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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Prepared by:

**The AALCO Secretariat
E-66, Vasant Marg, Vasant Vihar
New Delhi- 110057
(INDIA)**

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LIST OF ABBREVIATIONS

AALCO	Asian-African Legal Consultative Organization
ABS	Access and Benefit Sharing (relevant to CBD)
AIA	Advanced Informed Agreement (relevant to CBD)
BCH	Biosafety Clearing House (relevant to CBD)
CBD	Convention on Biological Diversity
CBDR	(Principle of) Common But Differentiated Responsibility
CDM	Clean Development Mechanism (relevant to UNFCCC)
CHM	Clearing House Mechanism (relevant to CBD)
COP	Conference of Parties
CRIC	Committee to Review the Implementation of the United Nations Convention to Combat Desertification
CSD	Commission on Sustainable Development
CST	Committee on Science and Technology (of UNCCD)
EU	European Union
FAO	Food and Agriculture Organization
G-77	Group of 77
GEF	Global Environment Facility
GHG	Green House Gases (relevant to UNFCCC)
GM	Global Mechanism (relevant to UNCCD)
GPSC	Global Strategy for Plant Conservation (relevant to CBD)
GTI	Global Taxonomy Initiative (relevant to CBD)
IAS	Invasive Alien Species (relevant to CBD)
ICCP	Intergovernmental Committee for the Cartagena Protocol on Biosafety
IFAD	International Fund for Agriculture Development
IMO	International Maritime Organization
IPR	Intellectual Property Rights
LDC	Least Developed Countries
LMO	Living Modified Organisms (relevant to CBD)
LULUCF	Land Use, Land Use Change and Forestry (relevant to UNFCCC)
MCPA	Marine Coastal Protected Area (relevant to CBD)
MDG	Millennium Development Goal
MEA	Multilateral Environmental Agreement
NAP	National Action Plan (relevant to UNCCD)
NAPA	National Adaptation Programme of Action (relevant to UNFCCC)
NBSAP	National Biodiversity Strategic Action Plan (relevant to CBD)
PA	Protected Areas (relevant to CBD)
PIC	Prior-Informed Consent
SBI	Subsidiary Body on Implementation (of UNFCCC)
SBSTA	Subsidiary Body on Scientific and Technological Advice (of UNFCCC)
SBSTTA	Subsidiary Body for Scientific, Technical and Technological Advice (of CBD)
SIDS	Small Island Developing States

UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development (or the Earth or Rio Summit)
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
UNGA	United Nations General Assembly
WIPO	World Intellectual Property Organization
WSSD	World Summit on Sustainable Development (or the Johannesburg Summit)
WTO	World Trade Organization

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

I. INTRODUCTION

1. The issues pertaining to environment and sustainable development remain high on the agenda of the international community. Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements of sustainable development. Further, there is a need to ensure a balance between economic development, social development and environmental protection, which are interdependent and mutually reinforcing pillars of sustainable development. In this context, the decision of the United Nations General Assembly at its Fifty-seventh Session¹ to adopt “sustainable development as a key element of the overarching framework for United Nations activities, in particular for achieving the internationally agreed development goals, including those contained in the United Nations Millennium Declaration, and to give overall political direction to the implementation of Agenda 21 and its review” is particularly relevant for the quest of international community for attainment of sustainable development.

2. The item entitled “United Nations Conference on Environment and Development: Follow-up” has been on the agenda of the AALCO since its 32nd Session held in Kampala, 1993. It had thereafter been considered at successive sessions of the AALCO. The main focus has been on the developments with regard to the implementation of Agenda 21 in general and the United Nations Framework Convention on Climate Change, 1992 (UNFCCC), Convention on Biological Diversity, 1992 (CBD) and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD), 1994 in particular.

3. In order to reflect upon the progress achieved at World Summit on Sustainable Development, held at Johannesburg, South Africa from 26 August to 4 September 2002, it was proposed by the Deputy Secretary-General Mrs. Toshiko Shimizu, at the Forty-first Session (Abuja, 2002) that the title “The United Nations Conference on Environment and Development: Follow-up” would need to be changed taking in view the Johannesburg Summit and suggested that it could be reformulated as “Environment and Sustainable Development” as a broad topic under which legal developments including the implementation of environmental conventions could be considered. The suggestion was endorsed by the Session.

¹ UNGA Resolution A/RES/57/253 entitled “World Summit on Sustainable Development”, adopted on 20 December 2002; A/RES/57/253.

4. The item was last considered at the 42nd Session (Seoul, 2003), wherein AALCO resolution RES/42/11 adopted on the agenda item reaffirmed that environmental protection constituted an integral part of sustainable development and directed the Secretariat to continue to monitor the progress in the implementation of the UNFCCC, CBD, and UNCCD as well as follow-up on the progress in the implementation of the outcome of the Johannesburg Summit.

5. These three Conventions, the progress in the implementation of which the AALCO Secretariat was directed to monitor, promote the realization of the goal of sustainable development. In the period under review i.e. post Forty-second Session of AALCO (Seoul, 16-20 June 2003), the sessions of the Conference of Parties (COP)—the supreme decision-making body of these three Conventions—took place. Formal decisions adopted at these COP Sessions, in addition to strengthening the institutional structures established under the Conventions, provide a valuable forum for addressing new challenges and shaping appropriate responses. Accordingly, this documents attempts to furnish an Overview of the Sixth Conference of Parties of the UNCCD (COP-6, 25 August – 6 September 2003, Havana, Cuba); the Ninth Conference of the Parties to the UNFCCC (COP-9, 1-12 December 2003, Milan, Italy); the Seventh Conference of Parties to the CBD (COP-7, 9-20 February 2004, Kuala Lumpur, Malaysia); and the First Meeting of the Conference of Parties to the CBD serving as the First Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-1, 23-27 February 2004, Kuala Lumpur, Malaysia). In addition, it highlights the consideration of the follow-up on the progress in the implementation of the outcome of the World Summit on Sustainable Development by the UN General Assembly at its Fifty-eighth Session. Finally, it offers some comments and observations on the agenda item under consideration for the 43rd Session of the Organization.

II. UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA, 1994 (UNCCD)

A. Background

7. The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and Desertification, Particularly in Africa (UNCCD or CCD) was adopted on 17 June 1994 and opened for signature in Paris in October 1994. The Convention entered into force on 26 December 1996. As at 17 March 2004, there are 191 Parties to the Convention.²

8. The Convention provides for an integrated approach to combat desertification and mitigate the effects of drought in the countries, especially in Africa, by advocating effective action at all levels supported by regional and international co-operation. The Convention also contains “Regional Implementation Annexes” for Africa, Asia, Latin America and the Caribbean, and the Northern Mediterranean. A fifth annex for Central and Eastern Europe was adopted at COP-4 in December 2000.

9. The Conference of Parties (COP) is the supreme body of the Convention. A Committee on Science and Technology (CST), established under the Convention as a subsidiary body of the COP is entrusted with the task of providing information and advice on scientific and technological matters relating to combating desertification and mitigating the effects of drought. At its first session held in 1997, the COP-1 decided to locate its Permanent Secretariat in Bonn. After the conclusion of the Headquarters Agreement with the German Government, the Secretariat moved to Bonn in early 1999. With a view to mobilization and channeling of financial resources for the implementation of the Convention, a Global Mechanism functions under the authority of the COP.

10. During its first to fourth sessions, the COP had discussed, apart from the administrative matters, including program and budget, other institutional arrangements such as establishment of an *Ad hoc* panel to survey benchmarks and indicators and linkages between traditional and modern knowledge. COP-3 held in 1999 approved the Memorandum of Understanding between COP and the International Fund for Agriculture Development (IFAD) as the Organization to administer the Global Mechanism (GM), as envisaged in the Convention. At that session, it was also decided to establish an Ad-hoc Working Group (AHWG) to review and analyze the reports on national, sub-regional, and regional action programs and make recommendations for their implementation.

11. The two important initiatives taken at COP-4 held in 2000, were the initiation of the consideration of modalities for the establishment of a Committee to review the implementation of the Convention (CRIC) and the adoption of a decision on the Global Environment Facility (GEF) Council initiative to explore the best options for GEF support for CCD implementation. In addition, the *Ad hoc* Working Group (AHWG)

² For Status of AALCO Member State’s participation in the UNCCD see table in Annex.

continued its review of various national, sub-regional, and regional reports and discusses strategies and policy frameworks to enhance the implementation of the Convention.

12. The Fifth Conference of Parties (COP-5) was held in Geneva from 1 to 13 October 2001. The meeting focused on setting the modalities of work for the two-year interval before the next COP, scheduled for September 2003. Significant decisions adopted by the meeting include the establishment of the CRIC, the identification of modalities to improve the efficiency and effectiveness of the CST, and the enhancement of the CCD's financial base following strong support for a proposal by the GEF to designate land degradation as another focal area for funding.

13. The first session of the CRIC took place from 11 to 22 November 2002 in Rome. The meeting deliberated upon the following seven thematic issues, identified by COP-5: participatory process involving civil society, non-governmental organizations (NGOs) and community-based organizations (CBOs); legislative and institutional frameworks or arrangements; linkages and synergies with other environmental conventions and, as appropriate, with national development strategies; measures for rehabilitation of degraded land, drought and desertification monitoring and assessment; early warning systems for mitigating effects of drought; access by affected country Parties, particularly affected developing country Parties, to appropriate technology, knowledge and know-how; and resource mobilization and coordination, both domestic and international, including conclusions and partnership agreements.

B. Sixth Conference of Parties of the United Nations Convention to Combat Desertification (UNCCD)³

14. The Sixth Conference of the Parties (COP-6) to the UNCCD took place in Havana, Cuba, from 25 August to 6 September 2003. COP-6 was attended by 12 Heads of State and Government, 170 Parties, four observer States, several UN agencies, 18 intergovernmental organizations, and 72 non-governmental organizations (NGOs). The delegates elected Hon'ble Rosa Elena Simeon Negrin, Minister for Science, Technology and Environment of Cuba as President of COP-6. Important decisions made therein are briefly discussed below:

15. During the COP Meeting the work was carried out through its Subsidiary Bodies, namely the Committee of Whole (CoW), Committee on Science and Technology (CST) and the Committee for the Review of the Implementation of the Convention (CRIC). In addition, a round table of Heads of State and Government took place on 1 and 2

³ This part of the Secretariat Report is based upon the following documents: UNCCD, *Report of the Conference of the Parties on its Sixth Session, held in Havana from 25 August to 5 September 2003*, ICCD/COP (6) 11 dated 3 November 2003; following *UNCCD Secretariat Press Releases*: "UNCCD Conference accepts the GEF as a financial mechanism and calls for more financial commitments to meet needs"; World leaders single out the UNCCD as a key instrument for the UN Millennium Development Goal of those living in abject poverty by 2015"; "Government recommend endorsement of GEF as a financial mechanism of the UNCCD"; available on the website of the UNCCD Secretariat: <http://www.unccd.int/publicinfo/pressrel> ; and "Summary of the Sixth Conference of the Parties to the Convention to Combat Desertification: 25 August – 6 September 2003", *Earth Negotiations Bulletin*, vol. 4, no. 173 dated 8 September 2003, available at URL: <http://www.iisd.ca/linkages/desert/cop6/> .

September 2003. On 2 September 2003, Heads of State and Government adopted the Havana Declaration on the implementation of the United Nations Convention to Combat Desertification.

