

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

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ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

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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 |
| CPB | Cartagena Protocol on Biosafety |
| 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 |
| KP | Kyoto Protocol |
| LDC | Least Developed Countries |
| LMMC | Group of Like-Minded Megadiverse Countries (relevant to CBD) |
| 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 |
| SPS | Agreement on the Application of Sanitary and Phytosanitary Measures |
| TBT | Agreement on Technical Barriers to Trade |
| 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 |
| WGRI | Working Group on Review of Implementation of Biosafety Protocol |
| WIPO | World Intellectual Property Organization |
| WSSD | World Summit on Sustainable Development (or the Johannesburg Summit) |
| WTO | World Trade Organization |

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

Table I: 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 | 9 June 2004 |
| 10. | Ghana | 12 June 1992 | 29 August 1994 | — | 30 May 2003 |
| 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 | 3 December 2004 |
| 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 | — | 14 June 2005 |
| 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 1994 | 11 May 2001 | — |
| 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 | 8 June 2005 |
| 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 | — | 01 December 2005 |
| 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. | South Africa | 4 June 1993 | 2 November 1995 | — | 14 August 2003 |
| 38. | Sri Lanka | 10 June 1992 | 23 March 1994 | 24 May 2000 | 28 April 2004 |
| 39. | State of Kuwait | 9 June 1992 | 2 August 2002 | — | — |
| 40. | State of Qatar | 11 June 1992 | 21 August 1996 | — | — |
| 41. | Sudan | 9 June 1992 | 30 October 1995 | — | 13 June 2005 |
| 42. | Sultanate of Oman | 10 June 1992 | 8 February 1995 | — | 11 April 2003a |
| 43. | Syrian Arab Republic | 3 May 1993 | 4 January 1996 | — | 1 April 2004 |
| 44. | Thailand | 12 June 1992 | 29 January 2004 | — | 10 November 2005 |
| 45. | Turkey | 11 June 1992 | 14 February 1997 | 24 May 2000 | 24 October 2003 |
| 46. | United Arab | 11 June 1992 | 10 February 2000 | — | — |

| | | | | | |
|-----|-----------------------------|--------------|--------------|---|---------------|
| | Emirates | | | | |
| 47. | 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. The information on the website of the Convention regarding Parties to the CBD and Cartagena Protocol <http://www.biodiv.org/world/parties.asp> was accessed on 3 February 2005.

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 3 February 2005, there were 188 Parties to the CBD. It has been ratified/acceded/accepted/approved to by 43 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 3 February 2005 there were 111 Parties to the Biosafety Protocol. It has been ratified/acceded/accepted/approved to by twenty-five AALCO Member States.

Table II: 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. | South Africa | 9 June 1995 | 30 September 1997 |
| 38. | Sri Lanka | — | 9 December 1998 a |
| 39. | State of Kuwait | 22 September 1995 | 27 June 1997 |

| | | | |
|-----|-----------------------------|-----------------|--------------------|
| 40. | State of Qatar | — | 15 September 1999a |
| 41. | Sudan | 15 October 1994 | 9 November 1995 |
| 42. | Sultanate of Oman | — | 23 July 1996 a |
| 43. | Syrian Arab Republic | 15 October 1994 | 10 June 1997 |
| 44. | Thailand | — | 7 March 2001 a |
| 45. | Turkey | 14 October 1994 | 31 March 1998 |
| 46. | United Arab Emirates | — | 21 October 1998 a |
| 47. | 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 South Africa, the State of Palestine and Republic of Iraq.

Table III: 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 | 12 January 2005 |
| 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) | — | 27 April 2005 Ac |
| 8. | Federal Republic of Nigeria | 13 June 1992 | 29 August 1994 | — | 10 December 2004 |
| 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 | 3 December 2004 |
| 14. | Islamic Republic of Iran | 14 June 1992 | 18 July 1996 | — | 22 August 2005 Ac |
| 15. | Japan | 13 June 1992 | 28 May 1993 (A) | 28 April 1998 | 4 June 2002 A |
| 16. | Kenya | 12 June 1992 | 30 August 1994 | — | 25 February 2005 |
| 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 | — | 13 August 2003 a |

| | | | | | |
|-----|-----------------------------|------------------|--------------------|-------------------|--------------------|
| | | | 1994 | | |
| 23. | Nepal | 12 June 1992 | 2 May 1994 | — | 16 September 2005 |
| 24. | Pakistan | 13 June 1992 | 1 June 1994 | — | 11 January 2005 |
| 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 | — | 15 September 2004 |
| 33. | Saudi Arabia | — | 28 December 1994 a | — | 31 January 2005 Ac |
| 34. | Senegal | 13 June 1992 | 17 October 1994 | — | 20 July 2001 a |
| 35. | Sierra Leone | 11 February 1993 | 22 June 1995 | — | — |
| 36. | Somalia | — | — | — | — |
| 37. | South Africa | 15 June 1993 | 29 August 1997 | — | 31 July 2002 |
| 38. | Sri Lanka | 10 June 1992 | 23 November 1993 | — | 3 September 2002 a |
| 39. | State of Kuwait | — | 28 December 1994 a | — | 11 March 2005 Ac |
| 40. | State of Qatar | — | 18 April 1996 a | — | 11 January 2005 |
| 41. | Sudan | 9 June 1992 | 19 November 1993 | — | 2 November 2004 |
| 42. | Sultanate of Oman | 11 June 1992 | 8 February 1995 | — | 19 January 2005 Ac |
| 43. | Syrian Arab Republic | — | 4 January 1996 a | — | — |
| 44. | Thailand | 12 June 1992 | 28 December 1994 | 2 February 1999 | 28 August 2002 |
| 45. | Turkey | — | 24 February 2004 a | — | — |
| 46. | United Arab Emirates | — | 29 December 1995 a | — | 26 January 2005 |
| 47. | 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. The information on website for UNFCCC is updated till 24 May 2004, whereas for the Kyoto Protocol it is updated till 24 November 2005: <http://unfccc.international/resource/convention/ratlist.pdf>. (website accessed on 16 December 2005).
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 24 May 2004, there were 189 Parties to the UNFCCC. It has been ratified/acceded/accepted/approved by 43 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 18 November 2005, there were 157 Parties to the Kyoto Protocol. It has been ratified/acceded/accepted/approved to by 36 AALCO Member States. AALCO Member States Parties to this Protocol are: Arab Republic of Egypt, Bangladesh, Botswana, Cyprus, Democratic People's Republic of Korea, Federal Republic of Nigeria, Gambia, Ghana, Hashemite Kingdom of Jordan, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Malaysia, Mauritius, Mongolian People's Republic, Myanmar, Nepal, Pakistan, People's Republic of China, Philippines, Republic of Korea, Republic of Yemen, Republic of Uganda, Saudi Arabia, Senegal, Sri Lanka, State of Kuwait, State of Qatar, South Africa, Sudan, Sultanate of Oman, Thailand, United Arab Emirates and United Republic of Tanzania.

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

I. INTRODUCTION

1. The law relating to “Environment and Sustainable Development” constitutes an important item on the agenda of the Organization. AALCO has been following the developments on this topic for over thirty years now. One of the hallmarks of the recently concluded Forty-Fourth Session of the Organization held in Nairobi from 27 June to 1 July 2005 was the convening of the highly successful one-day Special Meeting on Environmental Law and Sustainable Development.

2. The Session adopted the Nairobi Resolution on “Environmental Law and Sustainable Development.” The resolution inter alia recognizes the rapid development of Multilateral Environmental Agreements and National Environmental Law in Asia and Africa and notes that it needs to be implemented adequately and swiftly at international, regional and national levels. It reiterates the importance of rule of law in environment protection and sustainable development, which required the strengthening of the legal and institutional framework for environmental management at all, levels. It emphasizes the importance of strengthening laws and institutions for sustainable development for developing countries and the countries with economies in transition. The resolution recalls the need to promote and materialize the principle of three “R’s” i.e. Reduce, Reuse and Recycle, at all levels and the importance of efficient use of scarce natural resources. It invites the Member States to promote the legislative and other measures necessary to ensure implementation, compliance with and enforcement of national and international environmental law. It also urged Member States to continue to render assistance to the countries that have been affected by Tsunami. The resolution also encourages Member States to raise awareness and build capacity of various legal stakeholders who handle environmental issues such as the members of the Judiciary, legal practitioners, investigators and prosecutors, forensic experts, inspectors and custom officials.

3. The present focus of the work of the Organization is on the implementation of the three Rio Conventions namely; United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD) and United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994 (UNCCD) and Follow-Up in progress of the Implementation of the outcome of World Summit on Sustainable Development. Accordingly the present Secretariat Report attempts to furnish an Overview of the Second Meeting of the Conference of Parties to the CBD serving as the Second Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-2, 30 May – 3 June 2005, Montreal, Canada); the Seventh Conference of Parties of the UNCCD (COP-7, 17-28 October 2005, Nairobi, Republic of Kenya); and the Eleventh Conference of the Parties to the UNFCCC and the First Conference of Parties serving as the First Meeting of Parties to the Kyoto Protocol (COP-11 and COP/MOP 1, 28 November-10 December

2005, Montreal, Canada). Finally, it offers some comments and observations on the agenda item under consideration for the Forty-Fifth Session of the Organization.

II. CONVENTION ON BIOLOGICAL DIVERSITY (CBD) AND CARTAGENA PROTOCOL ON BIOSAFETY (CPB)

A. Background

4. 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 on 20 December 2005, 188 States have ratified the Convention.¹ 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. During the negotiations on this Convention and the Climate Change Convention, new terms were inculcated into environmental agreements, such as; (i) the common concern of mankind as a different concept from the common heritage of mankind, (ii) burden sharing among developed countries, (iii) common but differentiated responsibilities and (iv) rights of indigenous communities – with reference to CBD, the benefits of using the biological resources that they have reared over the years.

5. 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.

6. 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 on 20 December 2005 has 130 State Parties (103 signatures).²

¹ For Status of AALCO Member States participation in CBD see Table I in Annex. The status of ratification and signatures of the State Parties to the CBD and the Biosafety Protocol can be availed at <http://www.biodiv.org/world/parties.asp>

² Ibid.

