

(vi) **THE SIXTH GENERAL MEETING HELD ON SUNDAY, 24 JUNE 2001 AT 10.00 A.M.**

(The Vice President Hon'ble Chief Bola Ige (SAN) in the Chair)

The Meeting took up for consideration the item **“Follow-up of the work of the Preparatory Commission Concerning Some Aspects of Rome Statute (July 1998) Establishing the International Criminal Court”**.

1. The **Vice President** called upon the Secretary General to introduce the topic.
2. The **Secretary General** while introducing the item recalled that it was placed on the agenda of the AALCO's 35th Session which was held in Manila in 1996. As mandated at that session the Secretariat followed the preparatory work of the Conference of Plenipotentiaries and the outcome of the Rome Diplomatic Conference in 1998 which adopted the Statute of the International Criminal Court. During its last three sessions, in Tehran, Accra and Cairo, the Organization considered the progress made in the Preparatory Commission.

While giving a brief introduction to the work done in the Preparatory Commission, the Secretary General stated that the Commission was established in accordance with Resolution F of the Final Act adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and met at the United Nations Headquarters from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999, and from 13 to 31 March and 12 to 30 June 2000, in accordance with General Assembly resolutions 53/105 of 8 December 1998 and 54/105 of 9 December 1999.

Its work plan during this period focused on two essential instruments necessary for the functioning of the Court : The Rules of Procedure and Evidence and the Elements of Crimes. During the fifth session, on June 30, 2000 the Preparatory Commission adopted its report containing finalized draft texts of Rules of Procedure and Evidence and Elements of Crimes. He stated that at its seventh session held from 26 February to 9 March 2001 the Commission made progress in negotiating on additional instruments relating to the practical arrangements for the effective functioning of the Court, which included Draft Rules of Procedure of the Assembly of States Parties; Draft Relationship Agreement between the Court and the United Nations; Financial Regulations and Rules and Draft Agreement on the Privileges and Immunities of the Court. Work also continued on the preparation of proposals on the elements and conditions under which the Court could exercise jurisdiction over the Crime of Aggression.

The Secretary General then gave the crux of the oral reports given by the co-ordinators of these working groups. He focused attention on the Working Group on the Crime of Aggression, which had recognised that the UN Charter gave responsibility of determining the crime of aggression to the Security Council. There was, however, the concern that what mechanism would apply if the Council failed to recognize that a crime of aggression had been committed.

Many delegations felt that the Council's prerogatives were primary, but not exclusive. Some proposed that in a case where the Council did not decide such acts had taken place, the Court could ask the General Assembly to recommend whether it should continue with the case or not.

He stated that the group had also considered the conditions of the exercise of jurisdiction, as well as definition of the crime of aggression, which, he emphasized, was the core of the problem. The co-ordinator had stated that there continued to be a division between those preferring a general definition of the crime of aggression and those desiring a highly detailed list of specific and relevant actions. Various delegations had also taken up the issue of individual responsibility, others felt that the group and the wider Committee should consider intent, as well as the rights of the accused.

The Secretary General stated that a total of 139 states had so far signed the Rome Statute of the International Criminal Court, and 29 have ratified it. He underscored the fact that at this juncture it is important for the AALCO Member States to exchange views to introspect and try to find out the reasons which were hindering the progress of further ratifications, because it was equally important that the Court must enjoy universal support, without which it would not be effective or credible even if more than 60 ratifications are attained.

3. The **Delegate of Indonesia** addressed certain vital issues of concern regarding the Statute of the ICC. One of the strategic issues he said in the adoption of the Rome Statutes was the "principle of complementarity" as enshrined in the Statute. Another important fact to be considered by Member States of AALCO, besides coping with serious crimes such as genocide, crimes against humanity, war crimes and aggression, is the principle of "*Non bis in idem*" as stipulated in Article 20. This principle could be avoided in two circumstances, one when the national court is "unwilling" or "unable" to prosecute the perpetrators. In his view, these concepts have a very subjective interpretation which largely depends on who has the power to interpret. In that case the question to be answered would be whether these crimes were political or legal? Secondly, the issue of "inadmissibility principle" as stipulated in Article 17 could also be a loophole in the implementation of the ICC Rules.

He believed that after comprehensively studying the Rome Statute, both the aforementioned articles would place Member States of the UN in a difficult position, for even though the principle of complementarity was a strategic one, but in practice, the existence of both articles would impede the fair and impartial implementation of the international criminal justice system. He was of the view that Member States of the AALCO should strongly uphold the principle of complementarity with the "opt-in" approach.

The Delegate informed the Meeting that even though his government had not yet ratified the Rome Statute, it had taken strategic steps in facing human rights violations, by virtue of promulgating the Law of Human Rights number 39, 1999, which has adopted principles and certain articles of the ICCPR and ICESR, and the Law of Human Rights Court number 26, 2000 which, *inter alia*, has adopted principles and certain articles of the Rome Statute, and that law also required the establishment of the Ad Hoc Human Rights Court to try past human rights violations. He further added that the Law 26, 2000 of the Human Rights Court also stipulated

that the National Commission on Human Rights (KOMNAS HAM) is the only agency which has the power to conduct investigations on human rights violations.

