At its 51st Session the General Assembly also asked Stated Parties to the Convention to consider making a written declaration choosing from the means set out in Article 287 of the Convention for the Settlement of Disputes concerning the interpretation or application of the Convention.

5. The Inter-Governmental Conference To Adopt a Global Programme of a Action For The Protection of The Marine Environment From Land Based Activities

Representatives of 109 States, including 28 Member States of the AALCC, 2 UN bodies and Secretariat units viz UNDP and UNEP, 9 Specialized Agencies and other organizations of the UN system viz. FAO, GEF, IAEA, IMO; UNESCO/ IOC, UNIDO., WHO; WMO and the World Bank attended the Inter-governmental Conference to Adopt a Global Programme of Action for the Protection of the Marine Environment from Land Based Activities, held in Washington from 23 October to 3 November 1995.

The Conference was convened by the Executive Director of the UNEP pursuant to the request made in Chapter 17 of Agenda 21 for the purpose of adopting a programme of action for the protection of the marine environment from land based activities. It adopted the Washington Declaration on the Protection of the Marine Environment from Land Based Activities which affirmed the need to preserve the marine environment for the present and future generations and reaffirmed the relevant provisions of Chapters 17, 33 and 34 of Agenda 21 as well as the Rio Declaration on Environment and Development.

Recognizing the interdependence of human populations and the coastal and marine environment,and the growing and serious threat from land based activities to both human well being and the integrity of coastal and marine ecosystems and biodiversity the Conference adopted the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities.

The Washington Declaration [25] manifests the intention of the Participants to:

(i) promote access to cleaner technologies, knowledge and expertise to address land based activities that degrade marine environment, in particular for countries in need of assistance;

(ii) promote action to deal with the consequences of sea based activities such as shipping, off shore activities and ocean dumping which requires national and/or regional actions on land, including establishing adequate reception sand recycling facilities;[26]

(iii) give priority to the treatment and management of waste water and industrial effluent, as part of the overall management of water resources, especially through the installation of environmentally and economically appropriate sewage systems, including studying mechanisms to channel additional resources for this purpose for countries in need of assistance;

(iv) request the Executive Director of the UNEP,in close partnership with the WHO, Habitat, UNDP and other relevant organizations to prepare proposals for a plan to address the global nature of the problems of inadequate management and treatment of waste water and its consequences for human health and the environment, and to promote the transfer of appropriate and affordable technology drawn from the best available techniques; and

(v) develop in accordance with the provisions of the Global Programme of Action, a global legally binding instrument for the reduction and/or elimination of emissions, discharges and where appropriate, the elimination of the manufacture and use of the persistent organic pollutants.

[25] A/51/116, dated 16 April, 1996.

[26] Ibid, paragraph 14 at p. 19.

The Declaration elaborates in this regard that the nature of the obligations undertaken must be developed recognizing the special circumstances of countries in need of assistance and that particular attention should be devoted to the potential need for the continued use of certain persistent organic pollutants to safeguard human health, sustain food production and to alleviate poverty in the absence of alternatives and the difficulty of acquiring substitutes and transfer of technology for the development and/or production of those substitutes.

The Washington Declaration also envisaged elaborating the steps relating to institutional follow-up,including the clearing house mechanism in a resolution of the UN General Assembly at its 51 session.

6. Global Programme Of Action For The Protection Of The Marine Environment From Land Based Activities.

Global Programme Of Action For The Protection Of The Marine Environment From Land Based Activities (hereinafter referred to as the GPA) adopted by the Washington Conference comprises 5 parts viz.(i) introduction; and (ii) Action at the National Regional Cooperation ;(iv)International Cooperation;and (v) Recommended Approaches by Source Category. This section of the brief of documents furnishes an overview of the GPA.

The first part of the GPA viz. "introduction" addresses itself to such issues as (a) the need for action; (b) aims of the GPA, and (c) the legal and institutional framework. It describes the GPA as a "source of conceptual and practical guidance to be drawn upon by national and/or regional authorities in devising and implementing sustained action to prevent reduce,control and/or eliminate marine degradation from land based activities." It emphasizes that the effective implementation of the GPA is a crucial and essential step forward in the protection of the marine environment and will provide the objectives and goals of sustainable development.

