48/189 of 21 December 1993, 49/120 of 19 December 1994

⁵ Preambular paragraphs 1.2 and Article 2 of Convention

⁶ These principles include, common concern of mankind (paragraph 1 of the Preamble); common-but differentiated responsibilities (paragraph 6 of the Preamble and Article 3, paragraph 1 and Article 4); equity which includes intra and intergenerational dimensions paragraph 23 of the preamble, Article 3, paragraph 1; Precautionary approach (Article 31 paragraph 3); sustainable growth and development (Articles 3, paragraphs 4 and 5).

⁷ Article 4, paragraph 3, provides for new and additional financial resources to meet incremental costs. Article 11, provides for a financial mechanism, the Global Environment Facility (GEF)

⁸ Article 7, 8., 9 and 10 of the Convention

⁹ Article 4, paragraph 2, sub-paragraphs (a) 8(d), provide for a joint implementation or 'activities implemented jointly' (AIJ), mechanism.

(i) the establishment of an Ad hoc Group on Berlin Mandate, which would be entrusted to negotiate a protocol or any other legal instrument by 1997, containing additional commitments for industrialized countries for the post 2000 A.D. period; (ii) initiation of "joint activities" or 'activity implemented jointly' on a pilot phase; and (iii) as an interim measure, the Global Environmental Facility (GEF) to be the UNFCCC's financial mechanism. Other decisions included, the setting up of a "multilateral consultative process, pursuant to Article 13 of the Convention; and the recommendations of the subsidiaries bodies for scientific and technological advice and implementation"¹⁰

The Second Conference of Parties (COP-2) was held in Geneva, from 8 to 19 July 1996. Some of the important issues taken up for discussion at COP-2, along with unresolved issues of COP-1, included: (i) the continuing Ad Hoc Group on Berlin Mandate (AGBM) and the commitments of Annex-1 Parties; (ii) endorsement of the Second Assessment Report (SAR) of the IPCC, as the most authoritative assessment of the science of Climate Change, now available; (iii) activities implemented jointly (AIJ); (iv) the financial mechanism; and (v) Ministerial Declaration:

The AGBM, held its fourth meeting along with COP-2. In the light of its mandate in preparing a "protocol or any other legal instrument" to be adopted before COP-3, the AGBM process calls upon the developed country Parties to communicate their commitments aimed at returning greenhouse gas emissions to 1990 levels by the year 2000. However, many developed countries, view this mandate under Article 4, paragraph 2, sub-paragraphs (a) and (b), as not being mandatory¹¹. The AGBM also explicitly states that no new commitments should be introduced for developing countries, apart from those existing general commitments provided in Article 4, paragraph 1. The transition period would allow developing country Parties to achieve a measure of sustainable development, bearing in mind the commitments from Annex II Parties (OCED) and other developed countries to transfer finances and improved technologies.

¹⁰ Also see Doc. No. AALCC/XXXV/MANILA/96/4, pp. 1-6

¹¹ See statement of Raul Estrada-Oyuela, Chairman AGBM, Climate Change bulletin (UNFCCC, UNEP, WMO, IPCC Secretariats), Issue 11, 2 Quarter, 1996, p.2

A legally binding protocol¹² taking into consideration, the IPCC (SAR), calls upon countries to combat climate change following a rational or prudent strategy, that combines mitigation, adaptation and research. A general consensus emerged that, the proposed protocol should entail: (i) a legally binding commitment from developed countries, with new reduction targets and timetables, as provided by the Convention, beyond 2000; (ii) a 20 per cent reduction of emissions from developed countries beyond 2005;¹³ and (iii) a linkage to be established between the review mechanism with regard to commitment of Parties under the Convention and the proposed protocol.

A necessary fallout of concrete abatement policies was the discussion on joint implementation¹⁴ (JI) or 'activities implemented jointly' (AIJ)¹⁴ Though JI/AIJ necessarily reflect the co-operation between the industries, countries and international organizations on a voluntary basis, developing countries were of the views that, JI/AIJ being largely supplementary should not jeopardize national commitments by Annex-I Parties for capacity building and transfer of technology, which are obligations under the Convention.

With regard to the financial mechanism, concerns were expressed on the conditionalities placed on Global Environmental Facility (GEF) on project approvals. Calling for a restructuring of the GEF,¹⁵ the developing countries argued that apart from specific commitments for financial provisions from OECD countries, GEF should play an active role in institution building and providing the supportive framework needed for sustainable development.

¹²A number of draft protocols have been submitted which, include, Alliance of Small Island States (AOSIS), Germany, European Union and the Russian Federation.

¹³A key element for the protocol is the "quantified emissions limitation and reduction objectives" (QELROS): a 20 per cent reduction in carbon dioxide emission by 2005 with reference to 1990 levels is suggested by the AOSIS.

¹⁴Presently there are 29 planned and ongoing JI/AIJ pilot projects around the world (Source: Joint Implementation Quarterly (JIQ), (Groningen, Netherlands) vol. 2, No. 2, June 1996, p. 14

¹⁵The GEF was restructured in 1994, with a 2 billion replenishment. Developing countries argued that the implementing agency, the World Bank with a loan portfolio of \$ 148 billion, allocated only 1 billion for climate change, which includes large scale capacity building measures.

Ministerial Declaration

The Ministerial Declaration highlighted the political importance of the implementation of the objectives and commitments provided in the Convention. The Declaration adopted at COP-2, despite dissatisfaction expressed by some Ministers and other Heads of delegations; (i) reaffirmed the overarching importance of the principles of equity, common but differentiated responsibilities and the precautionary approach in mitigating the effects of climate change; (ii) endorsed the Second Assessment Report of the IPCC as currently the most comprehensive and authoritative assessment of the science of climate change, although some uncertainties do exist;¹⁶ (iii) called upon Annex I Parties to strengthen their commitments by implementing their national policies and measures and making additional efforts to stabilize their emissions of greenhouse gases; (iv) instructed the representatives to accelerate negotiations on the text of a legally binding protocol or any other legal instrument to be completed for adoption at COP-3; (v) affirmation of quantified legally binding objectives for emission limitations (QELROS) and significant overall reductions within specified time frames such as 2005, 2010 and 2020 with respect to their anthropogenic emissions by sources and removals by sinks of greenhouse gases, (vi) welcoming the efforts of the developing country Parties in implementing the Convention, it called upon Annex I Parties to fulfill their commitments to provide environmentally sound and benign technologies towards meeting the 'incremental costs'; and (vii) called upon the GEF to provide timely support to developing country Parties and initiate work towards a full replenishment in 1997.

AALCC views and comments

The protection of the global climate for present and future generations has been recognised as the common concern of mankind. Though this calls for concerted action by the international community, equity considerations and the Convention cast a historic responsibility

¹⁶Though the Ministerial Declaration, admitted that certain scientific uncertainties need to be further reduced, no mention was made of the special needs of fossil fuel-producing countries.