SUMMARY RECORD OF THE FOURTH GENERAL MEETING HELD ON THURSDAY, 18 JULY 2002, AT 10.00 A. M.

Hon'ble Musa Elayo Abdullahi, Minister of State, Federal Ministry of Justice of Nigeria in the Chair

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

1. The **Delegate of Kenya** stated that her country was host to the UNEP and Habitat and had been at the forefront on issues relating to environment. She thanked AALCO members who supported the strengthening of the role of UNEP and Habitat and stated that Nairobi was now the third United Nations Office after New York and Geneva.

She expressed her delegation's support to the very useful and constructive proposal by the Secretariat to change the title of the item to Environment and Sustainable Development. She said that the importance of environment could not be gainsaid. The summit in Johannesburg, South Africa later this year on environment was extremely important for the deliberations and exchange of ideas on sustainable exploitation of natural resources. Environmental issues were important to developing countries particularly as they related to its protection or preservation of the sustainable development. Environmental degradation was as a result of various factors that impact most negatively on the developmental agenda. She therefore urged states to take action in accordance with the principle of common and differentiated responsibility enunciated in the Climate Change Convention – the Kyoto Protocol. Collective responsibility by both the developed and developing world was critical to advance the noble goals elaborated in Agenda 21, the Convention of Biological Diversity and the Convention on Climate Change. She said that the developed countries were severely hampered by resource constraints in terms of finances and technology. She therefore hoped that the World Summit at Johannesburg next month would address these issues comprehensively and come out with time-bound solutions. Her country had placed environmental protection as a priority developmental concern. As hosts both to UNEP and Habitat, Kenya continued to play an active role in all environmental matters.

Comments submitted by the Government of **Malaysia.**

1. United Nations Framework Convention on Climate Change (UNFCCC) Malaysia signed the UNFCCC on 9 June and ratified it on 13 July 1994.
2. Malaysia would like to further contribute to the global effort to reduce the emissions of greenhouse gases. In this regard, Malaysia is making the necessary arrangements to become party to the Kyoto Protocol.
3. However, Malaysia cannot carry out its commitments without adequate financial resources and technological support from the developed country Parties to the UNFCCC and the international organizations. Financial resources must be continuously provided to the developing countries to enable them to carry out activities to mitigate and adapt to the adverse effects of climate change. In this regard, Malaysia is deeply concerned that there are attempts to contain the flow of further funds into climate change programmes and activities.
4. Malaysia is also concerned about the lack of technology transfer (TOT) to the developing countries although promises have been frequently made. Most of the technology needed by the developing countries is in the domain of the private sector in the developed country Parties. TOT cannot take place in such a situation. TOT can only take place if developed country Parties provide a conducive environment for the private sector to make such transfer, e.g. by providing incentives.
5. Malaysia supports the flexibility mechanisms under the Kyoto Protocol in principle on the basis that they are more politically acceptable than other options. In due course, this could enable targets to be tightened faster than otherwise and bigger reductions to be achieved.

However, these flexibility mechanisms may lead to corruption and collapse of global efforts to contain climate change, if not supervised properly. This is because these mechanisms, e.g. the Clean Development Mechanism (CDM) could enable countries to avoid taking politically awkward domestic measures to combat pollution, such as removing subsidies from fossil fuel electricity, promote the establishment of sinks while diverting attention away from emission reduction and energy efficiency and fail to deter investment in extensive new carbon-based resources and technologies.

6. In relation to the CDM, while Malaysia supports the flexibility mechanism, it should be viewed with concern and caution should be exercised against the inclusion of carbon sinks in the CDM. The reduction in carbon emissions should be undertaken at source rather than through carbon sinks.

7. Nonetheless, if carbon sink projects become acceptable activities within the CDM –

National authorities of the host country should be the sole judge for deciding whether the project activity meets its national sustainable development objective and priorities. It is noted that some of the principles suggested by TERI (2000) defining sustainable developments are –

There must not be local opposition towards the projects, and the projects must not impose a burden on local communities.

There must not be environmental burden shifting.

The project must provide multiple social and economic benefits, as well as environmental benefits.

World-wide assessment of changes in land use, especially afforestation, reforestation and deforestation becomes a requirement. Adaptation activities within the Global Environment Fund may include avoidance of deforestation and this will add further need. Collectively, these raise the problem of accurate, reliable and verifiable monitoring of the terrestrial carbon sink.

CDM activities must be governed by strict eligibility criteria and must satisfy the additional conditions relating to the environment, investment, TOT and finance.

8. Malaysia is also of the view that other human-induced activities under Article 3.4 of the UNFCCC should not be allowed during the 1st commitment period. Therefore Malaysia supports the 6 principles laid down by the G77 and China should carbon sinks be included in the CDM.

Convention on Biological Diversity (CBD).

1. Malaysia signed the CBD on 12 June 1992 and ratified it on 24 June 1994.
2. To give effect to Malaysia's obligations under the CBD, a National Policy on Biological Diversity (NPBD) was formulated and launched on 16 April 1998.
3. The NPBD places emphasis on both conservation as well as ensuring that access to Malaysian biological resources is controlled under the principles of ABS.

Access to Biological Resources and Benefit Sharing (ABS)

4. Malaysia is in the process of drafting its Access to Biological Resources and Benefit Sharing Bill ("the ABS Bill"). The ABS Bill is at the consultation /drafting stage. It is anticipated that the drafting process may take some time because biological resources are matters under the State List and thus within the legislative competence of the various States in Malaysia. Although it is not a federal matter, the Federal Government is coordinating the drafting of the Bill to facilitate matters.

5. The proposed ABS Bill, among others, aims to –

   (i) Implement and ensure the conservation, sustainable utilization of biological resources as well as fair and equitable benefit sharing among the stakeholders.

   (ii) Regulate access to, the collection of, the study and research on, experimentation, protection, utilization and export of our biological resources.

The provisions of the ABS Bill generally mirror the requirements of the CBD.

6. However, since these biological resources are under the jurisdiction and control of State Authorities, the ABS Bill will also serve to coordinate and regularize procedures among the States to ensure uniformity.

7. Issues of concern to Malaysia under the ABS are the protection of traditional knowledge and intellectual property patenting.

   In relation to traditional knowledge, Malaysia would be required to share the benefits gained from its exploitation (which are not limited to commercial profits only) with the originator of that traditional knowledge, e.g. the aboriginal peoples. However, there would be great difficulty in identifying who these persons are given that such knowledge is largely undocumented and has been handed down orally from generation to generation and from tribe to tribe and even transnationally among related tribes. A further difficulty would be the mechanism for the sharing of those benefits.

   In relation to intellectual property patenting, Malaysia has thus far adopted a policy that prohibits the patenting of naturally occurring life forms. Section 13 (b) of the Patents Act 1983 provides that "plant/animal varieties or essentially biological processes for the production of plants or animals, other than man-made living micro-organisms, micro-biological processes and the products of such micro-organism processes" are not patentable. Exceptions however, have been made in relation to Malaysia's biotechnology projects to safeguard Malaysian interests. The patenting of Genetically Modified Organisms (GMO's) is another area of concern. It is discussed in relation to the Cartagena Protocol.

Cartagena Protocol on Biosafety

8. Malaysia signed the Cartagena Protocol on 24 May 2000.

9. As a party to the Protocol, Malaysia would have to meet the minimum requirements of the Protocol including the requirement to regulate, among others –

   (i) Every activity in relation to Genetically Modified Organisms (GMO's) and products thereof, specifically the importation and exportation thereof;

   (ii) The deliberate release of GMO's into the environment;

   (ii) The use of GMO's and the placing thereof on the market to protect human, plant and animal health, the environment and biological diversity.

