

**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**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
AIA	Advanced Informed Agreement
AOSIS	Association of Small Island States
AWG	Ad Hoc Working Group
AWG-LCA	Ad Hoc Working Group on Long-term Cooperative Action (relevant to UNFCCC)
AWG-KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
BCH	Biosafety Clearing House
CBD	Convention on Biological Diversity
COP	Conference of Parties
CMP	Conference of Parties serving as Meeting of Parties
CPB	Cartagena Protocol on Biosafety
CSD	Commission on Sustainable Development
EEC	European Economic Community
GBO	Global Biodiversity Outlook
GC	Governing Council
GMEF	Global Ministerial Environment Forum
GEF	Global Environment Facility
HTPI	Handling, Packaging, Transport and Identification
ICEL	International Council of Environmental Law
IEG	International Environmental Governance
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
IPM	Intergovernmental Preparatory Meeting
IUCN	International Union for Conservation of Nature
JPOI	Johannesburg Plan of Implementation
KP	Kyoto Protocol
LDC	Least Developed Countries
LMOs	Living Modified Organisms (relevant to CBD)
LMO-FFPs	Living Modified Organisms for Food, Feed And Processing
MAT	Mutually Agreed Terms
MDGs	Millennium Development Goals
MYPOW	Multi-Year Programme of Work
NBSAPs	National Biodiversity Strategies And Action Plans
NFPs	National Focal Points
NGOs	Non-Governmental Organization
OAU	Organization of African Unity
PIC	Prior Informed Consent
REDD	Reducing emission from deforestation and forest degradation
TK	Traditional Knowledge
UN	United Nations
UNCCD	United Nations Convention to Combat Desertification

UNCED	United Nations Conference on Environment and Development (or the Earth or Rio Summit)
UNCSD	United Nations Conference on Sustainable Development
UN-ECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
WSSD	World Summit on Sustainable Development (or the Johannesburg Summit)
WTO/GATT	World Trade Organization/General Agreement on Tariffs and Trade

# ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

## I. INTRODUCTION

### A. Background

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

2. The present Secretariat Report attempts to furnish an overview of the Sixteenth Session of the Conference of Parties to the UNFCCC (COP 16) and Sixth Meeting of Parties to the Kyoto Protocol, (CMP 6) held from 29 November to 11 December 2010 at Cancun, Mexico and briefly refers to the subsequent negotiations on climate change held from 3 to 8 April 2011 at Bangkok, Thailand; Tenth Session of the Conference of Parties to the CBD (COP 10), held from 18 to 29 October 2010 at Nagoya, Japan and the Fifth Meeting of the Parties to the Cartagena Protocol on Biosafety held from 11 to 15 October 2010 at Nagoya, Japan. The last section of the Report entitled Forward to Rio + 20, attempts to highlight the ongoing momentum towards the United Nations Conference on Sustainable Development (UNCSD) that would take place from 4 to 6 June 2012 in Rio de Janeiro, Brazil. This part also reviews developments relating to the Governing Council of United Nations Environment Programme (UNEP) / Global Ministerial Environment Forum, that took place from 21 to 24 February 2011 at Nairobi, Kenya; and the forthcoming Nineteenth Session of the Commission on Sustainable Development (CSD), that would be held from 2 to 13 May 2011 at United Nations Headquarters in New York. Finally, it offers some comments and observations on the agenda item under consideration for the Fiftieth Annual Session of the Organization.

### B. Deliberations at the Forty-Ninth Annual Session of AALCO (5-8 August 2010, Dar es Salam, United Republic of Tanzania)

3. A Special Meeting on “Environment and Sustainable Development” was organized jointly by the Government of the United Republic of Tanzania, International Council of Environmental Law (ICEL) and the AALCO Secretariat in conjunction with Forty-Ninth Annual Session on 7 August 2010.

4. **Dr. Yuichi Inouye**, the then **Deputy Secretary-General**, in his introductory remarks, said that for the special meeting, there were two working sessions, namely;

Building Momentum towards Cancun Climate Change Negotiations; and the Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Covenant on Environment and Development.

5. Dr. Inouye said that convening special meeting on building momentum towards Cancun Climate Change Negotiations was a very significant and pertinent one as far as countries from Asia and Africa were concerned. The Copenhagen Climate Conference met with the goal of adopting a legally binding instrument; however, even the political agreement Copenhagen Accord though negotiated by several world leaders, could not be adopted by consensus at the Conference. Despite that the Accord represented a significant achievement as it was demonstrative of the commitment by most of the nations on a collective, long-term response to climate change, and a set of measures to implement global climate action. He stated that States must be cautious while negotiating on post-2010 biological diversity target at the forthcoming Nagoya Summit in Japan in October 2010. More care must be attributed to the Draft Protocol on Access and Benefit Sharing because the terms, language, implications and implementation strategies shall not be, in future, against the welfare of the peoples at the cost of biodiversity loss.

***Working Session I: Building Momentum towards Cancun Climate Change Negotiations***

6. The panellists for Working Session I on ‘Building Momentum towards Cancun Climate Change Negotiations were: **Mr. Xiang Xin**, Deputy Division Director, Department of Treaty Law, Ministry of Foreign Affairs, the People’s Republic of China; **Prof. Shinya Murase**, Member, International Law Commission from Japan; and **Dr. Roy S. Lee**, Permanent Observer of AALCO to the UN Headquarters, New York.

7. Mr. Xiang stated that global climate change and its adverse effects were common concern of mankind. Climate change arose out of development, and should thus be solved in the process of development. The problem of climate change should be dealt with through promoting sustainable development so as to achieve a win-win outcome of pursuing economic development and addressing climate change. Sustainable development was both the means and the end for effectively addressing climate change. To help reach positive outcome at the Cancun Conference, the future negotiations should, on the basis of Copenhagen Conference, continue to make comprehensive progress in promoting the “Bali Roadmap” dual-track negotiation, especially on the work of (AWG-KP) (the Ad-hoc Working Group for further commitments under the Kyoto Protocol). To be concrete, firstly, ambitious quantified emission reduction targets should be set for developed countries for the second commitment period under the Kyoto Protocol, and those developed countries that were not Parties to the Kyoto Protocol should also take comparable emission reduction commitments. Stating the position of his delegation, the panellists stated that firstly, developed countries must reduce their greenhouse gases emission in aggregate by at least 40% below 1990 levels by 2020. Secondly, effective institutional arrangements should be established to ensure that developed countries fulfil their commitments to provide technology, financing and capacity building support to developing countries. Thirdly, in the context of sustainable development, developing

countries should take nationally appropriate mitigation and adaptation actions, supported by technology, financing and capacity building assistance from developed countries.