7. 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 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.

8. 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. The COP adopted work programmes on protected areas, mountain biodiversity and technology transfer. Delegates also adopted decisions on: the Multi-Year Programme of Work up to 2010; the Strategic Plan; and access and benefit sharing. Decisions of relevance to the Biosafety Protocol include: the financial mechanism; application for CBD Secretariat observer status to the WTO SPS (Agreement on the Application of Sanitary and Phytosanitary Measures) and TBT (Agreement on Technical Barriers to Trade) Committees; and the budget.

9. The Conference had the important task of translating the biodiversity-related WSSD commitments of the Summit into concrete measures. These commitments include the target of significantly reducing the current rate of biodiversity loss by 2010, the negotiation of an international regime on access to genetic resources and benefit sharing, and the establishment of ecological networks and corridors. In response to it at the seventh meeting, the Conference of Parties requested the Executive Secretary of the UNEP along with the assistance of UNEP World Conservation Monitoring Centre and other relevant international organizations, to prepare the second Global Biodiversity Outlook for publication prior to next meeting of the Conference of Parties. Later, they had initiated activities to produce the second Global Biodiversity Outlook³ and the report.

³ The executive secretary of the UNEP had organized an International Conference on "Biodiversity: Science and Governance" and on the International Day for Biodiversity, 2005, it launched a Biodiversity Synthesis Report of the Millennium Ecosystem Assessment, 19 May 2005, at Montreal, Canada. The theme of the International Day for Biological Diversity for 2005, "Biodiversity: life insurance for our changing world."

The report would serve as a primary mechanism on the progresses for achieving the 2010 target at global level.⁴

10. It may be noted that COP-7 further reinforced the shift, already evident at COP-5 and 6, from policy development to implementation. The decisions on thematic and crosscutting programmes of work set clear outcome-oriented targets and either established or called for the development and incorporation of indicators for measuring progress.

11. The First Meeting of the Conference of Parties serving as the Meeting of Parties to the Cartagena Protocol on Biosafety was held at Kuala Lumpur, Malaysia from 23 May to 27 February 2004. The meeting agreed on documentation of LMO-FFPs, pending a decision on detailed requirements, to use a commercial invoice or other document to accompany the LMO-FFP; to provide details of a contact point; and include the common, scientific and commercial names, and the transformation event code of the LMO or its unique identifier. An expert group was established to further elaborate specific identification requirements and it was also agreed upon to have an agreement on more detailed documentation requirements for LMOs destined for direct introduction into the environment. The meeting established a 15-member Compliance Committee, and launched an *Ad Hoc* Group on liability and redress.

12. An attempt is made here to provide a brief overview of –

- (i) Second Meeting of the Conference of Parties serving as the Meeting of Parties to the Cartagena Protocol on Biosafety, which was held at Montreal, Canada from 30 May to 3 June 2005;
- (ii) First Meeting of the *Ad hoc* Group on Liability and Redress under the Biosafety Protocol held at Montreal, Canada from 25 to 27 May 2005; and
- (iii) First Meeting of the *Ad Hoc* Open-Ended Working Group on Review of the Implementation of the Convention Biological Diversity held at Montreal, Canada from 5 to 9 September 2005.

B. Second Meeting of the Conference of Parties serving as the Meeting of Parties to the Cartagena Protocol on Biosafety, (30 May to 3 June 2005, Montreal, Canada).⁵

⁴ The report was based on seven focal areas: reducing the rate of loss of the components of biodiversity; promoting sustainable use of biodiversity; addressing the major threats to biodiversity; maintaining ecosystem integrity and the provision of goods and services from biodiversity in ecosystems in support of human well-being; protecting traditional knowledge; innovations and practices; ensuring the fair and equitable sharing of benefits arising from the use of genetic resources; and mobilizing financial and technical resources.

⁵ In the preparation of this section of the Brief reference to the following documents have been made: “Summary of the First Meeting of the Ad Hoc Group on Liability and Redress and the Second Meeting of

13. The Second Meeting of the Conference of Parties serving as the Meeting of Parties to the Cartagena Protocol on Biosafety took place from 30 May to 3 June 2005 at Montreal, Canada. Hon'ble Sothinathan Sinna Gounder, Minister of Natural Resources and Environment of Malaysia was elected the President of the Conference. 750 delegates representing Parties to the Protocol and other Governments, UN Agencies, intergovernmental and non-governmental organizations (IGOs and NGOs), academia and industry attended the COP/MOP-2.

14. The COP/MOP-2 adopted 14 decisions on, inter alia: rules of procedure for meetings of the compliance committee; operations and activities of the Biosafety Clearing House; status of capacity-building activities; capacity-building (roster of experts); matters related to the financial mechanism and resources; cooperation with other organizations, conventions and initiatives; administration of the Cartagena Protocol and performance of the Protocol trust funds for the 2005-2006 biennium; options for implementation of Article 8; risk assessment and management; paragraphs 2 (b) and 2 (c) of Article 18; liability and redress; socio-economic considerations; public awareness and participation; and other scientific and technical issues that may be necessary for the effective implementation of the Protocol. Important aspects of some of these decisions are as under:

15. The first decision on rules and procedures for meetings of the compliance committee dealt with purposes, definitions, dates and notice of the meetings, agenda, distribution and consideration of information, publication of documents and information, members, officers, participation of committee proceedings, conduct of business, voting, language, amendments and overriding authority of the Protocol and its decision.⁶ During the meeting it was urged by several participants, to establish cooperation with certain organizations like World Trade Organization (WTO), World Customs Organization (WCO), etc.

16. Switzerland had presented a non-paper containing new proposals on handling, transport, packaging and identification of the LMO-FFPs, including a reference deciding to further consider the issue at COP/MOP-3. The question of dispute arose when the proposal mentioned that Parties of export is required to fully specify the list of LMOs that may be contained in the shipment, in cases when it is known which LMOs a shipment of LMO-FFPs contains. The meeting urged Parties to take necessary measures according to their specific capabilities to ensure compliance of Article 18.2 (b) and (c)⁷ and to make

the Parties to the Cartagena Protocol on Biosafety: 25 May – 3 June 2005”, *Earth Negotiations Bulletin*, vol. 9, no. 320 dated 6 June 2005 available online at: <http://www.iisd.ca/biodiv/bs-copmop2/>

⁶ UNEP/CBD/BS/COP-MOP/2/L.14.

⁷ Article 18.2 (b) and (c) on Handling, Transport, Packaging and Identification, reads thus;

(b) Living modified organisms that are destined for contained use clearly identifies them as living modified organisms; and specifies any requirements for the safe handling, storage, transport and use, the contact point for further information, including the name and address of the individual and institution to whom the living modified organisms are consigned; and

(c) Living modified organisms that are intended for intentional introduction into the environment of the Party of import and any other living modified organisms within the scope of the Protocol, clearly identifies them as living modified organisms; specifies the identity and relevant traits and/or characteristics, any

available to the BCH information on their domestic import and documentation requirements on LMOs for contained use and introduction into the environment.⁸ While taking a decision as to capacity building and BCH the meeting requested to continue capacity building for the developing countries for participation in BCH.⁹ The decision on capacity building includes sections on the coordination mechanism, capacity building needs and priorities and possible measures for addressing them and annexed terms of reference for the review and possible revision of the Action Plan.¹⁰

17. In the prior Meeting, capacity building for developing country parties and parties with economies in transition was considered as a crucial element in the effective implementation of the Protocol. Therefore, it established a voluntary fund for the use of the roster of experts on Biosafety and called for a coordinated approach towards capacity-building at all levels in order to develop possible synergies and promote partnerships among different capacity-building efforts and funding initiatives and adopted the Action Plan for Building Capacities for Effective Implementation of the Protocol together with a set of indicators for monitoring its implementation. A decision was taken for the appropriate use of the roster of experts like requesting the Secretariat to promote awareness about the roster and to include in the questionnaire on capacity-building questions to assess the possible reasons behind the limited use of rosters. It was pointed out by the developing country delegates on capacity building that the GEF could fund these countries and urge for further contribution from the donor countries.

18. During the meeting a decision was taken which called for all state Parties and other International organizations to submit their views on the rights and obligations of the transit States, exchange information on biosafety research, etc apart from the request to establish a permanent subsidiary to provide scientific and technical advice.¹¹

19. **Next COP/MOP Meeting:** The Third Meeting of the Conference of Parties to the Convention on Biological Diversity serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety would take place from 13 to 17 March 2006 in Curitiba, Brazil. The Government of Brazil invited all participants to attend the COP-8 to the CBD proposed to commence from 20-31 March 2006 in Curitiba, Brazil, which is considered as “ecological capital of Brazil.”

C. First Meeting of the *Ad hoc* Group on Liability and Redress under the Biosafety Protocol (25th to 27th May 2005, Montreal, Canada)

requirements for the safe handling, storage, transport and use, the contact point for further information and, as appropriate, the name and address of the importer and exporter; and contains a declaration that the movement is in conformity with the requirements of this Protocol applicable to the exporter.

⁸ UNEP/CBD/BS/COP-MOP/2/L.5.

⁹ UNEP/CBD/BS/COP-MOP/2/WG.1/L.4.

¹⁰ UNEP/CBD/BS/COP-MOP/2/L.7.

¹¹ UNEP/CBD/BS/COP-MOP/2/WG.1/L.4.

20. The need to set up an *Ad Hoc* Working Group on liability and Redress in the context of the Cartagena Protocol on Biosafety was stressed in COP/MOP-1.¹² The *Ad Hoc* Group prepared a ‘Questionnaire on Liability and Redress for Damage Resulting from Transboundary Movements of LMOs’ and circulated among its parties. 26 State Parties¹³ responded to the questionnaire and three organizations submitted their viewpoints. Parties, Governments, relevant international organizations and stakeholders were invited to submit further views with respect to approaches, options and issues identified by the meeting for further consideration by the Working Group at its next meeting. Based on these responses the Ad Hoc Group prepared the report¹⁴ which majorly addressed the issues on scope of damage, valuation of damage to biodiversity, causation, channeling of liability, limitations of liability, financial security settlement of claims and capacity building. According to Article 27 of the Biosafety Protocol¹⁵ ‘appropriate elaboration of international rules and procedures’ on the issue of liability and Redress resulting from the transboundary movement of LMOs is required to be studied and hence the major issues addressed by the Ad Hoc group is in terms of and damage resulting from the transboundary movement of LMOs. On the scope of damage, it envisages damages resulting from transport, transit, handling and or use of LMOs that find its origin in transboundary movements of LMOs and from unintentional transboundary movements of LMOs too.

