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Climate Change as a Global Challenge

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ASIAN-AFRICAN LEGAL
CONSULTATIVE ORGANIZATION

PERMANENT OBSERVER MISSION
TO THE UNITED NATIONS

*Informal Thematic Debate
of the General Assembly*

Climate Change as a Global Challenge

Statement by Mr. Nicholas A. Robinson
Legal Adviser

1 August 2007

Madam President,

Disruption of the Earth's climate is remaking the web of life and changing the environmental, social and economic relations of peoples and States. While the United Nations Charter in 1945 hardly conceived of these issues, it did focus clearly on economic and social well-being and on security of nations. Coordinating international cooperation to cope with the effects of climatic disruptions is necessary to both the development and the security of nations. International negotiations and agreements since 1945 have underscored that the framework of the United Nations Charter is broad enough to encompass all ecological dimensions of sustainable development and issues of environmental security, including the effects of climate change. Moreover, States have brought into being the new field of Environmental Law, and have at hand legal techniques by which they can cope with the present or forecast climatic impacts that threaten sustainable development.

By consensus, the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, established an action plan for all aspects of sustainable development, including issues associated with climate change, *Agenda 21* (A/CONF. 151/26, endorsed in General Assembly resolution. 47/190 of 22 December 1992), and at UNCED nations opened for signature and undertook the solemn undertakings agreed to in the UN Framework Convention on Climate Change (29 May 1992, entered into force 21 March 1994, <http://unfccc.int>), "UNFCCC."

In the years since 1992, States have come to recognize the magnitude of the scope of climate change and its implications for both development and security. This debate in the General Assembly amplifies the importance of international cooperation to meet the challenges of climate change. However, just as predicting changes in the weather for time immemorial has been notoriously imprecise, so today science still does not yet allow precise predictions of how and when the impacts of climate change will occur, or exactly where, or for whom.

The Intergovernmental Panel on Climate Change (www.ipcc.ch) has ably explained the range of characteristic new conditions that climate disruption is likely to occasion, such as rising sea levels, coastal erosion, expansion of exposure to insect-borne diseases, decreased rainfall and drought in many interior regions, loss of water from areas that rely on melting snows and glaciers, and intense local storms and flooding conditions. These effects will alter patterns of food production and distribution, disrupt infrastructure, cause migration of dislocated peoples, disrupt the habitats and migration of species, and remake land forms. Currently, scientific studies have established that frozen Arctic tundra is beginning to melt and polar ice is melting. As polar ice disappears, new sea lanes emerge across the North Pole. As sea levels rise world-wide, islands are losing their land mass. Historic borders and settled land use patterns are being altered; measurements of once agreed legal boundaries, such as those delimiting exclusive marine economic zones, may become confused, and indeed the very definition of state sovereignty may be challenged.

In turn, new opportunities for human settlement and development will emerge. Previously assumed legal relations will be altered in the wake of the physical effects of climate change.

Is international law, or the new field of environmental law, adequate to address such phenomena?

Just as the United Nations Charter has guided nations to focus on international cooperation with respect to environmental and climate issues, so the general principles of environmental law and the several multilateral environmental agreements developed since 1945 provide a legal framework adequate to address the practical challenges of climate change.

Although the impacts of climate disruption appear to many as new and even threatening phenomena, the fabric of international law is actually developed quite well enough to guide States in dealing with the effects of climate change. Since the 1972 UN Conference on the Human Environment in Stockholm, States have progressively developed the field of Environmental Law, which can guide how States should respond to the global challenge of climate change. There is substantial legal agreement among States regarding the principles of law, the treaty norms, and the rules of national environmental law that can guide the responses to climate change.

Before engaging in debate regarding the need for new laws and rules to address the effects of climate change, States should recall the agreements that already exist. Already agreed are a host of legal norms and instruments that may be employed at once. Because States already are experiencing the effects of climate disruption, it would be prudent to re-invigorate implementation of agreed measures that can buffer societies against the adverse effects of climate disruption while materially advancing environmental security and fostering sustainable development.