Finally, he urged Member States of AALCO to support the establishment of the ICC and to strictly uphold the principle of complementarity

4. The **Delegate of the Arab Republic of Egypt** thanked the Secretary General for his lucid presentation on the item relating to the establishment of the ICC and for dealing with some of the controversial points concerning the Statute of the ICC. He reiterated that the establishment of the ICC was one of the most important aspirations of the international community for nearly fifty years, hence it was of great satisfaction to note that the hope was about to be materialized. He stated that if the adoption of the Rome Statute in 1998 was an important step to realize this objective, what was now required was to intensify sincere and serious efforts in order to enable the Preparatory Commission, which has already held seven sessions, to reach consensus on points which were of controversial nature, and need to be resolved if the Court was to be universally acceded to .

He stated that Egypt had always actively participated in the efforts towards the adoption of the Statute of the ICC, ever since the ILC was given the mandate to work on a Statute. They continued to participate in the work of the Preparatory Committee during and after the Diplomatic Conference in Rome.

He recalled that his country had participated in all the meetings organized by the AALCO since the 35th session held in Manila. The aim has always been to have a nearly perfect Statute, taking into consideration the rights of the different parties, and hoping that it would get the maximum ratifications possible.

Without going into the details of all the pending issues within the Preparatory Commission, he focused attention on two basic points that were still of a controversial nature, first the Definition of the Crime of Aggression and second the Relationship between the Court and United Nations particularly the Security Council.

Concerning the Crime of Aggression, he stated that Egypt was very keen that this be under the jurisdiction of the Court, but unfortunately this did not happen, due to non-agreement of the definition of this crime. In fact the Court would not be able to function unless it has jurisdiction over this crime, which will involve a considerable amount of time, and a process which was very lengthy and complicated in nature. However, while referring to the Working Group established during the third session of the Preparatory Commission to look into the Crime of Aggression, after great efforts the Commission during the sixth session had started to consider the proposals put forward by Germany, Greece and Portugal. He emphasized the point that a strict balance was required while drafting a definition for the crime of aggression, which would take into consideration all international laws and customs particularly the definition laid down by the 1974 General Assembly resolution.

He also cautioned that there was every need to avoid depending on controversial principles which have not been agreed upon such as the right to humanitarian intervention. This would inevitably lead to doubts concerning the definition of aggression.

As for the relationship between the Court and the United Nations particularly the Security Council, the Delegate stated that it was important to bear in mind that the Statute cannot be isolated from political realities, at the same time a clear relationship should be established between both the parties with a view to preserving international peace and security, as well as preserving the independence of the Court.

He stated that due to paucity of time at this forum he had restrained from raising all the points of concern, but may be in future, he would get an opportunity to do so. He recalled that during the 39th session held in Cairo the Egyptian delegation had proposed to convene a meeting to study legal and constitutional points required for the ratification of the Rome Statute, keeping in mind the large number of countries that have signed the Statute it was timely to consider this proposal. He was confident at the same time that the success of these endeavours required a practical response and subjective dealing of cases, that is of concern to a large number of countries. Hence he hoped that all the endeavours of the international community would meet with success, and the Statute of the Court would be enforced, which would satisfy different parties and the Court would be an instrument in achieving justice, peace and stability in international relations.

5. The **Delegate of Republic of Korea** considered the adoption of the Rome Statute for the Establishment of the ICC as a significant development in international law, and believed that the Statute would help establish the rule of law in international relations, promote justice in the international community and protect human rights.

He stated that his Government was deeply involved in the Rome Diplomatic Conference that led to the adoption of the Statute, and is actively participating in the meetings of the Preparatory Commission. His government had signed the Statute on 8 March 2000, and hopes to ratify it in the near future, and to this end was presently reviewing its domestic laws and regulations.

He welcomed the adoption of the draft texts of the “Elements of Crimes” and the “Rules of Procedure and Evidence” at the fifth session of the Preparatory Commission. He was hopeful that the future sessions of the Preparatory Commission would produce fruitful results, in particular regarding the definition of the Crime of Aggression, the Relationship Agreement between the Court and the United Nations, the Financial Regulations and Rules of the Court and the Agreement on the Privileges and Immunities of the Court. With regard to the definition of the Crime of Aggression, while fully supporting the views expressed by the Secretary General and the Delegate of Egypt, he stated that there were many difficult issues to be sorted out before a definition could be arrived at. Another area where sharp differences exist was the role of the General Assembly and that of the Security Council in reconstituting the existence of the crime of aggression. However, he hoped to see a compromise solution as soon as possible and the establishment of the Court in the near future.

6. The **Delegate of the People’s Republic of China** stated that his Government had always showed great interest in the establishment of the ICC and had deemed it necessary and useful to

have this item on the agenda of the AALCO. It not only helps to keep the Asian African countries informed of the latest developments concerning ICC, but also provides an opportunity for them to exchange views and opinions on this issue.