21. The optional components for the Definition of ‘damage’ under the Biosafety Protocol put forth by the ad hoc group, includes, (a) damage to conservation and sustainable use of biodiversity, (b) damage to environment, including damage to biodiversity, and impairment of health, (c) damage to human health, incorporating loss of life or personal injury, loss of income, public health measures and impairment of health; and (d) socioeconomic damage including loss of income, cultural, social and spiritual values, food security and competitiveness.

22. Damage to biodiversity due to the transboundary movement of the LMOs may be valued by identifying the costs of reasonable measures to reinstate the damaged

¹² Establishment of an Open-Ended *Ad Hoc* Working Group of Legal and Technical Experts on Liability and Redress in the Context of Cartagena Protocol (Decision BC-1/8).

¹³ State Parties that responded to the questionnaire are Australia, Brazil, Bulgaria, Cameroon, Canada, Colombia, **Egypt**, EU, Guinea Bissau, **India**, **Islamic Republic of Iran**, Latvia, Liberia, Mali, **Mauritius**, Mexico, Norway, Palau, Romania, Saint Lucia, Slovenia, **Sri Lanka**, Switzerland, Togo, **Uganda** and USA. The organizations are Global Industry Coalition (GIC), Gropue De Recherche Etd’échanges Technologiques (GRET) and International Grain Trade Coalition (IGTC). The AALCO Member States that have responded to this questionnaire has been indicated in bold.

¹⁴ The report of the experts on Liability and Redress can be available on UNEP/CBD/BS/TEG-L&R/1/3 dated 9th November 2004.

¹⁵ Article 27 on Liability and Redress of CPB reads thus: “The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.”

environmental or biodiversity components and monetary compensation.¹⁶ International approaches to channeling of liability are state responsibility, primary state liability, residual state liability in combination with the operator or no state liability including civil liability or administrative approaches. The parties to the Protocol also adopted decisions on international cooperation, exchange of information and public awareness and participation. They requested the Executive Secretary to pursue efforts to obtain observer status for the Secretariat with the World Trade Organization's Committees on Sanitary and Phytosanitary Measures and on Technical Barriers to Trade as a measure to have cooperation with biodiversity-related conventions and organizations.

D. First Meeting of the *Ad Hoc* Open-Ended Working Group on Review of the Implementation of the Convention Biological Diversity (5 to 9 September 2005, Montreal, Canada)

25. The Parties to the Convention on Biological Diversity adopted a Strategic Plan in 2002, in which they committed themselves to implement the objectives of the Convention more effectively and the target to achieve a significant reduction in the current rate of biodiversity loss would be by 2010.¹⁷ This target was subsequently endorsed by the World Summit on Sustainable Development. Recognizing that, to achieve this target, more effective processes for evaluation, reporting and reviewing implementation of the Convention and the Strategic Plan were needed, the Conference of the Parties adopted a decision VII/30 (23), establishing the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention (WGRI).

26. The Working Group has a mandate to address a range of implementation-related issues, including, *inter alia*: progress in the implementation of the Strategic Plan; impacts and effectiveness of Convention processes; cooperation and stakeholder engagement; monitoring, reporting and evaluation processes; and means of identifying and overcoming obstacles to effective implementation of the Convention. On two areas the WGRI's contribution is significant; (i) national implementation, and (ii) meeting the 2010 target.

27. The national implementation of this Convention has become difficult due to the need for capacity building, technology transfer and financial resources. The WGRI pointed out certain other obstacles too like the burdensome process of national reporting, the difficulty in developing, implementing and updating national biodiversity strategies and action plans; and the diversion of financial and human resources from on – the

¹⁶ Special measures in case of damage to centers of origin and genetic diversity, formulation of quantitative thresholds of damage to conservation and sustainable use of biological diversity, and valuation of all types of damage.

¹⁷ In Decision VI/26 adopted at the Conference of the Parties adopted the Strategic Plan for the Convention on Biological Diversity. In its mission statement, Parties committed themselves to a more effective and coherent implementation of the three objectives of the Convention, to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on earth.

ground implementation of participation in a plethora of international meetings.¹⁸ The remedies suggested includes simplifying the format for the fourth national reports, aligning reporting with the framework for monitoring the Convention's implementation and progress towards the 2010 target, streamlining reporting under the five biodiversity-related conventions, and organizing regional and sub regional workshops to assist countries in report participation. They also emphasized on the role that the private sector, especially the business community that could play an important task in achieving the CBD's objectives besides other international organizations like FAO, and stakeholders such as indigenous peoples and NGOs etc.

E. 2005 World Summit Outcome

28. The 2005 World Summit Outcome urged that the State Parties to the Convention on Biological Diversity and the Biosafety Protocol should support the implementation of them as well as other biodiversity related agreements and the Johannesburg commitment for a significant reduction in the rate of loss of biodiversity by 2010. On benefits arising out of the utilization of the genetic resources it was stated that the states should continue to negotiate within the Convention by giving importance to Bonn guidelines to promote international regime on fair and equitable sharing of the same. States must take all necessary measures to fulfill their obligations as mandated in the 2010 target plan and continue to elaborate and negotiate an international regime on access to genetic resources and benefit-sharing. In order to conserve the biological resources it is required to legislate a national law to respect, preserve and maintain the knowledge, innovations and practices of the indigenous and local communities, which try to conserve these resources. This could be attained by protecting these traditional knowledge and equitable and fair benefit sharing.

¹⁸ "Summary of the First Meeting of the CBD *Ad Hoc* Open-Ended Working Group On Review Of Implementation: 5–9 September 2005" *Earth Negotiations Bulletin*, Vol. 9 No. 32, dated 12 September 2005, also available at www.iisd.ca/biodiv/wgri.

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

A. Background

29. 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 at Paris in October 1994. The Convention entered into force on 26 December 1996 and with 191 Parties, as on 17 March 2004, has attained universal membership.¹⁹

30. 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.

31. 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.

32. 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 makes recommendations for their implementation.

33. 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)

¹⁹ For Status of AALCO Member State’s participation in the UNCCD see table III 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.

34. 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.

35. The first session of the CRIC (CRIC-1) 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.

36. The Sixth Conference of the Parties (COP-6) to the UNCCD met from 25 August to 6 September 2003, in Havana, Cuba. Amongst the significant decision adopted by COP-6 the decision to accept the GEF as a financial mechanism of the Convention was important one. Progress was made on a number of other issues as well, including: activities for the promotion and strengthening of relationships with other relevant conventions and international organizations, institutions and agencies; enhancing the effectiveness of the CST; and follow-up to the WSSD. The Havana Declaration of Heads of States and Government on the implementation of the UNCCD adopted by COP-7 commits governments to pursue peace, sustainable development, multilateralism, and comply with international law. It noted 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.

B. Third Session of the Committee for the Review of the Implementation of the Convention (2-11 May 2005, Bonn, Germany)²⁰

37. The Committee for the Review of the Implementation of the Convention as a standing subsidiary body was established by the Conference of the Parties at its fifth session to assist it in its function of regularly reviewing the implementation of the Convention.

38. The third session of the Committee was convened in Bonn, Germany, from 2 to 11 May 2005. The meeting considered reports on the implementation of the Convention submitted by affected African parties, as well as relevant subregional and regional reports. It also considered the reports by developed country parties on measures taken to assist in the preparation and implementation of the action programmes of affected African parties, including information on financial resources they have provided, or are providing, under the Convention, as well as information provided by relevant organs, funds and programmes of the United Nations system, and by other intergovernmental organizations and nongovernmental organizations on their activities in support of the preparation and implementation of action programmes under the Convention.

39. The Committee reviewed available information regarding: the mobilization and use of financial resources and other support by multilateral agencies and institutions; necessary adjustments to the elaboration process and implementation of action programmes, including review of the enhanced implementation of the obligations under the convention; ways and means of promoting know-how and technology transfer, as well as of promoting experience sharing and information exchange among parties and interested institutions and organizations; ways and means of improving procedures for the communication of information, as well as the quality and format of reports to be submitted to the Conference of the Parties.

40. Two global interactive dialogues were convened: on the mainstreaming of national action programmes and their contribution to overall poverty eradication; and on land degradation/desertification and their impact on migration and conflicts.

41. The Committee discussed specific thematic issues pertaining to the implementation process in Africa, namely: participatory processes involving civil society and non-governmental and community-based organizations; legislative and institutional frameworks or arrangements; resource mobilization and coordination, both domestic and international, including the conclusion of partnership agreements; linkages and synergies with other environmental conventions and, as appropriate, with national development

²⁰ Reference to following documents have been made in the preparation of this section of the Report: "Report of the Secretary-General on the Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa", in Implementation of United Nations environmental conventions: Note by Secretary-General, UN Doc. A/60/171 dated 29 July 2005, pp. 8-13; and "Summary of the Third Session of the Committee on the Review of the Implementation of the Convention to Combat Desertification", *Earth Negotiations Bulletin*, vol. 4, no. 175, available online at: <http://www.iisd.ca/desert/cric3/>.

strategies; measures for the rehabilitation of degraded land and for early warning systems for mitigating the effects of drought; drought and desertification monitoring and assessment; access by affected country parties, particularly affected developing country parties, to appropriate technology, knowledge and know-how.

42. A number of recommendations were made on major thematic issues such as: the participatory processes; legislative and institutional frameworks; the promotion of synergies; resource mobilization, including coordination and partnership agreements; rehabilitation of degraded lands; monitoring and assessment, including the improvement of the reporting process; awareness-raising, information and communication.