The Asian-African Legal Consultative Organization has, for decades, examined and fostered international cooperation regarding the laws appropriate for international order and sustainable development. AALCO is pleased to digest international law and state practice, from a comparative legal analysis, regarding climate change and to present this thematic debate of the United Nations General Assembly with a synthesis of many of the applicable legal norms and instruments.

Environmental laws guide how nations and peoples can meet the global challenges of climate change. Chapter 9 of *Agenda 21* makes recommendations on “Protection of the Atmosphere.” States agreed that coping with climate change should be coordinated in an integrated manner with socio-economic development, “taking into account the needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.” (¶ 9.3). States further agreed that “the need to control

atmospheric emissions of greenhouse and other gases and substances will increasingly need to be based on efficiency in energy production, transmission distribution and consumption and on growing reliance on environmentally sound energy systems, particularly new and renewable sources of energy [solar thermal, solar photovoltaic, wind, hydro, biomass, geothermal, ocean, animal and human power]" (¶ 9.11) , that "more effective design and management of traffic and transport systems" is essential (¶ 9.13), and that "Land-use and resources policies will both affect and be affected by changes in the atmosphere. Certain practices related to terrestrial and marine resources and land use can decrease greenhouse gas sinks and increase atmospheric emissions. The loss of biological diversity may reduce the resilience of ecosystems to climatic variations and air pollution damage." (¶ 9.19) States emphasized the importance of the control measures in the Montreal Protocol to prevent stratospheric ozone depletion (¶ 9.22) and agreed to build capacity to prevent transboundary atmospheric pollution as priorities in protection Earth's atmosphere (¶ 9.26).

These policy recommendations in *Agenda 21* already can be found embodied: (a) in principles of international law; (b) in the treaty obligations to adapt to climate change; (c) in the obligations to mitigate impacts resulting in climate change; and (d) in fundamental environmental norms that the General Assembly has solemnly proclaimed. Each of these legal categories will be examined in turn.

A. General Principles of Law

These consensus themes recur in the UN Framework Convention on Climate Change, which recognizes "change in Earth's climate and its adverse effects are a common concern of mankind," and reaffirms the protection of the global climate for present and future generations of mankind" [General Assembly resolutions 44/228 of 22 December 1989, 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991]. Indeed, the States' parties to UNFCCC express that they are "determined to protect the climate system for present and future generations" (UNFCCC Preamble).

"Protection" of the climate is defined through the UNFCCC objective of stabilizing "greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system...achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner," (UNFCCC, Article 2).

This principle of international law is derived in large part from the Declaration of Rio de Janeiro on Environment and Development (A/CONF. 151/26, 1992), in Principle 3 "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." The urgency of the general

principle of law that would ensure full protection of the needs of generations as yet unborn has been amplified in many national judicial decisions. For example, in *Farooque v. Bangladesh and Others* (17 BLD (AD) 1997, vol. XVIII, Supreme Court of Bangladesh per Chief Justice A.T.M. Afzal), or in the judicial decision entitled *Oposa v. Factoran* (GR No. 101083, 30 July 1993, Supreme Court of The Philippines per Chief Justice Hilario G. Davide, Jr.), it was held that the concept of intergeneration equity inheres in the right to a balanced and healthful ecology; the court ruled that “such a right...considers the ‘rhythm and harmony of nature’. Nature means the created world in its entirety. Such rhythm and harmony indispensably includes, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land waters, fisheries, wildlife, off-shore areas, and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve the rhythm and harmony for the full enjoyment of a balanced and healthful ecology.” Such judicial decisions are consistent with, and in fact reflect international law principles, such as Principle 1 of the Declaration of Rio de Janeiro on Environment and Development: “Human beings are at the centre of concerns of sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

The theme of intergenerational equity has a long-standing applicability to environmental matters. For example, in 1908, the US President Theodore Roosevelt told the Governors of the United States, at the 1908 White House Conference on Conservation, that “The time has come to inquire seriously what will happen when our forests are gone...when the soils shall have been further impoverished and washed into the streams, polluting the rivers, denuding the fields, and obstructing navigation. These questions do not relate only to the next century or to the next generation; we have to ... exercise foresight...we should exercise foresight now, as the ordinary prudent man exercises foresight in conserving and wisely using the property which contains the assurance of well-being for himself and his children... We want to see him exercise foresight for the next generation.”