8. **Prof. Shinya Murase**, drew attention to the substantive aspect of climate change issues and the procedural problems on climate negotiations. On the substantive issues, he said that there was a need to assess the current situation within the historical context of international law-making on climate change over the past twenty years or so. The UNFCCC, 1992 provided for rather mild and flexible commitments for mitigation of greenhouse gasses by developed countries, or Annex I Parties. The Berlin Mandate of 1995 proposed strengthening the commitments of Annex I Parties through the adoption of a Protocol on the basis of the principle of “common but differentiated responsibilities”. Thus, the Kyoto Protocol adopted in 1997 provided for the rigid obligation of each Annex-I Party to limit its emissions of greenhouse gasses by placing upon each State numerical caps with certain flexibility mechanisms attached. Since the first commitment period of the Kyoto Protocol was to be terminated by the end of 2012, the negotiations for a post-2012 climate regime were launched by the Bali Action Plan in 2007 with a view to reaching an “agreed outcome” at COP-15 in Copenhagen in 2009.

9. He expressed concern on the failure by the COP Meeting to agree upon a legally binding instrument that only took note of Copenhagen Accord which was merely a political agreement. He said that there was a need to form a legally binding instrument either to supplement the UNFCCC and Kyoto Protocol or replace the Kyoto Protocol; an amendment or set of amendments to the UNFCCC including the Annexes, and adding the Annexes; a single COP decision or a set of COP decisions to further implement the FCCC; a Ministerial Declaration containing the elements of the political agreements; any combination or package of the above; and an instrument agreed upon outside COP. He proposed a WTO/GATT model to tackle the climate change issues.

10. **Dr. Roy S. Lee** in his presentation stated that countries from Asian-African region were adversely affected by the problem of climate change. The panellist said that there were three negotiating forums and three major texts. However, it was essential to have a single text and a single negotiating body in order to facilitate climate change negotiations. The developing countries still look at the extension of Kyoto Protocol and its principles like Common but Differentiated Responsibility to remain in the text. The Kyoto Protocol exempted developing countries from any emission. Therefore, there was a need to have different purposes for common emission reduction. He said that the existing framework of legal regime must be kept intact to negotiate for post-2012 commitments. Undertaking commitments for developing countries was slightly expensive for the Asian and African countries. He said that under the Copenhagen Accord there was an attempt to transfer the burden to the developing countries however, it must be equally realized that preserving position may delay undertaking commitments and moving ahead. He appreciated the AALCO for having considered the issue of climate change in a special day meeting.

11. The Delegations from **Thailand, Republic of Korea, the Sultanate of Oman, Japan, Republic of Indonesia** and the **Arab Republic of Egypt** made observations. The

delegations explained on the efforts taken by their respective governments in combating climate change. One delegate stated that concerning a quantified economy-wide emissions targets for 2020, they have announced that it would aim at 25% reduction of emissions in 2020, as compared to 1990, which was premised on the establishment of a fair and effective international framework in which all major economies participate and on agreement by those economies on ambitious targets. Another delegate referred to the need to assist countries in mitigating climate change. In that aspect, the developing countries needed to commit themselves to support third world countries in reducing emission and also to expenses which should be shared together. States must encourage private sector participation to reduce emissions.

12. In response to those observations, panellists explained the need to keep the UNFCCC and Kyoto Protocol as the base for further negotiation, failing which negotiating a new text and setting out commitments would become unrealistic.

***Working Session II: Revised African Convention on the Conservation of Nature and Natural Resources and the Draft International Convention on Environment and Development***

13. **Mr. Donald W. Kaniaru, Regional Governor, International Council of Environmental Law (ICEL) and formerly Director, Environment, Policy and Law Division of the United Nations Environment Programme (UNEP)** in working session II dealt with the Revised African Convention on the Conservation of Nature and Natural Resources (Maputo Convention) and the Draft International Covenant on Environment and Development. The panellist conveyed his greetings on behalf of the Executive Governors of the ICEL. He said that he was happy to have that opportunity to increase cooperation between the two Organizations. Recalling his association with the AALCO, he said that he first represented Kenya at the Eleventh Session in Accra, Ghana in 1970 and then represented UNEP again at Accra at the Thirty-Eighth Session in 1999, when the AALCO and UNEP jointly published an important compilation - *Asian-African Handbook on Environmental Law* that included 43 legal and policy instruments as well as global and regional conventions of interest to Asian and African countries.

14. On the Maputo Convention, the panellist narrated that at the request of the Organization of African Unity (now African Union), work on the Maputo draft started following concerns of African states that in view of development of numerous global and regional conventions, it was time to update the Algiers Conventions of 1968, 34 years after its entry into force on 16 June 1969. The Algiers Convention was itself a progressive instrument that built upon the 1933 London Convention on Species and was substantively relevant to Africa. It was well ahead of the Stockholm process of articulating policies and laws on the environment. The Organization of African Unity (OAU) asked the International Union for Conservation of Nature (IUCN), International Council of Environmental Law (ICEL) and the United Nations Environment Programme (UNEP) to assist in the review. In the review process, in addition to these institutions, experts from the United Nations Economic Commission for Africa (UN-ECA) and World Bank also worked on the 1968 draft. The UNEP was represented by senior lawyers



including the panellists himself. The Maputo Convention, the Panellist stated was the most comprehensive regional biodiversity, instrument, containing, 13 preambular paragraphs and 43 articles, that were cognisant of the principles (Stockholm and Rio) global and regional instruments developed after 1968 (Convention on International Trade in Endangered Species 1973, Convention on Migratory Species 1979, UNCLOS 1982; and Regional Seas conventions, Basel and Bamako Conventions on Hazardous Wastes, Convention on Biological Diversity 1992, UNCCD 1994 and provides component often lacking in follow-up of numerous instruments.