43. Other important decisions taken by the Committee included the consideration of thematic issues under a global review on measures taken to assist in the preparation and implementation of the action programmes of affected country parties.

44. The Committee recommended the need for a review process and procedure for communication of information, as well as of the quality and format of reports, mainstreaming of national action programmes into national development frameworks, including poverty reduction strategy papers, for efficiency and effectiveness of measures in reaching the end-users of natural resources. The Committee also called for increased political commitment and awareness-raising, in particular in regard to the International Year of Deserts and Desertification, 2006. It called on the General Assembly at its September 2005 high-level plenary meeting to underline the global magnitude of the issue of sustainable land management and combating desertification.

C. Seventh Session of the Conference of the Parties to the United Nations Convention to Combat Desertification (COP-7, Nairobi, Republic of Kenya 17-28 October 2005)

45. The seventh session of the Conference of the Parties (COP-7) to the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD) took place at the UN Office at Nairobi, Kenya, from 17-28 October 2005. Hon. Stephen Kalonzo Musyoka, Minister of Environment and Natural Resources of Kenya was elected COP-7 President by acclamation. The COP was attended by nearly 1000 participants with 33 ministers, 182 parties, 17 UN agencies, 21 intergovernmental organizations, 4 observers, as well as 125 non-governmental organizations (NGOs) from 65 countries.²¹

46. During the COP, parties also convened the eighth session of the Committee on Science and Technology (CST), and the fourth session of the Committee for the Review

²¹ Reference to following documents have been made in the preparation of this section of the Report: "Summary of the Seventh Conference of Parties to the Convention to Combat Desertification: 17-28 October 2005", *Earth Negotiations Bulletin*, vol. 4, no. 186 available online at: <http://www.iisd.ca/desert/cop7/>; *UNCCD Secretariat Press Releases*: "191 Countries meet in Nairobi as the UNCCD is expected to move towards full implementation", 17 October 2005; "Launch of new alliance to combat land degradation in Africa", 24 October 2005; and "The Executive Heads of the three Rio Conventions call for substantial GEF replenishment", 26 October 2005.

of the Implementation of the Convention (CRIC-4). The COP also included a high-level special segment and two open dialogue sessions with NGOs and governments. Progress was made on a number of issues, including: review of the implementation of the Convention; inclusion of NGO activities in COP's official programme of work; development of the Memorandum of Understanding (MoU) between the CCD and the Global Environment Facility (GEF); and review and implementation of the recommendations in the report of the Joint Inspection Unit (JIU) of the United Nations as well as development of a long-term strategic plan for the implementation of the Convention.

47. **Decisions taken by the Conference of Parties:** Following decisions were taken by COP-7: Strengthening the implementation of the Convention in Africa; Follow-up on the outcome of the WSSD relevant to the UNCCD; Follow-up to the Joint Inspection Unit report and strategy development to foster the implementation of the Convention; Necessary adjustments to the elaboration process and the implementation of action programmes, including review of the enhanced implementation of the obligations of the Convention; Mobilization of resources for the implementation of the Convention; Collaboration with the Global Environment Facility; Additional Procedures or institutional mechanisms to assist the COP in regularly reviewing the implementation of the Convention; Improving the procedures for communication of information, as well as the quality and format of reports to be submitted to the COP; Programme of the work of the fifth session of the CRIC; date and venue of the fifth session of the CRIC; Rationale for, modalities for, costs involved in, feasibility of, possible terms of reference of, and institutional and collaborative arrangements for the regional coordination units; Activities for the promotion and strengthening of relationships with other relevant conventions and relevant international organizations, institutions and agencies; Roster of independent experts; The Millennium Ecosystem Assessment; Improving the efficiency and effectiveness of the Committee on Science and Technology; Traditional Knowledge; Benchmarks and Indicators; Early warning systems; Land Degradation Assessment in Drylands; Programme of work of the Committee on Science and Technology; Consideration of rule 47 of the rules of procedure; Consideration of procedures and institutional mechanisms for the resolution of questions of implementation; consideration of annexes containing arbitration and conciliation procedures; Programme and budget for the biennium 2006-2007; Credentials of representatives of Parties attending the COP-& to the UNCCD; Nairobi Declaration on the implementation of the UNCCD; Designation of a convention secretariat and arrangements for its functioning: administrative and support arrangements; Report of the sixth Round Table of Members of Parliament; Celebration of the 2006 International Year of Deserts and Desertification; Relations between the Secretariat and host country; Programme of work of the Conference of Parties; Date and venue of the eighth session of the COP; and Expression of gratitude to the Government and people of Kenya.

48. **Launching of TerrAfrica:** It may be noted that 65% of Africa's population is affected by land degradation, and over 3 % of agricultural GDP is lost annually to soil and nutrient loss in Sub-Saharan Africa. To combat this, COP-7 launched a new initiative entitled "The New Alliance to Combat Land Degradation in Africa"(TerrAfrica) to

address land degradation and increase sustainable land management throughout the region. *TerrAfrica* has been developed in partnership with and based on the calls for action from the UNCCD, as well as from the New Partnership for Africa's Development (NEPAD), Comprehensive Africa Agriculture Development Programme and the NEPAD Environmental Action Plan and the G8 Gleneagles Summit Africa statement.

49. *TerrAfrica* is an initiative that aims to unlock financial and institutional resources and enable countries with the support of regional institutions and the international community to address land degradation along this integrated approach. Its target is to reach an investment of at least \$4 billion over a twelve year period. *TerrAfrica* operates at both the country and regional levels. *TerrAfrica* is built around three activity lines – 1) coalition-building, 2) knowledge generation and management, and 3) investments – to implement a strategic approach that improves the efficiency and effectiveness of collective effort in support of SLM and increases the scope and scale of financing.

50. **Review of Implementation of the CCD and its Institutional Arrangements:** COP-7 decided to renew the CRIC's mandate until COP-8, at which point its terms will be reviewed and modalities reconsidered. It also invited parties and relevant stakeholders, including civil society to submit responses to the questionnaire prepared by the Secretariat.

D. International Year of Deserts and Desertification, 2006

51. The General Assembly, concerned over the exacerbation of desertification, particularly in Africa, and its far-reaching implications for the achievement of the Millennium Development Goals, in particular on poverty eradication, adopted at its fifty-eighth session resolution 58/211, which declared 2006 the International Year of Deserts and Desertification. The resolution was adopted as a means of raising public awareness of the issue of desertification and of protecting the biological diversity, knowledge and traditions of those communities affected by desertification.

52. The COP reiterated the call by the General Assembly to all relevant international organizations and member states to support the activities related to desertification; encouraged parties to contribute, as they are able, to the Convention, and to undertake special initiatives in observance of the year,²² with the goal of enhancing the implementation of the Convention; requested the Secretariat to make a list all activities envisaged, prepare an interim report to CRIC-5 and a report to COP-8; and encouraged parties to make voluntary contributions to the CCD Special Fund for IYDD observance.

53. The IYDD would provide a major opportunity both to strengthen the visibility and importance of the dryland issue on the international environmental agenda and to highlight the truly global nature of the problem. All countries and civil society organizations have been encouraged to undertake special initiatives to mark the year. As

²² See "Status of preparations for the International Year of Deserts and Desertification, 2006: Report of the Secretary-General", UN Doc. A/60/169 dated 27 July 2005.

culmination of the International Year, the Government of Algeria would be hosting a Summit of Heads of States on theme of Desertification, Migration and Security.

54. The Year will also celebrate deserts as unique ecosystems, millennia old natural habitats and home to some of the world's most vibrant civilizations.

55. **Date and venue of COP-8:** COP-8 would take place in the autumn of 2007 in Spain.

E. 2005 World Summit Outcome

56. The world's leaders at their Summit resolved to support and strengthen the implementation of UNCCD, to address causes of desertification and land degradation, as well as poverty resulting from land degradation, through, inter alia, the mobilization of adequate and predictable financial resources, the transfer of technology and capacity-building at all levels.

IV. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, 1992 (UNFCCC) AND KYOTO PROTOCOL (KP)

A. Background

57. The UNFCCC was concluded on 9 May 1992 and opened for signature at the United Nations Conference on Environment and Development (UNCED) in June 1992. The Convention entered into force on 21 March 1994 and as at 24 May 2004 it has reached near universality with 189 Parties.²³

58. 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. With the meeting of the procedural requirements the Kyoto Protocol entered into force on 16 February 2005.

59. Subsequent to the adoption of the Kyoto Protocol, intensive efforts continued to negotiate its operational details, which facilitated wider ratification and entry into force of the Protocol.²⁴ As of 18 November 2005, the Protocol has received 157 ratifications. The developed country ratifications now account for 61.6 % of 1990 CO₂ emissions.

60. 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. 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.

²³ For status of participation of AALCO Member States in the UNFCCC see Table III in Annex.

²⁴ To enter into force, the Protocol required ratification 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%.

61. 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 of America's 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.

62. 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.

63. 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.

64. 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 was required to adapt 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 were 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.

65. COP-9 took place in Milan, Italy from 1 to 12 December 2003. It resolved a number of outstanding issues on the implementation of the Kyoto Protocol and explored a wide range of options for limiting greenhouse gas emissions and adapting to the impacts of climate change. Among the important decisions arrived at COP-9 was the agreement on the modalities and procedures for afforestation and reforestation ("sinks") project activities under the CDM completed the Marrakesh Accords by expanding the mechanism to the forestry sector. The mechanism allows industrialized countries to implement projects that reduce GHG emissions in a developing country. The certified emission reduction units (CER) generated by such projects can be used by industrialized countries to help meet their emission targets under the Kyoto Protocol. Another important decision was on the Special Climate Change Fund and the Least Developed Country Fund that have enabled the Global Environment Facility, as an entity entrusted with the operation of the financial mechanism of the Convention, to mobilize the resources to 14.