This is to be done in accordance with the precautionary principles, the principles of sustainable development and Malaysia's ethical and cultural norms.

10. Malaysia is in the process of drafting a Biosafety Bill to give effect to the obligations under the CBD. The proposed Bill will ensure minimum compliance with the CBD obligations and will generally mirror the requirements of the Protocol.

11. Genetically Modified (GM) crops are currently being widely grown in 13 countries with the USA heading the list. Such countries are of the view that GM food does not cause any ill effects to consumers. Malaysia subscribes to the contrary opinion that GM crops and

products thereof have a negative effect on health and has undertaken several measures to safeguard the public.

The Ministry of Science, Technology and Environment (MOSTE), as the National Focal Point for the CBD, has set up a task force to draft biosafety regulations which would encompass food, feed, processing and the release of GMO's into the environment.

The Ministry of Healthy (MOH) has made regulations under the Food Act 1983 to regulate GM food and to mandate labeling of GM foods. This is to allow consumers to make their own choice.

The Ministry of Agriculture (MOA) is proposing to introduce regulations to regulate animal feed and the deliberate release of GMO's under the Plant Quarantine Act 1976.

A joint committee comprising representatives of MOSTE, MOH and MOA has been established to harmonize efforts in this regard.

12. Malaysia is also working to improve its ability to detect GMO's and GM foods. The current methods commonly in use are Polymerize Chain Reaction (PCR) and Biosensor.

Convention on Combating Desertification (CCD).

13. Malaysia signed the CCD on 6 October 1995 and ratified it on 25 June 1997.
14. Malaysia has not been active in the implementation of the CCD as it has no domestic concerns in relation to desertification.
15. The Ministry of Foreign Affairs has advised that the reason Malaysia became a party to the CCD is purely political in that it wanted to lend support to the G.77 and China, in particular the African Member States, where desertification issues are prominent.

World Summit on Sustainable Development (WSSD)

16. Malaysia supports the World Summit and its proposed objective to review the outcome of UNCED and the implementation of its instruments. Malaysia will be represented by MOSTE and the relevant agencies at the Summit.
17. Malaysia also hosted the Asia-Pacific Regional Roundtable Meeting in Kuala Lumpur from 9 to 11 July 2001 to identify the priority issues to be addressed at the Summit and matters concerning the promotion of cooperation in the Asia-Pacific region.
18. Malaysia agrees with the proposed theme and agenda for the Summit and strongly supports the Preparatory Committee's decision that the Rio Declaration and Agenda 21 not be reopened for consideration at the Summit.
19. Malaysia also agrees with the AALCO Secretariat's view that the Summit should not just focus on the causes and effects generally but should come up with and adopt concrete and realistic plans of action.
20. Malaysia supports the AALCO's call for Convention Secretariats to provide papers on the status of their respective Conventions and the reasons for the lack of support thereof, if relevant, to help focus discussions on the shortcomings of the instruments especially where developing countries are concerned.
21. Malaysia notes the AALCO's call for voluntary contributions to the Special Fund on Environment to enable the AALCO Secretariat to participate at the Summit.
22. It is proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting a resolution that –

    The AALCO Secretariat be involved at the Summit;

    Voluntary contributions be made by Member States to the Special Fund on Environment to enable it to do so;

The item be placed on the agenda of the 42nd Session and that the Secretariat prepares a report on the outcome of the Summit together with its recommendations on the follow-up action that may be required for the further consideration of the 42nd Session.

The meeting then took up for consideration the item "International Terrorism".

2. **Dr. Li Zhenhua, Assistant Secretary-General** introduced the Secretariat document and he recalled that the issues concerning international terrorism had been on the agenda of the General Assembly of the United Nations and various other international organizations for over three decades. However, the adoption of the historic declaration on "Measures to Eliminate International Terrorism" by the General Assembly at its 49th Session on 9th December 1994 gave impetus to active consideration of the issues involved. At its 51st Session, the General Assembly adopted a supplement to its 1994 Declaration and established an Ad Hoc Committee with a mandate to elaborate an international Convention for the Suppression of Terrorist Bombings and another one on Suppression of Acts of Nuclear Terrorism.

At its 53rd Session, the General Assembly decided that the negotiations on the draft of a comprehensive convention on international terrorism (hereinafter referred to as Comprehensive Convention) based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September, 2000. Pursuant to that mandate, a Working Group of the Sixth Committee in its meeting held from 25th September to 6th October 2000 considered the draft Comprehensive Convention. It was followed by the second round of negotiations in the Working Group Meeting held from 12 to 23 February 2001.

Against this backdrop, the topic 'International Terrorism' was placed on the agenda of AALCO' 40th Session, upon a reference made by the Government of India. It was felt that consideration of this item by AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the Comprehensive Convention.

After detailed deliberations the Secretariat was directed to monitor and report on the progress in the negotiations related to the drafting of the Comprehensive Convention. Pursuant to the aforementioned mandate, the Secretariat presented this report.

The elaboration on the draft Comprehensive Convention continued during the Fifth Session of General Assembly between 15 and 26 October 2001, within the framework of a Working Group of the Sixth Committee. The Working Group considered draft articles 14 to 17 and 19 to 22 at its 2nd meeting. The coordinators of the informal consultations presented oral reports to the Working Group on articles 3 to 17 and 19 to 23, as well as on article 2, 2 *bis* and 18. In line with the informal consultations and taking into account the comments and written proposals by delegations, the Friends of the Chairman prepared revised texts of article 3 to 17 *bis* and 20 to 27. The co-ordinator prepared informal texts for articles 2 and 2 *bis*. The Chairman stressed that the finalization of the work on the draft Convention depended primarily on the political will to reach a compromise on the outstanding issues. In this regard, he urged delegations to demonstrate the necessary flexibility in order to bring the negotiations of the instrument to a successful conclusion at the current session of the Working Group.

Subsequently, the Ad Hoc Committee held its Sixth Meeting in New York from 28 January to 1 February 2002. Further efforts were made towards narrowing down the differences in respect of the elaboration of the Comprehensive Convention. It was encouraging, as remarked by Chairman Perera, that delegations had made every attempt during the session to understand and appreciate each other's position, in a dispassionate manner, despite the complexity of the issues involved.

During a weeklong Session, some progress had been made on the preamble and article 1. However, the final position relating to the preamble and article 1 would depend on the outcome of article 18. In addition to article 18, a number of outstanding issues still remain, such as definition of the

perpetration of terrorist acts, the scope of application of the draft convention, relationship of the draft Comprehensive Convention with existing sectoral conventions ad mechanism for co-operation. The Committee in its report recommended that the Sixth Committee (Legal) consider establishing a working group to be convened to continue to work as a matter of urgency on the elaboration of a Comprehensive Convention.

In the wake of 11 September 2001 incident, during the 56th Session of the General Assembly there was increased focus on urgency to conclude the work on the comprehensive international convention to combat terrorism. The Anti-Terrorism Committee constituted by the Security Council Resolution 1373 adopted on 28 September 2001 provided wide-ranging and comprehensive measures to combat terrorism.

He hoped that the 41st Session of AALCO provided a good opportunity for Members States to exchange their views relating to the draft Comprehensive Convention. He was confident that the discussion would provide useful inputs for consideration of the pending issues.

3**.** The **Delegate of the People's Republic of China** said his country had always condemned and opposed all forms of terrorism, no matter where, and by whom it was committed and against whom it was directed. The Chinese Government is opposed to using terrorism as a means to achieve political or other goals. His delegation believed that the suppression of terrorism should be consistent with the principles and purposes of the Charter of the United Nations and universally recognized norms of international law. In the delegate's view, terrorism represented neither any ethnic group nor any religion. Therefore it should in no way be lumped together. "Double standards" was of great harm to the unity and effectiveness of the anti-terrorism front and in fact encouraged power politics, interference with other countries' internal affairs and would no doubt stimulate terrorism.