15. The Draft International Covenant on Environment and Development consisted of 79 articles and would be a crucial tool consolidating key principles and developments in the field of sustainable development specially intensified from the 1980s to date. He said that the Fourth Edition would be ready by end of month and would be presented to Member States of the UN on the occasion of the high level event on Biodiversity during the 65<sup>th</sup> Session of the UN General Assembly.

16. The **Delegation of the Arab Republic of Egypt** thanked the panellist and said that the key aspects of such discussions were to make the participation of the developing countries at the forthcoming sessions on environmental law matters to be more effective. He stated that developing countries must be making use of meetings like the forthcoming Nagoya Summit in October 2010. The countries which were rich in natural resources may consider ratifying legal instruments protecting natural resources in accordance with their country positions.

17. The **Observer delegate from United Nations Environment Programme (UNEP)** stated that the UNEP had been assisting the developing countries in their sustainable development activities, by providing assistance. It was highlighted that there was a need to ratify the Maputo Convention by the African countries and also to have a proper coordination between various ministries in the member countries like the Ministry of Foreign Affairs, Ministry of Law and Justice, etc, in order to promote the need to ratify those legal instruments that were relevant to the countries. Such regional conventions would be significant in terms of promotion of economic growth and poverty eradication.

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

### **A. Background**

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

19. The Conference of Parties (COP) to the UNFCCC and the Meeting of Conference of Parties serving as Meeting of Parties to the Kyoto Protocol (CMP), the supreme decision-making bodies of the Climate Change Convention and the Kyoto Protocol, since the entry into force of these legal instruments have been meeting on an annual basis. As such, until December 2010, sixteen COP meetings and six CMP meetings have taken place.

20. The international community is presently engaged in negotiations for elaborating on a framework of action after 2012, when the Kyoto Protocol's first commitment period expires. It may be recalled that in December 2007, negotiators meeting at the United Nations Climate Change Conference in Bali had approved the Bali Action Plan (BAP) and Roadmap setting the Fifteenth meeting of Conference of Parties (COP 15) in December 2009 at Copenhagen as the deadline for agreeing on a framework for action after 2012. The plan laid out the four-fold action roadmap for climate change action – mitigation, adaptation, technology and finance. It was essentially a mandate to finalize two things: one, the emission reduction commitments of industrialized countries for the second phase of the Kyoto Protocol, and two, the global goals for long-term cooperative action until 2050. Although, these negotiations were to conclude at Copenhagen, the Conference failed to achieve the requisite breakthrough.

21. The highlight of the Copenhagen Conference was the political agreement entitled “Copenhagen Accord” of 18 December 2009, of which the Conference of the Parties took “note of”. By the Copenhagen Accord countries have agreed to cap the global temperature rise by committing to significant emission reductions, and to raise finance to kickstart action in the developing world to deal with climate change. It was supported by

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<sup>1</sup> The status of ratification of these instruments is drawn from the website: [http://unfccc.int/essential\\_background/items/2877.php](http://unfccc.int/essential_background/items/2877.php) (last accessed on 2 May 2011).

a majority of countries. Till date, 141 countries have expressed their intention to be listed as agreeing to the Copenhagen Accord.<sup>2</sup>

**B. Sixteenth Conference of Parties to the UN Framework Convention on Climate Change and Sixth Meeting of Parties to the Kyoto Protocol (29 November to 11 December 2010, Cancun, Mexico)**

22. The United Nations Climate Change Conference took place from 29 November to 11 December 2010 in Cancun, Mexico. The Conference included the sixteenth session of the Conference of the Parties (COP 16) to the United Nations Framework Convention on Climate Change (UNFCCC) and the sixth session of Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP 6).<sup>3</sup> The focus in Cancun was on a two-track negotiating process aiming to enhance long-term cooperation under the Convention and the Protocol. The original deadline for completing these negotiations was the UN Climate Change Conference in Copenhagen, Denmark held in December 2009, but as many issues remained outstanding, it was expected that these would be resolved at Cancun.

23. The Cancun Conference concluded with the adoption of a balanced package of decisions that have come to be known as “Cancun Agreements” that is expected to move international action on climate change forward. Its key elements include:

- Acknowledgement that global warming must be kept below 2°C compared to the pre-industrial temperature and establishment of a process to define a date for global emissions to peak and a global emissions reduction goal for 2050.
- Industrialised country targets are officially recognised under the multilateral process and these countries are to develop low-carbon development plans and strategies and assess how best to meet them, including through market mechanisms, and to report their inventories annually.
- Developing country actions to reduce emissions are officially recognised under the multilateral process. A registry is to be set up to record and match developing country mitigation actions to finance and technology support from by industrialised countries. Developing countries are to publish progress reports every two years.

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<sup>2</sup> Until 27 April 2011, following AALCO Member States are listed as agreeing to the Copenhagen Accord: Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Cyprus, Gambia, Ghana, India, Indonesia, Japan, Jordan, Kenya, Mauritius, Mongolia, Nepal, Nigeria, Republic of Korea, Senegal, Sierra Leone, Singapore, South Africa, United Arab Emirates, United Republic of Tanzania, and Uganda.

<sup>3</sup> This write-up is based upon the information contained in the following UNFCCC Secretariat Press Releases: “UNFCCC Chief says Cancun must be followed by higher global emission cuts and rapid launch of new climate bodies and funds”, 20 December 2010; and “UN Climate Change Conference in Cancun delivers balanced package of decisions, restores faith in multilateral process”, 11 December 2010 and the “Summary of the Cancun Climate Change Conference: 29 November - 11 December 2010, *Earth Negotiations Bulletin*, vol. 12, no. 498, dated 13 December 2010, available online at <http://www.iisd.ca/climate/cop16/>.