66. The tenth Conference of Parties to the UNFCCC (COP-10) held its session at Buenos Aires from 6 to 17 December 2004. The expectation of the imminent entry into force of the Kyoto Protocol, which occurred on 16 February 2005 gave the Conference a political momentum. With the entry into force of the Kyoto Protocol, international cooperation for the protection of the global climate has entered a new phase, because for the first time, industrialized countries who have ratified the Protocol have assumed quantified commitments to reduce their greenhouse gas emissions. The Conference further mainstreamed adaptation into climate change negotiations by adopting the Buenos Aires Programme of work on Adaptation and Response Measures. It also completed unfinished business from the Marrakech Accords, relating to land-use, land-use change and forestry issues.

67. The high-level political debate during the Conference took place through four round-table discussions among ministers and other heads of delegation. Panel discussions, which were attended by 85 ministers, along with heads of delegation, focused on:²⁵

68. (a) *The Convention after 10 years: accomplishments and future challenges:* Participants reflected on what they had achieved and not achieved, unanimously concluding that much more needed to be done if the objective of the Convention was to

²⁵ "Report of the Executive Secretary of the United Nations Framework Convention on Climate Change on the work of the Conference of Parties to the Convention", in Implementation of United Nations environmental conventions: Note by Secretary-General, UN Doc. A/60/171 dated 29 July 2005, pp. 3-7.

be attained. In that regard there was a call on parties to move forward on both adaptation and mitigation; the undeniable importance of both of which in addressing climate change and its effects was noted. Parties also noted the importance of scientific findings in supporting the process and the need for continued work in this area to further identify the degree and severity of climate change, and reduce existing uncertainties.

68. (b) ***Impacts of climate change, adaptation measures and sustainable development:*** Speakers emphasized that it was important to enhance efforts to mainstream adaptation to climate change into the broader sustainable development agenda to achieve the United Nations Millennium Development Goals, as well as to benefit from synergy with other Rio conventions. It was noted that the scientific picture of climate change and its associated impacts at the regional and local levels was far from complete, and many countries agreed to address the information gaps and uncertainties. Speakers also stressed that the sufficient and timely availability of financial resources and relevant methodologies and technologies, including capacity-building, was of critical importance in that regard.

69. (c) ***Technology and climate change:*** It was noted that relevant technologies were already available, for example in the area of energy efficiency and renewables; the challenge was to make those technologies available to all countries. It was also noted that innovative technologies, such as hydrogen-based technologies and capture and storage of carbon dioxide, had considerable potential to contribute to combating climate change. It was recognized that promotion of collaborative research and development projects and joint ventures between developed and developing countries would contribute to the dissemination of environmentally sustainable technologies. The participation of the private sector by means of an intelligent combination of regulation and incentives could be an important factor for the success of that effort, and it should be encouraged and supported by Governments. The importance of innovation and the search for market solutions was also stressed. An ideal cooperation model under the Convention should consist of building partnerships that brought together the skills, experiences and potentialities in developed and developing countries in a balanced and complementary manner.

70. Capacity-building, institutional development and access to information were mentioned as key components of successful technology transfer initiatives, together with the creation of appropriate financing and development mechanisms.

71. (d) ***Mitigation of climate change: policies and their impacts:*** There was a call for all countries to adopt novel approaches to mitigate climate change and to integrate climate change mitigation into the planning and decision-making process, while increasing economic efficiency, particularly in the energy and transport sectors. Those approaches could slow emission growth and decouple it from economic growth. They could achieve multiple co-benefits, such as energy security, improved local air quality, employment and reduced energy cost, and help to turn mitigation into a driver for economic growth, given the encouraging example of countries with economies in transition. It was noted that new and innovative mitigation policies and policy approaches

were emerging, such as emissions trading and green investment schemes; they could play a central role in climate strategies and in enhancing the cost-effectiveness of those strategies. Those policies were becoming an integral part of a broader policy mix to control emissions from national economies. They were already helping a number of countries to become leaders in the emerging market of green technologies, to stimulate innovation and enhance competitiveness. Engaging the private sector, major stakeholders, all levels of government and citizens in the implementation of those strategies would ensure their continuity and ultimate success. Those strategies were seen by many parties as a key component for the development of comprehensive long-term strategies to achieve deeper cuts in emissions worldwide.

B. Eleventh Conference of Parties to the UNFCCC and First Conference of Parties serving as the Meeting of Parties to the Kyoto Protocol (28 November- 9 December 2005, Montreal, Canada)²⁶

72. The eleventh Conference of the Parties (COP-1) to the United Nations Framework Convention on Climate Change (UNFCCC) and the first Conference of Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP 1) took place in Montreal, Canada, from 28 November to 10 December 2005. Nearly 10000 participants from government delegations, business and civic leaders and environmental activists attended the Conference. Mr. Stephane Dion, Canada's Environment Minister was elected President of COP-11 and COP/MOP-1 by acclamation.

1. Eleventh Conference of Parties to the UNFCCC (COP-11)

73. **Decisions Adopted by COP-11:** COP-11 adopted the following 14 decisions: Dialogue on long-term cooperative action to address climate change by enhancing the implementation of the Convention; Five-year programme of work of SBSTA on impacts, vulnerability and adaptation to climate change; Further guidance for the operation of the LDC fund; Extension of the mandate of the LDC Expert Group; Additional guidance to an operating entity of the financial mechanism; Development and transfer of technologies; Review processes during the period 2006-2007 for Annex 1 Parties to the Convention; Submission of second, and where appropriate, third national communications from non-Annex I Parties to the Convention; Tables of the common reporting format for the LULUCF; Research needs relating to the Convention; Flexibility for Croatia under Article 4, paragraph 6 of the Convention; Institutional linkage of the secretariat to the United Nations; Programme budget for the biennium 2006-2007; and Budget performance in the biennium 2004-2005 as June 2005.

²⁶ This section of the Secretariat Report is based upon "Summary of the Eleventh Conference of the Parties to the UN Framework Convention on Climate Change and First Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol", 28 November-10 December 2005", *Earth Negotiations Bulletin*, vol. 12, no. 291, available online at <http://www.iisd.ca/climate/cop10> and *UNFCCC Secretariat Press Releases*, "Historic United Nations climate change conference about to start in Montreal", 23 November 2005; "Montreal climate conference adopts 'rule book' of the Kyoto Protocol", 30 November 2005; and "United Nations Climate Change Conference agrees on future critical steps to tackle climate change", 10 December 2005.

74. **Dialogue on long-term cooperative action:** COP-11 launched a two-year dialogue “to analyse strategic approaches for long-term action to address climate change”. At COP-10 in Buenos Aires, parties agreed to hold a one-time Seminar of Governmental Experts to discuss on-going implementation for future action. The seminar, convened in May 2005, provided the first space within the Convention process for parties to discuss future steps but made no formal report to COP. The new dialogue advances the conversation to next stage. It will be a series of up to four workshops led by two co-facilitators, one from a developed and one from a developing country. The facilitators will report to both COP-12 and COP-13.

75. The dialogue has four broad areas of focus: sustainable development, adaptation, technology and market-based opportunities. Its aims are to support implementation of existing commitments under the Convention; support “actions put forward voluntarily by developing countries”; and “enable Parties to continue to develop effective and appropriate national and international responses to climate change”. The dialogue explicitly “will not open any negotiations leading to new commitments”.

76. **Five-year programme of work of SBSTA on impacts, vulnerability and adaptation to climate change:** The scientific, technical and socioeconomic aspects of impacts of, and vulnerability and adaptation to, climate change was an important focus of the Conference. It adopted a five-year work programme on adaptation to climate change impacts. This programme paves the way for concrete steps to identify impacts and measures to adapt to climate change. To this end, the conference also agreed on a one-year process to define how the Adaptation Fund will be managed and operated. This unique fund will draw on proceeds generated by the CDM and will support concrete adaptation activities in developing countries.

77. **Development and transfer of technologies:** Technology was at the centre of discussion on efforts to reduce emissions and adapt to climate change. Countries agreed on further steps on promoting the development and transfer of technologies. One technology that raised particular interest was carbon capture and storage- a technology that involves storing carbon underground. It is estimated to have the potential of reducing the costs of mitigation by up to 30%. The discussion was based on a special report published by the IPCC. Parties agreed to move further with a deeper analysis of this technology.

78. **Offer to host COP 12 and COP/MOP 2:** During the closing session of COP 11, Kenya announced its offer to host COP 12 and COP/MOP 2. The UNFCCC Secretariat will report back to the Parties by February 2006.

2. First Conference of Parties serving as the Meeting of Parties to the Kyoto Protocol (COP/MOP 1)

79. **Decisions adopted by COP/MOP1:** COP/MOP 1 adopted the following thirty six decisions: Consideration of commitments for subsequent period for Annex I Parties to the Convention under article 3.9 of the Kyoto Protocol; Further guidance relating to the

clean development mechanism; Guidance relating to the CDM; Modalities and procedures for a CDM, as defined in Article 12 of the KP; Modalities and procedures for afforestation and reforestation project activities under the CDM in the first commitment period of the KP; Simplified modalities and procedures for small-scale afforestation activities and reforestation project activities under the CDM; Procedures and mechanisms relating to compliance under the KP; Guidelines for the implementation of Art. 6 of the KP; Principles, nature and scope of the mechanisms pursuant to Articles 6, 12 and 17 of the KP; Modalities rules and guidelines for emissions trading under Article 17 of the KP; Modalities for the accounting of assigned amounts under Article 7.4 of the KP; Guidance relating to the registry system under Article 7, paragraph 4, of the KP; Initial guidance to an entity entrusted with the operation of the financial mechanism of the Convention, for the operation of the Adaptation Fund; Capacity-building relating to the implementation of the KP in developing countries; Capacity-building relating to the implementation of the KP in Parties with economies in transition; Land use, land use change and forestry; Good practice guidance for land use, land-use change and forestry activities under Article 3, paragraphs 3 and 4 of the KP; Matters relating to Article 3, paragraphs 3 and 4 of the KP; Guidelines for national systems under Article 5, paragraph 1 of the KP; Guidelines for the preparation of information required under Article 7 of the KP; Standard electronic format for reporting KP units; Guidelines for review under Article 8 of the KP-1; Terms of services for lead reviewers; Issues relating to the implementation of Article 8 of the KP-2; Good practice guidance and adjustments under Article 5, paragraph 2 of the KP; Review processes during the period 2006/2007 for Parties included in Annex I to the Convention that are also Parties to the KP; Criteria for failure to submit information from activities under Article 3.3 and 3.4 of the KP; Determination of quantified emission reduction commitments for Belarus; Implications for the establishment of new HCFC-22 facilities seeking to obtain certified emission reductions for the destruction of HFC-23; Privileges and Immunities for individuals on constituted bodies established under the KP; Programme Budget for biennium 2006-2007; Budget performance in the biennium 2004-2005 as at 30 June 2005; Arrangements for the Conference of Parties serving as the meeting of the Parties to the KP at its first Session; and Expression of gratitude to the Government of Canada and the people of city of Montreal.