The GPA reflects that States face an increasing number of commitments flowing from Agenda 21 and related Conventions the implementation of which would require new approaches by,and new

forms of collaboration among, Governments, Organizations and institutions with responsibilities and expertise relevant to marine and coastal areas at all levels - national, regional and global - including the promotion of innovative financial mechanism to generate the needed resources.

The second part of the GPA addressed to action, objectives and finally the actions. The six actions recommended are

(i) identification and assessment of problems;
(ii) establishment of priorities;
(iii) setting management objectives for priority problems;
(iv) identification, evaluation and selection of strategies and measures;
(v) criteria for evaluating the effectiveness strategies and measures; and
(vi) programme support elements.

Part three of the GPA deals with Regional Cooperation and apart from spelling out the basis for action and the objectives enumerates two vital elements thereof viz. (a) participation in regional and sub-regional arrangements and (b) effective functioning of regional and sub-regional arrangements.

The GPA emphasizes that regional and sub-regional cooperation and arrangement are crucial for successful actions to protect the marine environment from land based activities particularly where a number of countries have coasts in the same marine and coastal area, most notably in enclosed and Semi-enclosed seas. Regional cooperation allows for accurate identification and assessment of the problems in particular geographic areas and more appropriate establishment of priorities in these areas. It also strengthens regional and national capacity building and offers an important avenue for hannonizing and adjusting measures to fit the particular environmental and socioeconomic circumstances.

Part Four recognizes International Cooperation as being important for the successful and cost-effective implementation of the GPA and forms its central role in enhancing capacity building, technology

transfer and cooperation as well as financial support. Apart from the fact that effective implementation of the GPA would require efficient support from appropriate international agencies, international cooperation is necessary to ensure regular review of the implementation of the programme and its further development and adjustment. Accordingly, the four major activities enumerated in this part relate to (i) capacity building., (ii) mobilization of financial resources." (iii) international Institutional Framework; and (iv) Additional areas of international arrangements.

The final part of the GPA recommends approaches by pollutant source category. The pollutants identified are (a) sewage; (h) persistent organic pollutants (POPS); (c) Radio active substances; (d) Heavy metals; (e) Oils (Hydrocarbons). (f) Nutrients, sedicutation mobilization; (h) litter; and (i) physical alterations and destruction of habitats. This part of theGPA provides guidance as to the actions that States need to consider at national, regional and global levels. in accordance with their national capacities, priorities and available resources, and with the cooperation of the UN and other relevant organizations as well as with the international cooperation for building capacities and mobilizing resources identified in the preceding part on "International Cooperation.

Finally, it may be stated in this regard that the Secretary General of the United Nations has in his report to the General Assembly pointed out that while this GPA has no binding character, it rests on a firm international leqal basis, in particular, the UN Convention on the Law of the Sea and is expected to contribute substantially to the progressive development of international law, including the Law of the Sea.

7. Review of The Implementation of Chapter 17 of Agenda 21

Chapter 17 of Agenda 21 adopted by the United Nations Conference on Environment and Development (UNCED) rests on the foundation furnished by the Convention on the Law of the Sea. The Commission on Sustainable Development (CSD) at its fourth session in 1996 reviewed Chapter 17 of Agenda 21. The Commission welcomed the important advances made in the area since 1992 and made the following recommendations:

The establishment of institutional arrangements for the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and for periodic intergovernmental review. (b) The introduction of periodic, inter- governmental review of all aspects of the marine environment and its related issues (c) Reporting to the Secretary-General on the implementation of international fishery instruments and on "progress made in improving the sustainability of fisheries" (d) A review of the ACC Subcommittee with a view to improving its status and effectiveness, including the need for closer inter-agency links (by the Secretary-General). (c) A review of the Joint Group of Experts on the Scientific Aspects of marine Pollution (GESAMP) with a view to improving its effectiveness and' comprehensiveness while maintaining its status as a source of agreed, independent scientific advice , and (t) Ongoing review of the need for additional measures to address the issue of degradation of the marine environment from offshore oil and gas development.