- Parties meeting under the Kyoto Protocol agree to continue negotiations with the aim of completing their work and ensuring there is no gap between the first and second commitment periods of the treaty.
- The Kyoto Protocol's Clean Development Mechanism has been strengthened to drive more major investments and technology into environmentally sound and sustainable emission reduction projects in the developing world.
- Parties launched a set of initiatives and institutions to protect the vulnerable from climate change and to deploy the money and technology that developing countries need to plan and build their own sustainable futures.
- A total of \$30 billion in fast start finance from industrialised countries to support climate action in the developing world up to 2012 and the intention to raise \$100 billion in long-term funds by 2020 is included in the decisions.
- In the field of climate finance, a process to design a Green Climate Fund under the Conference of the Parties, with a board with equal representation from developed and developing countries, is established.
- A new Cancun Adaptation Framework is established to allow better planning and implementation of adaptation projects in developing countries through increased financial and technical support, including a clear process for continuing work on loss and damage.
- Governments agree to boost action to curb emissions from deforestation and forest degradation in developing countries with technological and financial support.
- Parties have established a technology mechanism with a Technology Executive Committee and Climate Technology Centre and Network to increase technology cooperation to support action on adaptation and mitigation.

24. The call for countries to list under the UNFCCC the emission reduction targets and actions which they announced in 2010, is described as forming the collective basis for the largest mitigation effort the world has ever seen. It was also agreed to build a comprehensive system of mutual accountability towards these goals. The Cancun Agreements are said to be including the most comprehensive package ever agreed by governments to help developing nations deal with climate change, including new institutions, funding channels and a technology transfer mechanism to help the developing world build its own sustainable, low emissions future, adapt more effectively to climate change, and preserve and protect its forests for the good of all nations.

25. However, the issue of the legal form of the agreement was not resolved in Cancun and will be discussed over the coming year in the lead up to Durban. The term of the Ad Hoc Working Group on Long Term Cooperative Action has been extended for one year and should continue to discuss the "legal options with the aim to complete an agreed outcome". This means that Parties still need to decide whether to adopt a legally binding agreement that complements the Kyoto Protocol, an inclusive legally binding agreement for all country that would replace the Kyoto Protocol, or another option where Parties cooperate through COP decisions rather than a new treaty.

26. The seventeenth meeting of the COP and the seventh meeting of COP/MOP is scheduled to take place in Durban, South Africa – an AALCO Member State – from 28 November to 9 December 2011.

**C. UN Climate Change Conference (3 to 8 April 2011, Bangkok, Thailand)**

27. The sixteenth session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 16), the fourteenth session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA 14), and three pre-session workshops convened in Bangkok, Thailand, from 3-8 April 2011. This marked the first round of negotiations on climate change following the sixteenth Conference of the Parties (COP 16), held in Cancun, Mexico in November - December 2010. Delegates set out to adopt the agenda and organization of work for 2011 to enable the Ad Hoc Working Groups (AWGs) to achieve their mandates in the lead up to COP 17, to be held in December 2011 in Durban, South Africa.<sup>4</sup>

28. Parties to the Climate Change Convention agreed an agenda to work towards a comprehensive and balanced outcome at the UN Climate Change Conference in Durban at the end of the year. Governments agreed that this outcome will both address the implementation of the Cancun Agreements and issues that were not resolved at Cancun but which are part of the comprehensive Bali Action Plan that governments agreed in 2007.

29. Positive discussions also emerged under the Kyoto Protocol negotiating track, which addresses the emission reduction targets of developed countries. Discussions in Bangkok under the Kyoto Protocol included not only a focus on what should happen with regard to the future of the Protocol but also how it will happen. It is significant that there is a strong desire to build on the Kyoto rules and a desire to find a political solution in 2011. It is important to note that the rulebook of the Kyoto Protocol is the only current international set of accounting rules to protect environmental integrity while ensuring that a tonne of carbon removed from the atmosphere is a real tonne, no matter where it is removed or who removes it.

30. The Bangkok meeting also included discussions to help bring clarity to countries intentions in the shape of three workshops. One workshop included presentations on industrialised country emission reduction targets and the conditions for meeting them. Another workshop was held on developing country mitigation actions, looking at what these actions mean and what level of developed country support they might need to be implemented. An expert workshop on the Technology Mechanism, which was agreed in Cancun, also took place in Thailand, looking into practical issues, including what the network should look like, who should be included in it, and how to ensure the effective participation of relevant institutions.

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<sup>4</sup> For details see: “Summary of the Bangkok Climate Change Talks”, *Earth Negotiations Bulletin*, vol. 12, no 499, dated 11 April 2011, available at: <http://www.iisd.ca/climate/ccwg14/>.

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

#### **A. Background**

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

32. After the Convention has been adopted, there have been ten sessions of the Conference of Parties (COP) and two Extraordinary sessions of the COP to the CBD. The Second Extraordinary Meeting of the COP in January 2000 adopted the Cartagena Protocol on Biosafety (CPB). The Protocol addresses the safe transfer, handling and use of living modified organisms (LMOs) that may have an adverse effect on biodiversity by establishing an advanced informed agreement (AIA) procedure for imports of LMOs for intentional introduction into the environment. It also incorporates the precautionary principle and mechanisms for risk assessment and management, and establishes a Biosafety Clearing House (BCH) to facilitate information exchange. The Protocol entered into force on 11 September 2003 and as on 15 April 2011 has 160 State Parties.

33. At the tenth session of the COP in 2010, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (the Nagoya Protocol) was adopted after seven years of negotiations.

#### **B. Tenth Conference of the Parties to the CBD (18 to 29 October 2010, Nagoya, Japan)**

34. The Tenth session of the COP to the CBD was held from 18 to 29 October 2010, in Nagoya, Japan and witnessed participation of over 7,000 delegates representing parties and other governments, UN agencies, intergovernmental, non-governmental, indigenous and local community representatives, academia and industry.<sup>5</sup> It considered a series of strategic, substantive, administrative and budgetary issues, and adopted 47 decisions. One of the major achievements of the session was the adoption of the Nagoya Protocol and

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<sup>5</sup> UNEP/CBD/COP/10/27, *Report of the Tenth Meeting of the Conference of Parties to the Convention on Biological Diversity, held in Nagoya, from 18 to 29 October 2010*; See also “Summary of the Tenth Conference of the Parties to the Convention on Biological Diversity: 18-29 October 2010” *Earth Negotiations Bulletin*, vol.9, no. 544, dated 1 November 2010, available online at <http://www.iisd.ca/biodiv/cop10/>.

the matters which were considered range from a new strategic plan, targets and a multi-year programme of work (MYPOW) for the Convention.