80. **Negotiating new Kyoto targets:** As required under Article 3.9 of the Kyoto Protocol, the COP/MOP initiated a process to “consider further commitments” for Annex I (developed) countries for the period beyond 2012, when the first round of Kyoto emission targets expire. The decision establishes an ad hoc working group open to all Kyoto parties but sets no specific deadline for completing the negotiations. It calls for the process to begin “without delay” and to conclude “in time to ensure that there is no gap between the first and second commitment periods.” The first meeting of the working group will be in May 2006.

81. **Adoption of Marrakesh Accords:** An essential task of COP/MOP-1 was to formally adopt the detailed rules for the operation of the Kyoto Protocol, which had been provisionally agreed at COP-7 as part of the Marrakesh Accords. Formal adoption of the Kyoto rules completed a cycle of negotiations initiated by the 1995 Berlin Mandate,

which called for an agreement establishing quantified emission limits for developed countries.

82. The COP/MOP adopted all 19 decisions recommended by COP-7, including: Operating rules for the Protocol's three flexibility mechanisms – emissions trading, joint implementation (JI) and the Clean Development Mechanism (CDM); rules for crediting of domestic sink activities, including reforestation, forest management and agricultural management; a compliance regime to review countries' eligibility to use the Protocol's flexibility mechanisms, and to impose consequences for non-compliance with a party's emissions target; and a detailed system for reporting and review of national emissions.

83. **Kyoto Compliance:** The only element of the Marrakesh Accords revisited by the COP/MOP was the legal means by which to establish the Protocol's compliance mechanism. Under Article 18 of the Protocol, any compliance procedures entailing binding consequences must be adopted as an amendment to the Protocol. Prior to the meeting, Saudi Arabia proposed such an amendment. After discussion, however, the COP/MOP decided to initially at least establish the compliance mechanism by decision rather than amendment, and referred the Saudi proposal to the Subsidiary Body on Implementation, which is to report back at COP/MOP 3. Parties also elected members of the facilitative and enforcement branches of the newly established Compliance Committee.

84. **Clean Development Mechanism:** A major goal in Montreal was strengthening and streamlining the Kyoto Protocol's Clean Development Mechanism, which allows credits from emission reduction activities in developing countries to be applied toward developed countries' emission targets.

85. Responding to concerns from business and from host countries that projects are moving too slowly through the CDM process, the COP/MOP approved steps to clarify rules, speed the development of methodologies, strengthen governance, and provide more funding for the CDM Executive Board. On crediting for early action, the decision allows for projects initiated between 2000 and late 2004 to receive retroactive credits if registered with the Executive Board by the end of 2006. To support the Board's operation, the decision established a levy on CDM proceeds to cover administrative expenses, and a number of developed countries announced additional voluntary pledges totaling nearly \$8.2 million.

86. The COP/MOP also opened the door for a broader range of potential CDM activities beyond those that are strictly project-based. While specifying that local or national policies or standards do not qualify as CDM projects, the decision allows project activities falling under a "program of activities" to be registered as a single CDM project, provided there are appropriate baseline and monitoring methodologies. This could allow for a so-called programmatic approach, crediting a range of activities such as energy efficiency improvements across a series of entities or an entire sector.

C. Asia-Pacific Partnership for Clean Development and Climate

87. On the sidelines of the Asian Regional Forum meeting in Vientiane, Laos, Australia, India, Japan, People's Republic of China, Republic of Korea and the United States of America on 28 July 2005 launched the "New Asia-Pacific Partnership for Clean Development and Climate". The Vision Statement of the Partnership²⁷ states that it is a "non-binding" compact, which would consider establishing a framework for the partnership including institutional and financial arrangements and ways to include other interested and like-minded countries. The Partnership is aimed at developing; deploying and transferring cleaner, more efficient technologies to meet nationally designed strategies for pollution reduction, energy security and climate change concerns consistent with the principles of UNFCCC.

88. It may be noted that the partnership includes countries that account for more than 40% of the world green house gas emissions and Australia and USA are not parties to the Kyoto Protocol. Further, all the six countries are big coal producers.²⁸

D. 2005 World Summit Outcome

89. The world leader's met at United Nations Headquarters from 14 to 16 September 2005 and agreed to take action on a range of global challenge. The High-level Plenary Meeting of the General Assembly's Sixtieth Session designated as the World Summit 2005 recognized that climate change was a "serious and long-term challenge that has the potential to affect every part of the globe".²⁹ To address this challenge the world leaders emphasized the need to meet all the commitments and obligations undertaken in the UNFCCC and other relevant international agreements, including, "for many of us, the Kyoto Protocol". The leaders also committed themselves to taking further action through practical international cooperation, inter alia:

- To promote innovation, clean energy and energy efficiency and conservation; improve policy, regulatory and financing frameworks; and accelerate the deployment of cleaner technologies;
- To enhance private investment, transfer of technologies and capacity-building to developing countries, as called for in the Johannesburg Plan of Implementation, taking into account their own energy needs and priorities;
- To assist developing countries to improve their resilience and integrate adaptation goals into their sustainable development strategies, given that adaptation to the effects of climate change due to both natural and human factors is a high priority for all nations, particularly in those most vulnerable, namely those referred to in article 4.8 of the UNFCCC; and

²⁷ The text of the Vision Statement is available on the website of the US Department of State at URL: <http://www.state.gov/g/oes/rls/fs/50335.htm>.

²⁸ Details stated herein are drawn from: "Asia-Pacific nations plan to reduce global warming", *The Hindu* (New Delhi), 29 July 2005, p. 14; and "Parallel treaty has Kyoto confused", *The Economic Times* (New Delhi), 10 August 2005, p. 2.

²⁹ UNGA Res. A/60/1 adopted on 16 September 2005.

- To continue to assist developing countries, in particular small island developing States, least developed countries and African countries, including those that are particularly vulnerable to climate change, in addressing their adaptation needs relating to the adverse effects of climate change.

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

A. Background

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

91. The 2002 World Summit on Sustainable Development, held at Johannesburg provided another opportunity to make an appraisal of the implementation of the Agenda 21. *Johannesburg Declaration on Sustainable Development* and the *Johannesburg Plan of Implementation* (JPOI) were the substantive outcome of the Summit. The Plan of Implementation had dealt with poverty eradication; changing unsustainable patterns of consumption and production; protecting and managing the natural resource base for economic and social development; sustainable development in a globalising world; health and sustainable development; sustainable development of small island developing states; sustainable development for Africa; means of implementation; and institutional framework for sustainable development. The Summit emphasized integrated and concerted actions on five key areas namely, water and sanitation, energy, health, agriculture and biodiversity, known as WEHAB initiative. In line with decision of the WSSD that CSD would be the key UN forum for consideration of issues related to implementation of WSSD, the Commission at its eleventh session adopted a comprehensive work-programme taking into account WEHAB initiative.

B. Twenty-third Session of the Governing Council of the United Nations Environment Programme/ Global Ministerial Environment Forum (21-25 February, Nairobi)

92. The twenty-third Session of the UNEP Governing Council and the Global Ministerial Environment Forum³⁰ took place at the UNEP Headquarters in Nairobi from

³⁰ The Global Ministerial Environment Forum was constituted by the UNEP Governing Council as envisaged in UN General Assembly resolution 53/242. The purpose of the GMEF is to institute a process for ensuring policy coherence in the environment field, as proposed in the 1998 report of the UN Secretary-General on environment and human settlements.

21 to 25 February 2005. His Excellency Mr. Rachmat Witoelar, Minister of Environment of the Republic of Indonesia was elected as the President of the Governing Council.

93. The ministerial consultations considered the implementation of the internationally agreed development goals, including those in the Millennium Declaration, with a focus on environment and poverty, environmental sustainability, and gender and the environment. The Governing Council concluded its work by adopting more than 11 decisions on issues relating to small island developing States, chemicals management, UNEP's water policy and strategy, international environmental governance, keeping the world environment situation under review, Programme of Work and Budget, administrative and other budgetary matters, poverty and the environment, environmental and equity considerations in the procurement practices of the UNEP, and strengthening environmental emergency response and developing disaster prevention, preparedness, mitigation and early warning systems in the aftermath of the Indian Ocean Tsunami disaster.³¹

94. At the World Summit 2005, as the world leaders, *inter alia*, reviewed the progress in the realization of the Millennium Development Goals. In light of this, the Ministerial Consultations focused upon goals 1 (eradicate extreme poverty and hunger), 3 (promote gender equality and empower women) and 7 (environmental sustainability) and the President of the Session was requested to convey to the President of the General Assembly, for submission to the high-level plenary meeting of the world leaders the summary of the Ministerial Consultations which reflects the major thrusts of the discussion among the participants, rather than a consensus view of all points.

95. ***President's Summary:*** The President's Summary is divided into four parts, an introduction and three substantive sections on: environment and poverty (MDG Goal 1); environmental sustainability in relation to water, sanitation and human settlements (MDG Goal 7); and gender and environment (MDG Goal 3). Each section contains an overview of the issues involved in the goal, and recommendations for countries, the international community and UNEP.³²

96. ***Environment and poverty:*** The President's Summary contains recommendations for countries and the international community to implement MDG Goal 1, including:

- providing economic rationale for investments in environmental sustainability;
- financing and implementing the Bali Strategic Plan for Technology Support and Capacity-Building³³ ;

³¹ The Report of the Meeting is contained in UN, *United Nations Environment Programme: Report of the Governing Council*, Twenty-third session (21-25 February 2005), UN Doc A/60/25.