The principle of intergenerational equity should also be read together with the other general principles of international law relevant to the environment and climate. All these principles should be referenced to guide how States respond to the effects of climate change. The transportation sector contributes approximately 15% of the greenhouse gas emissions that induce climate change; Chapter 7 of *Agenda 21* presents consensus recommendations on reforms for sustainable energy and transport systems (§ 7.46, et seq.). It will take about 30 years, or one generation, to transform transport systems both to eliminate greenhouse gas emissions and to establish robust transport that can withstand the changed conditions that climate change is bringing. Today’s generation must act for the benefit of the next generation. With reference to the approaches available to States for reform of the transportation sector, as an illustration of the relevance of general principles of international environmental law, the following principles may be considered:

- 1) Principle 21 of the Stockholm Declaration on the Human Environment (restated as Principle 2 of the Declaration of Rio de Janeiro on Environment & Development): States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies and *the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*;
- 2) Principle 16 of the Declaration of Rio de Janeiro on Environment and Development on internalization of the costs of pollution; the principles of pollution prevention and the polluter pays principle apply to greenhouse gas emissions, as for instance, to the uses of motor vehicles, especially for abatement of urban air pollution, securing public health, enhancing biological health for flora and fauna, and eliminating long-distance, transboundary air pollution;
- 3) Principle 15 of the Declaration of Rio de Janeiro on Environment and Development: *the precautionary approach shall be widely applied to anticipate, prevent or minimize the causes of climate change* necessitates cooperation by all interested parties in the formulation of policies and measures to secure cost-effective measures to reform transportation systems so as to avert climate change, and that environmental impact assessment, as a national instrument, is undertaken for proposed transportation activities that are likely to have a significant adverse effect on the environment;
- 4) Principle 14 of the Declaration of Rio de Janeiro on Environment and Development: the introduction of innovative technologies, for instance for use in motor vehicle transport should take place in an equitable manner, and contemporaneously in all regions and nations, and that states have the duty to cooperate together in order to efficiently replace older technologies to reduce greenhouse gas emissions as quickly as possible and to promote the internalization of environmental costs, taking into account that the polluter should bear the cost of pollution, and ensuring that all transfers of motor vehicles and related technology reflect the prior informed consent of States involved; and
- 5) Principle 10 of the Declaration of Rio de Janeiro on Environment and Development: *environmental concerns are best handled with the participation of all concerned citizens*, at the relevant level, with appropriate access to information concerning the environment and participation in decisions, and an effective access to administrative and judicial remedies,

Ultimately, States apply all principles of international law through their duty to cooperate, and in light of Principle 7 of the Declaration of Rio de Janeiro on Environment and Development:

“States shall cooperate in the spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions that global environmental degradation, States have common

but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources that they command.”

There is a need to integrate the several ways in which States may recognize the common but differentiated responsibilities that all nations have with respect to meeting the diverse challenges of global climate change. *Agenda 21* provides many well considered recommendations on how to achieve this integration. Environmental protection is an “integral part of the development process and cannot be considered in isolation from it.” (Principle 4 of the Declaration of Rio de Janeiro on Environment and Development). All States share common legal norms and have enacted comparable environmental legal means appropriate to address the effects of climate disruption.

