threat to peace, breach of peace or act of aggression"[8]. The Security Council has followed this procedure over the past half a century. Although the sanctions policies of the United Nations remain under criticisms[9] the powers of the United Nations to enforce sanctions and the obligation of the member states to abide by such decisions continue to remain part and parcel of contemporary international law.

13. Whereas the international community has empowered the United Nations only to adopt coercive economic measures on specific conditions where there exists threat to peace or breach of peace, actions of states to unilaterally exert coercive economic measures against other states has no foundation in international law. Various resolutions adopted by the United Nations organs affirm this point.

14. The General Assembly has repeatedly denounced economic coercion as a means of achieving political goals. Among these the resolution entitled "Economic Measures as a means of Political and Economic Coercion against developing countries" has strongly urged the industrial nations to reject the use of their superior position as a means of applying economic pressure "with the purpose of inducing changes in the economic, political, commercial and social policies of other countries."[10]

15. Furthermore, General Assembly Resolutions 47/19 and 50\10, while expressing concern over "application by member states of laws and regulations whose extra-territorial effects affect the sovereignty

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[8] See Article 39 of the Charter

[9] It has been argued that by imposing sanctions the Security Council intends to discipline the government of a target state, whereas the population of that state suffer as a result of these measures. Furthermore, coercive economic measures sometimes lead to new conflicts and therefore prove to be counterproductive. Applying double standard in inflicting embargo is another point that concerns many states. The adverse effects of sanctions on third parties is another flaw which has been on the agenda of the United Nations for years.
See Hans Kochler, the United Nations Sanctions Policy and International Law, Just World Trust, 1995, pp.67.

[10] G.A. Resolution 210 of December 1991.

of other states and the legitimate interests of entities or persons under their jurisdiction, and the freedom of trade and navigation,[11] reiterate its call to all States to refrain from promulgating and applying such laws and measures in conformity with their obligations under the Charter of the United Nations and international law which, *inter alia* reaffirm the freedom of trade and navigation.[12] These resolutions call upon States to revoke such laws:

> Urges States which have such laws or measures to take the necessary steps to repeal or invalidate them as soon as possible in accordance with their legal regimes.[13]

b) Unilateral Sanctions Infringe Upon the Right to Development

16. As the Vienna Declaration and Programme of Action of June 25,1993 has delineated, the Right to Development has become a "universal and inalienable right and an integral part of fundamental human rights." The Declaration on right to development describes this principle as "an inalienable right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized."[14]

17. The United Nations Conference on Trade and Development condemned the application of economic coercion, especially when it is used against developing countries. That resolution also signified that "such measures do not help to create the climate of peace needed for development". A resolution entitled Rejection of Coercive Economic Measures stipulates in part:

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[11] General Assembly Resolution 47/19, dated 24 November 1992.

[12] General Assembly Resolution A/50/L. 10 dated November 2, 1995.

[13] Ibid. paragraph 2. General Assembly Resolution A/50/L. 10 repeats the call for invalidation of such laws.

[14] General Assembly Resolution XLI of Decemher 4, 1984.

all developed countries shall refrain from applying trade restriction, blockade, embargoes and other economic sanctions incompatible with the provisions of the Charter of the United Nations.... against developing countries as a form of political coercion which affects their economic, political and social development.[15]

c) Imposition of Sanctions Violate the Principle of Non-intervention

18. The principle of non-intervention is backed by established and substantial state practice, indicating the existence of *opinio juris* of states. The principle of non-intervention is embodied in Article 8 of the Montevideo Convention on the Rights and Duties of States 1933 [16]; Article 15 of the Charter of the Organization of American States 1948[17]; Article 8 of the Charter of the League of Arab States 1945[18]; and Article 3 of the Charter of the Organization of African Unity 1963[19].

19. Moreover, the principle has been presented as a corollary of the principle of sovereign equality of states. A particular instance of this is General Assembly Resolution 2625(XXV), the Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States.

20. The Principle has since been reflected in numerous declarations adopted by international organizations and conferences, e.g. General Assembly Resolution 2131 (XX) 1965, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty.

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[15] UNCTAD Resolution 152 (IV) dated July 2, 1983.