35. The Nagoya meeting had three major inter-linked components: the Nagoya Protocol on Access and Benefit Sharing (ABS)<sup>6</sup>; the revised and updated Strategic Plan to guide international and national efforts to meet the three CBD objectives including a revised biodiversity target for the period 2011-2020; and the implementation plan for the Strategy for Resource Mobilization in support of the achievement of the CBD objectives adopted by COP 9 in Bonn, Germany in 2008.

36. The strategic issues for evaluating progress and supporting implementation that were deliberated upon during the COP 10 include (i) progress toward the 2010 biodiversity target, including national reports and the global biodiversity outlook, (ii) revised strategic plan, biodiversity target and indicators, (iii) operations of the convention, including programme of work for the period 2011-2022 and periodicity of meetings of the conference of the parties, (iv) strategy for resource mobilization, (v) scientific and technical cooperation and the clearing-house mechanism, (vi) technology transfer and cooperation, (vii) global strategy for plant conservation, (viii) communication, education and public awareness and the international year of biodiversity, (ix) cooperation with other conventions and international organizations and initiatives, engagement of stakeholders, including business and biodiversity, cities and biodiversity, and south/south cooperation, (x) financial mechanism: fourth review of effectiveness and guidance.

37. The issues for in-depth consideration were: (i) inland waters biodiversity, (ii) marine and coastal biodiversity, (iii) mountain biodiversity, (iv) protected areas, (v) sustainable use of biodiversity, and (vi) biodiversity and climate change. Other Substantive issues arising from decisions of the COP were: (i) agriculture biodiversity, (ii) biodiversity of dry and sub-humid lands, (iii) forest biodiversity, (iv) biofuels and biodiversity, (v) invasive alien species, (vi) global taxonomy initiative, (vii) article 8(j) and related provisions, (viii) incentive measures, and (ix) new and emerging issues.

38. The COP 10 adopted a decision amounting to a *de facto* moratorium on geo-engineering; took a stance on the issue of synthetic biology, urging governments to apply the precautionary approach to the field release of synthetic life into the environment and acknowledging parties' right to suspend it; affirmed the role of CBD in reducing emissions from deforestation and forest degradation in developing countries, and forest conservation, sustainable forest management and enhancement of forest carbon stocks (REDD+); adopted the Tkarihwaí:ri code of ethical conduct; and established clear steps to increase cooperation among the Rio Conventions leading up to the Rio+20 Summit.

39. *Progress toward the 2010 Biodiversity Target and Global Biodiversity Outlook:* The COP emphasised with regard to the decision on implementation of the Convention and the Strategic Plan, the need for increased support to parties to strengthen

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<sup>6</sup> The text of the Nagoya Protocol is annexed as Annex I to the UNEP/CBD/COP/10/27 from pages 87-106.

capacity to implement the CBD objectives in line with the Strategic Plan and its Strategy for Resource Mobilization, including through updating national biodiversity strategies and action plans (NBSAPs) as effective instruments to promote implementation of the strategic plan and mainstreaming biodiversity and regional and subregional cooperation.

40. It has requested the Secretariat to conduct workshops and capacity-building initiatives in collaboration with parties and international organizations, to facilitate countries on updating NBSAPs and mainstreaming biodiversity; and prepare a further in-depth analysis of the main reasons why the 2010 biodiversity target has not been met; continue to develop guidance on integrating biodiversity into relevant sectors and cross-sectoral policies, plans and programmes; and collaborate with the biodiversity-related conventions to facilitate the participation of national focal points (NFPs) in the updating of NBSAPs.

41. In the decision on integration of biodiversity into poverty eradication strategies, the COP welcomed increased efforts to mainstream biodiversity and the initiative of developing countries to develop a MYPOW on South-South cooperation, and invited developed country parties, governments, donors and the GEF to provide financial and technical support for mainstreaming biodiversity into poverty eradication and development processes. In the decision on GBO 3, the COP noted that the 2010 biodiversity target has not been fully met due to limited capacities and financial and technical resources. It was also noted that for effective strategy for reducing biodiversity loss, action at multiple levels needs to be steered.

42. *Revised Strategic Plan, Biodiversity Target and Indicators:* Regarding the decision on the revised Strategic Plan, the COP adopts the annexed revised Strategic Plan and urged governments to implement it by, developing national and regional targets, using the Strategic Plan as a flexible framework, in accordance with *national priorities and capacities*, taking into account both the global targets and trends of biodiversity in the country and the resources provided through the Strategy for Resource Mobilization; and review and update NBSAPs in line with the Strategic Plan and use them as effective tools for integration of biodiversity targets into the national development and poverty reduction strategies and national accounts, as appropriate, and for mainstreaming biodiversity at the national level. It also urged parties and donors to provide adequate, predictable and timely financial support to developing countries, in particular, LDCs, SIDS, and the most environmentally vulnerable countries and transition economies to enable the full implementation of the Strategic Plan.

43. Venue for COP 11: The eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity is tentatively scheduled for 8 to 19 October 2012 in India.



*i. Overview of the Nagoya Protocol on Access to Genetic Resources and Benefit Sharing, 2010*

44. COP 10 adopted the Nagoya Protocol on ABS and established an Open-ended Intergovernmental Committee to prepare for the first meeting of the Parties to the Protocol. The Committee will meet from 6 to 10 June 2011 and 23 to 27 April 2012. The Protocol will be open for signature by Governments at the UN Headquarters in New York from 2 February 2011 to 1 February 2012. Fifty ratifications are needed for the Protocol to enter into force.

45. The Nagoya Protocol on ABS includes 27 preambular clauses, 36 operative provisions, and an annex containing an indicative list of monetary and non-monetary benefits. The single objective of this Protocol is fair and equitable sharing of the benefits arising from the utilisation of genetic resources. This objective is supposed to be realised by appropriate access to genetic resources, by appropriate transfer of technologies and by appropriate funding.

46. The key features of the Nagoya Protocol are: Benefit sharing, Compliance, Access to Justice, Traditional Knowledge, and Technology Transfer. There were strong viewpoints made by certain developing countries accentuating that the Protocol has been rushed through at final hours of the meeting. In addition to this, it was also mentioned that many of the initial proposals of the developing and least developed countries on certain provisions have been diluted.