16. The second session of the Committee for the Review of the Implementation of the Convention (CRIC-2) welcomed the decision of the Second GEF Assembly in October 2002, declaring the multi-billion dollar global fund for the environment available as a financial mechanism of the Convention, and the decision by its Council in May 2003, establishing the operational modalities on sustainable land management. It also recommended the entering into a memorandum of understanding (MoU) between the Secretariats of the UNCCD and GEF on the arrangements to facilitate collaboration between the two United Nations agencies for consideration and adoption at COP-7. It also placed before the consideration of COP decisions on programme of work of the next session of the Committee; further steps in the implementation of the Convention; the overall review of the activities of the UNCCD Secretariat and of the progress made by the affected country Parties in the implementation of the Convention; the implementation of the Bonn Declaration on commitments to enhance the implementation and obligations of the Convention; and the review of the policies, operational modalities and activities of the Global Mechanism.

17. The Sixth Session of the Committee on Science and Technology (CST-6) recommended following decisions for adoption by the COP: traditional knowledge; benchmarks and indicators; the Dryland Degradation Assessment and the Millennium Ecosystem Assessment; the programme of work of the Committee; the roster of independent experts; the survey and evaluation of existing networks, institutions, agencies and bodies; early warning systems; and improving the efficiency and effectiveness of the Committee.

18. **Outcomes of the WSSD:** During the course of the deliberations the G-77/China called for effective synergies between the CCD and UN Commission on Sustainable Development (CSD) Secretariats, so that they enter into a dialogue to prepare for the discussion on desertification in the CSD work cycle for 2008-2009. Regional and interest groups stressed that work under the CCD should take into account the WSSD's outcomes and the Millennium Declaration. The African Group, supported by many others, emphasized recognition by the WSSD of the CCD's role in fighting poverty and promoting sustainable development. The consultations addressed such questions as the special circumstances of Small Island Developing States (SIDS). In addition, the European Union (EU) proposed text on poverty that "results from land degradation," the reference to the "lack of substantial financial resources" for CCD implementation, and reference to the need for the CCD Executive Secretary to "actively" participate in the follow-up to the WSSD outcomes and in "relevant" sessions of the CSD.

In the final decision on the outcomes of the WSSD⁴, the COP welcomed recognition by the WSSD of the CCD as one of the tools for poverty eradication, and underlined the importance of the CCD's implementation for meeting the Millennium

⁴ Decision 2/COP.6.

Development Goals (MDGs). The COP resolved to strengthen the implementation of the CCD in line with the outcome of the WSSD, including action to: mobilize adequate and predictable financial resources; formulate National Action Plans (NAP) as priority tools; encourage the Secretariats of the Rio Conventions to continue exploring and enhancing synergies; integrate measures to prevent and combat desertification and mitigate the effects of drought; provide affordable local access to information to improve monitoring and early warning; and improve the sustainability of grassland resources.

19. Review of the policies, operational modalities and activities of the Global Mechanism: GM Managing Director presented his Report on the review of the report on activities of the GM, highlighting two evaluations of the GM and the finalization of its business plan. He outlined several recommendations from the evaluations and lessons learned, underscoring mainstreaming and partnership building as the two pillars of the GM's operational strategy.

Parties congratulated the GM for its contribution in the implementation of the CCD, and underscored some shortcomings and recommendations. The G-77/China urged the COP to set a clear mandate and priorities for the GM. Many delegates welcomed the new GEF operational programme, and noted that new funds should be mobilized together with the GM, and requested the CCD Secretariat and the GEF to strengthen coordination for mobilizing resources.

The COP *inter alia* decided to request the GM to mainly focus on its primary role of mobilizing financial resources to support UNCCD implementation by broadening the funding base for implementation while giving greater emphasis to identifying sources of co-financing for GEF projects and facilitating funding rather than providing technical advice on project design in the light of the three main objectives of the Business Plan. It also requested the GM to continue to provide support to affected countries in mainstreaming national action programmes (NAP) into national development frameworks, such as Poverty Reduction Strategy Papers, as well as mobilize new sources of financing such as private capital, foreign direct investment, funding from multilateral institutions and grants from private foundations.⁵

20. Collaboration with the Global Environment Facility: Several Parties urged the COP to endorse the GEF as a financial mechanism of the CCD, and appealed to the CCD's partners to ensure that adequate resources be made available to the GEF. Participants also noted that the Memorandum of Understanding between CCD and the GEF should comprise a timetable and budget estimates, and that the establishment of criteria for GEF funding should focus on, *inter alia*, mega-projects based on the NAPs. Parties also urged further synergies among other conventions to complement actions that are relevant for the CCD.

The decision on the "collaboration with the GEF" addresses the designation of the GEF as a financial mechanism and the arrangements for establishing a working relationship with the GEF. In this decision, the COP decided to accept the GEF as a

⁵ Decision 5/COP. 6.

financial mechanism of the UNCCD, and requested the UNCCD Executive Secretary, with the Managing Director of the GM, to consult with the CEO and Chair of the GEF with a view to prepare and agree a Memorandum of Understanding on the arrangements for consideration and adoption by COP-7. It also invited Parties to submit their views on how the GEF should take into consideration policies, strategies and priorities agreed upon by the COP. It also requested the CCD Executive Secretary to report to COP-7 on measures taken to implement this decision.⁶

21. **Date and venue of the seventh session of the Conference of the Parties:** The meeting decided to hold the COP –7 at Bonn, the site of the Convention Secretariat, in the event that no Party makes an offer to host that session by 15 January 2005.⁷

22. **Havana Declaration of Heads of States and Government on the implementation of the UNCCD:** The Havana Declaration commits governments to pursue peace, sustainable development, multilateralism, and comply with international law. It notes that people living in affected areas need to be at the center of all programmes to combat desertification, and urges the improvement of economic, social and environmental conditions of the poor. It calls on the WTO to note the impacts that agriculture and trade subsidies have on rural development and desertification, and to consider phasing them out. It invites all affected Parties to integrate the CCD in national strategies for sustainable development, and include programmes to combat desertification in policies on land, water, rural development, forests, energy, and education and culture.

23. It may also be noted that the UN General Assembly at its Fifty-eighth Session vide its resolution 58/211 of 23 December 2003 has decided to declare the year 2006 the International Year of Deserts and Desertification. By this, the Assembly intends to raise awareness and to protect the biological diversity of deserts, as well as indigenous and local communities and the traditional knowledge of those affected by this phenomenon. It also called upon all countries to establish national committees or focal points and to celebrate the Year by arranging appropriate activities.

⁶ Decision 6/COP.6.

⁷ Decision 30/COP.6.

III. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, 1992 (UNFCCC)

A. Background

24. The UNFCCC was concluded on 9 May 1992 and opened for signature at the UNCED in June 1992. The Convention entered into force on 21 March 1994 and as at 26 February 2004 it has 188 Parties.⁸

25. At its first session in 1995, the Conference of Parties (COP-1) established an *Ad hoc* Group on the Berlin Mandate with a view to consider further measures to promote the objectives of the Convention. COP-3 (Kyoto, 1997) adopted the Kyoto Protocol to the UNFCCC. As provided in Article 3 of the Protocol, the countries listed in Annex I to the UNFCCC would commit themselves to reducing their overall emissions of six greenhouse gases by at least 5% below 1990 levels over the period between 2008 and 2012, with specific targets for each of those countries. In order to assist those countries in achieving their national targets, the Kyoto Protocol also provided for three mechanisms namely, Joint Implementation (Article 6); Clean Development Mechanism (CDM:Article 12); and Emission Trading (Article 17). While the Joint Implementation and Emission Trading Mechanisms could be availed of between Annex I Parties, the Clean Development Mechanism (CDM) could involve undertaking of Joint Projects between Annex I Parties and non-Annex I Parties, mainly the developing countries. The Protocol would enter into force on the ninetieth day after the date on which it has been ratified by at least 55 States Parties to the UNFCCC, including States Parties listed in Annex I which accounted for in total, for at least 55 per cent of the total carbon dioxide (CO₂) emissions for 1990.

26. Subsequent to the adoption of the Kyoto Protocol, intensive efforts continued to negotiate its operational details, which would facilitate wider ratification and entry into force of the Protocol.⁹ As at 26 November 2003, there were 120 Parties to the Kyoto Protocol,¹⁰ accounting for 44.2% of emissions.

27. At the COP-4 held in Buenos Aires, Argentina, in 1998, an action plan known as “The Buenos Aires Plan of Action” (BAPA), was adopted, which set out certain guidelines to develop the operational details concerning Kyoto Protocol and further measures to strengthen the implementation of the UNFCCC. It also set the schedule for completion of this work by COP-6 in 2000. During the next two years, intensive discussions were held in numerous meetings, workshops, and informal consultations.

⁸ For status of participation of AALCO Member States in the UNFCCC see Table in Annex I.

⁹ In order to enter into force, the Protocol must be ratified by 55 Parties to the UNFCCC, including Annex I Parties representing at least 55% of the total carbon dioxide emissions for 1990. Annex I includes developed countries and countries making the transition to a market economy. These countries/regional groups and their share of carbon emissions at 1990 level are: USA- 36.1%; European Union –24.2%; Russia-17.4%; Japan 8.5%; Poland-3.0%; Other European Nations 5.2%; Canada-3.3%; Australia-2.1% and New Zealand-0.2%. Till 26 November 2003, the Protocol has received 120 ratifications. The developed country ratifications now account for 44.2 % of 1990 CO₂ emissions. Russia’s 17.4% will be essential for pushing the tally over the required 55% limit.

¹⁰ For status of participation of AALCO Member States in the Kyoto Protocol see Table in Annex I.

Unfortunately, while agreement was reached on some issues, some key issues remained unresolved and COP-6, which met in The Hague in November 2000, failed to meet the deadline. Therefore, COP-6, Part II resumed its session in Bonn in July 2001.

28. At Bonn, discussions continued on unresolved key issues related to institutions and procedures for the implementation of Kyoto Protocol when it comes into force. The United States reluctance to participate in the negotiations dampened the spirit but did not derail the negotiations. After hectic negotiations, agreement was reached on certain specific issues and on some others progress was made in narrowing the divergent views. The agreements, as a package deal, *inter alia*, included establishment of a climate change fund and a fund for least developing countries, identification of eligible sink activities, rules governing the flexibility mechanisms and the establishment of a compliance mechanism, with a facilitative branch and an enforcement branch. The issue of penalty for non-compliance was resolved to some extent with the understanding that additional compliance procedures and mechanisms would be developed after the Kyoto Protocol enters into force. The completed draft decisions along with others, which required further consideration, were forwarded for formal adoption at the COP-7.

29. COP-7 was held in Marrakesh, Morocco in 2001 and after protracted negotiations, Marrakesh Accord with key features including consideration of Land Use, Land Use Change and Forestry (LULUCF) principles and limited banking of sinks under the CDM was agreed. The Marrakesh Ministerial Declaration hoped for the timely entry into force of the Kyoto Protocol. It expressed its satisfaction over the decisions adopted by the COP-7, which would pave the way for timely entry into force of the Kyoto Protocol. Expressing its concern that all countries, particularly developing countries, including the least developed countries and small island States, face increased risk of negative impacts of Climate Change, and, in this context, the problems of poverty, land degradation, access to water and food and human health needed global attention. It called for synergies between the UNFCCC, the CBD and the UNCCD. It stressed the importance of capacity-building and dissemination of innovative technologies in key sectors of development, particularly energy and of investment in this regard including through private sector investment and market-oriented approaches. It emphasized that Climate Change and its adverse impacts have to be addressed through cooperation at all levels and welcomed the efforts of all parties to implement the Convention.