The final decisions on the more significant aspects of these recommendations are expected to be taken after the Special Session of the General Assembly on Sustainable Development to be held in June 1997.

8. Role of International Organizations

It may be recalled that the General Assembly at its 49th session had invited all the competent international organizations to assess the implications of the entry into force of the Convention in their respective fields of competence and to identify additional measures that may need to be taken as a consequence of the entry into force of the Convention with a view to ensuring a uniform, consistent and coordinated approach to the implementation of the provisions of the Convention throughout the United Nations system. It requested the Secretary General, in that regard, to prepare a comprehensive report on the impact of the entry into force of the Convention on related existing or proposed instruments and programmes throughout the United Nations system and to submit a report thereon to the General Assembly at its 51 st session.

General Assembly Resolution 49\28 had also invited the competent international organizations, as well as developmental and funding institutions, to take specific account in their programmes and activities of the impact of the entry into force of the Convention on the needs of States, especially developing States, for technical and financial assistance and to support sub-regional or,regional initiatives aimed at cooperation in the effective implementation of the Convention.

It may be stated that the entry into force of the Convention has far reaching implications for international organizations involved in marine affairs in as much as the Convention contains numerous references to "competent international organizations" and the specific functions and tasks to be performed by them. It may be recalled, however, that with the exception of a few instances such competent organizations have never been formally identified in a systematic manner ' and this has caused ambiguities in their identification as well as overlapping of their respective mandates.

In order to avoid potential confusion regarding which organization or organizations are primarily responsible for the activities set forth in the specific provisions of the Convention the Division, for Ocean Affairs and the Law of the Sea of the office of legal Affairs, acting as the Secretariat responsible for the United nations Convention on the law of the Sea, has now prepared a table to assist States and to contribute to a better understanding of the implications of the convention for the organizations and bodies both within the outside the UN system dealing with marine affairs within their respective fields of competence.

The table lists 12 subjects[27] in the Sequence in which they appear in the convention, together with the names of 18 "competent international

[27] The subjects listed are (i) Territorial Sea and Contiguous zone; (ii) Straits used for International Navigation; (iii) Archipelagic States, (iv) Exclusive Economic Zone., (v) Continental Shelf, (vi) High Seas, (vii) Enclosed or Semi Enclosed seas; (viii) The Area (ix) Protection and Preservation of the Marine Environment; (x) Marine Scientific Research; (xi) Development and Transfer of Marine Technology; and (xii) Settlement of Disputes

organizations" in such subject areas. The Organization identified are the FAO, the IAEA., ICAO, IHO, ILO, IMO. IOC, ISBA, IWC, UNCTAD, UNDP, UNEP, UNESCO, UNIDO., WHO, WIPO, WMO and the WTO. The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs has, however, clearly indicated that the table is indicative and not authoritative. It has clarified that some organizations may become "competent" in the future with respect to certain provisions of the Convention, while others not formally named but considered to be competent in an advisory or another capacity may cooperate with the organiztions listed.[28]

9. Emerging Issues

The goal of universal acceptance has almost been achieved and the Convention's contribution to the speedy development of international law relating to the seas can be expected to be apparent. However there are some emerging issues.

Article 319 (2) (a), of the Law of the Sea Convention requires the Secretary-General of the United Nations to report to all States Parties, the International Seabed Authority and competent international organizations on issues of a general nature that have arisen with respect to the Convention. Such reports are in accordance with article 319 (3), to be transmitted also to those States which are listed in article 156 as observers of the Authority. The Secretary General has in a report, drawn the attention of States Parties, the Authority and competent international organizations, to three issues which in his opinion have arisen and which warrant their consideration.[29] The issues identified are: (i) Protection of the underwater cultural Heritage; (ii) Marine and Coastal Biodiversity; and (iii) Rules of origin.