[16] UNTS, 165, p. 19

[17] UNTS, 119, p.49

[18] UNTS, 70, p.237

[19] Peaslee, "International Governmental Organizations", 3rd revised edition, 1974, p. 1165

d) Content of Non-intervention Principle

21. As regards the exact content of the principle so accepted, treaties, Resolutions of the General Assembly and the proceedings of the International Court of Justice provide ample evidence that it encompasses the rejection of intervention and interference in both internal and external affairs of other states.

22. The American states have provided a specific criterion concerning the non-intervention principle in Article 18 of the "OAS limited to relations between state-members of OAS:

> No State or group of States has the right to intervene, directly or indirectly for any reason whatever, in the internal or external affairs *of any other state*. The foregoing principle prohibits not only armed forces but also other forms of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements[20](emphasis added)

23. The Final Act of the Conference on Security and Co-operation in Europe, which embraces the duty of non-intervention, clearly stipulates that it includes the prohibition of intervention both in internal and external affairs of other states. Article IV of that Act provides in part:

> The Participating States will refrain from intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another Participating State, regardless of their mutual relations.[21]

24. The international Court of Justice considered the content of this principle in the Case Concerning Military and Para military Activities in and Against Nicaragua, and ruled in the following terms:

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[20] UNTS, 119,P.48

[21] Conference on Security and Co-operation in Europe, Final Act, August 1, 1975

> [I]n the view of the generally accepted formulations, the principle forbids all states or groups of states to intervene directly or indirectly in internal or external affairs of other states. A prohibited intervention must accordingly be one bearing on matters in which each state is permitted by the principle of state sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones.[22]

25. As illustrated above, the non-intervention principle prohibits intervention and interference of states in the internal and external affairs of other states. Consequently, imposition of secondary sanctions, which interrupts economic co-operation and trade relations of target states with third parties, clearly violates the universally accepted principle of Non-intervention in the internal and external affairs of other states.

e) States Practice Opposes Imposition of Unilateral Sanctions

26. The strong opposition demonstrated by various governments around the world has proved that the International Community stands firm to reject the extra-territorial application of domestic legislation.

27. It has been the policy of the European Community and continues to be the policy of the European Union to oppose the national legislation with extra-territorial effects.

28. The 1982 Amendments to the US Export Administration Regulation[23] which, expanded the US control on the export and

[22] ICJ. reports, Case Concerning Military and Para-inilitary Activities In and Against Nicaragua, 1986, p. 108.

[23] On June 22,1982, the Department of Commerce at the direction of President Reagan and pursuant to Section 6 of the Export Administration Act amended Sections 376.12, 379.8 of the Export Administration Regulations. These amendments amounted to an expansion of the existing US controls on the export and re-export of goods and technical 'data relating to oil and gas exploration, exploitation, transmission and refinement.

re-export of goods and technical data to USSR was objected by the European Commission. The European Commission called these amendments "unacceptable under international law because of their extra-territorial effects.[24] The Amendment sought to "regulate companies not of U. S. nationality in respect of their conduct outside the United States.[25] The European Commission found that the Amendments of June 22,1982 run counter to the two generally accepted bases of jurisdiction in international law, the territoriality and the nationality principles.[26]

29. The European Union strongly opposed the enactment of such legislation by the United States calling the extra-territorial application of U. S. jurisdiction baseless in international law. In a letter addressed to Senator Robert Dole on December 7, 1995, and in a separate letter addressed to the State Department on December 8, 1995, the European Union made a str ong and unequivocal protest against the extraterritorial application of the United States legislation, which imposes sanctions on foreign persons, who export, transfer, or release to Iran, any petroleum-related goods or technology. These letters of protest are almost identical and state *inter alia*:

> However, as stated in the letter of 3 May, the European Community maintains its strong and unequivocal opposition to the extra-territorial application of U. S. jurisdiction which would restrict EC trade with third countries as a matter of law and policy and takes the position that the U.S. has no basis on inteniational law to claim the right to impose sanctions on any foreign person or foreign-owned company who supplies Iran with oil development equipment. This applies particularly to sanctions against trade in products that have no connection with proliferation-related technology.[27]

[24] See European Commission: Comments on the US Regulation Concerning Trade with the USSR, ILM, Vol. XXI, No.4, July 1982, p.893.