30. The Eighth Session of the Conference of Parties (COP-8) took place in New Delhi, India in 2002. The AALCO Secretariat enjoys Observer status with the UNFCCC and in that capacity participated in the COP meeting. The Secretary-General Amb. Dr. Wafik Z. Kamil delivered a statement in the High Level Segment of the Plenary on 30 October 2002, in which he *inter alia* emphasized that the principle of common but differentiated responsibility should remain as the basis for the UNFCCC process.

31. The adoption of Delhi Ministerial Declaration on Climate Change and Sustainable Development was the highlight of COP-8. It stresses that risks associated with climate change, with potentially most serious impacts on developing countries, need to be addressed by integrating appropriate action in national sustainable development strategies in such key areas as water, energy, health, agriculture and biodiversity. The Declaration

emphasizes that, along with mitigation measures, urgent action is required to adapt to climate change. It promotes informal exchange of information on actions relating to mitigation and adaptation to assist Parties in continuing to develop effective and appropriate responses to climate change. It reaffirms that all Parties should continue to advance the implementation of their Convention commitments, that developed countries should demonstrate that they are taking the lead in modifying longer term trends, and that economic and social development and poverty eradication are the first and overriding priorities of developing countries. The Declaration recognizes the finding of the Third Assessment Report of the Intergovernmental Panel on Climate Change and underscores the need for significant cuts in global emissions to meet the Convention's ultimate objective. Parties that have ratified the Kyoto Protocol to the Convention strongly urged Parties that have not done so to ratify the Kyoto Protocol.

32. The other important decisions adopted by the meeting relate to procedures for reporting and reviewing emission data from developed countries; improved guidelines for national communications from developing countries; guidance to Global Environment Facility on the priorities for the Special Climate Change Fund and a Least Developed Country Fund. A key accomplishment of the Conference was making the Kyoto Protocol's Clean Development Mechanism fully operational.

B. Ninth Conference of Parties to the UNFCCC

33. The ninth Conference of Parties to the UNFCCC and the nineteenth session of the COP's Subsidiary Body for Implementation (SBI) and Subsidiary Body for Scientific and Technological Advice (SBSTA) took place in Milan, Italy from 1 to 12 December 2003. The meeting was attended by over 5000 participants from 166 Parties, 4 observer states, 312 intergovernmental, non-governmental, and other observer organizations.¹¹ Hon'ble Miklos Persanyi, Minister of Environment and Water, Hungary was elected as the President of the Conference.

34. Three round table discussions were also organized during the course of the Meeting, in which Ministers and Heads of Delegations participated. Briefly the essence of these discussions is stated below:¹²

Round-table discussion 1: Climate Change, adaptation, mitigation and sustainable development: It was highlighted that climate change remained the most important global challenge for humanity. In meeting this challenge the international community was faced with a clear choice between collective irresponsibility or maturity. Most Parties saw the

¹¹ This section of the brief is based upon advance unedited version of the decisions of COP-9 available on the website of UNFCCC: <http://unfccc.int>; and following *UNFCCC Secretariat Press Releases*: "Milan conference to promote stronger national action on climate change", 26 November 2003; "Milan Conference concludes as ministers call for urgent and coordinated action on climate change", 12 December 2003; "Summary of the Ninth Conference of Parties to the United Nations Framework Convention on Climate Change: 1-12 December 2003", *Earth Negotiations Bulletin*, vol. 12, no. 231 dated 15 December 2003 available online at <http://www.iisd.ca/linkages/climate/cop9/>.

¹² Details are extracted from "Round-table Discussions Among Ministers and Other Heads of Delegations: Summary by the President of the Conference of the Parties at its ninth session", FCCC/CP/2003/CRP.1 dated 12 December 2003, available at URL: <http://unfccc.int/resource/docs/cop9/crp01.pdf>.

Kyoto Protocol as providing the right architecture and framework to reduce greenhouse gases and limit the adverse effects of climate change. Parties referred to the Kyoto Protocol as a significant step towards the ultimate objective of the Convention. Many Parties added that every effort should be made to implement its provisions, even though it was not legally in force. Importance of CDM as an instrument of capacity-building and a means to forge partnerships for the future was highlighted. Prompt implementation of the CDM was called for by many Parties. They also noted the increasing demand for adaptation measures. Need for more funding from developed country Parties to support mitigation and adaptation initiatives in non-Annex I Parties was highlighted.

Round-table discussion 2: Technology, including technology use and development and the transfer of technologies: The question of how to make best use of existing technology while at the same time facilitating technology innovation, development and diffusion for mitigation and adaptation in context of sustainable development was at the core of the dialogue among Parties. There was agreement that an appropriate combination of near term and long-term action was critical. Some Parties highlighted the need for sustainable economic growth to alleviate poverty and promote social development. It was stressed that the use and transfer of existing technology and the promotion of new technologies should go hand-in-hand and was complementary. The question of how to design and transfer technologies to the local level, and use local resources in accordance with national needs was posed.

Round-table discussion 3: Assessment of progress at the national, regional and international levels to fulfil the promise and objectives enshrined in the climate change agreements, including the scientific information, policy and financial aspects: Many parties expressed frustration about the lack of progress by Annex I parties in showing real leadership in combating climate change and limiting their emission of greenhouse gases. Parties noted that CDM has become operational, and the necessary infrastructure, capacity and conditions have been established to provide a basis for approving and implementing a growing number of projects in developing countries that can lead to tangible emissions reductions. Intensified North-North, South-South, South-North and regional cooperation was vital, for example in technology transfer, technology research, cleaner production and through Joint Implementation and CDM projects. Further mobilization of resources was highlighted as a key issue.

35. COP-9 explored a wide range of options for limiting greenhouse gas emissions and adapting to the impact of climate change and adopted following decisions: national communications from Parties included in Annex I to the Convention; guidance to the Executive Board of the clean development mechanism; modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol; scientific, technical and socio-economic aspects of impacts of, and vulnerability and adaptation to, climate change, and scientific, technical and socio-economic aspects of mitigation; good practice guidance for land-use, land-use change and forestry in the preparation of national greenhouse gas inventories under the Convention; global observing system for climate; capacity-building; compilation and synthesis of initial national communications; report of the Global Environment Facility to the Conference of the Parties; additional guidance to an

operating entity of the financial mechanism; further guidance to an entity entrusted with the operation of the financial mechanism of the Convention, for the operation of the Special Climate Change Fund; further guidance for the operation of the Least Developed Countries Fund; review of the guidelines for the preparation of national adaptation programmes of action; extension of the mandate of the Least Developed Countries Expert Group; issues relating to the technical review of greenhouse gas inventories from Parties included in Annex I to the Convention; arrangements for the first session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol; issues relating to the implementation of Article 8 of the Kyoto Protocol; technical guidance on methodologies for adjustments under Article 5, paragraph 2, of the Kyoto Protocol; forest management activities under Article 3, paragraph 4, of the Kyoto Protocol: Croatia; date and venue of the tenth session of the Conference of the Parties; income and budget performance in the biennium 2002-2003 and arrangements of administrative support to the Convention; and programme budget for the biennium 2004-2005. Briefly, some of these decisions are elaborated as under:

36. Modalities and procedures for afforestation and reforestation project activities under the clean development mechanism in the first commitment period of the Kyoto Protocol: Forest related issues attracted the significant attention of the delegates. They explored on how to expand the CDM activities to afforestation and reforestation projects that remove carbon dioxide (CO₂) from the atmosphere. CDM allows industrialized nations to invest in afforestation projects (besides energy efficiency and renewable energy projects) in developing countries to gain credits for reducing emissions. The decision on afforestation and reforestation under the CDM contains a draft COP/MOP decision and an annex detailing the modalities and procedures of the project activities decision. It provides that sink project proposals should contain information to assess the projects' socio-economic and environmental impact. It was decided that these projects should contribute to conservation of biological diversity and sustainable use of natural resources. The COP decision, declares an awareness of relevant provisions in international agreements applying to afforestation and reforestation under the CDM, and recognizes that host Parties evaluate risks associated with Genetically Modified Organisms (GMOs) and Invasive Alien Species (IAS) according to their national laws. The COP also invited Parties' submissions on simplified modalities and procedures for small-scale projects and their implementation, and requested the Secretariat to prepare a technical paper on the matter based on Parties' submissions, to be considered by SBSTA-20 and COP-10.

37. Good practice guidance on land use, land-use change and forestry (LULUCF) in the preparation of greenhouse gas inventories under the Convention: In arriving at a decision, the COP considered the Intergovernmental Panel on Climate Change (IPCC) report on good practice guidance for LULUCF, together with its work on factoring out direct human-induced changes in carbon stocks from indirect human induced and natural effects, as well as with the IPCC Report on degradation of forests and devegetation of other types of forests. In its decision on the use of good practice guidance for preparing national greenhouse gas inventories under the UNFCCC, the COP decided to further consider the common reporting format tables for reporting under the Protocol at SBSTA-20. The COP also invited Parties to submit their views on the draft

common reporting format tables and on reporting requirements under the Protocol, and requested the Secretariat to update the draft tables to facilitate their consideration.

38. **Non-Annex I National Communications:** There was divergence in opinion amongst the Parties on the issue of submission of communications from non-Annex I Parties. On the one hand, the US suggested that non-Annex I national communications should be submitted not more than four years after the submission of their initial communications and that LDCs should submit their communications every five years. It was also proposed by US that as regards the greenhouse inventories, non-Annex I Parties should submit these every two years, and that LDCs should submit inventories every five years, as part of their national communication. On the other hand, G-77/China noted that the preparation of national communication was a continuous process, but that frequency of submissions was a non-issue. Questions as to the availability of financial resources for national communications was also raised by the developing countries. In its decision on the consideration of the fifth compilation and synthesis of initial national communications the COP concludes, *inter alia*, that: many non-Annex I Parties have submitted projects for funding; the enhancement of capacity and support was necessary for the maintenance of capacity built during the preparation of national communications; and there continues to be a need for financial and technical support to enhance national capacities in non-Annex I parties to prepare second and, where appropriate, third national communications. The COP requested the Secretariat to prepare a compilation and synthesis of information contained in initial national communications submitted up to 1 April 2005, and a document on possible means to facilitate the implementation of projects proposed for funding by non-Annex I Parties.

39. **The Special Climate Change Fund (SCCF) and Least Developed Country Fund:** Delegates discussed how best could these two funds support technology transfer, adaptation projects and other activities. It was suggested that the SCCF should be used as a catalyst for leveraging additional financial resources. It was urged that a procedure for the replenishment of the SCCF be established. Several countries underlined the priority of financing projects in line with agreed decisions on adaptation and technology transfer. The G-77/China underscored the importance of addressing sources of finance and mechanisms for dispersal, and also said that the funding level of the SCCF should match that of the Global Environment Facility's (GEF) climate change focal area. In the decision, the COP noted that the SCCF supported the implementation of the UNFCCC, contributes to the achievement of the World Summit on Sustainable Development and the Millennium Development Goals, and contributed to the integration of climate change considerations into development activities. The COP also decided to support the implementation of adaptation activities, taking into account national communications or National Action Plan for Adaptation (NAPA), and other relevant information provided by the applicant Party. Regarding the use of resources from the SCCF, the COP decided that resources should be used to fund technology transfer activities, programmes and measures that were complementary to those currently funded by the GEF in the following priority areas: implementation of the results of technology needs assessments; technology information; capacity building for technology transfer; and enabling environment. The COP also decided that activities relating to economic diversification are to be funded, and invited Parties to submit to the Secretariat, by 15 September 2004, further views on

activities, programmes and measures in these areas for further consideration by SBI-21 and COP-10.