Speaking on the work of the AALCO, the delegate pointed out that the Secretariat had identified certain areas of priority in this regard such as: promotion of wider participation of Asian and African states, in international anti-terrorism conventions; monitoring the progress in the negotiations in UN Ad Hoc Committee and the endeavour to address the roots of terrorism, including inter alia the promotion of dialogue among civilizations, etc. These initiatives were constructive and worthy of further consideration. While concretizing these initiatives, he said, it must be kept in mind the overall interests of Asian and African states, especially those of Members of AALCO and AALCO's own resources.

China had taken an active part in international and regional co-operation against terrorism. China favoured early completion of the drafting work of the Ad Hoc Committee on a Comprehensive Convention on International Terrorism, as well as International Convention for the Suppression of Acts of Nuclear Terrorism, and hoped every party of that Committee showed its political good will in this regard. At the regional level, China concluded with other parties of Shanghai Co-operation Organization last year the Shanghai Convention on Combating Terrorism, Separatism and Extremism (SCO). The six members of SCO including China signed the Agreement of Sates Parties of Shanghai Co-operation Organization on the Regional Anti-Terrorism Agency on 7th June 2002. According to this Agreement, a Regional Anti-Terrorism Agency would be established.

4. The **Delegate of India** stated that terrorism was a scourge against mankind. It affected all countries and was not confined to any one country or region. He recalled that his country had proposed a comprehensive Convention at the UN to complete the framework of legal instrument to combat this global menace. Considerable progress had been made in the Working Group and the Ad Hoc Committee of the Sixth Committee and most of the provisions had been finalized. However, some issues were still outstanding.

He referred to following provisions: Article 2 of definitions: The text had been agreed but its acceptance was made conditional on agreement on other articles. He therefore considered this as agreed. The article, in defining offences to be punished, was the "terrorist intent" to distinguish them from other criminal acts based on the Convention against Financing of Terrorism.

Article 2 bis: There was agreement on the need to preserve the earlier sectoral conventions. However, he believed that similar to domestic law, all Conventions should be applied together rather than seeking to include application of one or more Conventions as the present text of Article 2 bis proposes. This provision if accepted would render the Comprehensive Convention ineffective.

Article 18 had proved to be the major stumbling block in the negotiations, particularly the proposal to exclude acts of national liberation movements, especially struggles against foreign occupation. In his view, it was necessary to recognize that this was a Convention against terrorism, not on national liberation. Inclusion of such provisions, therefore was not helpful as it would direct attention from the primary objective, particularly when the States making this proposal had recognized that international humanitarian law did not permit acts of terrorism during such struggles.

He therefore urged all member states to co-operate and help in concluding the adoption of the Comprehensive Convention.

The **Delegate of Islamic Republic of Iran** stated that terrorism was a menace that has haunted the international community for many decades. It was a major challenge to international peace, stability and security. As a multifaceted phenomenon, its dire implications affect all corners of the world. The September 11th attacks in the United States demonstrated that terrorism recognizes no boundaries of geography, wealth or even power. And it underlined that terrorism was a global menace and as such requires a global response. No country or region was immune from terrorism, nor any one alone could successfully tackle and eradicate this calamity.

He traced the history of the international campaign against terrorism from the time of the League of Nations to the United Nations. Since the First International Conference of Penal Code in 1926, terrorism has been high on the agenda of the international community. The Geneva Convention for the Prevention and Punishment of Terrorism, concluded under the auspices of the League of Nations in 1937, was the first major drive to develop a global and collective view of terrorism. The Convention, although never entered into force, put the stone for the United Nations, in the course of the past three decades, to codify a set of international norms and rules into legally binding instruments to fight different forms of terrorist acts.

The Instruments, which each and individually deals with a specific crime, represent a trend called the “piecemeal” or “thematic” approach in criminalizing such acts that constitute a terrorist crime. Indeed, all these instruments intend to limit or diminish the dangers posed by a certain trend in terrorist acts by obliging the member states to prosecute, punish or extradite terrorist offenders without exception. A pertinent question may here arise as whether these instruments have successfully managed to meet their objective, namely to create an environment inhospitable to terrorism. The answer may not always be affirmative. And the judgment cannot be made without considering carefully. He recognized inherent limitations of the instruments as well as the political will of the parties concerned to implement them faithfully. In his view, codification and adoption of these instruments were undoubtedly positive steps in the right direction. However, they hardly offer a panacea that will significantly limit the increasing dangers of this phenomenon. In his view for states to challenge terrorism effectively and successfully, they need to deploy multidimensional policies and strategies that would also address the root causes of terrorism. The international efforts and cooperation cannot and should not be directed solely to challenging the symptoms of the problem; namely the use of violence. They should also pursue vigorously the elimination of the roots and breeding grounds of this phenomenon.

He said that his country Iran, as a vivid victim of terrorism, has rendered its unequivocal support to all initiatives aimed at combating terrorism particularly at the international level. The United Nations was in a unique position to mobilize the international community to address terrorism at its roots. Having confidence in the UN ability to undertake this important task, Iran’s President Khatami in his letter of 16 September 2001 to the UN Secretary-General proposed that “comprehensive and inclusive negotiations should commence to articulate practical and serious global policies and strategies to eradicate the menace of terrorism and called for the convening of a “Global Summit at earliest possible date to register and demonstrate the highest international political will to uproot terrorism”.

He stressed that the General Assembly should consider a multifaceted approach to terrorism, which should include, as one of its major components, a comprehensive legal framework articulating objective criteria, which would enable the international community, to identify and combat terrorism regardless of its victims or culprits. Legitimacy as well as sustainability of the global struggle against terrorism rests on applying a single set of standards to all. It was not acceptable that patterns of alliance rather than actual engagement in terrorist activities would become the determining factor. Thus, the credibility of the campaign against terrorism was seriously undermined when policies and practices designed to instill terror and fear among the entire Palestinian people receive deliberate silence, while resistance to foreign occupation and state terrorism was conveniently demonized. A major issue that has been regarded as the stumbling block to arrive at the consensus on a comprehensive instrument relating to the long-standing question of definition of terrorism.

He was of the view that the comprehensive convention should clearly distinguish terrorism from the legitimate struggle in the exercise of self-determination and independence of all peoples under foreign occupation. The comprehensive legal framework should also include appropriate guidelines for a rational and rule-based approach across the board, so that no terrorist, no matter where they commit their terror, can find refuge or source of support, financing and recruitment in any member of the international community.

While referring to a matter of deep concern for the Islamic countries and Muslim communities all over the world he said that since the September 11th terrorist attacks, attempts have been made to attribute acts of terror and violence to Islam and Muslims. As a consequence, a new wave of Islamophobia and bigotry against Muslims has been emerged particularly in the western countries. He stressed that indeed, terrorism has no religion, no nationality or ethnic background. It was in fact the negation of everything religions stand for. Intolerance, extremism and violence have no place in Islam or among its adherents.

5**.** The **Delegate of the Republic of Korea stated** that his delegation firmly supported the efforts of UN to achieve a 'Comprehensive Convention against International Terrorism'.

He referred to the efforts in the past and said that many individual conventions on specific issues such as hijacking and diplomat-protection had been made. While admitting the importance and utility of individual sectorial conventions, the comprehensive approach was still very important to cope with international terrorism effectively. Therefore he urged every Member State of AALCO to show more flexibility to conclude this important Convention as soon as possible.