[25] Ibid.

[26] Ibid.

[27] The text of the letter is reprinted in, "Inside U.S. Trade", December 15,1995.

30. Furthermore, in a letter dated January 25,1996, the European Presidency reiterated their "strong and unequivocal opposition to the extraterritorial application of US Jurisdiction."[28] The European Commission warned the chairman of the Finance Committee of the United States Senate that the European Commission will be obliged to protect European commercial interests through all available multilateral fora.[29]

31. Speaking on behalf of the European Union before the 51st Session of the General Assembly, the Permanent Representative of Ireland stated:

> the European Union wishes to reiterate its rejection of attempts to apply national legislation on an extra-territorial basis. We have always rejected attempts by the United States to coerce other countries into complying with the commercial measures it has adopted unilaterally against Cuba. For this reason, we continue to oppose United States legislation which provides for the application of United States law to companies and individuals outside the jurisdiction of the United States, including provisions designed to discourage third country companies from trading with, or investing in, Cuba. We cannot accept that the United States may unilaterally determine or restrict the European Union's economic and commercial relations with any other State. Measures of this type violate the general principles of international law and the sovereignty of independent states.[30]

32. The Non-Aligned Movement, in several declarations, including the one adopted after the signature of D'Amato law, rejected extra-territorial application of domestic law as illegal and unacceptable.[31] The Ministerial meeting of the Group of 77 in New York in October

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[28] See letter dated January 1996, addressed to Senator Robert Dole on behalf of the European Presidency.

[29] See letter dated April 18,1996 addressed by European Commission to the Chairman of the Finance Committee of the US Senate.

[30] Explanation of Vote on behalf of the European Union, by Ambassador John H.F. Campbell, the Permanent Representative of Ireland to the United Nations, delivered on November 12, 1996.

[31] NOAL/0733/F of 23 August 1996.

1996, and the Preparatory Meeting for the 24th OIC Ministerial Conference[32] adopted similar positions. Finally the General Assembly, in its Resolution A/51/23, called for the immediate repeal of unilateral extra-territorial measures.

f) Opinio Juris Rejects Unilateral Imposition of Sanctions

33. Many Western scholars have questioned the legality of unilateral sanctions. For instance, in the wake of the "Arab Oil embargo", a number of articles published in American legal periodicals indicating that the use of economic coercion constitutes a violation of international law as envisioned by the Untied Nations Charter.

34. D.W.Bowett argued in 1972 that economic measures could be characterized as illegal where specific treaty commitments are breached or a general principle of international law, and in particular the Non-intervention principle, is violated.[33] He later attempted to establish criteria to distinguish the permissible economic conduct of states from impermissible economic coercive measures and concluded that the motive or purpose of the acting state should be a critical factor in determining the illegality of an economic conduct. He wrote:

> Much of state economic activity is harmful to other states tor the very reason that state economies are competitive and that promoting one's own economy may well be injurious to others. This suggests that it will be necessary to characterize unlawful economic measures by their intent rather than their effect. In other words, measures not illegal per se may become illegal only upon proof of an improper motive or purpose.[34]

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[32] ICFM/24-96/PIL/DR.35

[33] D.W.Bowett, "Economic Coercion and Reprisals by States", 13 Va. Journal of International Law, 1 (Fall 1972)

[34] D.W.Bowett, "International Law and Economic Coercion", 16 Va. Journal of International Law, 245 (winter 1976)

35 Professor Lillich has argued that "economic coercion, even of the most blatant type, is permissible when undertaken pursuant to internationally-authorized measures." He further noted that the real issue is the lawfulness of the unilateral use of economic coercion by a state or group of states without color of international authorization." He concludes by finding a "general principle that serious and sustained economic coercion should be accepted as a form of permissible self-help only when it is also compatible with the overall interests of the world community, as manifested in the principles of the UN Charter or in decisions taken or documents promulgated thereunder."[*]

g) Final Observations

36. The serious opposition to U.S. unilateral measures, particularly those with an extra-territorial dimension, indicates that the world community has discovered the gravity of this new tendency and its implications which go far beyond the attempt by the United States to implement its hostile policy against a few States.