40. As regards the item on second review of adequacy of UNFCCC Article 4.2(a) and (b) (fulfillment of commitments by developed countries Parties), as no consensus could be arrived at, the decision was held in abeyance and the item was forwarded to COP-10.

41. The Conference accepted the offer of Argentina to host COP-10 in Buenos Aires from 29 November to 10 December 2004.

42. The General Assembly at its Fifty-eighth session once again acknowledged that the global nature of climate change called for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions. The Assembly was also deeply concerned that all countries, in particular developing countries, including the least developed countries, face increased risks from negative impacts of climate change. In this regard, it noted that States that have ratified the Kyoto Protocol have strongly urged States that have not already done so to ratify the Kyoto Protocol in a timely manner.¹³

¹³ UNGA Res. A/RES/58/243, "Protection of global climate for present and future generations of mankind", adopted on 23 December 2003.

IV. CONVENTION ON BIOLOGICAL DIVERSITY, 1992 (CBD)

A. Background

43. The Convention on Biological Diversity (CBD) negotiated under the auspices of the UNEP was opened for signature on 5 June 1992 and entered into force on 29 December 1993. As at 13 February 2004, 188 States have ratified the Convention.¹⁴ The main goals of the CBD are to promote the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilization of the genetic resources.

44. From the time it has entered into force, seven sessions of the Conference of Parties (COP) and two Extraordinary sessions of the COP to the CBD have been held and a number of important decisions on different topics such as establishment of the Clearing-House Mechanism (CHM) and the Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA); designation of the Global Environment Facility (GEF) as the interim financial mechanism; designation of Montreal, Canada as the permanent location for the Secretariat; access and benefit sharing (ABS); programme of work on marine and coastal biodiversity; inland water ecosystems; agricultural and forest biodiversity national reports; access to genetic resources; alien species; biodiversity and tourism etc., have been adopted.

45. The Second Extraordinary Meeting of the COP in January 2000 adopted the Cartagena Protocol on Biosafety. 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 at 13 February 2004 had 88 Parties.¹⁵

46. The Sixth Meeting of the Conference of Parties (COP-6) to the CBD was held at The Hague, the Netherlands from 7 to 19 April 2002. The Conference *inter alia* adopted decisions on forest biodiversity; alien species that threaten ecosystems, habitats and species; the Global Taxonomy Initiative (GTI); the Global Strategy for Plant Conservation (GPSC); liability and redress; access and benefit-sharing (ABS); the strategic plan, national reporting, CBD operations, and the multi-year work programme; financial resources and mechanism; scientific and technical cooperation and the Clearing House Mechanism (CHM); and Article 8 (j) on traditional knowledge. The Ministerial Meeting adopted The Hague Ministerial Declaration which *inter alia*: acknowledges the importance of biodiversity for humans' well-being; notes a shift from policy development to implementation, the equal footing of the CBD's objectives, and the link between biodiversity and sustainable development; recognizes the need for timetables, review mechanisms and targets, including a year 2010 target for adoption of measures to halt

¹⁴ For Status of AALCO Member States participation in CBD see Table in Annex.

¹⁵ For Status of AALCO Member States participation in Caratgena Protocol see Table in Annex.

biodiversity loss; urges States to ratify and implement the CBD, the Biosafety Protocol and other biodiversity-related international instruments; urges developed countries to increase financial efforts; and enable stakeholders to contribute to the implementation of the CBD, in particular youth, women and local communities.

47. The Third Meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP-3) took place from 22 to 26 April 2002 at The Hague, the Netherlands. The meeting adopted thirteen recommendations, which it recommended for consideration by the first Conference of the Parties serving as the Meeting of Parties (MOP). The most contentious areas of discussion at ICCP-3 related to compliance, liability and redress, and handling, transport, packaging and identification, particularly regarding provisions in Article 18.2 on documentation for living modified organisms (LMOs) for food, feed or processing, contained use and intentional introduction.

48. An attempt is made here to provide a brief overview of COP-7 of the CBD and COP/MOP-1 of the Cartagena Protocol on Biosafety, held in Kuala Lumpur Malaysia in February 2004.

B. Seventh Meeting of the Conference of Parties to the Convention on Biological Diversity¹⁶

49. The Seventh Meeting of the Conference of Parties to the Convention on Biological Diversity took place from 9-20 February 2004 at Kuala Lumpur, Malaysia. Hon'ble Dato' Seri Law, Minister of Science, Technology and Environment of Malaysia was elected as the President of the Conference. The Meeting was attended by over 2, 300 participants representing 161 governments, as well as UN agencies, non-governmental organizations (NGOs), intergovernmental organizations (IGOs), indigenous and local communities, academia and industry.

50. Delegates to COP-7 considered and adopted 33 decisions on, *inter alia*: biodiversity and tourism; monitoring and indicators; the ecosystem approach; biodiversity and climate change; sustainable use; invasive alien species (IAS); the Strategic Plan; mountain biodiversity; inland water ecosystems; marine and coastal biodiversity; protected areas (PAs); access and benefit-sharing (ABS); technology transfer and cooperation; article 8(j) (traditional knowledge); incentive measures; communication, education and public awareness (CEPA); scientific and technical cooperation and the clearing-house mechanism (CHM); financial resources and mechanism; and national reporting. A Ministerial Segment was convened on 18-19 February, and adopted the Kuala Lumpur Ministerial Declaration.

¹⁶ In the preparation of this section of the Brief reference to the following documents have been made: "Summary of the Seventh Conference of Parties to the Convention on Biological Diversity: 9-20 February 2004", *Earth Negotiations Bulletin*, vol. 9, no. 284 dated 23 February 2004 available online at: <http://www.iisd.ca/linkages/biodiv/cop7/> and also in general other information available at the website of the CBD: <http://www.biodiv.org>. Until the time of preparing this report, i.e. 22 March 2004, the Official Report of COP-7 was not available on the website of the Convention.

51. **Biological Diversity of Mountain Ecosystems:** Issues pertaining to mountain biodiversity were considered in-depth by the delegates. The management of mountain ecosystem poses an important challenge and it should incorporate all relevant facets of life on and near mountains, including the intricate relationship between upland and lowland areas.¹⁷ Many delegates expressed support for the work programme and its integration into the Multi Year Programme of Work of the COP upto 2010 (MYPOW) and CBD thematic work programmes. Several delegates emphasized the importance of transboundary cooperation, coordination with other initiatives, and new and additional financial resources to implement the work programme. A number of delegates stressed empowering local communities and building capacity. References to international trade and trade distorting measures was a cause for much division.

52. The COP decision adopted the work programme on mountain biodiversity, invited Parties to adopt outcome-oriented targets, and encouraged governments to enter into partnerships in order to address the need for resources, human, technological and financial capacity to implement the work programme. The COP requested the Executive Secretary to: develop proposals on a small number of global outcome-oriented targets and timeframes relating to the 2010 target; and collect and share information about the role of mountain ecosystems in producing and maintaining freshwater resources, and about the consequences of climate change and desertification on mountain biodiversity.

The work programme annexed to the decision contains elements on direct actions for means for implementing and supporting actions for conservation, sustainable use and benefit-sharing.

Element 1: establishes goals to: prevent and mitigate the negative impacts of key threats to mountain biodiversity; protect, recover and restore mountain biodiversity; promote the sustainable use of mountain biological resources; promote access to benefit sharing (ABS); and maintain genetic diversity in mountain ecosystems, in particular through preserving and maintaining traditional knowledge and practices.

Element 2: sets goals to: enhance the legal, policy, institutional, and economic framework; respect, preserve, and maintain traditional knowledge; and establish regional and transboundary collaboration.

Element 3: establishes goals to: develop work on identification, monitoring and assessment; improve knowledge on, and methods for, assessing and monitoring the status of mountain biodiversity; improve the infrastructure for accurate assessment and monitoring and develop associated databases; improve research, technical and scientific cooperation, and other forms of capacity building; increase public education, participation and awareness; and promote the development, validation, and transfer of appropriate technologies for mountain ecosystems, including indigenous technologies in accordance with Article 8(j).

¹⁷ Statement by Mr. Hamdallah Zedan, Executive Secretary, Convention on Biological Diversity to the Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity, 9 February 2004, Kuala Lumpur, Malaysia. Available on the website of the Convention.

53. **Protected Areas:** In adopting the programme of work on Protected Areas (PA), the challenge was to adopt a programme of work that will lead to the establishment and maintenance of an effectively managed ecologically representative global system of protected area networks, in which the structure and functioning of the full range of ecosystems is maintained, so as to continue to provide benefits and to achieve a significant reduction in the rate of biodiversity loss.¹⁸

54. The COP decision on Protected Areas recognized that the work programme should be implemented in the context of nationally determined priorities, capacities and needs. It emphasized the need for capacity building in developing countries. It said that the targets included in the work programme provided a framework within which national and/or regional targets may be developed, and activities prioritized according to national priorities and capacities. The decision further underlined the importance to conserve biodiversity not only within but also outside PAs.

The COP called on Parties to estimate the cost of implementing the necessary activities to meet the targets of the work programme and report back to COP-8, and integrate PA objectives into their development strategies. Parties were further invited to consider options, such as ecological networks, ecological corridors, buffer zones and other approaches. It requested the GEF to support the implementation of the work programme through various specific actions.

The COP further noted that the establishment, management and monitoring of PAs should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations. The meeting decided to establish an *Ad hoc* open-ended working group on PAs to support and review implementation of the work programme; and assess progress in the implementation of the work programme at each COP meeting until 2010. The Executive Secretary was requested to, *inter alia*, make arrangements to hold at least one meeting of the working group before COP-8.

55. **Technology Transfer and Technology Cooperation:** The aim of the decision on the question of technology transfer and technology cooperation was to operationalize the relevant provisions of the Convention with a view to complementing and underpinning all other activities under the Convention. Technologies presented real opportunities to add value to the genes, species and ecosystems for development, as well as risks and both needed to be assessed in a balanced manner.¹⁹ Most delegates supported *inter alia*: the need for political will; identification of, and access to, environmentally sound technologies; funding for South-South cooperation; and the importance of North-South transfers. Many developing countries called for financing, capacity building and creating incentives for technology transfer. Many stressed the need for guidance to the GEF to secure financial support from donor institutions.

¹⁸ Ibid.

¹⁹ Ibid.

Several delegates said that intellectual property rights (IPRs) should not hinder technology transfer. Many delegates requested including traditional knowledge and references to Article 8(j). Some countries supported a *sui generis* system for the protection of traditional knowledge. Some developed countries called for emphasis on scientific and technical cooperation and collaboration with other processes, highlighting the role of the Clearing House Mechanisms (CHM) as a gateway to databases of relevant organizations. Several delegates proposed establishing an expert group, with others prioritizing work through the CHM.

The final decision adopted the work programme on technology transfer and technological and scientific cooperation, and decided that implementation of the work programme should be undertaken in close coordination with relevant activities of the Convention. It invited Parties to convene national, subregional and regional workshops to exchange information and enhance capacity and requested the Executive Secretary to convene the informal advisory committee of the CHM to assist the Executive Secretary with providing advice on the CHM's possible role as a central mechanism for information exchange and facilitation of technology transfer. The Executive Secretary was also requested to establish an expert group on technology transfer and scientific and technological cooperation to assist with preparing proposals on measures and mechanisms to facilitate access to, and adaptation of, technologies. The decision invited Parties' for development of innovative approaches and means of technology transfer and cooperation and urged financial and technical support and training to assist in the implementation of the work programme. The Meeting decided to provide further guidance to the GEF for capacity building, facilitating access to proprietary technologies, and providing incentives for technology diffusion.