47. *Benefit Sharing:* Article 5 of the Protocol provides for benefit sharing arising from the utilization of genetic resources as well as subsequent applications and commercialisation. This is no more than an amplification of 'utilisation' as referred to earlier. The sharing must be fair and equitable. Parties are at liberty to determine what constitutes such sharing according to their needs through mutually agreed terms. Countries may stipulate minimum terms that ought to be included to fulfill the fair and equitable criteria in their national ABS law. Some of these terms are indicated in Article 6 paragraph 3(g) of the Protocol. Developing countries could consider drawing up a menu of model clauses for easy reference. This may be particularly helpful where genetic resources are endemic to a region so as to avoid any downward spiralling of such terms.

48. *Compliance:* There is a clear obligation for countries with users in their jurisdiction to establish 'effective, appropriate and proportionate' measures for compliance. Developing countries can, through national law and a COP/MOP decision, establish clear and objective criteria for what constitutes 'effective, appropriate and proportionate' measures. Further national law could provide for the denial of access to users where their countries have not established measures that match the criteria. The Protocol obliges countries to establish one or more checkpoints to monitor compliance.

49. Parties may also prescribe in their national law that access will be denied to users unless and until their countries have designated checkpoint(s) acceptable to COP/MOP.

Until such a decision is made by COP/MOP, Parties may deny access to users in countries that have no effective checkpoints.

50. *Access to Justice*: Developing countries should, through decisions of COP/MOP and their national law, elaborate on the content of ‘access to justice’ in Article 18 of the Protocol. This Article requires user countries to take effective measures to ensure that provider countries have recourse to their legal system to obtain redress when there has been a breach of the mutually agreed terms for the grant of access. The concept ‘access to justice’ encompasses several facets as the Aarhus Convention instructs. It includes an obligation to provide access to administrative or judicial procedures to challenge breaches of national law as is provided for by Article 18.2 of the Protocol. The concept also envisages giving the right to a wide category of persons to challenge any violation of national law in court or any other independent and impartial body, such as an ombudsman. This would include NGOs and indigenous and local communities. Importantly, the term also obliges a State to ensure that costs in bringing an action are not prohibitively expensive. States must therefore provide an inexpensive and accessible forum.

51. *Traditional Knowledge*: The Protocol advances the CBD provisions on TK. However, these provisions are made subject to national law. It should be clarified that this is to allow countries to reflect the diversity of the ways in which TK is held and treated in different countries. A preamble to the Protocol recognizes ‘the unique circumstances where traditional knowledge associated with genetic resources is held in countries’. The qualifier should not be construed to thwart the rights of indigenous and local communities. Further, it should be clarified through COP/MOP decisions and national law, that nothing in the Protocol allows for access to publicly available TK or TK that is diffused and has no identifiable holders (and that is consequently held by the State) without prior informed consent (PIC) and mutually agreed terms (MAT). Work in other fora - such as WIPO - should not be allowed to undermine this requirement as this would clearly run counter to the objectives of the CBD and the Protocol.

52. *Technology Transfer*: The Protocol subtracts from the provisions of the CBD on technology transfer. It is of crucial importance for COP/MOP to restate that the provisions in the Protocol are built upon the existing obligations in Article 16 of the CBD. This should include, inter alia, a clear obligation by Parties to provide incentives to the private sector within their jurisdiction to promote and encourage access to and transfer of technology to developing countries to help them establish a sound and viable technological and scientific base. This will be operationalising Article 16.4 of the CBD.

### **C. Fifth Meeting of the Parties to the CPB (11 to 15 October 2010, Nagoya, Japan)**

53. The fifth meeting of the Parties to the CPB (COP/MOP 5) was held from 11 to 15 October 2010 in Nagoya, Japan.<sup>7</sup> 1600 participants representing parties to the Protocol

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<sup>7</sup> UNEP/CBD/BS/COP-MOP/5/17, *Report of the Fifth Meeting of the Conference of Parties to the Convention on Biological Diversity serving as Meeting of Parties to the Cartagena Protocol on Biosafety*,

and other governments, UN agencies, intergovernmental and non-governmental organizations, academia and industry attended the meeting. One of the breakthroughs was the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (the Supplementary Protocol). During the meeting 16 other decisions were adopted, focussing on: the Biosafety Clearing-House (BCH); capacity building; the Roster of Biosafety Experts; experiences with documentation requirements for handling, packaging, transport and identification (HTPI) of living modified organisms (LMOs) for food, feed and processing (LMO-FFPs); HTPI standards; rights and/or obligations of parties of transit of LMOs; monitoring and reporting; risk assessment and risk management; public awareness and participation; and so on.

54. The COP/MOP requested the parties to continue taking measures to ensure that information required to identify the LMO-FFPs was incorporated into existing documentation accompanying LMOs besides encouraging governments and relevant organizations to cooperate with and support developing country parties to build capacity to implement identification requirements. Also, on rights and/or obligations of parties of transit of LMOs, the COP/MOP urged parties to continue addressing issues related to the transit of LMOs through their territories using domestic administrative and legal systems, and to consider the item at COP/MOP 8.

*i. Overview of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress, 2010*

55. The Parties had adopted a new international treaty, the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety<sup>8</sup>. The Supplementary Protocol would be open for signature at United Nations Headquarters in New York from 7 March 2011 to 6 March 2012, and would enter into force 90 days after ratification by at least 40 Parties to the CPB.

56. The Supplementary Protocol intends to bridge the gap between the economic priorities of industry and the concern of States to hold biotech companies accountable for damage caused by the intentional or accidental introduction of LMOs into the environment. The Supplementary Protocol tries to harmonize the international legal principles applicable to environmental and human health risk from LMOs. As its parent instrument, the Supplementary Protocol builds on existing international environmental law principles, particularly Principle 13 of the Rio Declaration on developing national law regarding liability and compensation for the victims of . . . other environmental damage. Article 27 of the CPB, recognized that the international legal regime for LMOs may result in damage to a State's biodiversity. This provision provided that States would create a process for "the appropriate elaboration of international rules and procedures in

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*held in Nagoya, from 11 to 15 October 2010*; See also "Summary of the Fifth Meeting of the Parties to the Cartagena Protocol on Biosafety: 11-15 October 2010" *Earth Negotiations Bulletin*, vol.9, no. 533, dated 18 October 2010, available online at <http://www.iisd.ca/biodiv/bs-copmop5/>.