He further stated that the establishment of a permanent ICC with a view to punishing the perpetrators of the most serious international crimes is what the international community had been striving for a long time. The adoption of the Rome Statute, illustrated the strong willingness and determination of the international community in applying the rule of law in international relations, and is not only significant in terms of international politics, but also has far reaching impact on the development of international law. He stated that his Government supported the initiative of setting up an ICC and correspondingly takes active part in the Preparatory Commission for its establishment. He underscored the fact that the ICC if established would be a unique criminal judicial system which would endeavour to balance and compromise different major legal systems and correspondingly the Statute was also taking the challenges.

In his view the “principle of complementarity” was the key to the successful functioning of the ICC. It constitutes the core of the ICC mechanism, and emphasizes that the domestic judicial systems have played, are playing and will continue to play a primary role in the prevention and punishment of crimes as well as in the maintenance of social order, whereas the ICC can only play a complementary role where the judicial system of a State Party collapses or becomes ineffective. He cautioned that only with the strict observance of this principle can, the concerns of many states over the abuse of the ICC for political purposes be substantially removed, the fairness, effectiveness and universality of the ICC be ensured and the good intentions of the international Community be turned into reality.

He stated that his Government attaches great importance to the work of the Preparatory Commission and has actively participated in discussions with a constructive and practical approach. Expressing satisfaction over the adoption of the Drafttexts of Elements of Crimes and Rules of Procedure by consensus on 30 June 2000, he stated that this had further elaborated and clarified the scope of crimes over which the ICC has jurisdiction and relevant procedure, laying down a solid foundation for the effective operations of the ICC in future.

He stated that his Government was not yet ready to become a Party to the ICC statute, because some of their most important concerns were left unresolved. However, they would continue to pay close attention to the process of the establishment of the ICC and take part in the work of the Preparatory Commission in a constructive manner, and would join other countries in contributing to the establishment of an independent, fair, effective and universal ICC and hence to the promotion of peace and security of the international community.

7. The **Delegate of the Islamic Republic of Iran** while appreciating the work done by the Secretariat on the establishment of the ICC, and realizing the difficulties which had been faced due to change of venue and consequently the short time at the disposal of the Secretariat. However, due to the complexity and technicality of the matter under consideration, it would have been desirable if the proceedings in the Seventh Session of the Preparatory Commission (26 February to 9 March 2001) had been presented at this session.

Having raised his concern, he reflected the position of his Government on the work being done in the Preparatory Commission, and referred to the two documents that had been elaborated and completed by the Commission. He underlined the fact that the Statute of the ICC, was the primary document which stipulates the powers and functions of the future ICC. Thus, any other document pertaining to the jurisdiction and functions of the Court should be elaborated in conformity with its constitution. The same, he said, was applicable to the Rules of Procedure and Evidence as well as the Elements of Crimes. He emphasized that though every effort was made, in the course of negotiations, to maintain consistency of the said documents with the letter and spirit of the Statute, he cautioned that, in cases of discrepancies between the Rules of Procedure and Evidence and Elements of Crimes on the one hand, and the provisions of the Statute on the other, the latter should prevail.

Turning to the matter of disagreement between the developed countries and members of the Non-Aligned Movement, relating to the crime of aggression, in his Government's view the mandate accorded to the Preparatory Commission was an unconditional assignment and that should be accomplished within the life span of the Commission, and the progress of work on this topic would encourage the ratification of the Statute by many states, which in turn would facilitate its universal adherence.

He reiterated that his Government's view in respect of both procedure and the substance of the work in the Preparatory Commission remained almost the same as most of the NAM countries. As far as the procedure is concerned, he stated that two documents were put up by the coordinator of the Working Group on the Crime of Aggression and believed that these two documents are complementary in nature and should be considered jointly. He also believed that the issues enumerated in these documents should not be extraneous to the mandate of the Preparatory Commission. He elaborated that the Statute as well as Resolution F had clearly and expressly clarified the areas in respect of which future work is required: The Commission was required to prepare : (a) definition of aggression, (b) conditions under which the court should exercise its jurisdiction with regard to this crime, and (c) elements of the Crime of Aggression. Therefore, the Preparatory Commission was not entitled to elaborate a separate regime of jurisprudence in respect of the Crime of Aggression, thus it was evident that general principles of international law, as contained in the Statute, are applicable to all crimes within the jurisdiction of the Court including the Crime of Aggression. As far as the substance of the definition is concerned, he stated, that General Assembly Resolution 3314 of 14 December 1974 could be a sound basis and the point of departure for both the general definition and for the selection of acts for inclusion in the definition.