56. **Access and benefit sharing:** The Johannesburg Summit had given a call for the negotiation of an international regime to promote and safeguard the equitable sharing of benefits arising out of the utilization of genetic resources. This matter was taken up at the Subsidiary bodies of the Convention and they recommended the terms of reference for the negotiation of an international regime. At the COP meeting many countries supported a legally binding regime that balances access with benefit-sharing concerns, and includes technology transfer.

57. Delegates decided to mandate the ABS (access and benefit sharing) Working Group, with the collaboration of the Working Group on Article 8 (j), to elaborate and negotiate an international ABS regime, with the aim of adopting an instrument/instruments. It invited the cooperation of FAO, WIPO, WTO and the International Union for the Protection of New Varieties of Plants (UPOV) and encouraged community participation. The Executive Secretary was requested to compile information on the regimes' elements. The Terms of Reference (ToR) for the ABS Working Group to negotiate an ABS regime includes terms on process; nature; scope and elements. The Working Group is called upon to: elaborate and negotiate the nature, scope and elements of an international ABS regime, drawing on, *inter alia*, an analysis of existing instruments; and examine whether the identified elements are part of these instruments and address the gaps. It is noted that the international regime could be composed of one or more instruments within a set of principles, norms, rules and

decision-making procedures, legally-binding and/or non-binding. The regime's scope covers access to genetic resources and promotion and safeguarding of benefit-sharing and traditional knowledge, innovations and practices in accordance with Article 8(j).

A list of elements to be considered by the ABS Working Group includes, *inter alia*: measures ensuring: collaborative scientific research and sharing of its results; sharing of benefits arising from the utilization of genetic resources and their derivatives and products; compliance with national legislations on ABS, prior-informed consent (PIC) and Mutually Agreed Terms (MAT); and compliance with PIC of indigenous and local communities holding associated traditional knowledge; measures preventing unauthorized access to genetic resources; the issue of derivatives; certificates of origin/source/legal provenance; disclosure requirements in IPR applications; protection of community rights over their traditional knowledge and customary law; instruments to ensure benefit-sharing with communities; monitoring, compliance and enforcement; dispute settlement and/or arbitration; and relevant elements of existing instruments and processes.

The COP also requested the ABS Working Group to address issues related to an international certificate of origin/source/legal origin, and to identify issues related to disclosure requirements in IPR applications. The COP invited WIPO to examine issues regarding the interrelation of access to genetic resources and disclosure requirements in IPR applications, and requested the Executive Secretary to gather information on compliance-related issues and make the compilation available for the ABS Working Group's consideration.

C. First Meeting of the Conference of Parties to the Convention on Biological Diversity Serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety²⁰

58. The Cartagena Protocol on Biosafety, the first legally binding international agreement governing the transboundary movement of living modified organisms resulting from modern biotechnology, entered into force on 11 September 2003. There are currently 88 Parties to the Protocol.²¹ The treaty aims at ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology. Welcoming the entry into force of the Cartagena Protocol on Biosafety, the UN Secretary-General Mr. Kofi Annan said that it was a "landmark for sustainable development, and another milestone in the global effort to reconcile environmental conservation and development". However, he cautioned that

²⁰ In preparation of this section of the Secretariat Report reference to the following documents have been made: "Summary of the First Meeting of the Conference of the Parties to the Convention on Biological Diversity Serving as the First Meeting of the Cartagena Protocol on Biosafety", *Earth Negotiations Bulletin* vol. 9, no. 289 dated 1 March 2004; available at URL: <http://www.iisd.ca/biodiv/bs-copmop1/>. The Official Report of the Conference was not available on the website of the CBD Secretariat until the time of preparation of this Report, i.e., 22 March 2004.

²¹ For status of AALCO Member States participation in the Protocol see Annex.

biotechnology “must be developed judiciously and used with adequate and transparent safety measures”.²²

59. For States Parties to the Protocol following steps are now imperative:

- 1) Under the advance informed agreement (AIA) procedure, any Party shipping LMOs for intentional introduction into the environment for the first time shall have to give prior notification to the importing country that is a Party to the Protocol and provide sufficient information to enable it to make an informed decision.
- 2) On the other hand, if a Party approves for domestic use and marketing LMOs intended for direct use as food, feed or processing and these may be exported to other countries, that Party must communicate its decision and details about the LMOs to the world community via the Biosafety Clearing-House (BCH).
- 3) Exporters must ensure that all shipments are accompanied by appropriate documentation required under the Protocol.
- 4) Shipments of LMOs for intentional introduction into the environment will have to be identified in accompanying documentation as LMOs, with a specification of the LMO identify and characteristics and a declaration that “the movement is in conformity with the requirements of the Protocol”.
- 5) The Biosafety Clearing-House is now operational. All decisions taken by any party regarding the importation or release of LMOs must now be made available to the Biosafety Clearing-House. In addition, the information specified in the Protocol, including: national laws for implementing the Protocol; any bilateral, regional and multilateral agreements entered regarding transboundary movement of LMOs and summaries of risk assessments of LMOs must be provided through the BCH.
- 6) Parties must ensure that risk assessments are carried out for decisions taken under the AIA procedure and must adopt measures for managing any risks identified by risk assessments. They must also monitor and control any new risks that may emerge in the future.

60. The First Meeting of the Conference of Parties (COP) to the Convention on Biological Diversity serving as the First Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-1) took place from 23-27 February 2004 at Kuala Lumpur, Malaysia. The meeting was attended by over 750 participants representing 81 Parties to the Protocol, 79 non-Parties, as well as UN agencies, NGOs, IGOs, indigenous and local communities, academia and industry.

61. COP/MOP-1 adopted 13 decisions on, *inter alia*: decision making by Parties of import; capacity building and the roster of experts; handling, transport, packaging and identification (HTPI) of living modified organisms (LMOs), information sharing and the Biosafety Clearing House (BCH); liability and redress; compliance; other issues for implementation; the medium-term programme of work for the COP/MOP; guidance to

²² “Entry into Force of Cartagena Protocol on Biosafety ‘landmark for Sustainable Development’, Statement of UN Secretary-General”, *UN Press Release*, SG/SM/8856 ENV/DEV/734.

the financial mechanism; and the budget for distinct costs of the Secretariat and the biosafety work programme.

62. **Guidance to the Financial Mechanism:** Many delegates stressed the need for capacity building, with the Asia and Pacific Group calling upon developed countries to provide financial support for the Protocol's implementation. Some countries raised concerns about difficulties for countries wanting to become Parties to the Protocol, noting that efforts to build the necessary infrastructure will not be supported financially.

The Conference decided that financial support by the GEF be given, subject to its guidance and eligibility criteria, to developing countries that are Parties to the Protocol, and also to non-Parties for the development of national biosafety frameworks and the establishment of national BCHs when they provide a clear political commitment towards becoming Parties to the Protocol. The COP/MOP also stressed the need for country-driven activities, and invited assistance for capacity-building activities and support for demonstration projects on national biosafety frameworks. It urged rapid implementation of the GEF's Initial Strategy for assisting the preparation for ratification, and noted that the GEF's mandate includes: funding for legislative and administrative frameworks; further areas of capacity building; facilitating technical support; and the use of networks.

63. **Handling, Transport, Packaging and Identification (HPTI):** Delegates discussed the type of documentation accompanying LMO for food, feed or processing (FFP) with divergent views over whether to use stand alone documentation or a commercial invoice. Regarding information contained in accompanying documentation, some Parties noted that exporters of LMO-FFPs should be "required," instead of "encouraged," to declare that a shipment contains LMO-FFPs. A few Parties objected to the suggestion made by many to include the LMO's name and unique identifier in the documentation. Delegates agreed to establish an open-ended technical expert group on identification requirements for LMO-FFPs, and discussed whether to convene a technical meeting prior to the open-ended technical expert group. Delegates also debated criteria on which participation should be based, and participants designated.

The decision contains sections on: documentation for LMO-FFPs; documentation for LMOs destined for contained use or for intentional introduction into the environment; unique identification system(s); and capacity building.

a. Documentation for LMO-FFPs (Article 18.2(a)): The COP/MOP noted the interim nature of the present documentation requirements, subject to a decision on detailed requirements to be taken by COP/MOP-2. The COP/MOP requested Parties and urged other governments to take measures to require the use of a commercial invoice or other document required or utilized by existing documentation systems, as documentation that should accompany LMO-FFPs. The COP/MOP requested Parties and other governments to ensure that documentation accompanying LMO-FFPs clearly identified that the shipment may contain LMO-FFPs, and states that they were not intended for intentional introduction into the environment. The COP/MOP also requested Parties and urged other governments to take measures to ensure that the documentation accompanying LMO-FFPs provides details of a contact point for further information: the exporter, the

importer, or any appropriate authority, when designated by a government as the contact point. It urged Parties and other governments to require that accompanying documentation includes (i) the common, scientific and, where available, commercial names, and (ii) the transformation event code of the LMOs or, where available, its unique identifier code. The decision encourages Parties and other governments to require exporters of LMO-FFPs to declare in accompanying documentation that the shipment contains LMO-FFPs, the identity of the LMO, and any unique identification, where possible.

The COP/MOP decided to establish an open-ended technical expert group on identification requirements of LMO-FFPs, whose terms of reference (ToR) provide that the technical expert group shall examine issues related to specifying the identity of LMO-FFPs, including: accompanying documentation, information provided in the accompanying documentation, the extent and modality of using unique identifiers, and thresholds for adventitious or unintentional presence of LMOs that may be needed to trigger identification requirements. The expert group shall also review available sampling and detection techniques, with a view to harmonization and prepare a draft decision on these matters to be considered by COP/MOP-2.

b. Documentation for LMOs destined for contained use or for intentional introduction into the environment (Article 18.2(b) and (c)): The COP/MOP requested Parties and urged other governments to ensure the use of a commercial invoice or other documents as accompanying documentation, required or utilized by existing documentation systems, and considering outlined formats. Parties were also requested, and other governments invited, to submit prior to COP/MOP-3, information on experience gained with the use of accompanying documentation, for future consideration of a stand alone document. Regarding LMOs for contained use, the COP/MOP requested Parties and urged other governments to ensure that documentation accompanying LMOs contain, *inter alia*: clear identification as “LMOs,” including common and scientific names of the organisms, and as “destined for contained use”; name and address of the consignee, and exporter or importer, as appropriate, including contact details; any requirements for the safe handling, transport and use of LMOs as provided under applicable existing international instruments, domestic regulatory frameworks, or under any agreements entered into by the importer and exporter; and where appropriate, further information including the commercial names of the LMOs, new or modified traits and characteristics such as event(s) of transformation, risk class, specification of use, and unique identification, where available.

