The Eleventh Conference of the Heads of State or Government of the Non-Aligned Countries had called upon the developed countries "to put an end to all political conditionalities to international trade, development assistance and investment, as they are fully in contradiction with the universal principles of selfdetermination national sovereignty and non-interference in internal affairs.'

The Eleventh Conference of the Head of State or Government of the NonAligned Countries had also called upon the Government of the United States of America to "put an end to the economic, commercial and financial measures and actions which in addition to being unilateral and contrary to the Charter and international law, and to the principles of neighborliness, cause huge material losses and economic damage."

More recently, the Twelfth Conference of the Foreign Ministers of the NonAligned Countries held in New Delhi in April 1997, inter alia called upon all States to refrain from adopting or implementing extra-territorial or unilateral measures of coercion as means of exerting pressure on non-aligned and developing countries. They noted that measures such as Helms-Burton and Kennedy-D'Amato Acts constitute violations of international law and the Charter of the United Nations, and called upon the international community to take effective action in order to arrest this trend.

ORGANIZATION OF ISLAMIC CONFERENCE.

Like the Non-Aligned Movement, the Organization of Islamic Conference (OIC) has rejected extra-territorial application of domestic law as illegal and unacceptable. The Preparatory Meeting for the 24th OIC Ministerial Conference adopted a similar position. The 8th Islamic Summit Conference held in Tehran in December 1997 declared its firm commitment to the rejection of unilateral and extra-territorial law. The Final Declaration of the 8th OIC Summit held in Tehran inter alia rejected unequivocally the "unilateralism and extra-territorial application of domestic law" and urged all States to "consider the so-called D'Amato Act as null and void."

THE IBER-AMERICAN SUMMIT CONFERENCE

In November 1996, leaders of Latin America, Spain and Portugal denounced the sanctions as violating international law at Iber-American Summit Conference held in Chile. The resolution of the Conference was based on the opinion of the Inter-American Juridical Committee. In its opinion, of 23 August 1996, Inter-American Juridical Committee had inter alia observed that :

> "Except where a norm of international law permits, the State,May not exercise its power in any form in the territory of another.State. The basic premise under international law for establishing legislative and judicial jurisdiction is rooted in the principle of territoriality"[38]

---

[38]. See the Opinion of the Inter-American Juridical Committee in Response to Resolution AG\DOC.3375\96 of the General Assembly of the organization, Entitled "Freedom of Trade and Investment in The Hemisphere" in 35, International Legal Materials, (1996) p. 1329 at 1333.

Annex

Report Of The Rapporteur Dr. V.S. Mani On The Seminar On Extra Territorial Application Of National Legislation:Sanctions Imposed Against Third Parties, Tehran 24-25 January 1998

Mr. President,

1. I thank you for giving me this privilege of being the Rapporteur of this Seminar.

I. INTRODUCTION

2. The Seminar was participated by delegations from 16 Member countries of the AALCC seven Observer delegates and seven experts three of whom are from non-member countries. One expert could not attend but sent his paper for the Seminar, while the seven experts who attended made presentations at the Seminar.

3. The present report seeks to portray an overview of the Seminar in terms of the major issues raised, broad areas of agreement, the few points of disagreement, State responses to unilateral sanctions imposed through extra-territorial application of national legislations, and the further work to be pursued in study and elaboration of rules.

II. THE ISSUES.

4. The deliberations at the Seminar focused on a range of legal and policy aspects of the subject mainly in relation to two US enactments, namely the Helms-Burton Act, 1966 and the D'Amato Act, 1996, although references were also made to some of the earlier US laws such as the anti-trust legislation, the US Regulations concerning Trade with USSR, 1982, and the National Defence Authorization Act, 1991(i.e. the Missile Technology

Control Regime - MTCR - Law).

5. The legality of the two 1966 US enactments were examined in terms of their conformity with the peremptory norms of international law, the law relating to countermeasures, the law relating to international sanctions principles of international trade law, the law of liability of States for injurious consequences of acts not prohibited by international law, impact of unilateral sanctions on the basic human rights of the people of the target state, and issues of conflict of laws such as non-recognition, *forum nonconveniens* and other aspects of extraterritorial enforcement of national laws.

6. At least two of the presentations expounded the policy implications and foundations of the Helms-Burton Act and the D'Amato Act. They also analyzed the major provisions of these statutes examined their international legal validity.

III. BROAD AREAS OF AGREEMENT.

7. There was general agreement that the validity of any unilateral imposition of economic sanctions through extra-territorial application and national legislation must be tested against the accepted norms and principles of international law. The principles discussed included those of sovereignty and territorial integrity, sovereign equality, non- intervention, self-determination, and the freedom of trade. It was generally agreed that the Helms-Burton Act and the D'Amato Act in many respects contravened these basic norms. The right to development and the permanent sovereignty over natural resources were specifically mentioned, and it was argued that the two enactments impinged these principles as well.

8. While discussing the law relating to counter measures, it was generally agreed that the rules of prohibited counter measures as formulated by the international law Commission in its draft articles on State Responsibility must apply to determine the legality of counter measures purported to be effected by the extra territorial application of the two impugned US statutes. These rules include the prohibition of injury to third states, the rule of proportionality, and also the other rules relating to prohibited counter measures

incorporated in Article 13 of the ILC draft articles.