37. The said legislation apart from being at variance with the various rules and principles of international law, purports to disrupt the economic co-operation and commercial relations of the target states with other states including *inter alia* with the member states of AALCC. These measures, undoubtedly, adversely affect the development process of developing countries, hinder, even, South-South co-operation, and impede the transfer of technology to the target states.

38. Therefore, it is the duty of free and independent states to continue to oppose the illegal extraterritorial application of national legislation of other states. Failure of the international community in encouraging the recalcitrant states to abide by the law of nations would be a step backwards which, may lead to the retrieval of the old society of "anarchy of sovereignties."

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[*] Richard C. Lillich, "Economic Coercion and the New International Economic Order", 1976.

IV. The AALCC is requested to carry out further study

39. There are a variety of reasons for inclusion of this item on the agenda of the AALCC. Firstly, although there exist exceptions to the well established principle of territorial jurisdiction, the limits of these exceptions are not well defined. Secondly, practice of states indicates that they oppose extra-territorial application of national legislation in this field. Thirdly, these measures infringe various principles of international law. Fourthly, these measures affect trade and economic co-operation between developed and developing countries on the one hand, and interrupt co-operation among developing countries on the other.

40. Therefore, the Asian-African Legal Consultative Committee is requested to carry out a comprehensive study concerning the legality of such unilatteral measures taking into consideration the positions and reactions of various governments including the positions of its member states.

The Committee adopted the proposed item and the subject was taken up for discussion at this session.

(i) Thirty Sixth Session: Discussion

The Assistant Secretary General Mr. A. Dastmalchi while introducing the item "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties" stated that the item had been placed on the provisional agenda of the thirty sixth session following a reference made by the Government of the Islamic Republic of Iran. In an explanatory Note submitted to the Secretariat, the Islamic Republic of Iran, had enumerated four basic propositions viz. (i) the limits of the exception to the principle of extra-territorial jurisdiction are not well established., (ii) the practice of States in that they oppose the extra-territorial application of National Legtislation, (iii) extra-territorial measures infringe various principles of international law; and (iv) extra-territorial measures, on the one hand, affect trade and economic cooperation between developed and developing countries and undermine co-operation among developing countries, on the other for the inclusion of this item on the agenda of the AALCC. The Explanatory Note had *inter alia* requested the AALCC to "carry out a comprehensive study concerning the legality of such unilateral measures taking into consideration the positions and reactions of various governments including the positions of its member States."

The Assistant Secretary General further stated the rationale for the request for a comprehensive study of the legality of unilateral actions was established by demonstrating that national legislation with extraterritorial effect violates the principles of international law, including the impermissibility of unilateral imposition of sanctions. The Explanatory Note pointed out that "unilateral sanctions infringe upon the right to development" and that the "imposition of sanctions violate the principle of non-intervention" He further stated that although in common understanding, jurisdiction in matters of public law character is territorial in nature, though some States are however known to give extra-territorial effect to their municipal legislation which has resulted in conflict of jurisdictions and resentment on the part of other States.

Civil Law countries exercise Jurisdiction over their nationals for offences committed even while they were abroad.

He pointed out that conflicts had often arisen in the context of economic issues when States sought to apply their laws outside their territory in a fashion which precipitated conflicts with other States. In the claims and counter claims that had arisen with respect to the exercise of extra-territorial jurisdiction the following several principles, including the principles concerning jurisdiction; sovereignty, in particular economic sovereignty and non-interference had been invoked.

He stated that the preliminary study prepared by the Secretariat, apart from referring to some recent instances of the extra-territorial application of national laws which raise several questions including the question of economic countermeasures sought to furnish an overview of the limits imposed by international law on the extra-territorial application of national laws and, inter alia, spelt out the response of the international community to such actions. It recounts that such fora as the General Assembly of the United Nations, the Conference of the Heads of State or Government, the European economic community and the Group of 77 have in various ways expressed concern about the promulgation and application of laws and regulations whose extra-territorial effects affect the sovereignty of other States and the legitimate interests of entities and persons under their jurisdiction, as well as the freedom of trade and navigation. He further stated that the preliminary study prepared by the Secretariat also drew attention to the opinion of the Inter-American Juridical Committee.