Regarding the relationship of the Court and the Security Council, he pointed out that the Statute itself had prescribed that such a provision should be consistent with the relevant provisions of the UN Charter. While referring to the provisions laid down in Article 39 of the Charter, he stated that a balanced relationship provision should envision a situation where the Security Council, on political grounds, fails to determine the commission of an act of aggression and should provide a solution. According to him, there could be three possible ways of dealing with this thorny issue: (1) The General Assembly can play a role in cases where the Security Council fails to determine the aggressor; (ii) The International Court of Justice could make a ruling in such circumstances

and (iii) the Court itself could make a ruling in the absence of the Security Council's decision. However, his Government, he stated, would prefer the ruling of the ICC after the lapse of appropriate period of time when the Security Council fails to determine the aggressor.

He concluded by inviting all the Member States of this Organization to actively participate in the coming sessions of the Preparatory Commission. The endeavour should be to have a unified position on the outstanding issues, in particular, on the crime of aggression. His delegation in New York, he said, would be ready to co-operate and co-ordinate on the remaining issues in the coming meeting of the Preparatory Commission. Finally, he urged the AALCO to monitor closely and actively the work of the Preparatory Commission with a view to presenting a substantive and comprehensive report to the next session of the Organization.

8. The **Delegate of India** recalled the adoption of the Rome Statute in 1998 and reiterated that the jurisdiction of the Court should be limited to the most serious crimes of concern to the international community namely, the crime of genocide as defined in Article 6; crimes against humanity as defined in Article 7 (which have been left open ended by an illustrated list only); war crimes as defined in Article 8, the concept of 'grave breaches' instead of 'serious offences' have been brought in while dealing with the crimes connected with the laws and customs of war.

The Delegate then gave the basic position of his country on the Rome Statute,. He said that his Government had not signed the Statute when it was adopted by the Rome Conference in 1998. He enumerated the basic objection to the Rome Statute : (1) The Security Council has been given the power to refer a matter to the Court, the power to block consideration of a matter by the Court and the power to bind non-state parties. Since the Security Council was a political organ of the UN system, all the three powers given to it were undesirable. (2) He emphasized that as a nuclear weapon state, India wanted to list nuclear weapons among those weapons whose use was banned for the purposes of the Rome Statute. However, it was regrettable that this was not accepted by the Conference. He said that the message this sends was that the use of nuclear weapons, the most inherently indiscriminate of weapons, was not a crime, and what was worse the Statute does not list any weapon of mass destruction among those whose use was banned as a war crime.

While elaborating certain other factors on which the Rome Statute was also unsatisfactory, he stated that (a) the role of the Prosecutor: The Prosecutor had been given extensive powers to initiate investigations upon complaints received from any source and demand co-operation from an unwilling state and sometimes even in disregard of its own law, even before the jurisdiction of the Court in a given case is clearly established, (b) The jurisdiction of the Court, he said, in respect of the offences specifically provided in the Statute appeared to be wide. This is inspite of the assertion that the jurisdiction of the ICC is only complementary to the domestic jurisdiction of a State. He recalled that the principle of complementarity would not apply if the State concerned is either unable or unwilling to prosecute the case. While deciding the issue of complementarity, the State concerned can only submit its views to the Court but without having any voice in the determination of the complementarity. (c) Further, he stated, that the violation of

state sovereignty and territorial integrity through invocation and exercise of ICC jurisdiction is most likely in cases of crime against humanity which are defined to include all kinds of cases involving, prostitution, slavery and unforced pregnancies etc. Given the very wide definition of crimes against humanity, the ICC could turn out to be a Court for the implementation of human rights, which are essentially within the domestic jurisdiction of a State. Similar is the case with crimes against laws and customs of war, particularly those involving internal or domestic armed clashes or conflicts. He then pointed out that the crime of terrorism has not yet been included as a crime in the Rome Statute. Even the Preparatory Commission could not address this issue and it is left to be considered by a Review Conference, which is to take place only five years after the entry into force of the Rome Statute.

Regarding the work done by the Preparatory Commission, he stated that so far it had adopted the Rules of Procedure and Evidence and the Elements of crimes. However, it was regrettable that in spite of the good progress made by the Commission on these aspects, there was no marked improvement in the areas of concern to them.

While elaborating on the progress of the Working Group on the definition of crime of aggression, he stated that no significant progress has been achieved so far on the definition and elements of crime of aggression. In his view, the broad political definition approved by the General Assembly in its Resolution of 1974 on the definition of aggression should be the basis for negotiations and any attempt at revising the same, or reopening some of the elements incorporated by consensus at that time in that definition should be avoided.

9. The **Delegate of Kuwait** stated that his country is among those who are participating with the same zeal and enthusiasm in the work of the Preparatory Commission, as was demonstrated while adopting the Rome Statute in 1998.

During the Sixth Session of the Preparatory Commission, the Working Group on the crime of aggression, had before it two discussion papers, one by Germany and an explanatory paper presented by Greece and Portugal. He stated that reference had been made on a simple point of contribution i.e. paragraph 49 of the Secretariat document states that the Working Group document prepared by the co-ordinator of the Working Group, wherein the co-ordinator stated that those two papers had been accepted without any other proposals having been dealt with in the same way. He stated that reference should be made by organizations to support the proposal submitted by the Arab Group. One of the most strong proposals made in this connection, was by the Arab Group which had taken the initiative to set forth the subject matter in a strong and effective manner which would have an impact on the work of the Preparatory Commission. The Arab Group had exerted efforts in order to coordinate with all other members of the Groups to which the third world countries belong particularly the African and Asian ones, and they would have appreciated if reference to this document were made.