Regarding LMOs for intentional introduction, the COP/MOP requested Parties and urges other governments to ensure that documentation accompanying LMOs contained the following information and declaration: clear identification as “LMOs” and their description, including common and scientific names, relevant traits and genetic modification, including transgenic traits and characteristics, such as event(s) of transformation or a reference to a unique identification system; any requirements for the safe handling, transport and use of LMOs as provided under applicable existing international requirements, domestic regulatory frameworks, or under any agreement entered into by the importer and exporter; the name and address of the exporter and

importer; the details of the contact point for further information, including an individual or organization in possession of relevant information in case of emergency; a declaration that the movement of the LMOs is in conformity with the Protocol's requirements; and where appropriate, further information, including the commercial name, risk class, and import approval for the first transboundary movement of LMOs.

c. *Unique identification system(s)*: The COP/MOP invited Parties and other governments to take measures to apply, as appropriate, the Organization for Economic Cooperation and Development (OECD) Unique Identifiers for Transgenic Plants to LMOs under the Protocol, without prejudice to the possible development and applicability of other systems. The Executive Secretary was requested to develop or maintain, in the BCH, a register of unique identification codes to ensure harmonization of such codes, and encourages the OECD and other relevant organizations to initiate or enhance their activities towards developing a harmonized system of unique identifiers.

d. *Capacity building*: The COP/MOP requested the Executive Secretary to convene, prior to the meeting of the open-ended technical expert group, a workshop on capacity building and exchange of experiences related to implementing Article 18.2.

64. **Compliance:** Questions pertaining to compliance generated the maximum debate during the Conference. Many opposed punitive measures to address non-compliance. Reference to consistency with international law was keenly debated. Regarding the Compliance Committee, many Parties requested deleting a reference to balanced representation of importing and exporting countries in the committee. On submissions for non-compliance, several Parties, supported submissions from any Party with respect to non-compliance by another Party. Many delegates called for committee members to serve objectively and in the best interest of the Protocol.

The COP/MOP adopted the procedures and mechanisms on compliance, established the Compliance Committee, and requested the Executive Secretary to arrange for a meeting of the Committee before COP/MOP-2. The annex on procedures and mechanisms on compliance contains sections on: the objective, nature and underlying principles; institutional mechanisms; functions of the Committee; procedures; information and consultation; measures to promote compliance and address cases of non-compliance; and review of the procedures and mechanisms. On the underlying principles, the compliance procedures and mechanisms shall be facilitative and cooperative in nature, pay particular attention to developing country Parties' special needs, and take into full consideration the difficulties they face in implementing the Protocol.

The Compliance Committee shall meet twice a year, be regionally balanced and consist of 15 members elected by the COP/MOP. Committee members shall serve objectively and in their personal capacity. On procedures, the Committee receives, through the Secretariat, any submissions relating to compliance from any Party with respect to itself, and from any Party, which is affected or likely to be affected, with respect to another Party. The Committee may reject any ill-founded submission.

On information and consultation, the Committee shall consider relevant information from: the Party concerned; the Party that has made a submission; the BCH, COP, COP/MOP and subsidiary bodies to the Convention and Protocol; and relevant international organizations.

On measures to promote compliance and address non-compliance, the Committee may report to the COP/MOP on non-compliant Parties' efforts to return to compliance and maintain this as an agenda item of the Committee until adequately resolved. Upon the Committee's recommendations, the COP/MOP may, taking into account the compliance capacity of the Party involved, especially developing countries, and the cause, type, degree and frequency of non-compliance, also decide to, *inter alia*: issue a caution to the concerned Party; request the Secretariat to publish cases of non-compliance in the BCH; and in cases of repeated non-compliance, take such measures as may be decided upon by COP/MOP-3 and thereafter.

On the review process of the procedures and mechanisms, the COP/MOP shall, at its third meeting and thereafter, review their effectiveness, address repeated cases of non-compliance, and take appropriate action.

The Plenary Meeting of COP/MOP-1 elected following as the members of the Compliance Committee, for two or four year terms: Bather Kone (Mali), Mary Fosi Mbantenkhu (Cameroon), Tewolde Berhan Egziabher (Ethiopia), Victor Villalobos (Mexico), Leonard O'Garro (Barbados), Alvaro Rodriguez (Colombia), Sergey Gubar (Ukraine), Biserka Strel (Slovenia), Gábor Nechay (Hungary), Birthe Ivars (Norway), Jürg Bally (Switzerland), Veit Koester (Denmark), Netatua Prescott (Tonga), Nemat Khansari (Iran), and Gurdial Singh Nijar (Malaysia).

65. **Liability and Redress:** Many delegates supported creating a working group on liability and redress, and suggested that it report to the COP/MOP. The COP/MOP established an open-ended *Ad hoc* working group of legal and technical experts on liability and redress. It requested the Executive Secretary to convene a technical group of experts to undertake preparatory work for the working group, which should meet at least once before COP/MOP-2.

The Term of Reference for the working group state that the group shall be composed of representatives, including legal, technical and scientific experts, nominated by Parties, and shall be open to observers. The working group shall: examine information provided by Parties, governments and others; take into account the report of the workshop on liability and redress; and take due account of ongoing processes under international law. It shall analyze general issues relating to the potential and/or actual damage scenarios of concern and to the application of international rules and procedures to these scenarios. The working group shall also elaborate options for elements of rules and procedures, which may include, *inter alia*, definition and nature of damage, valuation of damage to biodiversity and human health, channeling of liability, roles of Parties of import and export, mechanisms of financial security and standing/right to bring claims.

The group shall report to each COP/MOP and, two years after its establishment, the COP/MOP will review its activities and provide guidance. It shall present its final report, together with the proposed international rules and procedures to the COP/MOP, and shall complete its work in 2007.

66. **Next COP/MOP Meeting:** The Meeting decided that unless an offer to host the meeting is received, it would be held at the site of the CBD Secretariat in Montreal, Canada, in the second quarter of 2005.

V. FOLLOW-UP ON THE PROGRESS IN THE IMPLEMENTATION OF THE OUTCOME OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT

A. Background

67. The World Summit on Sustainable Development took place at Johannesburg, South Africa from 26 August to 4 September 2002. The Summit, the biggest ever-United Nations Conference adopted the Johannesburg Declaration on Sustainable Development and the Plan of Implementation (JPOI). The JPOI builds upon the Agenda 21 adopted by the United Nations Conference on Environment and Development (UNCED), 1992.

68. The General Assembly, in its resolution 57/253 of 20 December 2002, on the World Summit on Sustainable Development (Johannesburg Summit), endorsed the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation. The Assembly decided, *inter alia*, to adopt sustainable development as a key element of the overarching framework for United Nations activities, in particular for achieving the internationally agreed development goals, including those contained in the Millennium Declaration. In the same resolution the Assembly urged Governments and organizations of the United Nations system, as well as other intergovernmental organizations and major groups, to take timely actions to ensure effective follow-up to the outcomes of the Johannesburg Summit. The Assembly also encouraged the implementation of voluntary partnership initiatives and called for further discussion of this matter within the Commission on Sustainable Development.

69. In sum and substance, the General Assembly resolution re-emphasized the need for focused attention to the effective implementation of Agenda 21 and co-ordinated follow-up work at all levels. In this brief Note, it will not be possible to present overviews of various developments and follow-up activities initiated by the organizations of the United Nations system subsequent to the adoption of the RES/42/11 adopted at the 42nd Session of AALCO (Seoul, 2003) directing the Secretariat to follow-up progress in the implementation of the outcome of the Johannesburg Summit. In this context, it may be highlighted that the comprehensive *Report of the UN Secretary-General on the Activities undertaken in implementation of Agenda 21, the Programme of Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development*²³, placed for consideration of the Fifty-eighth Session of the Assembly shows that:

There is a good deal of enthusiasm and dynamism involved in the follow-up to the World Summit and consensus on the sharper focus on implementation. An important thrust of implementation has been to identify obstacles and constraints in implementation and to share lessons learned and best practices at all levels. The widely varied actions and partnership initiatives being implemented at the national, regional and international levels demonstrate the imperative of strengthened cooperation and coordination within and between organizations of the

²³ UN Doc. A/58/210 dated 1 August 2003.

United Nations system and other international institutions. The Commission on Sustainable Development, as the high-level intergovernmental body on sustainable development within the United Nations system, provides an important forum for sharing experiences in implementation gained at the country, regional and global levels and for integrating such experiences with policy review and guidance.

70. The Report emphasizes that after the conclusion of the Johannesburg Summit the prevailing sentiment was that the Summit represented the beginning of a common journey rather than the end of an intergovernmental event. The Johannesburg Summit launched a Plan of Implementation with specific goals and time-bound targets. There were high expectations of concrete progress and calls for a sharper focus on implementation. This emphasis on implementation has since been endorsed by Governments, international institutions, major groups and other stakeholders, setting in motion a process of reorientation of programmes and activities. The follow-up action at the inter-governmental level in the United Nations has been swift and focused, as exemplified by the General Assembly in endorsing the outcomes of the Summit.

B. Eleventh Session of the Commission on Sustainable Development

71. The Commission on Sustainable Development dedicated its eleventh session (28 April-9 May 2003)²⁴ to the elaboration of its future programme, organization and methods of work. In keeping with the Johannesburg Plan of Implementation, which provides that the Commission should place more emphasis on actions that enable implementation at all levels, the Commission agreed to organize its future work as a series of two-year action-oriented implementation cycles, which will include, in the first year of each cycle, a review session and, in the second, a policy session.

Multi-year programme of work of the Commission on Sustainable Development

<i>Cycle</i>	<i>Thematic Cluster</i>
2004/2005	Water, Sanitation, Human Settlement
2006/2007	Energy for Sustainable development, Industrial development, Air pollution / atmosphere, Climate Change
2008/2009	Agriculture, Rural Development, Land, Drought, Desertification, Africa
2010/2011	Transport, Chemicals, Waste Management, Mining, Ten-year framework of programmes on sustainable consumption and production patterns
2012/2013	Forests, Biodiversity, Biotechnology, Tourism, Mountains
2014/2015	Oceans and seas, Marine resources, Small island developing States, Disaster management and vulnerability

²⁴ For details see UN Commission on Sustainable Development – Report on the eleventh session (27 January 2003 and 28 April – 9 May 2003), UN Doc. E/2003/29.

2016/2017

Overall appraisal of the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the Johannesburg Plan of Implementation

The cross-cutting issues for all the cycles, except for 2016/2017 are: Poverty eradication; changing unsustainable patterns of consumption and production; protecting and managing the natural resource base of economic and social development, sustainable development in a globalizing world; health and sustainable development; sustainable development of small island developing States; sustainable development for Africa; other regional initiatives; means of implementation; institutional framework for sustainable development; gender equality and education.

72. The Commission further decided that its first review session, scheduled for April 2004, would undertake an evaluation of progress in implementing Agenda 21, the Programme of the Further Implementation of Agenda 21 and the Johannesburg Plan of Implementation. The policy session, to be held in May 2005, will build upon the outcome of the review session and will take policy decisions on practical measures and options to expedite implementation. Prior to the policy session, an intergovernmental preparatory meeting will be convened in February/March 2005 to address constraints and obstacles in the process of implementation.

73. For the 2004-2005 cycle, the Commission decided to focus on the themes of water, sanitation and human settlements, while also giving priority attention to linkers with cross-cutting issues, including poverty eradication, changing unsustainable consumption and production patterns, and protecting and managing the natural resource base of economic and social development.

74. The twelfth session of the CSD (CSD-12) will be held from 14-30 April 2004, at UN Headquarters in New York.

C. Establishment of World Solidarity Fund

75. At its 2003 substantive session, the Economic and Social Council (ECOSOC) took action on the World Solidarity Fund. At the Johannesburg Summit, world leaders called for the establishment of a solidarity fund to eradicate poverty and promote sustainable development. In response, the General Assembly adopted resolution 57/265 of 20 December 2002, requesting the Secretary-General to mandate the Administrator of the United Nations Development Programme (UNDP) to take the necessary measures for the immediate operationalization of the World Solidarity Fund. In his report to the Assembly and to the Council, the Administrator reported that the Fund had been set up and that steps were being taken to operationalize and publicize it. Recognizing the important potential contribution of the Fund to the achievement of development goals, the Council encouraged Member States, international organizations, the private sector, relevant institutions, foundations and individuals to contribute to it. The Council also requested that the Administrator of UNDP to take further measures to operationalize the Fund and invited developing countries to identify indicative projects to be submitted for financing as soon as resources were made available to the Fund.