The application of unilateral measures is at variance with numerous international instruments, including the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States and the Charter of Economic Rights and Duties of States. The legality of the use or resort to countermeasures is linked closely to the recourse to dispute settlement procedures and is considered as a core issue in the current work of the International Law Commission on State Responsibility. The ILC had taken the view that counter measures cannot be taken prior to the exhaustion of all available dispute settlement procedures, except in certain specific circumstances.

He further stated that the topic clearly covers a broad spectrum of inter-state relations i.e. politicolegal, economic and trade. The use of unilateral actions, particularly those with extra-territorial effect can impede the efforts of the developing countries in carrying out trade and macro economic reforms aimed at sustained economic growth. The use of such unilateral trade measures poses a threat to the multilateral trading system. It was necessary to delimit the scope of the inquiry into the issue of extra-territorial application of national legislation. In determining the parameters of the future work of the Committee on this item consideration may need to be given to the question whether it should be a broad survey of the question of extra-territorial application of municipal legislation, and in the process examine the relationship and limits between public and private international law on the one hand and the inter play between international law and municipal law on the other. In determining the scope of the future work on the subject the Committee may, the Assistant Secretary General stated, recall that the request of the Government of Islamic Republic of Iran is to carry out a comprehensive study concerning the legality of such unilateral measures (i.e. sanctions imposed against third parties) "taking into consideration the positions and reactions of various governments including the position of its Member States. "In considering the future work of the Secretariat on this item Member States may wish to consider sharing their experiences, with the Secretariat, on this matter.

The Delegate of the Islamic Republic of Iran conveyed his appreciation to the Secretariat for conducting a preliminary study on the topic "Extra-territorial Application of National Legislation: Sanctions imposed against Third Parties" and thanked the Assistant Secretary General for introducing the document. He said there were two pieces of legislation enacted by the United States Congress, by virtue of which the State intended to exercise jurisdiction beyond its territory by imposing sanctions against third states that invest in, or enter into business with Iran, Libya and Cuba. These were the Cuban Liberty and Democratic Solidarity Act (LIBERTAD) of 1996, also called by the familiar name of the sponsors Helms Burton Act. The second was the Iran-Libya Sanctions Act, 1996 also called the Kennedy-D'Amato Act. Condemning these two enactments he said, these sanctions went beyond the previous sanctions imposed by the United States against other States and they were not primarily intended to regulating US interests. He said these

two legislations violated customary and conventional international laws. Firstly, in this regard, he referred to Article 41 of the UN Charter, wherein sanction can only be implemented, when the Security Council has determined the existence of a "threat to peace, breach of peace and act of aggression". He also pointed out that the Charter does not provide for unilateral sanction by one State, by way of economic measures. Elaborating on this issue he recalled General Assembly Resolution 47/19 and 50/10, which called upon States to refrain from promulgating and applying laws which contravene the Charter of the UN. Secondly, speaking of human rights, he pointed out that unilateral sanctions are violative of the Vienna Declaration and Programme of Action of June 25, 1993 which guarantees the right to development. In this regard, he also cited UNCTAD, which has time and again condemned use of economic measures especially against developing countries. Thirdly, he stated sanctions are violative of the principle of non-intervention. Stating that this principle is a customary norm, he brought to notice the Nicaragua case and number of UN resolutions which are evidence of its customary status. He also spoke of the position of Governments, who opposed these unilateral imposition of sanctions. In this regard, he made a reference to the European Union (EU) opposition to 1982 amendments to the US Export Administration Regulations, which expanded the US control of the export and re-export of goods and technical data to USSR. Another instance, he felt was in 1996,- when the EU strongly opposed the D'Amato Act, as these measures had no basis in law and are violative of the general principles of international law and the sovereignty of independent states. He also spoke of denunciations by the NonAligned countries, Group of 77 and the Inter American Juridical Committee.