As regards the matter of the protection of underwater cultural heritage the Secretary General has invited attention to the work of

[28] See Law of the Sea Bulletin No.31 UN Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, New York, 1996 p.79 para 3.

[29] Report of the Secretary General under Article 319 of the United Nations Convention on the Law of the Sea: SPLOS\6

UNESCO on the possible drafting of an international standard-setting instrument for the protection of the underwater cultural heritage. It was pointed out that the UNESCO General Conference called upon UNESCO to consult with the United Nations office on law of the sea matters, as well as with the IMO on such aspects as, salvage, and to organize a meeting of experts. Comments will be invited on the findings of the experts, and a final report submitted to the General Conference at its twenty ninth session in 1997, for it "to determine whether it is desirable for the matter to be dealt with on an international basis and on the method which should be adopted for this, purpose"

With regard to coastal biodiversity the Secretary General of the United Nations has drawn the attention of Member States to recent developments in the field of marine and coastal biodiversity and to the implications thereof for the Law of the Sea. It has been pointed in this regard that the Second Meeting of the Conference of Parties to the Convention of Biological Diversity declared a new global consensus on the importance of marine and coastal biological diversity[38] Conference of Parties has in its resolution requested the secretariat of the Convention on Biological Diversity, in consultation with the Division for Ocean Affairs and the Law of the Sea of the United Nations, "to undertake a study of the relationship between the Convention on Biological Diversity and the United nations Convention on the Law of the Sea with regard to the conservation and sustainable use of genetic resources on the deep seabed, with a view to enabling the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to address at future meetings, as appropriate, the scientific, technical and technological issues relating to bio-prospecting of genetic resources on the deep seabed"

The topic touches not only on the protection and preservation of the marine environment, including that of the international seabed area, but also on such other matters as the application of the consent regime for marine scientific research, the regime for protected areas in the exclusive economic zone, the duties of conservation and management of

[38]Resolution II\10 on the "Conservation and Sustainable Use of Marine and Coastal Biological Diversity"

the living resources of the high seas, and the sustainable development of living marine resources generally. The specific issue of access points to the need for the rational and orderly development of activities relating to the utilization of genetic resources derived from the deep seabed area beyond the limits of national, jurisdiction. In addition to the questions that may be raised concerning applicable or relevant international law and the possible development of generally accepted international rules and regulations, a number of concerns exist as to the appropriate intergovernmental forum for consideration of the issues now raised, as well as other institutional issues, including coordination among treaty bodies and the competent international organizations.

Finally, the entry into force of the Convention has brought new attention to all areas affected, or potentially affected, by the Law of the Sea. Attention is now focussed by the World Trade Organization (WTO) and the World Customs Organzation on the possible need to formulate special provisions as to "rules of origin" to deal with products (both living and non-living) originating or derived from the various maritime zones. In addition to clarifying the concepts and the jurisdictional aspects of the territorial sea, the high seas, the continental shelf, the exclusive economic zone and the international seabed area, the Division for Ocean Affairs and the Law of the Sea has brought a broad range of issues to the attention of the Technical Committee of the World Customs Organizations and the WTO Committee on Rules of Origin, which are charged with further legal development under the Agreement on Rules of Origin.

10. Comments and Observations

The International Community has, since the entry into force of the Law of the Sea Convention in November 1994 devoted its attention to the establishment of the institutions that instrument had envisaged. The establishment of the new treaty system of ocean institutions is almost complete.

With its entry into force and with new prospects for its universal acceptance the Convention on the Law of the Sea is attracting renewed and widespread interest among governments and intergovernmental and non-governmental organizations. The Convention is being increasingly

recognized as providing the mechanism for addressing all ocean related issues, and by clearly defining the terms of international cooperation serves to enhance coordination and promote coherence of action. In the words of the Secretary-General of the United Nations "the Convention provides a universal legal framework for rationally managing marine resources and an agreed set of principles to guide consideration of the numerous issues and challenges that will continue to arise from navigation and over flight to resource exploration and exploitation conservation and pollution and fishing and shipping, the Convention provides a focal point for international deliberation and for action.