As for individual sectorial conventions against international terrorism, so far 12 conventions were recognized by international community as important tools against international terrorism. Among them two important conventions were 'Convention on the Suppression of Terrorist Bombing' and 'Convention on Suppressing Terrorist Financing' which to his delegation were the most effective and essential tool to combat the menace of international terrorism. Whilst stressing the urgency for successful conclusion of the negotiation of 'Comprehensive Convention against International Terrorism', his delegation urged all Member States to give high priority to sign and ratify those Conventions on suppressing terrorist bombing and terrorist financing.

He said that his government had ratified 8 individual sectorial conventions against international terrorism and now studying the possibility in a serious manner to accede to other 4 Conventions against international terrorism. (Convention for the Suppression of Unlawful Acts against the Safety of Marine Navigation, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Comprehensive Convention against International Terrorism, Convention on Suppressing Terrorist Financing). In particular, his government had already signed Terrorist Bombing Convention and Terrorist Financing Convention and was now preparing domestic legislation for the ratification of two Conventions within this year, mindful of the importance of two Conventions as a useful and essential tool to combat this subject.

6. The **Delegate of Thailand** said that his delegation shared the view of the international community that terrorism remained a major threat to regional and international peace and security, and constituted a serious violation of the rights of innocent individuals and of the integrity of states.

He reaffirmed Thailand's universal condemnation of terrorism in all its forms and manifestation, wherever it occurred and to co-operate with all States concerned in the efforts to strengthen the legal framework to combat terrorism and to ensure that their perpetrators are brought to justice. In this respect, his country had already increased security co-operation with many countries in the form of the information exchange and intelligence sharing.

He said that his country had a firm policy towards terrorism to ensure that Thailand would not be used as a base for the commission of any terrorist acts and that terrorists would never find safe haven in it. Accordingly, after the tragedy of 11 September 2001, all security and law enforcement agencies of Thailand had stepped up measures to detect, monitor and be alert to any movement of persons or a group of persons who were believed to be associated with terrorist organizations.

On the Draft UN Comprehensive Convention on International Terrorism, Thailand firmly believed that there was an urgent need for such an instrument. He was very appreciative of the initiative of India in proposing the draft Convention and welcomed all efforts exerted by Member States of AALCO in making this convention truly effective and acceptable by all. He was aware that differences of opinion concerning the definition of terrorism and the relationship between the proposed Comprehensive Convention and the sectoral conventions already adopted on specific aspects of terrorism remained unresolved.

On the issue of relationship between the Comprehensive Convention and the existing conventions, Thailand was of the view that wherever there was an overlap of coverage, the provision in the Comprehensive Convention should serve as a supplementary provision.

On the definition issue, Thailand recognized that the struggle of people in the exercise of the right to self-determination is legitimate under international law. However, Thailand strongly urged that any distinction made between people's struggle to self-determination and terrorism must ensure that terrorists would never be able to escape justice by relying on a defence that their acts were legitimate on the basis of a right to self-determination.

Thailand supported all actions against terrorism under the framework of the Untied Nations Security Council and the General Assembly. On domestic front, the Thai Government was determined to push ahead with the steps needed in terms of domestic legislation and regulations to enable Thailand to become Party to all international conventions relating to terrorism. Thai authorities concerned had taken steps to strengthen security measures at all ports of entry including the provision of more security assurances for the diplomatic community in Thailand. Immigration control had been tightened.

He highlighted the efforts being undertaken in Southeast Asia in the combat against terrorism. Under the ASEAN Framework Thailand hosted the ASEAN Foreign Ministers' Retreat in Phuket in February 2002. The Meeting expressed political resolve to co-operate in counter-terrorism as well as examined practical ways and means for long term prevention and suppression of terrorism.

At the Special ASEAN Ministerial Meeting on Terrorism, held in Kuala Lumpur during 20-21 May 2002, the Meeting adopted the terrorism component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime. Such areas of co-operation included information exchange, legal matters, law enforcement matters, training, institutional capacity building and extra-regional co-operation.

7. The **Delegate of Indonesia** complimented the Secretariat for the excellent work that had been done in the preparation of the paper pertaining to this agenda item.

International terrorism had been an issue of international concern for many years now. However, the delegate said it had recently taken the utmost attention of the international community when terrorist attacks accrued in New York and Washington DC on 11 September 2001. And it had given a new momentum to the consideration by the United Nations on the drafting of a comprehensive international convention to combat terrorism.

He reiterated Indonesia's stand against terrorism in all its forms and manifestations, regardless of their motive and reasons. Indonesia strongly supported regional and international co-operation in preventing and combating terrorism with due regard to the sovereignty of countries and to the principle of non-interference to the domestic affairs of any countries.

Within the framework of co-operation to prevent and combat the activities of the international terrorism, the delegate informed that Indonesia, Malaysia and the Philippines had recently concluded an Agreement on Information Exchange and Establishment of Communication Procedures which provided among other things the modalities of activities among them in addressing the terrorist activities in the region. This Agreement was open for any other ASEAN member countries to accede to it. He also informed the Meeting that Indonesia had ratified the Tokyo Convention of 1963, the Hague Convention of 1970 and the Montreal Convention of 1971. Furthermore, Indonesia was currently in the process of drafting a legislation on terrorism.

8**.** The **Delegate of Sudan** was of the view that terrorism constituted a threat to international peace and security. He condemned the trend of linking terrorism with any particular culture or religion as dangerous. Calling for joint and collective measures to combat terrorism, he highlighted the importance of fighting against root causes of terrorism, like poverty and social injustice. Liberation struggles in occupied territories, he cautioned, should not be associated with terrorism.

9. The **Delegate of the United Republic of Tanzania commended** the Secretariat for the presentation of the paper. He referred to the observation of AALCO Secretariat in respect to paragraph 54 and suggested that this session should commission the secretariat under the auspices of AALCO to initiate a joint programme with the office of the Legal Counsel of UN for the ratification of the Conventions to Combat Terrorism, assist developing countries within AALCO in capacity building in combating terrorism and implementation of initiatives of the Committee established by UN Security Council Resolution 1373.

The Tanzanian delegation urged the Secretariat to form its data bank depository of legislation of the Member States and other materials on terrorism to facilitate easy exchange of information.

10. The **Delegate of Syria** emphasized the need to distinguish liberation struggles in occupied territories and terrorism. In the context of Palestine – Israel conflict, the delegate accused Israel of having carried out organized terrorism in 1982 when it invaded Lebanon and subsequently when it committed acts of wanton destruction and massacres of Palestinians. Return of land to Palestinian people and reversing of occupation by Israel were solutions to this problem.

11. The **Delegate of the Arab Republic of Egypt** commended the initiative of the Republic of India for the proposal to have a comprehensive convention on terrorism. He recalled that the item had not come out of vaccum, there were previous initiatives of the United Nations in this regard. However, post September 11, it was a universal feeling that no country however big or small was safe from this phenomena which transcended borders and did not care for race, religion etc.

He stated that the phenomena of terrorism was a real threat to the peace and security of mankind. However, as it had effected the United States of America, this had lead to initiatives of suppression of terrorism throughout the world. He cautioned that it was more than ever necessary that the United Nations should play a pivotal role for formulating procedural and legal principles to deal with terrorism. He stressed the need for AALCO to handle the subject legally rather than political.

12. The **Delegate of Uganda** appreciated and agreed with the interventions of the various speakers. She spoke on the need to address the issue of pressure put on individual governments which sought to put laws in place to combat terrorism. Such pressure came mainly from international human rights activists and the western world. She also said that fighting terrorism should not give opportunity to some states to solve their long desired revenge on other states. The success to fight terrorism must depend on equity of treatment and fairness in addressing the root causes of terrorism.