Finally, he observed that serious opposition to the US unilateral measures, especially those with antiterritorial dimension were indicative of the fact that these violated principles of international law and disrupted economic relations amongst states. He warned that a failure by the international community to encourage recalcitrant states to abide by international law, would lead to an anarchy of sovereignties. Outlining the reasons for inclusion of this item on the agenda of the AALCC, as given is the explanatory note, he stated that, as, limits of the exceptions to extra-territorial jurisdiction are not defined,state practice indicates

that there is an opposition to extraterritorial application of national legislation, the measures are violative of the principle of international law and these measures affect trade and economic co-operation between developed and developing countries on the other hand. He also felt that owing to the complexity of the topic, an overall study on the other hand. He also felt that owing to the complexity of the topic, an overall study on the subject had not been suggested and was limited to the recommendations of the Secretariat in paragraph 62 of the preliminary study. It was further sugested that one or two seminars must be organised during the inter-sessional period. He further pointed out that, bearing in mind the fact that the preliminary study of this topic was on the pre-selected list for inclusion on the agenda of the ILC, it would be useful for Member State to choose the source, if the secretariat takes up a further study.

The Delegate of Cuba conveyed his appreciation to the AALCC Secretariat and the Assistant Secretary Genetal Mr. Asghar Dastmalchi on behalf of his people, his government and himself. He also thanked the people of Iran for the brotherly treatment he received. Making a reference to the blockade by the US, by way of the Cuban Liberty and Democratic Solidarity Law (LIBERTAD), also called the Helms-Burton Act. He further added that the reasons for the adoption of the Act were: to provide a political and economic change in Cuba., to impose a unilateral solution, far removed from the procedures established by the International Right, on behalf of the claims stated by the citizens and entities of the United States as a consequance.

He outlined the 'titles' under the Helms Burton Act which provide economic embargo (blockade) was assistance to a free and independent Cuba, protection of the property rights of the United States' nationals and exclusion of certain foreigners from the United States. The delegate citing the judgement in the Nicaragua Case and the Friendly Relations Declaration stated that the "principle of non-intervention has established the right of every sovereign state to rule its affairs without foreign interference". Speaking on expropriation of Cuban property, he said the Charter of Economic Rights and Duties of States and the principle of permanent sovereignty over natural/national resources had established

that every state had the right to nationalize, expropriate or transfer the property of foreign assets and the nationalizing state should pay compensation taking into consideration its own laws and regulations.

As regards title 3 of the Act, he said the element of extraterritoriality of laws is clear as entities companies and individual persons non dependent to US jurisdiction but are 'trafficking' with properties confiscated by Cuban Government after 1 January 1959, would be made responsible before US Tribunals in claims put forth by US nationals. Recalling the General Assembly Resolution on the New International Economic Order" and the sentence, he said every State has a sovereign right over its property and the person staying on its territory. He further more added that title 3 was violative of the sovereign right of every state to frame its own municipal legislations based upon its peculiar socioeconomic need In conclusion he added that the Cuban people would resist this act of aggression aimed at absolute control of United States over Cuba.

The Delegate form Syria appreciated the efforts of the Secretariat and the government of the Islamic Republic of Iran for having included this topic in the agenda of the AALCC. Supporting the topic he stated that the organic content of the law can be traced to the needs and aspirations of society. The society we live in, he felt was governed by a number of extra-territorial laws. These laws, he felt infringed the sovereignty of the people. He further added that his delegation condemns any extra-territorial laws that violate the political independence and territorial sovereignty of a state. Expressing support to the government of the Islamic Republic of Iran, he reiterated his delegation's stand that the AALCC muust, thoroughly study the topic.

The Delegate of Ghana genuinely appreciated the good work done by the AALCC Secretariat and furthermore thanked Assistant Secretary General Mr. Asghar Dastmalchi for a comprehensive introduction of the topic. He referred to the Helms-Burton Act relating to trade with Cuba and the Kennedy-D'Amato Act concerning trade wjth Libya, Iran and Iraq. He observed that these were examples of the extra-territorial application of national law in the form of sanctions against third parties. He explained that even though superficially one