D. Imperative for coordination and collaboration between the UN System and relevant international institutions

76. The Report of Secretary-General places a sharper focus on implementation and the wide-ranging activities of organizations of the United Nations system and underscores the imperative of coordination and collaboration within and between the United Nations system and relevant international institutions. It states that the United Nations System Chief Executives Board for Coordination (CEB) had agreed that the Johannesburg Summit had given renewed political impetus to the implementation of commitments and agreements reached in Rio in 1992 and had introduced new goals and targets to guide and orient follow-up at both the national and the international level. Members of CEB pointed out that the key message to be conveyed by the United Nations System should be “implementation”, which implies acting on the whole range of commitments. They further emphasized that the United Nations system, in contributing to the implementation of the outcomes of the Johannesburg Summit, based on a clear division of responsibilities, should focus on promoting policies that effectively integrate the economic, social and environmental dimensions of sustainable development, as well as on supporting the achievement of specific goals and time-bound targets.

E. Resolution adopted by the UN General Assembly at its Fifty-eighth Session

77. The UNGA Resolution 58/218 entitled “Implementation of Agenda 21, the Programme of Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development” of 23 December 2003 reaffirms the commitment to implement the JPOI, including the time-bound goals and targets, and other internationally agreed development goals, including the MDGs. It expressed its satisfaction of the new organization of work and multi-year programme of work, aimed at promoting and supporting implementation by the CSD, through two-year action-oriented implementation cycles, alternating review and policy years. The Resolution calls upon Governments, all relevant international and regional organizations, the Economic and Social Council, the United Nations funds and programmes, the regional commissions and specialized agencies, the international financial institutions, the Global Environment Facility and other inter-governmental organizations, in accordance with their respective mandates, as well as major groups, to take action to ensure the effective implementation of and follow-up to the commitments, programmes and time-bound targets adopted at the Summit. It also requested the Secretary-General to strengthen system-wide, inter-agency cooperation and coordination for the implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the Johannesburg Plan of Implementation and in that regard to report on such inter-agency cooperation and coordination activities to the CSD and ECOSOC in 2004.

VI. SECRETARIAT COMMENTS AND OBSERVATIONS

A. United Nations Convention to Combat Desertification

78. The decision of COP-6 to designate the Global Environment Facility as the funding mechanism for the UNCCD would open the GEF to funding desertification programmes. It may be noted that lack of funding had been the major barrier to the implementation of the UNCCD and this achievement is expected to bring the CCD closer to breaching the implementation gap.

79. It is hoped that Havana Declaration which reaffirms the strong political commitment to combat desertification would be reflected in the National Action Plan of Parties to the Convention. Further, awareness as regards the General Assembly decision for observing 2006 as the International Year of Deserts and Desertification is also required to be promoted.

B. United Nations Framework Convention on Climate Change

80. The year 2003 is considered to be the warmest year since scientists have started recording the temperatures. Recent reports suggest that 2004 would surpass 2003. Thus, climate change and global warming remain the biggest environmental challenge before the international community. The way to reduce global warming lies in reducing GHG emission as provided in the 1997 Kyoto Protocol to the UNFCCC. However, its entry into force is far from being achieved. The Millennium Declaration adopted by the General Assembly in December 2000 had urged States to ratify the Kyoto Protocol. Later on, it was hoped that either before the Johannesburg Summit or COP-8, the Protocol would enter into force. However, even after COP-9 the Protocol has not entered into force.

81. The key challenge before the Parties to this Protocol, as of now is to ensure its entry into force, without the largest emitter of Carbon emissions-the United States of America, which had in March 2001 refused to become a Party to the Protocol.²⁵ In addition, after its entry into force the developed countries are required to undertake necessary and immediate steps to implement the legally binding commitments contained in the Protocol, particularly through domestic action. Furthermore, the funding provisions adopted by the COP-6 (Part II at Bonn, July, 2001) are required to be implemented by the developed countries. In addition, the principles and modalities of the Kyoto mechanisms, namely emission trading, joint implementation and clean development mechanism are adhered to once the Protocol enters into force. Added to this is the challenge to make the implementation mechanism of the Protocol work without its coming into force, as the Russian Federation which holds the pivot to ensure its entry into force has adopted a dithering attitude.

²⁵ Later on 11 June 2001, President George Bush of the USA declared that the “Kyoto Protocol was fatally flawed in fundamental ways”, hence the USA would not ratify it. He believed that complying with Kyoto mandate would have a “negative economic impact” for America and the Protocol did not provide for “meaningful participation” from key developing States like China, Brazil and India. For the text of speech see website: <http://www.whitehouse.gov/news/releases/2001/06/20010611-2.html>.

82. Mr. Kofi Annan, the UN Secretary-General in his message on the 10th Anniversary of the entry into force of the UNFCCC on 21 March 2004 has aptly observed that

The global fight against climate change is a vast undertaking that will require sustained global citizenship and vision for decades to come. The international community should take pride in what it has done thus far to respond to this challenge. But if only these efforts are truly re-energized will we place our societies on more secure footing, and avert the calamities that the world's best science tells us lie ahead if we continue on our present course.

C. Convention on Biological Diversity

83. The response of COP-7 of CBD to the WSSD target of significantly reducing biodiversity loss by 2010 by adoption of concrete measures demonstrates that the CBD is the most appropriate and efficient policy framework to address biodiversity. Furthermore, the creation of a Working Group with a clear term of reference to work for the development of access and benefit sharing regime based on the Convention's objective of a "fair and equitable sharing of benefits arising out of the utilization of genetic resources" is a commendable achievement. It may be noted that developing countries Parties were advocating for the creation of such a regime and now they must actively participate in the negotiation process for such a regime. The adoption of work programmes on biological diversity of mountain ecosystem and protected area would provide further impetus to the conservation and management of biodiversity.

84. The entry into force of the Cartagena Protocol on 11 September 2003 is considered as a landmark for sustainable development, and another milestone in the global effort to reconcile environmental conservation and development. The decisions arrived at COP/MOP-1 are particularly important in providing the benefits of biotechnology. In this regard, two decisions of the Meeting stands out one the creation of a Compliance Committee and two the practical and effective documentation of Living Modified Organisms. (LMOs).

D. Follow-up on the progress in the implementation of the outcome of the Johannesburg Summit

85. Implementation of the targets and timetables prescribed by the JPOI remains the key challenge in the quest for sustainable development. As reiterated in the General Assembly such a task requires coordination and cooperation between Governments and relevant international organizations, particularly, the international economic and financial institutions. It may be noted that in order to promote complementarities among the Secretariats, while respecting their independent legal status, work is going on in the liaison group of the secretariats and offices of the relevant subsidiary bodies of the UNFCCC; UNCCD and the CBD.

86. Environmental governance is a catchy phrase which has come into vogue in discussions on environmental matters. There is hardly any Government which has not established a separate ministry or department allocated to deal with environmental matters. A spate of national environmental legislations have been enacted. However, their implementation has not been effective for various reasons. Most of the international environmental conventions which envisage implementation through adoption of national legislations are couched in too many technical and scientific details which are beyond comprehension of the legal experts in the environment ministries of most of the developing countries that causes delay in such enactments. In order to develop such expertise, one of the priorities should be the capacity building in legislative matters. This would promote wider acceptance and effective implementation of the international environmental conventions at the national levels. In this regard the experiences of the developed countries, their co-operation and assistance would be of great help.

87. Issues concerning transfer of environmental technology from the developed to the developing countries are crucial but at the same time complicated. Such new technologies are in the possession of multinational corporations and private sectors in most of the developed countries and have been developed after devoting a good deal of resources. Any such commitment from them may not be free from commercial angle. However, at the Governmental level efforts should continue to find a viable solution. An area which needs to be further explored in this context is the promotion of South-South Co-operation. Many of the developing countries are well advanced in the environmental technological matters and have great potential to help other developing countries.

ANNEX

STATUS OF AALCO MEMBER STATES PARTICIPATION IN UNCCD, UNFCCC & CBD

Table I: Status of the participation of AALCO Member States in the United Nations Convention to Combat Desertification

S. NO	MEMBER STATE	UNCCD	
		SIGNATURE	RATIFICATION ACCESSION (a) ACCEPTANCE (A) APPROVAL (AA)
1.	Arab Republic of Egypt	14 October 1994	7 July 1995
2.	Bahrain	—	14 July 1997 a
3.	Bangladesh	14 October 1994	26 January 1996
4.	Botswana	12 October 1995	11 September 1996
5.	Brunei Darussalam		4 December 2002a
6.	Cyprus	—	29 March 2000 a
7.	Democratic Peoples' Republic of Korea	—	29 December 2003a
8.	Federal Republic of Nigeria	31 October 1994	8 July 1997
9.	Gambia	14 October 1994	11 June 1996
10.	Ghana	15 October 1994	27 December 1996
11.	Hashemite Kingdom of Jordan	13 April 1995	21 October 1996
12.	India	14 October 1994	17 December 1996
13.	Indonesia	15 October 1994	31 August 1998
14.	Islamic Republic of Iran	14 October 1994	29 April 1997
15.	Japan	14 October 1994	11 September 1998 A
16.	Kenya	14 October 1994	24 June 1997
17.	Lebanon	14 October 1994	16 May 1996
18.	Libyan Arab Jamahriya	15 October 1994	22 July 1996
19.	Malaysia	6 October 1995	25 June 1997
20.	Mauritius	17 March 1995	23 January 1996
21.	Mongolian Peoples' Republic	15 October 1994	3 September 1996
22.	Myanmar	—	2 January 1997 a
23.	Nepal	12 October 1995	15 October 1996
24.	Pakistan	15 October 1994	24 February 1997
25.	Palestine	—	—
26.	People's Republic of China	14 October 1994	18 February 1997
27.	Philippines	8 December 1994	10 February 2000
28.	Republic of Iraq	—	—
29.	Republic of Korea	14 October 1994	17 August 1999
30.	Republic of Singapore	—	26 April 1999a
31.	Republic of Uganda	21 November 1994	25 June 1997
32.	Republic of Yemen	—	14 January 1997 a
33.	Saudi Arabia	—	25 June 1997 a
34.	Senegal	14 October 1994	26 July 1995
35.	Sierra Leone	11 November 1994	25 September 1997

36.	Somalia	—	24 July 2002 a
37.	Sri Lanka	—	9 December 1998 a
38.	State of Kuwait	22 September 1995	27 June 1997
39.	State of Qatar	—	15 September 1999a
40.	Sudan	15 October 1994	9 November 1995
41.	Sultanate of Oman	—	23 July 1996 a
42.	Syrian Arab Republic	15 October 1994	10 June 1997
43.	Thailand	—	7 March 2001 a
44.	Turkey	14 October 1994	31 March 1998
45.	United Arab Emirates	—	21 October 1998 a
46.	United Republic of Tanzania	14 October 1994	19 June 1997

Note

Information stated in the above table has been compiled from Status of Ratification and Entry into force of the UNCCD available on the website of the UN Convention to Combat Desertification: <http://unccd.int/convention/ratif/doiif.php>; (accessed on 18 March 2004) and UN, *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2002*, (UN, New York, 2003), vol. II, pp. 419-421. Kuwait has made a Declaration to this Convention.