<sup>8</sup> The text of the Supplementary Protocol is annexed as Annex I to the UNEP/CBD/BS/COP-MOP/5/17 from pages 62-71.

the field of liability and redress for damage resulting from transboundary movements of living modified organisms.”

57. Any party bringing a claim for liability and redress under the Supplementary Protocol must demonstrate that,

- i) there has been an adverse effect on conservation or sustainable use of biological diversity or risks to human health;
- ii) the effect is measurable or observable for the purposes of attribution of impacts; and
- iii) the adverse effect is significant.

58. However, the key challenges for the developing countries would be that many of the biotech-promoting States that are not parties to the CPB would also not sign this Supplementary Protocol. It would indirectly affect biologically diverse States, because they would be bound by the set of universal legal standards for liability and redress for actors involved in the creation, distribution, and the transfer of LMOs.

59. This legal framework for liability and redress for damage caused by LMOs is expected to be governed primarily by public actors who would be concerned with preserving both biodiversity and sovereignty, but this should not shift to private multinational actors concerned with preserving open markets.

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

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

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

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

##### **B. Twenty-sixth Session of the UNEP Governing Council /Global Ministerial Environment Forum (21 to 24 February 2011, Nairobi, Kenya)**

62. The Twenty-sixth session of the UNEP Governing Council/Global Ministerial Environment Forum (GC-26/GMEF) took place from 21 to 24 February 2011 at the UN Office in Nairobi, Kenya. The meeting was attended by 1000 participants from 140 countries, including ministers, representatives of UN agencies, international organizations, academia, non-governmental organizations, business and industry, and women and youth organizations.<sup>9</sup> The ministerial consultations and roundtables addressed the themes of the (i) green economy and (ii) international environmental governance (IEG). The session adopted 17 decisions on issues relating to, *inter alia*, chemicals and waste management; the world environment situation; IEG; an

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<sup>9</sup> See also “Summary of the 26<sup>th</sup> session of the UN Environment Programme Governing Council/Global Ministerial Forum: 21-24 February 2011” *Earth Negotiations Bulletin*, vol.16, no. 89, dated 28 February 2011, available online at <http://www.iisd.ca/unepegc/26unepegc/>.

intergovernmental science-policy platform on biodiversity and ecosystem services (IPBES); South-South cooperation; and strengthening international cooperation for environmental crisis response.

63. The discussions on the green economy focused on (i) social equity in economic transitions; (ii) mechanisms for technology and knowledge transfers; (iii) examples of national level policy strategies to promote renewable energy and other environmental innovation; and (iv) definitions of the green economy. The issues discussed on IEG included, (i) the integration of a strengthened IEG system in a reformed institutional framework for sustainable development; (ii) the role of IEG in achieving sustainable development at the national level; (iii) enhancing UNEP; and (iv) creating a world environment organization and a new umbrella organization for sustainable development.

64. The main issues that the President of the session summarized as highlights of the meeting were that:

- (i) Rio 2012 needs to produce an assessment and stocktaking as to why many of the commitments of the 1992 UN Conference on Environment and Development as well as the 2002 World Summit on Sustainable Development were not realized to their full potential;
- (ii) The green economy needs to be seen in the context of sustainable development and poverty eradication, and as one of the means to achieve sustainable development;
- (iii) a country while implementing a green economy would have to depend on its specific natural resources and capacities and must exchange its experiences with other transition countries;
- (iv) concerns of countries relating to the trade barriers and the implications for international trade;
- (v) On IEG, the challenge for the UNEP GC was about moving the conversation beyond the common diagnosis of the problem and beginning to articulate a forward-looking consensus on reform objectives;
- (vi) IEG would act as a bridge between the green economy and the institutional framework for sustainable development;
- (vii) Strengthening UNEP alongwith broader reform proposed in the Nairobi-Helsinki Outcome must be further developed.

65. The session has been successful in terms of negotiating a number of long-pending decisions, many of which will bear directly on preparations for Rio 2012. Countries agreed to develop institutional arrangements for the ground-breaking intergovernmental science-policy platform on biodiversity and ecosystem services (IPBES), with some holding out hope that UNEP would host the secretariat. Ministers emphasized on the need to pioneering work by UNEP on environmental assessments. Decisions on chemicals and waste management and on sustainable consumption and production, among others, would also steer UNEP's work in those areas.

66. The Twelfth special session of the UNEP Governing Council/Global Ministerial Environment Forum is scheduled to take place from 20 to 22 February 2012 and the

venue is yet to be confirmed.

**C. Inter-governmental Preparatory Meeting for the forthcoming Nineteenth Session of the Commission on Sustainable Development (28 February to 4 March 2011, UN Headquarters, New York)**

67. Prior to the Nineteenth session of the CSD, the Intergovernmental Preparatory Meeting (IPM) were held from 28 February to 4 March 2011 in New York<sup>10</sup>. It held 10 meetings. The main issues for the forthcoming session would be (i) transport, (ii) chemicals, (iii) Waste management, (iv) mining, (v) 10-year framework of programmes on sustainable consumption and production patterns, and (vi) inter-linkages and cross-cutting issues, including means of implementation. The IPM was attended by representatives of 53 states of the CSD.

68. It was discussed that on transport related issue, the following policy options/actions needed to be taken which include providing basic rural transport infrastructure and services, including improved rural public transport services, and ensure that all larger villages and rural settlements are accessible, year round, by all-weather roads, addressing urgently the particular needs of Sub-Saharan Africa. Also to increase public investments in integrated rural accessibility planning, investing in rural roads, implementing new road networks and enhancing existing ones so as to enhance poverty eradication and the achievement of the MDGs in all developing countries. Greater use of railways and inland waterways, in particular high-volume passenger and freight transport over long distances and between cities and commercial centres needs to be promoted.