13. The **President**, summing up the discussion said that fighting terrorism should look into the root causes of terrorism. Other solution such as political or diplomatic should be equally addressed the military means was not the only solution for fighting terrorism. The struggle for liberation or foreign occupation should be distinguished from terrorism.

Comments submitted by the Government of **Malaysia.**

1. Malaysia condemns terrorism in all its forms and manifestations and supports the call that its perpetrators and all those who support them under whatever guise be brought to justice.
2. Malaysia is prepared to work within the United Nations framework in its efforts to prevent and eliminate all forms of terrorism.
3. In addition, Malaysia strongly emphasizes that measures against terrorism should not impinge upon the sovereignty and territorial integrity of States and such measures should be undertaken in conformity with universally recognized principles governing international relations and international law.
4. Malaysia is of the view that all measures against terrorism should be undertaken with the sanction of the UN pursuant to Chapter VII of the UN Charter. Malaysia is not in favour of and will not support any unilateral action by any State that is not in conformity with international norms, rules and regulations.
5. Malaysia supports the CCIT and is playing an active role in the deliberations of the Ad Hoc Committee on the draft CCIT. Malaysia is willing to work with the other States for an early resolution of the outstanding issues so that the CCIT may be finalized and adopted by the UN.
6. Malaysia is of the view that it is imperative that the question of the definition of terrorism be addressed in a serious fashion so that a universally accepted definition could be included in the CCIT. Such a definition is essential to clarify any ambiguity about the term and to facilitate greater and more comprehensive cooperation among States to combat terrorism.
7. Malaysia is of the view that the use of force alone will not solve the problem of terrorism. A truly lasting solution will only be achieved if the root causes of terrorism are identified and dealt with effectively by all States.

8. Malaysia is party to the following UN Terrorism Conventions – Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969).

   Malaysia ratified on 5 March 1985.

   Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (entered into force on 14 October 1971).

   Malaysia ratified on 4 May 1985.

   Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 December 1971 (entered into force on 26 January 1973).

   Malaysia ratified on 4 May 1985.

9. Malaysia has signed and is taking steps to ratify the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, supplementary to the Convention

for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). Malaysia signed the Protocol on 24 February 1988 and is currently taking steps to amend its Aviation Offences Act 1984 to enable it to ratify the Protocol.

10. Malaysia is also studying the remaining Conventions with a view to accession. In response to the call by the Security Council in SCR 1373, priority is being given to the International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Terrorist Bombings. Malaysia will be enacting a new Act to give effect to its obligations under the former.

11. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation is being studied by the National Security Department in relation to the piracy and robbery at sea problem.

12. The Ministry of Science, Technology and Environment is studying the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 (entered into force on 8 February 1987).

13. In relation the AALCO Secretariat's proposed initiatives enumerated at paragraph 15 and that the Secretariat should follow the negotiations on the CCIT at the Ad Hoc Committee and report thereon, it is proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting it.

The meeting then took up for consideration the item **"Follow-up on the work of the Preparatory Commission concerning some aspects of Rome Statute establishing the International Criminal Court."**

14. The **President** gave the floor to Deputy Secretary-General, Dr. Ali Reza Deihim to introduce the item "Follow-up on the work of the Preparatory Commission concerning some aspects of Rome Statute establishing the International Criminal Court".

15. The **Deputy Secretary-General, Dr. Deihim** recalled that this item had been placed on the agenda of the AALCO for the first time at its 35th Session held in 1996. The Secretariat followed and monitored the activities of the Preparatory Commission, established by the Final act of the Rome Conference 1998 and reported on the progress made.

Since the conclusion of AALCO's 40th Session the Preparatory Commission has held three more meetings i.e. the Eighth (24 September – 5 October 2001), Ninth (8 – 19 April 2002) and Tenth Sessions (July 1st 2002).

He gave a short summation of the work done in the Preparatory Commission, and stated that on 11 April 2002 when the Rome Statute received more than 60 ratifications followed by the time limit of July 1, 2002 for the entry into force of the statute, a truly historic event namely the creation of a permanent judicial institution of international criminal justice was materialized. In fact it was due to the real determination of the international community and civil society to finally put an end to the prevalent culture of impunity and replace it with a culture of accountability for crimes described in the statute namely Genocide, War Crimes and Crimes against humanity. However, it was a matter of regret that still the requirements concerning the trigger of the Courts' jurisdiction upon the (mother of the crimes namely) crimes of aggression due to some political aspects had not been met.

He noted that the entry into force of the statute occurred earlier than some people were expecting. As by July 1st, 2002, the treaty had been signed by 139 States and ratified by 76 States. Among them 25 Member States of AALCO had signed the Statute and 11 States namely Botswana, Cyprus, Ghana, Jordan, Mauritius, Mongolia, Nigeria, Gambia, Senegal and Sierra Leone and Uganda have ratified it.

He added that the coming into force of the Statute of the ICC was a significant institutional development. While the universal ratification of the Statute was an ideal goal for the world community including the States of Asia and Africa, how to achieve that goal was still an important matter for consideration. Some States had expressed concern over some of the provisions of the Statute and even

its creation, inter alia, violation of primacy of their own law, putting the military personnel, as well as activities of the peace keeping operations at risk, the sovereignty or judicial independence had been undermined and compromised, politically motivated accusations against military forces. It should be noticed that the primary responsibility of prosecution of the crimes mentioned in the Statute, rests with the respective governments. The jurisdiction of the Court would be only triggered when States' concerned are unable or unwilling to bring the perpetrators to justice.

He then briefly stated the work accomplished by the Preparatory Commission during the Eighth, Ninth and Tenth Sessions.

He stated that during the Eighth Session, the Preparatory Commission considered seven items: (1) The Relationship Agreement between the Court and the United Nations; (ii) The Financial Regulations and Rules of the Court; (iii) The Agreement on the Privileges and Immunities of the Court; (iv) The Rules of Procedure of the Assembly of States Parties; (v) The basic principles of the headquarters agreement to be negotiated between the Court and the host country; (vi) The first year budget; and (vii) The Crime of Aggression, the definition of the Crime of Aggression and the condition under which the Court could exercise its jurisdiction over that crime. The Commission at that session also decided to establish working groups on item nos. (v) and (vi) i.e, Headquarters Agreement and the first year budget.

Four of the seven Working Groups of the Preparatory Commission, he said, completed their assignments during the eighth session. The four texts finalized by the various Working Groups were (a) A relationship agreement between the Court and the United Nations; (b) Financial Rules and Regulations of the Court; (c) Privileges and Immunities of the Court and (d) Rules of Procedure of the Assembly of States Parties.

At that session, he said, the Working Group on the Crime of Aggression discussed a consolidated set of texts submitted at the seventh session, as well as new proposals presented by Bosnia and Herzegovina, New Zealand and Romania. The proposals dealt with the definition of the crime of aggression and conditions for exercise of jurisdiction over that crime. There was also a new proposal from Guatemala.

Turning to the ninth session, he said, the Preparatory Commission considered the following items namely: draft texts of the Basic Principles Governing a Headquarters Agreement and Financial Rules. Also adopted were two draft resolutions related to the Assembly of States Parties, on (i) Secretariat of the Assembly of States Parties and (ii) Crediting contributions to the United Nations Trust Fund to support the Establishment of the International Criminal Court. The Commission also dealt with arrangements for the nomination and election procedure for judges, the prosecutor and registrar, as well as their remuneration, and a trust fund for victims and witnesses. In addition, final details were worked out concerning the principles that should govern the Headquarters Agreement with the Host country of the Court, The Netherlands. Discussion also continued in the Working Group on the Crime of Aggression

He also underscored that the Working Group on the Crime of Aggression, which would be included within the Court's jurisdiction once the crime was legally defined, met only once during the ninth session. Followed by the tenth PREPCOM in July 2002, it focused on two new documents that had been presented: a Co-ordinator's text and a Secretariat paper that provided a background on discussions of the crime of aggression. At those meetings the Group focused on three aspects: First on the definition of the Crime of Aggression; secondly on the conditions for the ICC exercising its jurisdiction over this crime; thirdly the elements of this crime, mental and material elements. The other issue, which was also taken up at the previous sessions was, how will the crime of aggression be dealt with in future.