The Delegate wished that AALCO would support and foster this proposal during the forthcoming meeting of the Preparatory Commission.

10. The **Delegate of Sudan** with reference to the crime of aggression stated that aggression is a heinous crime that falls within the category of core crimes that the Statute of the ICC must and

should provide for. The non-provision of this crime in the Statute was a shortcoming that must be addressed and remedied.

While lending support to GA Resolution 3314 of 1974, he stated that it could provide a good basis and a viable solution to the thorny issue of the definition of crime of aggression. Concerning the relationship of the Court with the UN particularly the Security Council, he stated that it should be in conformity with the provisions of the UN Charter. While agreeing with the Delegate of Islamic Republic of Iran, he said that the NAM countries and the Arab Group had demonstrated a great degree of flexibility and several options had been presented by them in this regard, which could be considered while discussing these topics.

He stressed on the fact that what is needed is political will and a resolve that whatever had happened in the past, that culminated in sufferings brought about by aggression during the second World War, would never be repeated again.

He urged the AALCO to support the efforts aimed at inclusion of the crime of aggression in the list of crimes that fall within the jurisdiction of the ICC.

11. The Meeting then took up for consideration the item "United Nations Conference on the Environment and Development: Follow-up".

12. The President invited **Mr. Ryo Takagi, Deputy Secretary-General** to introduce the item.

13. The Deputy Secretary General while introducing document AALCC/XL/NEW DELHI/2001/S.8 stated that the same contained an overview of the developments concerning the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), the UN Convention on Biological Diversity (CBD) and the UN Convention on Combating Desertification (CCD). However, as the Secretariat document had provided a detailed overview on ongoing implementation of these conventions, he added that, he would focus only on the latest developments in the matters related to the Climate Change Convention.

Recalling the Sixth Conference of Parties to the UNFCCC (COP-6), held in the Hague, in 2000, the Deputy Secretary General said that it considered a number of outstanding issues relating to flexibility mechanisms, carbon sinks, nature of a compliance mechanism, capacity building and financing. Despite long drawn negotiations, he added that no agreement could be reached on the outstanding issues pertaining to Clean Development Mechanism (CDM) project eligibility, inclusion of nuclear sinks for CDM measures and the issue of supplementarity. He, however, hastened to add that the resumed COP-6 negotiations would begin in July 2001, and it was hoped that Parties would work towards drawing up a new negotiating text. Furthermore, the Deputy Secretary General expressed dissatisfaction that a country producing a quarter of the world's total greenhouse gas emissions, had decided not to abide with the provisions of the Kyoto Protocol. He expressed hope that other developed Country Parties would not be influenced by that country's decision and would continue to fulfill their obligations under the Protocol.

While concluding his statement, he cited the latest Third Report of the Intergovernmental Panel of Climate Change (IPCC) which had reconfirmed its opinion that the climate changes are largely attributable to human activities and it would require stronger action by Parties to reverse this trend. Stating that developed countries had the primary responsibility for increase in greenhouse gases, he further added, that they must take concerted actions on the principle of “common but differentiated responsibility”, provided in the UNFCCC. With respect to the developing countries, he said that though they did not have any obligation to reach emission reduction targets in the first commitment period, some major countries like China and India were undertaking measures to reduce carbon emissions. He concluded by stating that the early entry into force of the Kyoto Protocol to the UNFCCC would provide a sound legal framework for binding emission reduction obligations by developed countries, which in turn, could further encourage developing countries to consider reduction greenhouse gases, in the future.

14. **The Delegate of Myanmar** in his intervention recalled the theme of 2001 – World Environment Day as “Connect with the Worldwide Web of Life” and expressed the view that human beings must make efforts to live in harmony with the other forms of life in our ecosystem. He added that human actions, on account of mindless over exploitation of resources were responsible for endangering of the earth's ecosystem. While stating that these environmental challenges called for international cooperation, he appreciated the efforts of the United Nations Environment Programme (UNEP) for developing a number of multilateral environmental agreements, which provided for implementing institutional frameworks. He further added that developed countries should provide technologies and financial assistance to the poorer nations to be able to mitigate environmental degradation.

Speaking about the efforts of his own country in the field on environment protection, he added that despite the need to become a modern State, it had undertaken sustainable development measures to preserve the vital life, flora and fauna. To promote a wider regional cooperation on this issue, he said that his country was taking part in the ASEAN environmental actions and was hosting the ASEAN Ministerial Meeting on Environment in 2003.

In conclusion, recalling the historic importance of the Earth Summit of 1992, he expressed the view that the Rio + 10 Summit, to be held in South Africa in 2002, would provide yet another opportunity to States to save planet – Earth !