The General Assembly has repeatedly called on States to harmonize their national legislation with the provisions of the Convention and ensure their consistent application. A persistent inconsistency with the Convention are the claims of 15 State [31] for a territorial sea extending beyond 12 miles. Another area in which there would appear to be a widening gap is legislation on the continental shelf: of the 35 States that continue to claim a shelf based on the criteria contained in the 1958 Convention on the Continental Shelf (200-metre depth and exploitability), 21 are Parties to the 1982 Convention on the Law of the Sea.

Among the other areas which require harmonization with the Convention is the nature of the 'Jurisdiction" provided in article 56 with respect to the exclusive economic zone, as concerns marine scientific research, protection and preservation of the marine environment, and offshore structures and installations. The provision does not allow for "exclusive jurisdiction" in these areas, and yet much legislation does, particularly with respect to marine scientific research.

[31] Angola, Benin, Cameroon, Congo, Ecuador, El Salvador, Liberia, Nicaragua, Nigeria, Panama, Peru, Sierra Leone, Somalia, Syrian Arab Republic and Togo.

III. Extra - Territorial Application of National Legislation: Sanctions Imposed against Third Parties.

(i) Introduction

The item "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed on the provisional agenda of the Thirty Sixth Session of the Asian African Legal Consultative Committee following upon a reference made by the Government of the Islamic Republic of Iran in accordance with the Article 4 (c) of the Statutes and sub- Rule 2 of Rule II of the Statutory Rules of the Committee. In an Explanatory Note the full text of which is given below the Government of the Islamic Republic of Iran enumerated four major reasons for the inclusion of this item on the agenda of the AALCC. The reasons so identified and listed were: (i) that the limits of the exception to principle of extra-territorial jurisdiction are not well established; (ii)that the practice of States indicates that they oppose the extra-territorial application of National Legislation; (iii) that extra-territorial measures infringe various principles of international law; and (iv) that extra-territorial measures, on the one hand, affect trade and economic cooperation between developing countries and interrupt cooperation among countries, on the other.

Explanatory Note of the Government of the Islamic Republic of Iran.

In the Name of God the Compassionate the Merciful

Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties

I. General Observations

1 The principles of Sovereign Equality and Territorial Integrity of States are fundamental principles of international law, that form the

cornerstones of the contemporary international relations. Respect for these principles has been incorporated in a number of international instruments including, *inter-alia*, the Charter of the United Nations, Manila Declaration on the Peaceful Settlement of International Disputes and the Declaration on Principles of International Law concerning Friendly Relations.

2. Sovereignty, primarily is territorial and 'includes certain powers to be exercised within a particular territory unimpeded by any interference from outside." [1] As it was declared in the North Atlantic Coast Fisheries case:

> One of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is coterminous with the territory.[2]

3. Thus, in international law, territorial sovereignty continues to remain a right 'with which almost all international relations are bound up."[3]. As the International Court of Justice has observed "territorial sovereignty is an essential foundation of international relations"[4] It is obvious that the territorial sovereignty of each State imposes corresponding obligation of nonintervention and non-interference on the part of other States.

4. It must be emphasized however, that in contemporary international relations, states do not enjoy absolute sovereignty. The old theory of absolute sovereignty fitted in very well with the actual conditions of international society at that time. In place of an "anarchy of sovereignties", there exists a society of interdependent states, bound by international law. They are not only bound by freely accepted treaty obligations, but also by generally accepted principles of customary

[1] Anand, R.P., "Sovereignty of States in an Interdependent World", Recueil Des Cours, Collected Courses of Hague Academiy of International Law, 1986, p.27.

[2] North Atlantic Coast Fisheries case (Great Britain v.United States), RIAA, Vol.2, p.839.

[3] Ibid.p.839.