It is, perhaps, unexceptional to acknowledge the wide acceptance of these general principles of international law. Their acceptance is not in dispute. The question inevitably is asked, so what should States do in response to these principles? Reference to agreed norms of international environmental law provides a ready answer. States have already agreed upon many different rules with respect to adaptation to the changed conditions resulting from climatic disruption, and States have agreed to laws to avert and mitigate the effects of climate change by controlling green house gas emissions. Many of the recommendations in *Agenda 21* are being addressed, but too few of *Agenda 21's* objectives have been realized. As States agreed at the 1992 U.N. World Summit on Sustainable Development (WSSD) in Johannesburg, sustainable development can only be realized by implementing what already has been agreed, Johannesburg Plan of Implementation (A/Conf. 199/L. 6 rev. 2, of 4 Sept. 2002). The WSSD emphasized the need to elaborate on the recommendations in *Agenda 21* to increase access to modern energy services that increase efficiency and increase use of renewable energy sources, while supporting measures to phase out energy subsidies and ensure expanded access to energy in Africa (¶ 20). The legal tools referenced in *Agenda 21* should be deployed more widely.

B. International Norms Guiding Adaptation to Climate Change

It is appropriate to examine adaptation as a priority because most of the adaptation measures also can advance sustainable development, and many can do double service by mitigating greenhouse gas emissions at the same time. Consider, for instance, the Millennium Development goal to provide potable water. One of the crucial sources of potable water is the aquifer, or subsurface water table, which is often recharged by water being collected in wetlands and filtered through wetlands soils into the ground. Wetlands are carbon sinks, sequestering carbon dioxide; wetlands of international importance are protected by the 1971 Ramsar Convention on Wetlands of International Importance (www.ramsar.org). Wetlands also provide flood protection, because of their hydrologic absorption capacity they act like sponges, holding flood waters and releasing them gradually. Wetlands also provide habitat for many species of flora and fauna, and are rich

biodiversity resources. Marine wetlands and mangroves are essential to protect upland areas from storm surges, erosion, or tsunami impacts. Thus, when States observe their duties under the Ramsar Convention to protect wetlands, they both provide an adaptation to cope with the effects of severe storms induced by climate change, while at the same time advancing sustainable development.

What is missing from this “win-win” situation is the fact that many States lack a strong national regime to ensure that Ramsar wetlands duties are implemented and observed and enforced. This is the case with most of the national environmental statutes that implement international environmental norms. While many States have enacted environmental statutes, a great many currently lack the capacity to make use of these laws in advancing their sustainable development objectives, or in coping with the effects of climate disruption. *Agenda 21* agreed on measures to address this capacity building challenge. States agreed in Chapter 8 of *Agenda 21* to give priority to building national laws for environmental protection and development (§ 8.10). In response to recommendations for capacity building with respect to national environmental laws, the IUCN Academy of Environmental Law has established a consortium of universities world-wide to provide education, research and training on environmental law, with a coordinating secretariat at the University of Ottawa, Canada (www.iucnael.org). Another example of capacity-building responsive to *Agenda 21* is illustrated by how The Parties to the Ramsar Convention have prepared a manual on implementation of wetlands stewardship obligations (www.eramsar.org/lib_manual2003.pdf). Comparable measures have been undertaken by other multilateral environmental treaty organizations.

In terms of both adaptation and mitigation, an important precedent exists in the reduction of the emission of chemical substances that deplete the stratospheric ozone layer. Much of the atmosphere above the South Pole lacks the layer of ozone molecules in Earth’s stratosphere, because human releases of the coolant “freon,” or chlorofluorocarbons, and other ozone depleting substances, have reached the stratosphere and interacted with the ozone’s oxygen molecules to destroy them. This ozone layer protects Earth from the extreme ultraviolet rays of the sun; its elimination produced skin cancer, cataracts and diminished biological growth in agriculture and flora and fauna generally. Each CFC molecule is 20,000 times as effective as a single carbon dioxide molecule in retaining solar energy, heating the atmosphere and producing climate change. The Vienna Convention for the Protection of the Stratospheric Ozone Layer, endorsed by *Agenda 21* (§ 9.22), with its Montreal Protocol and subsequent agreements (London, Copenhagen, and Beijing) has created a comprehensive global regime to contain Ozone Depleting Substances. National implementation is nearly universal, in both developing and developed nations. National focal points see to the implementation of these treaty obligations. States have transferred technology to facilitate elimination of Ozone Depleting Substances, and have cooperated to build their capacity to do so.