15. **The Delegate of the People's Republic of China** thanked the Deputy Secretary-General for his excellent presentation and the Secretariat for preparing the documents on the topic. On the issue of climate change, the Delegate while stating that the international community was making efforts for the early entry into force of the Kyoto Protocol, added that a developed country was refusing to ratify the Protocol on the excuse that the developing country parties have not undertaken the emission reduction commitments. Such a position, the Delegate added, ran counter to basic principles of the UNFCCC. Stating that the issue on addressing climate change required cooperation between developed and developing countries, she added that the former should show their sincerity in cooperation by transferring technology and providing financial assistance to developing countries. Elaborating further, that developing countries on their part had made contribution to address climate change, she said that her country despite national

priorities such as the eradication of poverty and the development of economy, had done its best within its capacity to addressing climate change.

On the issue of biological diversity, the Delegate called upon Member States who had not ratified the CBD, to do so as early as possible. Further, she stated that developed country Parties to the CBD must fulfill their obligations by providing new and additional financial resources and transferring the environmentally sound technologies to developing countries. Expressing satisfaction at the adoption of the Cartagena Protocol on Biosafety, she hoped that it could help in ensuring the full protection to the safe transfer, handling and use of 'living modified organisms' (LMO's), without causing harm to the biological diversity and human health.

As regards the problem of desertification, the Delegate said that it was a major problem affecting countries of the Asian-African region. She expressed the view that support from developed country Parties and various international organizations was needed to implement the UN Convention to Combat Desertification (UNCCD). In this regard, she specifically pointed out the need to address the shortage of financial resources, lack of implementation and review mechanisms. She concluded her intervention by expressing hope that COP-5 to the UNCCD, to be held in October 2001, would address these issues.

16. **The Delegate of Japan** stated that he would like to concentrate his intervention on the issue of climate change. While expressing his country's concern on the attitude of the United States towards the Kyoto Protocol, he felt that as one of the Parties to the UNFCCC and a signatory of the Kyoto Protocol, the United States had the responsibility to abide by these legal instruments. Speaking further on the same issue, he said his country would make every effort to get the United States back to the negotiating table at the resumed session of COP-6.

Commenting on the substantive aspects of climate change, the Delegate said that a practical approach to the implementation of the Kyoto Protocol must be adopted whereby no extra emphasis was placed on preserving its environmental integrity. Further, he added that a realistic, effective and simple approach must be taken, with regard to the compliance system provided under the Protocol.

17. **The Delegate of the Republic of Korea** expressed the view that, of late, the field of environment was attracting the attention of the international lawyers. In this regard, he highlighted the role played by the United Nations Conference on Environment and Development (UNCED) 1992 and the implementing mechanism Agenda 21 in providing the international community guidelines for protecting the environment. Speaking on the upcoming Rio + 10 Conference to be held in South Africa in 2002, he expressed hope, that it would create a new momentum for the implementation of Agenda 21.

On the issue of climate change, the Delegate felt that it was one of the most important issues facing the international community. Providing details on the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, he said they provided a sound international legal framework for controlling emission from greenhouse gases. Listing out the mechanisms of emission trading, joint implementation and Clean Development Mechanism (CDM) provided under the Protocol, he said that operational rules to put these into effect needed

to be finalized. Expressing concern at the passive attitude of a few country parties at COP-6 to the UNFCCC, he stated that States should be able to come up with mutually acceptable solutions to help the early entry into force of the Protocol by 2002. The Delegate added that in the opinion of his country, developed Country Parties on the basis of “common but differentiated responsibilities”, and should take the lead in reduction of greenhouse emissions.

As regards the issue of biological diversity, the Delegate felt that the adoption of the Cartagena Protocol on Biosafety would ensure the safe handling, transfer and use of LMO's. The Biosafety Protocol, he added, was based on the precautionary principle wherein the burden of proof for claiming health/environmental damage was reversed from the victim to the polluting offender. In this regard, he felt that there was a possibility that the principle could be in conflict with some rules of international trade. Furthermore, though the Committee on Trade and Environment of the WTO had serious discussions on the interface between trade and environment, there was no consensus reached on the issue. Speaking on the benefits of the use of bio-diversity, the Delegate felt that the benefits should accrue to all in a fair way, without undermining the right to use and conservation by the local community.

On the issue of desertification, the Delegate felt that as the topic was related to climate change and biodiversity there should be a comprehensive approach, which brought about complementarity and harmonized the implementation processes of the three UN conventions on Climate Change, Biological Diversity and Desertification. In this regard, he added that the Global Mechanism, which is the financial mechanism under the CCD should be provided with sufficient financial resources to implement the regional annexes related programmes.

18. **The Delegate of Malaysia** while noting that the Secretariat document had focused on the UNFCCC, UNCBD and UNCCD, added that she would like to register her concern on the UNFCCC and its Kyoto Protocol.