³² The details are drawn from "Summary of the 23rd Session of the UNEP Governing Council/Global Ministerial Environment Forum", *Earth Negotiations Bulletin*, vol. 16, no. 47, available online at <http://www.iisd.ca/unepgc/23gc/>

³³ The Bali Strategic Plan was adopted by the High-level open-ended Inter-governmental Working Group at its Third Session in Bali, Indonesia on 4 December 2004 and is considered to be a landmark achievement as technology support was important not only for cleaner production and sustainable consumption, but also for viable and sustainable economic growth.

- canceling or alleviating debt for Least Developed Countries and Highly Indebted Poor Countries;
- employing innovative financial mechanisms;
- increasing efforts to meet 0.7% of gross domestic product (GDP) for official development assistance (ODA);
- expediting the implementation of the Johannesburg Plan of Implementation (JPOI) and other related development goals, removing trade and aid measures in a mutually supportive manner; and
- strengthening the scientific and financial base of UNEP.

97. Regarding UNEP, the Summary recommends, inter alia: implementing the UNEP and UNDP Memorandum of Understanding; and enhancing cooperation with international financial institutions and specialized agencies and programmes within the UN.

98. ***Environmental sustainability:*** The President's Summary contains recommendations for countries and the international community to implement MDG Goal 7, including:

- achieving environmentally sustainable water use and applying Integrated Water Resources Management (IWRM), including ecosystems approaches;
- quantifying costs of environmentally unsustainable water use;
- employing smaller scale and environmentally sustainable infrastructure;
- promoting land-use planning policies to reduce vulnerability of slum-dwellers;
- increasing financial resources; and
- improving water institutional mechanisms and governance.

99. Regarding UNEP, the Summary recommends, inter alia:

- increasing support for the implementation of the JPOI target of integrated water resources management and efficiency plans by 2005;
- monitoring the implementation of the Convention on Biological Diversity (CBD) and marine and freshwater biodiversity targets of the JPOI by the UNEP World Conservation Monitoring Centre (WCMC), as mandated by CBD;
- providing support for establishing regional water ministerial bodies;
- ensuring, together with UNDP and the UN Development Group, that environmentally sustainable water use is integrated into poverty reduction strategies and national development plans; and
- increasing its presence in international fora to underline environmental sustainability in meeting, inter alia, water targets.

100. ***Gender and environment:*** The President's Summary contains recommendations for countries and the international community to implement MDG Goal 3, including:

- mainstreaming gender equality at all levels in strategies, policies and programmes;
- empowering women and girls through education and capacity building;

- including gender equality and environment in school curricula for both men and women;
- removing barriers for women and girls to access leadership roles, economic activities and land tenure;
- focusing on international commitments that particularly affect women such as chemicals, heavy metals, water, sanitation and human settlements; and
- strengthening or establishing mechanisms to assess the impact of development and environmental policies on women.

101. Regarding UNEP, the Summary recommends, inter alia: increasing its role in areas of education, participation and assessment, in collaboration with UNESCO, UNICEF, UNDAW, other UN agencies and national governments.

102. The next Special Session of the UNEP's Governing Council would be hosted by the United Arab Emirates in Dubai in 2006. It would be the first time that the event would be held in the Arab world.

C. Thirteenth Session of the Commission on Sustainable Development (11-22 April 2005, UN Headquarters, New York)

103. The thirteenth session of the United Nations Commission on Sustainable Development (CSD-13) took place from 11-22 April 2005, at UN headquarters in New York.³⁴ CSD-13 was the second session to be held since the new multi-year programme of work was adopted at CSD-11 in 2003. The new work programme restructured CSD's work on the basis of two-year Implementation Cycles, with each cycle comprised of a Review Year and a Policy Year focused on a thematic cluster of issues. Building on the outcomes of CSD-12 (the Review Year of the first cycle), CSD-13 focused on policies and options to expedite the implementation of commitments in the areas of water, sanitation and human settlements, as contained in Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Plan of Implementation (JPOI) and the Millennium Declaration. This was CSD's first policy session following the WSSD refocused international attention on the UN Millennium Declaration, which contains two development targets that relate directly to water and human settlements—namely to halve by 2015 the proportion of people unable to reach or afford safe drinking water, and by 2020, to have significantly improved the lives of at least 100 million slum dwellers.

104. The High-Level Segment took place from 20-22 April 2005 and was attended by 106 Ministers of Environment, Finance, Economy, Development and other high-level officials. Several sessions focused on the issue of “Turning political commitments into action,” and delegates highlighted a wide range of relevant issues, including: specific suggestions on CSD-13's outputs; the UN General Assembly's High-level Plenary Meeting (Millennium Review Session) in September 2005; national policies, achievements and challenges; the MDGs and the JPOI; official development assistance

³⁴ “Summary of the Thirteenth Session of the Commission on Sustainable Development: 11-22 April 2005”, *Earth Negotiations Bulletin*, vol. 5, no. 227, available online at <http://www.iisd.ca/csd/csd13/>.

(ODA), and financial resources issues; and the respective roles and needs of governments, UN agencies, local authorities and other key stakeholders.

105. There were also sessions on meeting the MDGs related to water, sanitation and human settlements, the impact of natural disasters on water, sanitation and human settlements, and the need to strengthen prevention and response capacity. In addition to these sessions, a panel of finance and development cooperation ministers and experts in their discussions covered issues such as the MDGs, the Monterrey Consensus, the Doha round of trade negotiations, the target of 0.7% of gross national product for ODA, using ODA to leverage other sources of financing, public-private partnerships, governance, learning by doing, donor performance, and ecosystem management.

106. The final document contains decisions on CSD-13's three thematic areas, as well as on "interlinkages and cross-cutting issues" and on "international institutional arrangements for monitoring and follow-up of CSD-13 decisions." The slate of policy measures adopted aim at speeding up implementation of water, sanitation and human settlements goals. The Commission emphasized the need for a substantial increase in resources from all sources if developing countries were to achieve the internationally agreed development targets. The text recognizes that governments have the primary role in promoting improved access to safe drinking water, basic sanitation and adequate shelter, through improved governance at all levels and appropriate enabling environments and regulatory frameworks, with the active involvement of all stakeholders.

107. The outcome also calls for at the same time efforts by governments to achieve the agreed goals and targets should be supported by international community through a conducive international policy environment, including good global governance; a universal rule-based, open, non-discriminatory and equitable multilateral trading system; mobilization and transfer of financial resources; debt relief, including debt cancellation, where appropriate; public-public and public-private partnerships; technical cooperation and capacity-building; and technology transfers.

D. 2005 World Summit Outcome

108. The world's leaders in 2005 World Summit Outcome resolution reiterated their commitment to achieve the goal of sustainable development, including through the implementation of Agenda 21 and the Johannesburg Plan of Implementation. They committed themselves to undertake concrete actions and measures at all levels and to enhancing international cooperation, taking into account the Rio principles. These efforts, they stated would promote the integration of the three components of sustainable development-economic development, social development and environmental protection-as interdependent and mutually reinforcing pillars. They also agreed to promote sustainable consumption and production patterns, with the developed countries taking the lead and all countries benefiting from the process, as called for in the JPOI. They also supported developing countries in their efforts to promote a recycling economy.

VI. SPECIAL DAY MEETING ON ENVIRONMENTAL LAW AND SUSTAINABLE DEVELOPMENT (AALCO's Forty-Fourth Session, 29 June 2005, Nairobi, Republic of Kenya)

109. The Forty-Fourth Session of the Asian-African Legal Consultative Organization devoted a day to a Special Meeting under the theme "Environmental Law and Sustainable Development".³⁵ The meeting was organized with the cooperation of host government and UNEP and started with the welcome address by the Secretary-General of AALCO Amb. Dr. Wafik Z. Kamil. He stressed on the importance to comply and implement the hundreds of international instruments and reflect them in national legislations in order to seriously eradicate the problems of environment.

110. The Vice-President and Minister for Home Affairs of the Republic of Kenya Hon'ble Dr. Moody Awori delivered the keynote address. He called for the development of clear mechanisms that would ensure compliance with and implementation of environmental standards. He hoped that the Conference would adopt a resolution that would contain concrete strategies and recommendations to Member States on how to address environment and sustainable development issues.

111. The Deputy Executive Director of the United Nations Environment Programme Mr. Shafqat Kakakhel emphasized in the present day world the problem of sustainable development was no less urgent than that of decolonization and apartheid against which the Asian-African states had waged a relentless battle and therefore it was imperative for them now to take up the objective of realization of sustainable development. He noted that international environmental law, despite being the youngest stream of international law was its most dynamic stream. This reflected the concern of international community, however much was required to be achieved on the implementation and enforcement of environmental law, at international, regional and national levels.

112. The Minister for Environment and Natural Resources of the Republic of Kenya Hon. Kalonzo Musyoka, the President of Forty-Fourth Session and Attorney-General of Kenya Hon. S. Amos Wako, also made their opening statements. These dignitaries spoke about the urgent need for addressing environmental issues in the face of continuing global environmental degradation and emphasized upon the necessity of strong legal mechanisms at international, regional and national levels to address the challenges posed. Special attention was given by these speakers to the concerns of developing countries in realizing the goal of environment protection and at the same time moving ahead on the path of industrial development. The dignitaries also lauded the valuable role played by the Nobel Laureate Prof. Wangari Maathai for environment protection through her green belt movement in Kenya.

113. The deliberations of the Meeting took place in three Sessions. The first substantive session was devoted to the Asian and African perspective to "Sustainable Development, the Role of Law, Human Rights and Environmental Justice". While Amb.

³⁵ For a detailed record of the deliberations of the Special Day Meeting see AALCO, *Verbatim Record of Discussions: Forty Fourth Session*, pp. 130-208.