The Tenth and final session of the PREPCOM coincided with the first day of the Rome Statute's entry into force. This session dealt among others with the procedures for nomination and election of the Judges, Prosecutor and Deputy Prosecutor and the question of the victims Trust Fund, considered criteria for management of the Working Group on Financial issues.

He said in the coming months, particularly in September 2002, we have before us the convening of the first Assembly of the States parties and later in January 2003, in which the approval of all adopted documents by the PREPCOM, election of judges and nomination of Courts Staff would be taken up besides finalizing the matters discussed in the Working Group on the Assembly of States Parties First Year Budget. It is expected that the Court will be set up and start functioning in late 2003. Moreover, a Special Plenary at the 10th PREPCOM, on 3 July 2002, was convened in order to discuss the proposals before the Security Council. It should be recalled that aftermath of Veto in Security Council on 30th June 2002, US made proposal in which it insisted in having immunity for the officials and soldiers for any actions arising from UN peacekeeping missions.

This US proposal, according to some commentators could have amended the Court's Statute by a Security Council Resolution and could have been ultra vires, as the Security Council lacked competence in treaty making. In addition, it had the effect of undermining the integrity of the Rome Statute.

16. The Delegate of the People's Republic of China thanked the Secretariat for the work that had been done in respect of the present agenda item. The documentation prepared and the brief introduction made by Dr. Deihim provided a useful and informative basis for the discussion. He then shared some views on the International Criminal Court.

He stated that, the entry into force of the Rome Statute of the International Criminal Court, on 1 July 2002, marked the beginning of actual operation of the International Criminal Court, as a permanent international judicial institution. Great changes had taken place in international relations since the end of the Cold War, which brought about the development of international criminal law. Through endeavors of almost half a century, a permanent international criminal court finally came into being. It is expected that such an institution would ensure that perpetrators of the most serious international crimes be brought to justice and deter potential perpetrators from committing such crimes. The entry into force of the Rome Statute reflected to a large extent the strong desire to suppress and punish the most serious international crimes and the high aspiration for an international order of equality and rule of law.

He emphasized that the Chinese Government had always supported the establishment of an independent, impartial, effective and universal international criminal court. The operation of the Court, should it be successful in ensuring that all persons who have committed an international offence of the most serious nature are appropriately punished, would not only help build confidence and trust in international justice, but also contribute to the maintenance of international peace and security. It was such a perception and belief that the Chinese Government had actively participated in the whole process for the establishment of the International Criminal Court.

At the same time, he said, "we have to be very clear that the future development of the International Criminal Court would be determined by quite a number of factors." He believed that, in order to establish its authority, to build states' confidence and trust in the Court and to achieve its universality, the Court should operate in strict accordance with the following: firstly, the principle of complimentarity, i.e. the role of the ICC was to complement rather than to supersede the national judicial institutions of States and should not prejudice to the exercise of jurisdiction by States within their domestic judicial systems over persons who had committed a most serious international offence; secondly, the jurisdiction of the ICC should be confined to the most serious international crimes as provided in the Rome Statute; thirdly, the activities of the ICC should not contravene the provisions of the Charter of the United Nations; fourthly, the ICC should perform its functions in an objective and just manner and should be free of political prejudice and double standards, thus saving it from being a forum of politically-motivated allegations or prosecutions.

Although the international community was not quite sure as to how the ICC would operate, however there was no reason to be pessimistic about the future of the Court. The universal support for the ICC and co-operation with the Court as a result of its just and effective operation would be much desirable for the international community and undoubtedly be conducive to the development of international law. As an observer state at the future Assembly of States parties, China would continue

with a sense of seriousness and responsibility to follow closely the evolution and operation of the ICC. He emphasized that China was willing and ready to make further contribution to the rule of law in the international relations.

17. The Delegate of Japan appreciated the excellent report prepared by the Secretariat of AALCO and the statement made by Dr. Deihim. His delegation welcomed the entry into force of the Rome Statute of the International Criminal Court (ICC). He stated that Japan had consistently supported the establishment of the ICC. During the Rome Diplomatic Conference in 1998, Japan worked actively for the adoption of the ICC Statute. Japan had also been actively engaging in the effort to establish the ICC, including participating in ten sessions of the Preparatory Commission in New York.

Furthermore, with regard to the ratification of the ICC Statute, the Japanese government was currently conducting the examination of articles of the Statute so as to ensure the compatibility between the ICC Statute and Japan's own domestic law. Now that the ICC Statute had entered into force, Japan intended to accelerate such examination for its ratification.

18. The Delegate of the Arab Republic of Egypt stated that the ratification of the Rome Statute in less than four years time was a historic milestone achieved in the international justice system. However, concerted efforts were required to reach a consensus on the remaining contentious points in PREPCOM, specially reaching a definition on the crime of aggression based on the UN resolution of 1974. Caution was also needed to avoid controversial principles like right to humanitarian intervention, a matter which could hamper further ratifications of the Statute. He also dwelt briefly on the relationship between the Court and the Security Council, which primarily had the responsibility of maintaining international peace and security.

19. The Delegate of the Republic of Korea welcomed the entry into force of the Rome Statute of the International Criminal Court on July 1st this year. The entry into force of the Rome Statute was a major achievement in the long march of mankind towards the establishment of the rule of law in the international community. Even though criminal law has traditionally been regarded as a national matter, the international community has increasingly been willing to accept a criminal jurisdiction exercised by international legal bodies as complementary to national jurisdiction, for the purpose of promoting international humanitarian law and human rights.

He noted that, in this regard the adoption of the Rome Statute at the diplomatic conference in July 1998 and the entry into force of the Statute on July 1st, 2002 were truly historic events in this process of furthering the rule of law and the fight against impunity.

He was of the view that preparations were on to bring to operation the International Criminal Court at The Hague next year. Much work has yet to be done. By thorough preparations, it must be ensured that the Court could carry out its work fairly and effectively. The Republic of Korea would do its best to participate in this task.

He emphasized that as a strong proponent of a world free from impunity and aggression, the Republic of Korea had advocated the early establishment of a permanent international criminal court and had contributed much to make the Rome Statute and various legal instruments, such as the Elements of Crimes, the Rules of Procedure and Evidence and financial regulations. At the Rome Conference in 1998, the Korean Delegation had produced an extremely critical compromise proposal on the jurisdiction of the Court that was intended to bridge the gaps between the ideal of universal jurisdiction for the serious breach of international humanitarian law and the harsh reality of creating an international judicial body by a treaty.

As a signatory of the Rome Statute, his Government was currently stepping up efforts to enact domestic implementing legislation necessary for the ratification of the ICC statute, hopefully to be completed within this year.

In conclusion, he called upon as many AALCO member states as possible to join the Court at an early date so that the Court may be a universal, fair and effective institution.

He stated that there was a precious opportunity for action which would help bring a brave new world of peace, security and justice to future generations. He was of the view that Asian and African countries should be part of the major players in the pursuit of a universal and effective International Criminal Court.