Like the climate, the Earth’s stratospheric ozone layer is a common concern of humankind. States must act based on the general principle of “solidarity.” Any non-

complying State hurts all other States, as well as Earth's natural systems. The fundamental systems of the Earth require consistent world-wide national action. This reality of natural science is recognized in much of international law. For instance, Article 192 of the UN Convention on the Law of the Sea provides: "States have the obligation to protect and preserve the marine environment." Observance of this basic duty is a means also to cope with climate change, because the oceans are a great carbon sink, as well as the modulator for Earth's climate conditions. Global cooperation to study the oceans is managed (Articles 197-201), as is provision of technical assistance (Articles 202-3). Most importantly, States shall "assess the potential impact" of their activities on the marine environment and share the results of these assessments (Art. 206). In addition to protecting marine coastal wetlands, which the Ramsar Convention promotes, States protect the marine coastal and oceanic resources through several regional seas agreements (Barcelona Convention for the Mediterranean Sea, Cartagena Convention for the Caribbean Sea, Kuwait for the Gulf, and several others). Within States, national laws use integrated coastal zone management to govern implementation of these treaty obligations, as recommended in Chapter 127 of *Agenda 21*. If all these Agenda 21 recommendations were implemented, the seas would function well to stabilize the Earth's climate and sequester greenhouse gases, and provide for sustainable development.

Agenda 21 included in 1992 the recommendations in Chapter 17, Section E, "Addressing critical uncertainties for the management of the marine environment and climate change." While many States have implemented the research objectives recommended, much greater attention must be devoted to the "management-related activities." (§ 17.100). Realistic recommendations remain to be implemented, such as calling upon States to "strengthen high-level inter-agency, subregional, regional and global coordination," (§ 17.105). *Agenda 21's* consensus was that "One aim should be the predicting of the effects of climate-related emergencies on existing coastal physical and socio-economic infrastructure." (§ 17.106). In the wake of Hurricanes and Typhoons, and the persistent damage such as that in the Gulf Coast of the USA, including New Orleans, there is urgency in advancing these recommendations. They serve both adaptation and mitigation, and there is ample legal authority to advance these objectives through the UN Convention on the Law of the Sea and the UNEP Regional Seas Agreements. *Agenda 21* recommended that the UN General Assembly address the coordination of law of the sea activities (§ 17.117), and this international consensus needs to be recalled and acted upon. It is as valid today as in 1992. *Agenda 21's* recommendations for the small island states are especially important today, but their fate in terms of climate change is not dissimilar to the fate of all nations. The guiding principle must be the principle of solidarity.

States have agreed to many further rules of international environmental law, confirming that global action to implement these rules is both appropriate and accepted by capitols. What is needed now is for the General Assembly to press for the wider implementation, observance and the enforcement of these basic rules, as already agreed. The Netherlands, and other States, have contributed to important capacity building measures to this end through the International Network for Environmental Compliance

and Enforcement (www.inece.org). Important academic contributions have also been made to advance the effective observance of these agreed norms (e.g., www.yale.edu/envirocenter/clinic/cities.html).

Adaptation to the effects of climate change is a universal challenge, and can be accomplished only by rigorous implementation of the sustainable development recommendations set forth in *Agenda 21*. States have made many of these recommendations obligatory in the multilateral environmental agreements (MEAs). The success of the MEA for the protection of the stratospheric ozone layer teaches the lesson that applies to all MEAs, and the UN General Assembly can encourage States to heed the lessons: (1) all States must adhere to the MEAs if they are to be effective, for their scope covers all the Earth (too large a number of States still have not adhered to some MEAs); (2) all States need to enact national laws to implement their MEA obligations (most States have accomplished this); (3) all States need to designate national focal points responsible for international cooperation for the MEA and for national implementation of the MEA obligations (most States need to build capacity with respect to this critical aspect); (4) all States need to integrate the several sectors addressed by MEAs through the use of cross-sectoral governmental management methodologies, such as environmental impact assessment (EIA), environmental management systems (EMS), or ecosystem management techniques.

