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**STATEMENT BY MR. S. THANARAJASINGAM  
CHARGE D'AFFAIRES / DEPUTY PERMANENT REPRESENTATIVE OF  
MALAYSIA ON AGENDA ITEM 142  
ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT AT THE SIXTH  
COMMITTEE  
OF THE 50TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY  
WEDNESDAY, 1 NOVEMBER 1995**

Mr. Chairman,

Let me at the outset express my appreciation to the Chairman of the Ad Hoc Working Committee.

2. Let me also, at this juncture, reiterate our support for the expeditious establishment of the International Criminal Court. In the process towards its establishment, certain issues of concern need to be addressed as well. These issues, in the main, deal with the principle of complementarity, inherent jurisdiction, role of Security Council, consent of States and the type of crimes.

Principle of Complementarity

3. As for the principle of complementarity, it is necessary to determine where and how to draw the line between the jurisdiction of the ICC and the jurisdiction of the national criminal justice system of the State in question. In this respect, my delegation supports the view that the jurisdiction of the States criminal justice system in question should be given precedence over that of the ICC especially so when the matter in question involves a national of that State.

Inherent Jurisdiction

4. On the issue of inherent jurisdiction of the ICC as embodied in Art 21(1)(a) of the Draft Statute, we believe the following aspects require to be resolved namely:

i) whether it is consistent with the principle of national sovereignty as enshrined in Art 21 of the UN Charter;

ii) whether it conforms with the principle of complementarity.

iii) whether it is compatible with the principle requiring the consent of States to the jurisdiction of the ICC as embodied in Art 22.

#### Role of the Security Council

5. In regard to Art 23 dealing with the Security Council, my delegation supports its exclusion as this article undermines the judicial impartiality of the ICC embodied in Art 10(1). We note that Art 23 seeks to confer greater powers on the Security Council than that provided under the Charter of the UN. The role written in for a politicised Security Council is incompatible vis-a-vis that of a judicial institution like the ICC. In addition, the permanent members through their veto powers can in any case render Art. 23 ineffective by blocking the referral of any case to it.

#### Consent of States to the Exercise of Jurisdiction by the ICC

6. My delegation can support Art 21(1)(b) and 22, relating to the consent of States to the exercise of jurisdiction by the ICC. At the same time, further consideration should be given as to whether the consent requirement should be extended to additional states which would have a significant interest in the case, such as the state of nationality of the victim and of the accused respectively and the target state of the crime. The consent of the state of nationality of the accused may be important in cases where its constitution or fundamental laws prohibit extradition of its nationals.

#### Question of Crimes

7. With regard to the crimes which the ICC has jurisdiction, it is to be noted that Art 20 does not state the constituent element of each crime which in our view should be specified

to avoid any ambiguity and to enable the accused to prepare his defence.

8. In regard to the crime of genocide in Art 20(a), we support the meaning as contained in the Genocide Convention.

9. We acknowledge that the precise legal meaning of aggression may be difficult to ascertain. Art 20(c) relating to "serious violations of the law and customs applicable in armed conflict" needs clarification as the phrase "serious violations" is relative and may be open to more than one interpretation. While we express our concern that "crimes against humanity" may not be capable of precise formulation, we wish to see this crime being limited to only the most serious abuses of human rights such as those which occurred recently in Bosnia and Rwanda. Serious consideration has to be given in regard to its applicability in times of peace when the legal and judicial institutions of a state still function. In regard to Art 20(e), my delegation's view is that such a provision should not indirectly bind states which are not yet parties to the particular treaties enumerated in the Annex. Such crimes listed in the Annex may have been adequately provided for by the states national law and may be more effectively prosecuted and punished thereunder.

"Where do we go from here"

10. Mr. Chairman, the question now being asked is "where do we go from here?" The Malaysian delegation believes that concerns and reservations expressed must be addressed to ensure that the ICC, once established, should be as effective and as widely acceptable as possible. Admittedly many reservations and concerns, though identified, were neither adequately discussed, nor resolved.

11. At the last meeting of the Ad Hoc Committee, my delegation had expressed the view that the Ad Hoc Committee should be allowed to complete the task entrusted to it by the General Assembly. Be that as it may, we do not wish to stand in the way of forward movement, if this Committee proceeds with the establishment of a preparatory committee open to all State Members to further discuss the major substantive and administrative issues arising out of the draft Statute as prepared by the International Law Commission and to draft texts with a view to preparing a consolidated text of a convention for an International Criminal Court.

12. The Malaysian delegation recognises that the momentum to establish the ICC must be maintained. Although the proposed preparatory committee has to complete its task expeditiously, it may neither be advisable nor realistic to stipulate a rigid time frame for the proposed preparatory committee to complete its work. As such we would propose that the preparatory committee should be given a certain latitude of flexibility on its working schedule so as to ensure that as many problems and reservations regarding the establishment of the ICC are resolved. At the same time, we would wish to see the preparatory committee submit its report to the General Assembly at the beginning of the 51 Session.