69. On chemicals, it was discussed that there was a need to integrate sound management of chemicals as a priority in national development strategies and plans based on the Millennium Development Goals; strengthen the enforcement of laws and regulations as well as the implementation of the precautionary approach and the polluter-pays principle; establish or strengthen national coordinating mechanisms engaging all relevant agencies and stakeholders in sound chemicals management; link the health and environmental sectors to address chemical safety, risk prevention and reduction and use the expertise of the offices of the World Health Organization to strengthen national and regional coordination; strengthen the implementation of international agreements and processes on chemicals through a cross-sectoral, participatory and partnership based set of interventions. In this regard, it was also stated that states must be encouraged to participate in and implement the prior informed consent procedures as provided by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

70. Waste management was another area wherein it was realised that a number of new waste streams having emerged or assuming greater importance, especially e-waste

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<sup>10</sup> See E/CN.17/2011/19, "Report of the Intergovernmental Preparatory Meetings: Commission on Sustainable Development Nineteenth Session" dated 25 March 2011.

and hazardous waste, there was a need to handle new waste streams. Adequate consideration must be given to the negative impacts on the health of surrounding communities, as well as on the local environment, in terms of pollution of land, water and air, etc. Ineffective and inefficient waste management results in greenhouse gas and toxic emissions and loss of precious materials and resources. Therefore, there was a need to decouple waste generation from economic growth. Sustainable waste management was crucial for eradicating poverty and achieving other Millennium Development Goals. In this regard, it was essential to formulate policy-oriented approaches like promoting waste prevention and minimization; supporting effective and efficient management of the remaining solid and hazardous wastes, focusing on reuse, recycling and recovery (3R concept) of useful materials and energy, as well as on environmentally sound disposal.

71. The meeting concluded with the adoption of the report of the IPM that would be submitted for consideration at the CSD-19, scheduled to take place from 2 to 13 May 2011 at the United Nations Headquarters in New York.

#### **D. Forward to Rio + 20**

72. Looking ahead to “Rio+20”<sup>11</sup> in next year, preparations are underway wherein the meeting would focus on the areas of environmental information networking and information access through multi-stakeholder collaboration in order to keep the world environmental situation under review. The United Nations Conference on Sustainable Development (UNCSD) would be organized in pursuance of General Assembly resolution 64/236.<sup>12</sup> The UNSCD would mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) held in Johannesburg. It is envisaged as a Conference at the highest possible level, including Heads of State and Government or other representatives. The Conference will result in a focused political document. Rio+20 would be held from 4 to 6 June 2012 and the venue would be Rio de Janeiro, Brazil. The Conference would focus on (a) green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development. The objective of the Conference is to secure renewed political commitment for sustainable development, assess the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development, and address new and emerging challenges.

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<sup>11</sup> See website <http://www.uncsd2012.org/rio20/index.php?menu=14>.

<sup>12</sup> See General Assembly resolution A/RES/64/236.



## V. COMMENTS AND OBSERVATIONS OF THE AALCO SECRETARIAT

73. In view of the threat posed to the planet Earth by climate change a fair, effective, comprehensive and legally-binding framework on stronger international action on climate change beyond 2012 is the need of hour. The building blocks for such an outcome should certainly include concepts such as historical responsibility, justice, equity, principle of common but differentiated responsibility, as well as the effective implementation of developed countries commitments and support for developing countries. The negotiations at Cancun and Bangkok have revived hopes for the multilateralism and the UNFCCC process and in this regard it may be hoped that through collective action the international community at Durban can deliver a full, operational architecture to implement effective, collective climate action.

74. The adoption of Nagoya Protocol on Access to Genetic Resources and Benefit Sharing, 2010 and Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress, 2010 by the COP 10 of CBD and MOP/COP 5 of CPB are significant developments in international environmental law, and enhance international commitment to protect biological diversity. These instruments hold several implications, for biologically diverse countries as while dealing with the ‘liability and redress’ and ‘access and benefit sharing’ options unless the instrument is signed and ratified by biotech rich countries, the implementation would be difficult. Advantages if any, would be on the flexibility of provisions. It is for developing countries to exercise options open to them through national laws as well as through COP/MOP at the crucial implementation stage after the Protocol enters into force.

75. There exist many criticisms of the Nagoya Protocol on Access and Benefit Sharing which could be considered as crucial for indigenous communities within the developing countries. To add on, obligation for compliance for countries with users in their jurisdiction to establish ‘effective, appropriate and proportionate measures’, requires state parties to be well equipped to deal with issues regarding access and benefit sharing of genetic resources. Therefore, AALCO member states which are parties to these Protocols may consider taking effective, appropriate and proportionate measures taking into account the biologically rich and diverse environment.

76. The world is moving towards preparing for the Rio+20 Summit commemorating 20 years of Rio Conference and 10 years of WSSD. Since 1972 Stockholm Conference, the environmental summits have played a crucial role in bringing sustainable development on international political agenda. Many of the countries have changed their national policies favouring green economy which would in future be beneficial for protection of environment and ensuring sustainable development for succeeding generations. It is essential that countries take adequate efforts for protection of the environment besides safeguarding their national interests.

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

*The Asian-African Legal Consultative Organization at its Fiftieth Session,*

**Considering** the Secretariat Document No. AALCO/50/COLOMBO/ 2011/S 10;

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

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

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

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

**Welcoming** the adoption of the Johannesburg Declaration on Sustainable Development and the Plan of Implementation at the World Summit on Sustainable Development, held at Johannesburg in 2002;

**Also welcoming** the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, 2010;

**Further welcoming** the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, 2010;

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

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

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

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

**Considering** the Copenhagen Accord of which the United Nations Climate Change Conference held at Copenhagen, Denmark from 7 to 9 December 2009, took note;

**Noting with appreciation** the adoption of the Cancun Agreements by the United Nations Climate Change Conference held in Cancun, Mexico from 29 November to 11 December 2010;

**Hoping** that the United Nations Climate Change Conference, scheduled to take place at Durban, Republic of South Africa from 28 November to 9 December 2011 would be able to achieve positive outcome for the Bali Road-Map negotiations;

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

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

1. **Urges** Member States to actively participate in the on-going Bali Road-Map negotiations.
2. **Directs** the Secretariat to follow the on-going Bali Road-Map negotiations for stronger international cooperation on climate change for the period beyond 2012.
3. **Further directs** the Secretariat to continue to follow up the progress in the implementation of the outcome of the Johannesburg Summit as well as follow up the progress in the implementation of the United Nations Framework Convention on Climate Change, Convention on Biological Diversity, and the United Nations Convention to Combat Desertification.
4. **Decides** to place this item on the provisional agenda of the Fifty-first Annual Session.