States have previously agreed upon measures that facilitate adaptation to climate change in the 1994 UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification (www.unccd.int/main.php). Measures to cope with biodiversity impacts of climate change are central to the 1992 UN Convention on Biological Diversity (www.biodiv.org). Chapters 12 and 15 of Agenda 21 provide agreed recommendations for both desertification and biodiversity. The States' obligations under these treaties can advance both sustainable development and prepare adaptive measures to cope with the challenges of climate change. The two ends are inextricably linked, even if the treaty organizations are not. The General Assembly can promote more effective work on climate change by urging States to adopt the same set of action priorities in each of the MEAs. Each could contribute to the same universal goals, from the perspective of their sector or special expertise. If such a concerted approach is not realized, the obverse results: actions in one sector will neutralize or negate the otherwise well-intended actions in another sector, wasting time and resources.

The theme throughout *Agenda 21* is the integration of environment and development in decision-making (Chapter 8, and *passim*). Many States that adopted national "Agenda 21" plans did much to achieve this integration; others have not yet done so. Coping with the effects of climate disruption requires integrating all sectors to ensure that development is not jeopardized by the effects of climate change.

C. Mitigation and Avoidance of Greenhouse Gas Emissions

Several international agreements exist to cope with emissions of greenhouse gases. These are excellent models or starting points, but need to be universally applied in all regions. The ASEAN 2002 Agreement on Transboundary Haze Pollution and 1997 Regional Haze Action Plan (www.haze-online.or.id/) and the UN ECE Convention on Transboundary Air Pollution (www.unece.org/env/lrtap/) are excellent examples of approaches that can be used in developing and developed nations.

One of the effects of climate change on continents around the Earth is the expansion of dry conditions, which in turn leads to forest fires in the interior of continents. Severe fire conditions are found in forest from Australia to North and South America, to Eurasia and Siberia and Asia, and to Africa, with little capacity to extinguish the fires. Beyond their destruction of biodiversity and natural resources and losses of human life and property, uncontrolled forest fires are estimated to produce roughly the same greenhouse gases as do industrial emissions. However, no “cap and trade” program can extinguish forest fires; they must be prevented and extinguished. The ASEAN regional haze agreement provides a framework for international cooperation to prevent and contain forest fires. There are regional agreements to extinguish forest fires (such as the Northeastern Forest Fire Protection Commission, www.nffpc.com, providing mutual aid agreements between the provinces and states within Canada and the USA). Through such regional compacts, states mutually agree to share their personnel and equipment necessary to combat forest fires, and these agreements also can be replicated worldwide. States can be encouraged to build upon and extend these regional MEAs.

Moreover, forests provide important sinks for sequestering carbon dioxide. There are abundant recommendations in *Agenda 21* for “rehabilitation, afforestation, reforestation and other rehabilitative means” of enhancing Earth’s forests (¶11.10, et seq.). By implementing the sustainable development provisions of *Agenda 21*, States would materially advance international cooperation in dealing with a sector of climate change, which is equally as important as is the industrial sector. If economic systems simply seek to sequester carbon dioxide emissions through offsets in forest areas, without at the same time securing forest management and forest fire protection systems, then it is not likely that the offsets will bring any material benefit to stabilizing the Earth’s climate.

The obligations in Article 4 of the UNFCCC can all be observed through implementation of recommendations in *Agenda 21*.