20. The Delegate of Thailand thanked Dr. Deihim, Deputy Secretary-General of AALCO for his presentation.

He stated that the Rome Statute of the International Criminal Court (ICC) was a significant international instrument which would complement the functioning of the national courts in effectively bringing to justice perpetrators of grave crimes that threatened peace, security and well-being of humankind, namely genocide, crimes against humanity, war crimes and the crime of aggression. In the past, these offences were not stated in a written form, but it was widely recognized that these offences were part of customary international law.

He noted that Thailand had attached great importance to and had been in full support of the establishment of ICC, as reflected in Thailand being the first country in the Southeast Asia to have signed the Rome Statute on 2 October 2000. As a signatory State, Thailand therefore welcomed the entry into force of the Rome Statute on 1 July 2002. Nevertheless, having finished its thorough consideration of the Rome Statute, the National Committee for the Consideration of the Rome Statute, set up by the Thai Cabinet, had come to a conclusion that ratification of the Rome Statute by Thailand would definitely need implementing legislation, as certain provisions of the Statute are not implementable under existing Thai laws, for example, crimes within the jurisdiction of the ICC, international cooperation and judicial assistance and recognition of sentences. Given the fact that only some member countries of AALCO had ratified the Rome Statute, it was therefore more timely to give a serious thought and support to a proposal made at the 39th session of AALCO by the Egyptian delegation to convene a meeting to study legal and constitutional points required for the ratification of the Statute. Such a meeting would provide a useful forum for AALCO's member countries which had ratified the Statute and those which had not yet done so to benefit from each other's experiences and technical difficulties and obstacles or otherwise which they were facing in their countries in the process of ratification.

He informed the meeting that at the recently concluded 10th Session of the preparatory Commission for the ICC, held in New York from 1-12 July, 2002, which was the last Preparatory Commission Meeting of the ICC, Thailand, together with Belgium, Cambodia and Sierra Leone jointly submitted a new proposal on a definition of the crime of aggression. The proposal sought to incorporate the effective leadership within the crime of aggression. It was therefore important to reflect this "effective" notion in the definition of Crime of Aggression, otherwise it might be subsequently diluted among other things by the application of Article 10 of the Rome Statute. This could be simply achieved by adding the word "effectively" before the words "exercise control". The joint proposal of Belgium, Cambodia, Sierra Leone and Thailand received support from several delegations at the 10th Preparatory Commission Meeting and is now duly reflected in the discussion paper proposed by the Coordinator of the Working Group on the Crime of Aggression.

21. The Delegate of the Islamic Republic of Iran noted that the AALCO had been considering this topic for over 7 years. But this year was a special year in the history of the subject. Most significantly, the 11th of April 2002 constituted an important day in the history of establishing the International Criminal Court. On this date, simultaneous deposit of ten instruments of ratification brought the number of the states members to the Rome statute from 56 to 66, thereby the number of ratifications required to enter the treaty into force had been reached. Furthermore, he said, the International Criminal Court established on 1 July 2002 would have jurisdiction over persons responsible for most serious crimes in international law, namely, genocide; crimes against humanity and war crimes. It would bridge the existing gap in the international legal order and enforcement of international humanitarian law. The creation of this Court would inaugurate a new chapter in combating impunity and brutality.

He cautioned that the entry into force of the statute should not be considered as the end of the road. The universality of the Court was so essential to its future functioning. This should be viewed as regard to the number of States members and the composition of the future bench and Secretariat of the Court. Therefore it was necessary to have as many states as possible from all regions and legal systems. The geographical distribution and representation of the different legal systems should be also taken into consideration in the future composition and Secretariat of the Court.

He emphasized that the Preparatory Commission was playing a crucial role with regard to the proper functioning of the Court. By now, the Commission had completed a series of instruments deriving from the Statute. In the reporting period of 2001 and 2002 the PREPCOM of the International Criminal Court convened three times. It had considerable achievements in drafting of the instruments deriving from the Statute. They would be presented to the First Assembly of State parties for adoption. By now, the PREPCOM entered in its final phase of work, focusing on practical steps towards the effective establishment of the ICC. He then briefly enumerated the work accomplished in the 8th and 9th Sessions of the PREPCOM.

He further stated that considering the achievements of the Commission in its previous nine sessions, it could be asserted that the rule-setting function that had been entrusted to the Commission by the Rome Conference had been largely realized. But there were still more substantial tasks remaining to be fulfilled, in particular, the preparation of the draft provision on the crime of aggression. It concerned the definition of the crime of aggression and the conditions for the exercise of the jurisdiction by the International Criminal Court.

In this regard, he stated that during the Working Group on Crime of Aggression deliberated on the role of the United Nations Security Council in determination of an act of aggression, definition of the crime and possible role of the Prosecutor once an act of aggression was committed by a State. It also scrutinized the possible remedies when the Security Council did not make a determination as to the existence of an act of aggression.

He noted that there was an overwhelming majority that the crime of aggression was a serious international crime, which in the past decades had brought enormous sufferings to the human kind. Inclusion of this crime (in the meaning of the Article 5(2) of the Statute) to the crimes under the jurisdiction of the Court was very significant to the function of the Court. It, in the long run, would ensure a balanced and realistic approach to ending the most serious international crimes.

He also noted that the delegation of Islamic Republic of Iran had actively participated in the negotiations and clearly stated that the role of Security Council in determination of an act of aggression was, and is, primary not exclusive. Therefore they supported the options suggesting that the Court would proceed the cases that Security Council would not perform its primary role.

In conclusion the delegate stated that, it was note worthy that in the last sessions of the Preparatory Commission, the above-mentioned working group made improvements in respect to its mandate. The goal is not far reaching, but there is still more way to pave. His delegation strongly believed that the negotiations in this respect should continue in open-ended working group, even after the establishment of the Court. In due course, the outcome of the working group would be taken up by the Review Conference, which would convene in accordance with article 123 of the Rome Statute.

22. The Delegate of Indonesia while appreciating the coming into force of the Rome statute on 1 July 2002, stated that although the Indonesian Government had not ratified the Rome Statute, the Government had taken strategic steps by virtue of promulgating, the law on Human Rights court of 2000 (Law No. 26/2000). The last two laws had in fact adopted certain important principles and articles of the Rome Statute. Based on those laws, the Ad hoc Human Rights Court had been established at the moment was trying human rights violation cases and prosecuting the perpetrators, after having been investigated by the National Commission on Human Rights, the agency which had been established with the authority to conduct investigation on gross human right violations as stipulated in law No. 26/2000. In

carrying out this development most of their judges and prosecutors had been under training programme in cooperation with foreign institutions. He also emphasized the position of his Government and was of the view that the principle of complementarity in relations to the Rome Statute should be retained.

He stated that Indonesia was currently in the process to consider the possibility whether or not to ratify the Rome Statute which had come into force in 1 July 2002. Although the Indonesian Government has not ratified the Rome Statute, the Government had taken strategic steps by virtue of promulgating the law on Human Rights Court of 2000 (Law No. 26/2000). The two laws had in fact adopted certain important principles and articles of the Rome Statute. Based on those Laws, the Ad hoc Human Rights Court had been established and was in the process of trying human rights violation cases and prosecuting the perpetrators, after having been investigated by the National Commission on Human Rights, the agency which had been established with the authority to conduct investigation on gross human rights violations as stipulated in the Law No. 26/2000. In carrying out of this development most of the judges and prosecutors have been under training programme in cooperation with foreign institutions.

Indonesia had been in its position and had the view that the principle of complementarity in relations to the Rome Statute should be retained.

23. The Delegate of the Federal Republic of Nigeria congratulated the world community on the establishment of the ICC which came into force on 1 July, 2002. He said, it was gratifying that 11 Member States of AALCO had ratified the Statute while 25 had signed it. He hoped that more Member States of AALCO would sign and ratify the Statute.