The Delegate while stating that her country would like to contribute to the international efforts of reduction of greenhouse gas emissions, felt that such an exercise would require provision of adequate financial resources and transfer of technology from developed country Parties and international financial institutions. These obligations mandatory under the UNFCCC and the Kyoto Protocol, the Delegate added were needed by developing countries, to cope with the adverse effects of climate change.

Furthermore, expressing her country's view on the issue of Clean Development Mechanism (CDM), she said that caution should exercise against the inclusion of sinks in the CDM. She added, that the reduction in carbon emission should be undertaken at source rather than through sinks. Moreover, if sinks were to be included in CDM, then they must be governed by the strict eligibility criteria and must satisfy the additional conditions relating to environment, investments, and transfer of technology and supply of financial resources. Furthermore, the Delegate added, that “human induced activities” under Article 3.4 of the Protocol, should not be allowed under the first commitment period.

19. **The Delegate of Indonesia** expressed the view that he would like to focus on the Secretariat document dealing with climate change. He added that commitment to implement the

remit of the UNFCCC and the Kyoto Protocol, required the support of the developed country Parties by way of early ratification of the Kyoto Protocol. The Delegate further added, his country as a non Annex-I Party to the UNFCCC was actively involved in reduction of greenhouse gas emission through the CDM projects and AIJ projects undertaken on a voluntary basis.

Speaking on a number of issues concerning climate change, the Delegate made the following comments: (a) on the issue of definition of ‘forests’, afforestation, reforestation and deforestation, the definition should reflect their general term or meaning; (b) on the three mechanisms provided under the Kyoto Protocol, developed country Parties should prioritize their domestic activities, while conducting CDM projects as supplementary activities; (c) the ratification of the Protocol must be followed by strict compensation to achieve the primary objectives of the protocol; (d) with regard to full scale participation in the UNFCCC implementation, capacity building measures should be undertaken in developing and other neighbouring countries. In this regard, there should be flexibility of GEF conditions as a financial mechanism regulating competition; and (e) developed country Parties should increase their transfer of environmentally friendly technologies to developing countries.

On the issue of biological diversity, the Delegate proposed the granting of assistance and technical training to least developed countries to enable them to preserve their biodiversity and address the problem.

He concluded his intervention by stating that his country had ratified the UN Conventions on Climate Change and Biological Diversity.

20. The Meeting then took up for consideration the items **Progress Report on legislative Activities of the United Nations and Other Organization’s concerned with International Trade Law.**

21. The **Deputy Secretary General Dr. Ahmed J. Al-Gaa’tri** introduced the Secretariat document AALCC/XL/HQ(New Delhi)/2001/S-9. on the topic. Dr. Gaa’tri stated that the main objective of this Report is to keep Member States informed of the legislative developments in the field of international trade law. Highlighting the work of the United Nations Commission on International Trade Law (UNCITRAL) at its 33rd session held in June – July 2000, he informed that the Commission had finally adopted the Legislative Guide on Privately Financed Infrastructure Projects. The Working Group on International Contract Practices, he explained, is at a fairly advanced stage in its consideration of the draft convention on “Assignment of Receivables in International Trade. He also reported on UNCITRAL’s progress of work on “Electronic Commerce” and the proposals to improving arbitration laws, rules and practices.

Speaking on the developments in the United Nation’s Conference on Trade and Development (UNCTAD), he informed that the tenth session of UNCTAD held at Bangkok in February 2000, had adopted the Bangkok Declaration on Global Dialogue and Dynamic Engagement and also a Plan of Action. In a globalizing world economy, Dr. Gaa’tri identified capacity-building, technical assistance and integrating the developmental dimensions within the framework of existing trade institutions as the three components that would ensure wider

participation of developing countries in international trade. The Bangkok Declaration and Plan of Action, he hoped, could contribute to addressing these three aspects.

Other matters addressed by the Deputy Secretary General relates to the work of the International Institute for the Unification of Private Law (UNIDROIT) at its 79th session held in April 2000 and the developments within the Hague Conference on Private International Law.

22. The **Delegate of the Republic of Korea**, offered the following observations on the work of UNCITRAL.

His delegation expressed appreciation for the work done by the UNCITRAL's Working Group on International Contract Practices that is currently engaged in drafting a convention on the Assignment of Receivables in International Trade. Expressing hope that the convention would be successfully adopted at the earliest time possible, he said that the utility of the convention lays in promoting the availability of capital and credit at more affordable rates, thus facilitating the development of international trade.

Welcoming the successful completion by UNCITRAL Working Group of its work on the Model Law on Electronic Signature and its Enactment Guide, he said that this work could encourage electronic commerce, by enhancing the security of electronic signatures in electronic transactions.

Calling for the expansion of the membership of UNCITRAL, the Delegate stressed that the expansion should accommodate the various interests of countries in the new economic order and the position that countries occupy in international trade.

23. The Meeting then to up the item **WTO as a Framework Convention and Code of Conduct for World Trade**.

24. **Dr. Li Zhenhua, Assistant Secretary General of AALCC** introduced the Secretariat document AALCC/XL/HQ(New Delhi)/2001/S.10 on this item.