Ultimately, the effectiveness of any of the mitigation measures will depend on what the UNFCCC terms, “education, training and public awareness” (Article 6). The effectiveness of agreed international environmental norms depends upon States implementing their obligations in this respect. An educated work force is needed to cope with climate disruption, as well as to sustainably develop. Government support for

university education, as well as preparatory education, is declining world-wide just as population levels of young people are at unprecedented levels. This generation must be attentive to the education of the next generation. Until support for education grows there will not be a universally successful implementation of any climate change mitigation program. The result, predictably, is that all States will suffer the adverse consequences of climate change if they continue to invest inadequately in the education capacity worldwide. Most of this generation, and the next generation, are youngsters, who need education.

Principle 10 of the Declaration of Rio de Janeiro on Environment and Development underscores the importance of these duties: “States shall facilitate and encourage public awareness and participation by making information widely available.” The 1998 Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (www.unece.org/env/pp/) elaborates rules for building public participation, and ensuring access to justice. This approach should also be advanced universally, if the measures to cope with the effects of climate change are to be successful.

D. Fundamental Environmental Norms

Several environmental legal tools can be employed in a “win-win” manner, to materially advance sustainable development, secure ways to adapt to the effects of climate change, and also achieve mitigation of greenhouse gas emissions that cause climate disruption. Two examples stand out. The tool of environmental impact assessment (EIA) is a prime example. The laws of many States require they use EIA, but the use of EIA is not yet universal within any State. As a priority, capacity building should be encouraged in all States to use EIA to the fullest extent possible. Another tool is the use of energy audits and deployment of energy efficiency measures. States can mine their excess energy uses and redirect energy to both avert waste of resources while encouraging sustainable development. The use of energy efficiency measures also abates emissions of greenhouse gases. Since States have already agreed to these measures, what remains is States to build their capacity to put these tried and proven environmental law tools to work.

The fullest application of these two environmental law techniques is more than just an efficient, accessible, and practical way for States to cope with the effects of climate change. Any State can take a leadership position on climate disruption issues, no matter where the State is located on Earth, through assiduously applying these techniques. Doing so is a way for States to implement their solemn obligations under the UNFCCC and other international agreements. Use of EIA and energy efficiency techniques gives practical application to the principle of inter-generational equity. Projects subject to EIA are intended to last into coming generations, and often are financed with debt instruments that look 30 to 40 years into the future for their repayment. It is elementary that the fullest possible assessment of environmental impact

should accompany these undertakings. From the perspective of intergenerational equity, this is a moral as well as a financial, ecological or developmental matter.

The Johannesburg Plan of Implementation adopted in 2002 (A/CONF. 199/L-6 rev 2 of 4 September 2002), recognizes that States cannot meet the challenges of sustainable development without conscious recourse to fundamental human values. *“We acknowledge the importance of ethics for sustainable development and, therefore, emphasize the need to consider ethics in the implementation of Agenda 21”* (¶ 6).

The General Assembly has adopted a fundamental statement of the applicable ethical norms in the UN World Charter for Nature (Res. 37/7, A/37/51 of 28 October 1982. The World Charter for Nature sets forth an integrated framework of values and norms and practical, functional means to ensure that the values are realized, and concrete measures to implement those functions. The substance of much of the World Charter for Nature has been reflected in the UNFCCC and the CBD and in *Agenda 21*. Moreover, the provisions in The World Charter for Nature are elaborated and detailed in many international legal instruments. It is important to highlight fundamental ethical norms, however, because they are too often lost sight of amidst the many pages of legal text in the MEA’s or *Agenda 21*.

In its brevity and concise exposition, the General Assembly’s World Charter for Nature offers States clear paths toward ensuring that sustainable development can advance while States also struggle to cope with the effects of climate change. The General Assembly needs – repeatedly - to recall the norms and functional measures agreed to in the World Charter for Nature. The General Assembly there noted that “in the decision-making process it shall be recognized that man’s needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles” set forth in the World Charter for Nature (¶6). The General Assembly’s words are germane today with even greater intensity than when they were adopted twenty-five years ago: (¶1): “Nature shall be respected and its essential processes shall not be impaired.” Present and future generations, the peoples of the United Nations, expect nothing less.