Prof. Chusei Yamada Member International Law Commission dwelt upon the Asian perspective, Prof. Frank Njenga, Professor of Law, Moi University, Kenya and Former Secretary-General of AALCO elaborated upon the African perspective. The next session was devoted to addressing compliance with and enforcement of environmental law. Ms. Elizabeth Mrema of the UNEP addressed from the international perspective while Prof. Ratemo Michieka, Director-General of the National Environmental Management Agency of Kenya spoke from national perspective. The last session was devoted to addressing climate change issues. Mr. Seth Osafo, Senior Legal Adviser in the Secretariat of the United Nations Framework Convention on Climate Change and Dr. Patricia Kameri-Mbote, Chair Private Law, University of Nairobi highlighted the problems and prospects for developing countries arising out of the entry into force of the Kyoto Protocol.

114. Several Member States of AALCO delivered their statements on the occasion and highlighted the environmental challenges faced by their countries as well as their national perspective on the various themes of the Session.

115. The highly successful meeting concluded with the signing of a Memorandum of Understanding between the UNEP and AALCO. The two Organizations have joined hands to further enhance their efforts for the promotion of law of sustainable development in Asia and Africa.

116. The Session adopted the Nairobi Resolution on “Environmental Law and Sustainable Development.” The detailed report of the Meeting is contained in the Verbatim Record of the discussion of the Forty-Fourth Session.³⁶

³⁶ AALCO/44/NAIROBI/2005/VR from pages 103-208.

VII. SECRETARIAT COMMENTS AND OBSERVATIONS

A. Convention on Biological Diversity and the Cartagena Protocol on Biosafety

117. 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 stand out: one the creation of a Compliance Committee and two the practical and effective documentation of Living Modified Organisms (LMOs). These two aspects were effectively addressed during the COP/MOP-2.

118. One of the significant aspects of the COP/MOP-2 was on the progress on implementation of the Biosafety Protocol. Another aspect was regarding the documentation for transboundary movement of LMO-FFPs wherein an interim solution has been derived and finalizing of discussions is proposed to be during COP/MOP-3 at Brazil in 2006. The main reasons for a disagreement on the documentation of LMOs were on the need for flexibility in the exact formulation of the statement explaining the presence of LMOs (on the phrase “contains or may contain”). Further, the Ad Hoc Working Group’s report on Liability and Redress explaining the definition, scope and classification of damage in terms of handling, transport, packaging and identification of LMOs is remarkable. The Ad Hoc Open-ended Working Group on Review of Implementation of the Convention (WGRI) gave a detailed report as to how implementation at the national level should be made more effective and the reasons for non-implementation by the countries. Also, it elaborated on the necessities for complying with the 2010 target by emphasizing on the need for capacity building, technology transfer and financial resources.

119. The protection of Intellectual Property Rights in genetic resources, folklore, and traditional knowledge is one of the most debated issues in the negotiations of several multilateral agreements, such as the CBD, World Trade Organization’s (WTO) – Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), World Intellectual Property Organization (WIPO), UN Human Rights Committee etc., as it gives rise to a range of legal and practical issues concerning both their relationship in international law and their implementation at the national level. Therefore, there is a need for harmonization of the provisions of these agreements. In this regard, one may hope that the negotiation process for the international regime for access and benefit sharing from access to genetic resources and fair and equitable sharing of the benefits arising out of their utilization would take care of the concern of many countries which are unable to effectively protect their genetic resources.

B. United Nations Convention to Combat Desertification

120. The UNCCD has successfully accomplished the long transition from awareness raising to implementation. The implementation includes 81 national action plans, the synergies developed with other Rio Conventions, the memorandum with the GEF and the recently launched *TerraAfrica* initiative. All these together with the recent World Summit's call for providing adequate and predictable financial resources for addressing land degradation and desertification provide a welcome political signal. There is an increasing realization in the international community that the Millennium Development Goals cannot be achieved without an all-out attack on root causes of rural poverty, which to a large extent is caused by the spreading of desertification and drought.

121. The Convention is often seen as a people's Convention as it directly addresses the needs of the developing world's rural poor and a critical tool to fight global poverty. Therefore, it is essential that it should remain a priority issue for the donor government's of the rich countries. In this regard the growing insistence by developing countries to address desertification in close connection with the other two Rio Conventions, would mean that combating climate change and protecting biodiversity would have to depend forthwith on progress made by the UNCCD.

C. United Nations Framework Convention on Climate Change and Kyoto Protocol

122. The Montreal Conference has had two major achievements. One was in firming up plan to start talks on further commitments on targeted emission reductions beyond 2012 by those developed countries which have already undertaken such commitments in the first phase of the Protocol. The second was in trying to bring the USA and Australia into the international climate change agenda by initiating what is called a "dialogue process", due to take place in next two years. This "dialogue on long-term cooperative action" is based on a recognition of "diversity of approaches to address climate change" and the "essential role of technology". One may hope that this dialogue would provide an opportunity to the dissident members of the Kyoto Protocol to come on board.

123. The adoption of the 'rule book' of the Kyoto Protocol by the Montreal Conference is another significant achievement. It would formally launch the emission trading, joint implementation and clean development mechanism. One may hope that with these decisions in place, the infrastructure to move ahead with implementation of Kyoto Protocol has been attained and this would provide a solid basis for future steps to bring emissions down.

124. The Clean Development Mechanism is the main instrument of cooperation between industrialized countries and developing countries under the Kyoto regime. In Montreal, developed countries committed themselves to fund the operation of the CDM with over US \$ 13 million in 2006-07. However, due to complexity of procedures and lack of clarity in terms such as "baseline", "additionality" and afforestation it had been making slow progress. The Montreal decisions would provide an accelerated operation of

the CDM, which would be valuable to the global community in forging the broadest possible commitment to the issue of climate change.

D. Follow-up on the outcomes of the World Summit on Sustainable Development

125. It is important to note that the world's leaders had reaffirmed their commitment to achieve the goal of Sustainable Development at World Summit 2005. Apart from resolve on Rio Conventions, other important resolves of the leaders include: recognition that sustainable development of indigenous peoples and their communities was crucial in the fight against poverty and hunger; expeditiously work towards the establishment of a worldwide early warning system for all natural hazards with regional nodes; assist developing countries' efforts to prepare integrated water resources management and water efficiency plans as per their national development strategies and to provide access to safe drinking water and sanitation in accordance with the Millennium Declaration and the JPOI.; strengthen the conservation, sustainable management of all types of forest; and to promote the sound management of chemicals and hazardous wastes throughout their lifecycle. The comprehensive approach adopted by the World Summit would it is expected give greater thrust to the realization of the goal of sustainable development.

126. It is hoped that the comprehensive and integrated approach adopted by the world's leaders through the World Summit outcome on "Sustainable development: managing and protecting our common environment" would give a renewed political thrust to the task of safeguarding the environment which was as urgent as ever and key to the achievement of the Millennium Development Goals. Success on achieving those goals was dependent on healthy ecosystems and on the development of resources to defeat poverty, treat diseases and promote sustainable economic growth. It was therefore imperative that environmental concerns needed to be better integrated into policy-making and strategies for security, development and humanitarian action.

E. The 3 R Initiative

127. The Secretariat would like to draw attention to the 3 R Initiative. It aims to promote the "3rs" (reduce, reuse and recycle) globally so as to build a sound-material-cycle society through the effective use of resources and materials. Reducing means choosing to use things with care to reduce the amount of waste generated. Reuse involves the repeated use of items or parts of items which still have usable aspects. Recycling means the use of waste itself as resources. Waste minimization can be achieved in an efficient way by focusing primarily on the first of the 3rs, "reduce", followed by reuse and then "recycle".³⁷

128. The principle of 3 Rs is based upon the Japanese concept of "*mottai nai*". This would, literally translated, mean, "don't waste what is valuable". Nobel Peace Prize laureate Prof. Waangari Maathai during the course of her visit to Japan in early 2005

³⁷ Details stated herein are drawn from the website of "The 3R Initiative", on URL: <http://www.env.go.jp/earth/3r/en/outline.html>.

explained to the Japanese Prime Minister Junichiro Koizumi how impressed was she with this word. UNEP Executive Director Dr. Klaus Toepfer is of the view that it was “necessary to promote, in different parts of the world, to the people and citizens in their day to day lives and to private business” the concept of 3 Rs. It was more than just a technical solution, that it has something to do with the overall spirit and dedication of the people.³⁸

129. A Ministerial Conference on the 3R initiative was held in Tokyo on 28-30 April 2005 to formally launch the 3R Initiative agreed upon at the G8 Island Summit in 2004. The Conference recognized it necessary to promote:

- (a) formulation and implementation of visions and/or strategies leading to a sound material society;
- (b) reduction of barriers to the international flow of goods and materials;
- (c) cooperation between developed and developing countries;
- (d) cooperation among stakeholders; and
- (e) science and technology suitable for the 3Rs.

130. It may be useful to explore how AALCO Member States can integrate the 3 Rs Initiative within their national environment policies and legislation. This would contribute towards global efforts for establishing a World-Wide Sound Material Cycle Society through the 3 R Initiative. Developing states could also seek benefit from the experience of the industrialized countries in formulating laws and implementation programmes on this initiative.

F. Follow-up of the Nairobi resolution on Environmental Law and Sustainable Development

131. The Nairobi Session has inter alia mandated the Secretary-General “to organize a seminar for AALCO Member States legal experts on compliance and enforcement of Environmental Law at national, regional and international levels.” The Secretariat requests for the guidance and support of Member States for convening this seminar at an appropriate date. On its part, the Secretariat has been informally exploring the feasibility of organizing such a seminar in cooperation with the United Nations University, Tokyo.

132. The Secretariat, as part of its work on “Environment and Sustainable Development” has entered into negotiations with the International Tropical Timber Organization, an inter-governmental organization based at Yokohoma, Japan for entering into a mutually beneficial Memorandum of Understanding. Exchanging views and experiences on the enforcement of forest laws between the two Organizations forms an important element of the proposed MOU.

³⁸ Message of Dr. Klaus Toepfer, Executive Director, UNEP delivered at the Ministerial Meeting on the 3 R Initiative dated 29 April 2005, Tokyo, Japan, available on UNEP website: <http://www.unep.org>.