Dr. Li in his statement, recalled the setback suffered at the Seattle Ministerial Conference in December 1999 and highlighted the confidence-building measures launched thereafter by the General Council. Such confidence – building measures include examining steps in favour of LDCs; capacity-building through technical cooperation; implementation issues; and ensuring transparency and fuller participation of Member States. Notwithstanding the stalemate at the Ministerial Conference, Dr. Li stated that the mandated negotiations on agriculture and negotiations are progressing smoothly. The TRIPS Council is currently studying the approaches towards reviewing the TRIPS Agreement. The Members, have registered their confidence in the WTO's dispute settlement mechanism, with almost 200 complaints being brought before the Dispute Settlement Body in a short period of six years (1995-2000).

As to the future, Dr. Li stated that in the opinion of the AALCC Secretariat, the review process of the WTO's Dispute Settlement Understanding started in 1998 must be completed

soon. Emphasising the significance of the Fourth WTO Ministerial Conference to be held at Doha, Qatar from 9 to 13 December this year, he said that the agenda for the Ministerial has to be broad enough to have something in it for everyone and should exclude issues that are inappropriate or where compromise is impossible.

The floor was then opened for statements by the Member States on this agenda item.

25. The **Delegate of the Republic of India** recalling the high hopes and expectations with which the developing countries undertook substantial obligations while joining the WTO in 1995, expressed disappointment over the non-accruing of the expected benefits. More specifically the Delegate highlighted his dismay over the following aspects:

Expected benefits from the liberalization of trade in textiles or agriculture sector have not materialized in view of the tardy implementation of their commitments by developed countries;

Non-tariff barriers, in the form of higher standards or excessive sanitary and phyto-sanitary measures, have made access for developing country exports even more difficult and added to their transaction costs;

Increased resort to trade defence measures, such as anti-dumping, countervailing or safeguard actions have only rendered the situation even more burdensome for developing countries.

The Delegate stressed that unless all these issues are addressed satisfactorily first and the confidence of developing countries in WTO enhanced, developing countries would not be in a position to approach their national constituencies once again for securing a mandate for a fresh round of WTO negotiations.

Opposing the inclusion of any new items to the agenda of the Fourth Ministerial Conference to be held at Doha in December 2001, the Delegate said that mandatory negotiations (already taking place in agriculture, services, etc); the mandated reviews (i.e. in the Uruguay Round Agreements in respect of Agreements relating to TRIPS, TRIMS, subsidies etc) coupled with the resolution of implementation-related concerns by themselves constitute a sufficiently large agenda and that we should not overload the WTO work programme. Expressing anguish over the recent attempts of some developed countries to link the extension of Generalized System of Preferences to either the observance of labour standard or some other social standards by the beneficiary countries, he stoutly opposed the linking of trade with any social issue or the expansion of the environmental window of WTO.

The Delegate stated that the Ministerial Conference need not be linked with the launch of any new round of negotiations.

26. The **Delegate of the People's Republic of China** while informing that the negotiations for China's accession to WTO had gathered pace said it would not be long before China becomes a full member of the WTO.

China's accession to the WTO, the Delegate stated, can promote not only the development of Chinese economy, but will inject new impetus in the progress of Asian, and the world economy.

After achieving its membership in the WTO, China will further open the market of trade in goods, services and other areas; gradually advance the opening up of commerce, foreign trade, finance, insurance, securities, telecommunication, tourism, intermediary services and other fields. With that the Chinese economy would be more closely linked to the world economy, the huge market potential that China enjoys will be turned into realistic purchasing ability and more business opportunities will be provided to industrial and commercial communities of all countries.

The Delegate said, at present, China is in line with the WTO rules and the requirement of establishing socialist market economic system. China is undertaking a thorough checking up of the laws and regulations concerning foreign trade and will make suitable amendments as per relevant legal procedures, with a view to speeding up the establishment and improvement of the foreign-related economic administration system in conformity with international practice; pushing forward economic restructuring and industrial upgrading; disseminating information of WTO rules; promoting training; etc.

After joining the WTO, the Delegate said China would actively participate in the new round of WTO negotiations. The new round of negotiations, in the view of China, should reflect the interests of both developed and developing countries. While the new round should focus on issues directly related to trade, the developed nations should earnestly implement their part of the obligations undertaken and improve the environment for market access for developing countries. He pledged the willingness of China to join hands with other WTO Members to actively promote the establishment of a fair, reasonable international economic order where developing countries share the benefits and opportunities of the multilateral trading system.

27. The Meeting then took up the item “**Progress Report of the AALCO's Regional Centre for Arbitration**”. Statements were made by the Directors of the Kuala Lumpur and Lagos Arbitration Centres. The Director of the Cairo Regional Centre for International Arbitration could not attend the Fortieth Session due to unavoidable circumstances. The statements of the Directors of the Kuala Lumpur and Lagos Arbitration Centres and the excerpts from the Report of the Director of the Cairo Centre are included in the later part of this Report.