[4] Corfu Channel case, ICJ Reports 1949, p.35.

international law. It has to be stated further, that sovereignty creates international law, and that law recognizes sovereignty as its foundation and as a basic principle of law among nations. To put it bluntly, the law of nations is not enacted by some higher authority and superimposed upon states; it arises directly from their consent. It is a law of not subordination but of co-ordination. As the Permanent Court of International Justice observed in LOTUS case:

> International law governs relations between independent states. The rules of law binding therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate relations between those coexisting independent communities or with a view to the achieving of common aims.[5]

5. While the will of parties creates law between them, it does not depend on the discretionary will of the state whether it should or should not respect the principles of international law.

6. It is universally admitted that in the case of a conflict between municipal law and international law, the latter prevails over the former. The Permanent Court of international Justice observed in the Treatment of Polish Nationals in the Danzig case:

> According to generally accepted principles, a state cannot rely, as against another state, on the provisions of the latter's constitution, but only on international law and international obligation duly accepted ... and conversely, a state cannot adduce as against another state, its own constitution with a view to evading obligations incumbent upon it under international law[6] or treaties in force.

[5] PCIJ, Series A, No. 10, p. 18

[6] PCIJ, Series A/B, No.44, p.24

II. Legal Status of Extraterritorial Application of National Legislation

7. The doctrine concerning extra-territorial application of national legislation is not well settled. There are no uniform or universally settled principles in this regard. The basic principle, however, is that all national legislation are, *prima facie*, territorial in character. While the Permanent Court in the Lotus Case, recognized this principle, it also held that several states did approve extra-territorial effect being given to their national laws and that such a policy and practice were not prohibited by international law.[7]

8. There are other principles, however, extending the jurisdiction of states beyond their boundaries. These are *inter alia*: nationality principle, under which a state may prescribe laws governing the conduct of its citizens irrespective of where they reside; passive personality principle, is invoked to exercise the jurisdiction of the state of a victim over crimes committed outside the territory of that state; the effect principle, provided the basis for some countries to extend the reach of their laws over activities affecting their interests (including the interests of their nationals);and finally, universal jurisdiction , may be invoked to prosecute the offenses that recognized by the community of nations, as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, and war crimes. These principles are indeed exceptions to the basic principle ofjurisdiction, the principle of territoriality.

9. Although the doctrine concerning extra-territorial application of national legislation, as was illustrated, is not well settled, in some cases public international law provides for detailed rules concerning the exercise of extra-territorial jurisdiction. For instance the Vienna Conventions on Consular and Diplomatic relations provide detailed rules concerning the application of laws of sending states in receiving states of diplomatic and consular missions. Apart from those cases that are

[7] The Lotus case. PCIJ (1927), p.25

regulated by public international law , a state may at bilateral level, allow another state to exercise jurisdiction in its territory in specific areas such as customs matters. International law, however, does not provide a complete set of provisions concerning the limits of extra-territorial jurisdiction.

10. Lack of a comprehensive set of rules and regulations at the international level cannot and should not be construed to provide a leeway for those states that wish to extend their jurisdiction beyond their boundaries to the detriment of other sovereign and independent states. Based on the principles of Sovereign Equality of States and Exclusive Sovereignty of States over their national territories, extra-territorial efifects of administrative, judicial , and legislative acts of states have to be tested as to whether these fundamental principles are violated.

III. National Legislation with Extra-territorial Effect Violates Principles of International Law.

11. There have been instances that certain legislation enacted by a given state extended the jurisdiction of that state beyond its boundaries contrary to the norms and principles of international law. This type of conduct of states has been objected and continue to be opposed by other states of the international community.

a) Impermissibility of Unilateral Imposition of Sanctions Under International Law

12. The imposition of sanctions is permissible only by the United Nations under the Chapter seven of the Charter. Article 41 of the United Nations Charter provides for including *inter alia* "complete or partial interruption of economic relations" in order to give effect to the Security Council decisions with respect to maintaining or restoiing international peace and security, without using the term "sanctions" to designate such measures. Sanctions can only be imposed by the Security Council against a law-breaking state after the determination of the existence of