Inference

As at 17 March 2004, there were 191 State Parties to the UNCCD. All the Member States of AALCO have ratified/acceded/accepted/approved the United Nations Convention to Combat Desertification, except for the Palestine and Republic of Iraq.

Table II: Status of participation of AALCO Member States in the United Nations Framework Convention on Climate Change and its Kyoto Protocol

S. NO	MEMBER STATE	UNFCCC		KYOTO PROTOCOL	
		SIGNATURE	RATIFICATION ACCESSION (a) ACCEPTANCE (A) APPROVAL (AA)	SIGNATURE	RATIFICATION ACCESSION (a) ACCEPTANCE (A) APPROVAL (AA)
1.	Arab Republic of Egypt	9 June 1992	5 December 1994	15 March 1999	—
2.	Bahrain	8 June 1992	28 December 1994	—	—
3.	Bangladesh	9 June 1992	15 April 1994	—	22 October 2001 a
4.	Botswana	12 June 1992	27 January 1994	—	8 August 2003 a
5.	Brunei Darussalam	—	—	—	—
6.	Cyprus	12 June 1992	15 October 1997	—	16 July 1999 a
7.	Democratic Peoples' Republic of Korea	11 June 1992	5 December 1994 (AA)	—	—
8.	Federal Republic of Nigeria	13 June 1992	29 August 1994	—	—
9.	Gambia	12 June 1992	10 June 1994	—	1 June 2001 a
10.	Ghana	12 June 1992	6 September 1995	—	30 May 2003 a
11.	Hashemite Kingdom of Jordan	11 June 1992	12 November 1993	—	17 January 2003 a
12.	India	10 June 1992	1 November 1993	—	26 August 2002 a
13.	Indonesia	5 June 1992	23 August 1994	13 July 1998	—
14.	Islamic Republic of Iran	14 June 1992	18 July 1996	—	—
15.	Japan	13 June 1992	28 May 1993 (A)	28 April 1998	4 June 2002 A
16.	Kenya	12 June 1992	30 August 1994	—	—
17.	Lebanon	12 June 1992	15 December 1994	—	—
18.	Libyan Arab Jamahriya	29 June 1992	14 June 1999	—	—
19.	Malaysia	9 June 1993	13 July 1994	12 March 1999	4 September 2002
20.	Mauritius	10 June 1992	4 September 1992	—	9 May 2001 a
21.	Mongolian Peoples' Republic	12 June 1992	30 September 1993	—	15 December 1999 a
22.	Myanmar	11 June 1992	25 November 1994	—	13 August 2003 a

23.	Nepal	12 June 1992	2 May 1994	—	—
24.	Pakistan	13 June 1992	1 June 1994	—	—
25.	Palestine	—	—	—	—
26.	People's Republic of China	11 June 1992	5 January 1993	29 May 1998	30 August 2002 AA
27.	Philippines	12 June 1992	2 August 1994	15 April 1998	20 November 2003
28.	Republic of Iraq	—	—	—	—
29.	Republic of Korea	13 June 1992	14 December 1993	25 September 1998	8 November 2002
30.	Republic of Singapore	13 June 1992	29 May 1997	—	—
31.	Republic of Uganda	13 June 1992	8 September 1993	—	25 March 2002 a
32.	Republic of Yemen	12 June 1992	21 February 1996	—	—
33.	Saudi Arabia	—	28 December 1994 a	—	—
34.	Senegal	13 June 1992	17 October 1994	—	20 July 2001 a
35.	Sierra Leone	11 February 1993	22 June 1995	—	—
36.	Somalia	—	—	—	—
37.	Sri Lanka	10 June 1992	23 November 1993	—	3 September 2002 a
38.	State of Kuwait	—	28 December 1994 a	—	—
39.	State of Qatar	—	18 April 1996 a	—	—
40.	Sudan	9 June 1992	19 November 1993	—	—
41.	Sultanate of Oman	11 June 1992	8 February 1995	—	—
42.	Syrian Arab Republic	—	4 January 1996 a	—	—
43.	Thailand	12 June 1992	28 December 1994	2 February 1999	28 August 2002
44.	Turkey	—	24 February 2004 a	—	—
45.	United Arab Emirates	—	29 December 1995 a	—	—
46.	United Republic of Tanzania	12 June 1992	17 April 1996	—	26 August 2002 a

Note

1. Information stated in the above table has been compiled from Status of Ratification of the United Nations Framework Convention on Climate Change and its Kyoto Protocol available on the website of the UNFCCC and *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2002*, (UN, New York, 2003), vol. II, pp. 404-410. The information on website for UNFCCC is updated till 26 February 2004, whereas for the Kyoto Protocol it is updated till 26 November 2003: <http://unfccc.international/resource/convention/ratlist.pdf>. (website accessed on 16 March 2004).

2. The AALCO Member States have not made any Reservation/Declaration to either of these instruments.

Inferences

Following inferences as to the participation of AALCO Member States in the UNFCCC and its Kyoto Protocol may be made from the above Table:

United Nations Framework Convention on Climate Change

(i) As at 26 February 2004, there were 188 Parties to the UNFCCC. It has been ratified/acceded/accepted/approved by 42 AALCO Member States. Amongst AALCO Member States Brunei Darussalam, Palestine, Republic of Iraq, and Somalia are non-Parties to the Convention.

Kyoto Protocol

(i) As at 26 November 2003, there were 120 Parties to the Kyoto Protocol. It has not yet entered into force, as the requirement relating to at least 55 % of emission from Annex I Parties has not been fulfilled. It has been ratified/acceded/accepted/approved to by 20 AALCO Member States. AALCO Member States Parties to this Protocol are: Bangladesh, Botswana, Cyprus, Gambia, Ghana, Hashemite Kingdom of Jordan, India, Japan, Malaysia, Mauritius, Mongolian People's Republic, Myanmar, People's Republic of China, Philippines, Republic of Korea, Republic of Uganda, Senegal, Sri Lanka, Thailand, and United Republic of Tanzania.

(ii) Arab Republic of Egypt and Indonesia are Signatories to the Kyoto Protocol.

Table III: Status of the participation of AALCO Member States in the Convention on Biological Diversity and Cartagena Protocol on Biosafety

S. NO	MEMBER STATE	CONVENTION ON BIOLOGICAL DIVERSITY		CARTAGENA PROTOCOL ON BIOSAFETY	
		SIGNATURE	RATIFICATION ACCESSION (a) ACCEPTANCE (A) APPROVAL (AA)	SIGNATURE	RATIFICATION ACCESSION (a) ACCEPTANCE (A) APPROVAL (AA)
1.	Arab Republic of Egypt	9 June 1992	2 June 1994	20 December 2000	23 December 2003
2.	Bahrain	9 June 1992	30 August 1996	—	—
3.	Bangladesh	5 June 1992	3 May 1994	24 May 2000	5 February 2004
4.	Botswana	8 June 1992	12 October 1995	1 June 2001	11 June 2002
5	Brunei Darussalam				
6	Cyprus	12 June 1992	10 July 1996	—	5 December 2003a
7.	Democratic Peoples' Republic of Korea	11 June 1992	26 October 1994 (AA)	20 April 2001	29 July 2003
8.	Federal Republic of Nigeria	13 June 1992	29 August 1994	24 May 2000	15 July 2003
9.	Gambia	12 June 1992	10 June 1994	24 May 2000	—
10.	Ghana	12 June 1992	29 August 1994	—	—
11.	Hashemite Kingdom of Jordan	11 June 1992	12 November 1993	11 October 2000	11 November 2003
12.	India	5 June 1992	18 February 1994	23 January 2001	17 January 2003
13.	Indonesia	5 June 1992	23 August 1994	24 May 2000	—
14.	Islamic Republic of Iran	14 June 1992	6 August 1996	23 April 2001	20 November 2003
15.	Japan	13 June 1992	28 May 1993 A	—	21 November 2003a
16.	Kenya	11 June 1992	26 July 1994	15 May 2000	24 January 2002
17.	Lebanon	12 June 1992	15 December 1994	—	—
18.	Libyan Arab Jamahriya	29 June 1992	12 July 2001	—	—
19.	Malaysia	12 June 1992	24 June 1994	24 May 2000	3 September 2003
20.	Mauritius	10 June 1992	4 September 1992	—	11 April 2002 (a)
21.	Mongolian Peoples' Republic	12 June 1992	30 September 1993	—	22 July 2003 a
22.	Myanmar	11 June 1992	25 November	11 May 2001	—

			1994		
23.	Nepal	12 June 1992	23 November 1993	2 March 2001	—
24.	Pakistan	5 June 1992	26 July 1994	4 June 2001	—
25.	Palestine	—	—	—	—
26.	People's Republic of China	11 June 1992	5 January 1993	8 August 2000	—
27.	Philippines	12 June 1992	8 October 1993	24 May 2000	—
28.	Republic of Iraq	—	—	—	—
29.	Republic of Korea	13 June 1992	3 October 1994	6 September 2000	—
30.	Republic of Singapore	12 June 1992	21 December 1995	—	—
31.	Republic of Uganda	12 June 1992	8 September 1993	24 May 2000	30 November 2001
32.	Republic of Yemen	12 June 1992	21 February 1996	—	—
33.	Saudi Arabia	—	3 October 2001 a	—	—
34.	Senegal	13 June 1992	17 October 1994	31 October 2000	8 October 2003
35.	Sierra Leone	—	12 December 1994 a	—	—
36.	Somalia	—	—	—	—
37.	Sri Lanka	10 June 1992	23 March 1994	24 May 2000	—
38.	State of Kuwait	9 June 1992	2 August 2002	—	—
39.	State of Qatar	11 June 1992	21 August 1996	—	—
40.	Sudan	9 June 1992	30 October 1995	—	—
41.	Sultanate of Oman	10 June 1992	8 February 1995	—	11 April 2003a
42.	Syrian Arab Republic	3 May 1993	4 January 1996	—	—
43.	Thailand	12 June 1992	29 January 2004	—	—
44.	Turkey	11 June 1992	14 February 1997	24 May 2000	24 October 2003
45.	United Arab Emirates	11 June 1992	10 February 2000	—	—
46.	United Republic of Tanzania	12 June 1992	8 March 1996	—	24 April 2003

Note

1. Information stated in the above table has been compiled from Status of Ratification to the Convention on Biological Diversity and Cartagena Protocol available on the website of the CBD and *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2002*, (UN, New York, 2003), vol. II, pp. 411-417.

The information on the website of the Convention regarding Parties to the CBD and Cartagena Protocol is updated till 13 February 2004: <http://www.biodiv.org/world/parties.asp>. (accessed on 18 March 2004).

2. Sudan and Syrian Arab Republic have made Declarations while ratifying the Convention.

Inferences

Following inferences as to the participation of AALCO Member States in the CBD and its Cartagena Protocol may be made from the above Table:

Convention on Biological Diversity

(i) As at 13 February 2004, there were 188 Parties to the CBD. It has been ratified/acceded/accepted/approved to by 42 AALCO Member States. Amongst AALCO Member States, Brunei Darussalam, Palestine, Republic of Iraq and Somalia are non-Parties to the CBD.

Cartagena Protocol on Biosafety

(i) As at 13 February 2004 there were 88 Parties to the Biosafety Protocol. It has been ratified/acceded/accepted/approved to by Nineteen AALCO Member States.

(ii) Gambia Indonesia, Myanmar, Nepal, Pakistan, People's Republic of China, Philippines, Republic of Korea, and Sri Lanka are Signatory States to this Protocol.