He noted that the establishment of such a Court was long overdue. It would put an end to the ad hoc tribunals set up spasmodically by only a group of countries that claimed to be acting on behalf of the whole world as and when they felt politically inclined to do so. Examples abound of such tribunals starting from the Nuremberg Tribunal to the one sitting at present in The Hague on crimes of aggression and crimes against humanity in Yogoslavia.

He cautioned that in the administration of criminal jurisdiction in the court to avoid confusion on acts which at present were not discernible as clear acts of crime against humanity or acts classified as acts of terrorism when in actual fact they are in pursuit of self determination. Finally, he stated that AALCO had a role to play in the election of members of the Court in ensuring that the interests of its member states were represented in the administration of criminal justice. It is only with that participation that a true and fair application of criminal justice could be assured.

24. Prof. Bruno Simma Member of the International Law Commission, referred to the concern of some countries as regards the provisions of the Rome Statute, pointed out that first of all jurisdiction of the Court was based on a complimentarity principle, namely if governments were not willing or unable to put the perpetrators on trial then the Court would exercise its jurisdiction. Concerning the politically motivated accusation against military accusations, he emphasized, that in the Statute there were a number of safeguards which prevented any politically motivated accusations. Therefore, military commanders or political leaders were not subjected to any unfounded acquisitions and there was no domain for being afraid of malicious frivilous persecution. Concerning the crime of terrorism, he pointed out that jurisdiction of the court could be triggered over that crime in conjunction with the crimes against humanity according to Article 7 of the Statute.

25. The Observer from Germany said the subject was very dear to his country and since the beginning had strong supportive ideas in that regard. They were more than happy to see the coming into force of the Rome Statute on 1 July 2002. He advocated the participation of as many states as possible with a view to receive universal acceptance of the Court. He offered to lend whole hearted support to those countries who were desirous of formulating their national legislations in line with the statute of the ICC and hoped that as many states as possible would ratify the Rome Statute.

26. The Delegate of Uganda said that her concern had been to draw up a follow up action plan with regard to countries who had an interest to sign the Rome Statute. She said her concern had actually

been answered by the Delegate of Germany, who volunteered to lend support to countries desiring to do so or while enacting their national legislations.

27. The President commended all the Member States for having lent their whole hearted support to the Rome Statute of the ICC and requested as many states as possible from the Asian-African region to ratify the Statute as soon as possible as this alone could take care of the interests of these regions and help in achieving global support for the ICC.

The meeting was thereafter adjourned.

Comments received from the Government of Malaysia

1. Malaysia notes that the Rome Statute of the ICC came into force on 1 July 2002 and that as at that date there were 73 States Parties to it. Malaysia also notes that the ICC is continuing its efforts to increase the number of ratifications/accessions in order to make the ICC a truly universal instrument of international justice.
2. Malaysia notes that the USA has renounced its signing of the Rome Statute and is spearheading efforts to guarantee immunity from the ICC for its troops seconded to UN, NATO and other similar missions.
3. Malaysia has undertaken a detailed study of the Rome Statute with a view to formulating a recommendation on accession to it pursuant to the Cabinet decision dated 14 October 1998. Consultations have been held with the relevant agencies, i.e. the Internal Security Department, the Ministry of Foreign Affairs, the Anti-Corruption Agency, the Royal Malaysia Police, the Ministry of Defence and the Prison Department to study the legal implications arising from the provision of the Rome Statute if Malaysia were to accede to the Statute since the date of signature expired on 31 December 2000.
4. Apart from the Ministry of Foreign Affairs, all the other agencies shared the view that it was not prudent for Malaysia to become a party to the Rome Statute at this time. This is because, although we do not completely oppose the establishment of the Rome Statute and the ICC, we have concerns in the following areas –
   - its effect on national sovereignty
   - its effect on the national legal system
   - its effect on the special position of the King and the Rulers of the States under the Federal Constitution.
5. Malaysia is of the opinion that it would be more prudent to first observe the implementation of the Rome Statute and the operations of the ICC.
6. Further, should Malaysia choose to allow the ICC to exercise its jurisdiction in respect of a particular offence pursuant to its powers under the Rome Statute, Malaysia is at liberty to invoke Article 4.2 of the Rome Statute which allows non-State Parties like Malaysia to sign a special agreement with the ICC for that specific purpose.
7. On the definition of “crimes of aggression”, Malaysia notes that this is one of the major tasks remaining for the last session of the Preparatory Commission (10^{th}) scheduled to be held from 1 to 12 July 2002. Though the Rome Statute is supposed to cover aggression, the statement has thus far defied a consensus definition.
   - Article 5.1 of the Rome Statute provides that the jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole. The ICC thus has jurisdiction in accordance with the Statute with respect to the crime of genocide, crimes against humanity, war crimes and the crime of aggression.
   - Article 5.2 of the Rome Statute stipulates that the ICC “Shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the ICC shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”.
   - Thus the ICC will not be able to exercise jurisdiction over crimes of aggression until the Statute is amended to define the crime and establish the conditions under which the ICC is to exercise jurisdiction.

- Article 121 of the Rome Statute deals with amendments and article 121.1 provides that no amendments will be considered until 7 years after the treaty's entry into force.
- Articles 121.3 and 121.4 of the Rome Statute further stipulate that the amendments must be approved by a two-thirds vote of the Assembly of States Parties and ratified by seven-eights of States Parties.

8. Malaysia has maintained the view that the definition should be specific so as not to give rise to contentious interpretation and difficulties in proving the elements of the offence. Malaysia is in favour of maintaining an illustrative or definitive list of acts of aggression as opposed to a generic approach to ensure certainty in the elements of the crime to be proven. Thus the current consolidated text of the proposed definition is not acceptable to Malaysia.

9. Malaysia notes that the idea of adopting the listing approach finds its precedent in General Assembly Resolution 3314 (XXIX) which adopts a definition of aggression.
   - Article 1 of the Resolution provides that aggression is "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations", as set out in the Definition
   - Article 3 of the Resolution sets out a list of acts, which regardless of a declaration of war, qualifies as an act of aggression –
   - the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof
   - bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State
   - the blockade of the ports or coasts of a State by the armed forces of another State
   - an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State
   - the use of armed forces of one state which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement
   - the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State
   - the sending by or on behalf of a State of armed bands, groups, irregulars by or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.
   - Article 4 of the Resolution serves as the "catch-all" clause by providing that the list in Article 3 is not exhaustive and vesting residuary power to determine other acts as constituting acts of aggression in the Security Council.

10. On the issue of when the ICC may exercise its jurisdiction over a crime of aggression, i.e. only upon a determination of such case by the Security Council or also upon an advisory opinion of the ICJ, Malaysia notes that the very need to refer the question of whether an act is or is not an act of aggression to the Security Council as a precondition of the exercise of the ICC's jurisdiction is objectionable as it undermines the independence of the ICC and obliges States Parties to accept the process. Thus the issue that remains is how the determination process should proceed where the Security Council does not make the requisite determination (that the act concerned is or is not an act of aggression), with or without invoking the 12-month delay period provided for in Article 16 of the Rome Statute. Malaysia agrees that a practical solution must be found on this matter. In this regard, Malaysia takes note of the proposal by Bosnia and Herzegovina, New Zealand and Romania.

11. On the issues of whether the ICC should be bound by the determinations of the Security Council or the ICJ or another body as to whether an act is or is not an act of aggression for

the purposes of allowing it to proceed with the case, Malaysia is of the opinion that the ICC should be allowed to proceed with the matter regardless of the determination by any third body.

General

12. It is also proposed that, depending on the views expressed by other AALCO Member States, Malaysia may consider supporting a further resolution that the Secretariat monitor the developments in this matter.