9. While discussing counter measures, it was emphasized that the presiding peremptory norm must be the peaceful settlement of disputes. All States have an obligation to seek settlement of their international disputes through peaceful means, an obligation to continue to seek such settlement, an obligation not to aggravate the dispute pending peaceful resolution, and an obligation not to resort to counter measures until after all reasonably possible methods of peaceful settlement have failed.

10. The ensuing discussion also highlighted the inter play between counter measures and non-intervention, and between counter measures and unilateral imposition of economic sanctions.

11. There was also general agreement that counter measures could not be a facade for unilateral imposition of sanctions in respect of matters that fell within the purview of Chapter VII of the Charter of the United Nations or the sanctions competence of other international organizations. A State could not take the law in its own hands where an organization had competence to decide whether or not sanctions should be issued. The differences between counter measures and sanctions of the nature of international sanctions should be recognized, it was argued.

IV. POINTS OF DISAGREEMENT

12. The seminar revealed mainly three points of disagreement.. First, whether the subject should be confined, to secondary sanctions through extra territorial application of national laws. There was a view held by an overwhelming majority of the participants that the delegate should encompass all legal aspects of unilateral economic sanctions imposed through extra territorial application of national legislation. The reasons in support of this proposition were given at two levels. First, it was pointed out that some of the Member States were themselves targets for such legislation. Second it was also contended, the distinction between the target state and the third State was often not maintainable in terms of the basic legality of the sanctioning legislation. The opposite view was that the subject should be confined in terms of the

impact of unilateral sanctions on third states, since it was clearly identifiable and separable from the impact on the target State.,

13. Second there was also a disagreement on the distinction between the prescriptive jurisdiction and the enforcement jurisdiction of every state. A minority view argued that what mattered for state responsibility was violation of international law by a State under its enforcement jurisdiction. Passing a piece of domestic legislation, even if purported to be enforced, but not yet enforced in itself did not invite state responsibility. The majority view, however, was that a national legislature could also involve state responsibility, by directing action by national authorities. Also, even a threat of sanctions could cause injury to the economy of another state. At any rate, it was pointed out, the concept of reparation must wipe out all consequences of an illegal act, including its ultimate source.

14. Third, the debate revealed a further disagreement concerning the applicability of WTO disputes settlement procedure to resolve disputes relating to Helms-Burton Act and the D'Amato Act in their extra-territorial application. One view was that the United States could , as it did, make its national security interests in defence of its unilateral action and that therefore the WTO fora would not have jurisdiction to deal with the disputes. The contrary view was that the WTO disputes settlement Body and the Council had competence to interpret the provisions of the Agreements. The economic sanctions, according to this view, by definition invited the disputes settlement competence of WTO.

V. STATE RESPONSES TO UNILATERAL SANCTIONS THROUGH EXTRA-TERRITORIAL APPLICATION OF US NATIONAL LEGISLATION.

15. The Seminar deliberations touched on a range of State responses to counter the possible impact of the US legislation in particular and the unilateral imposition of sanctions through extra territorial application domestic legislation in general. Detailed references were made of the response of the Inter-American system. and the European Union. The measures discussed encompassed 'blocking' legislation, statutes with 'drawback' provisions and

laws providing for compensation claims, all at the national level. At the international level the responses noted included diplomatic protests, negotiations for exemptions \ waivers in application of the projected sanctions, negotiations for settlement of disputes, use of WTO avenues and measures to influence the drafting of legislation in order to prevent its adverse extra territorial impact. It was also suggested,as a lego-political response that an old agenda item calling for a study of the distinction between acts in pursuance of the right of self-determination and terrorist acts.

VI. FUTURE WORK TO BE UNDERTAKEN

16. A number of proposals were made by the participants for AALCC to pursue. The Rapporteur takes the liberty to reformulate some of them and add some of his own.

17. The proposals would include formulation of principles, and sponsorship of studies.

A. FORMULATION OF PRINCIPLES \ RULES

18. The Rapporteur proposes that:

(i) AALCC along with ILC undertake formulation of principles \ rules relating to extra-territorial application of national laws in all its implications.

(ii) There is need for a second look at the ILC formulation of principles concerning counter measures vis-a-vis sanctions. The ILC formulation of counter measures seems to leave this aspect open. A State may violate (a) an obligation erga omnes or (b) an obligation erga omnes but injuring another state, or (c) an obligation vis-a-vis another state which of these situations would give rise to counter measures? A clarification on this issue will help determine the permissible counter measures, and the relationship between them and sanctions.

Similarly the relationship between counter measures and other peremptory norms of international law such as non-intervention and peaceful settlement of international disputes needs to be further examined.

B. PROPOSALS FOR STUDIES

19. It is also suggested that AALCC undertake three studies:

(i) A study on unilateral sanctions counter measures and disputes settlement procedures offered by the WTO group of agreements;

(ii) A study of the concept of abuse of rights in international law, preferably under the presiding norm of good faith, with context of exercised extra territorial application of national laws in pursuit of national policy objectives and

(iii) A study of the impact of unilateral sanctions on trade relations between States.

20. No doubt the above proposals, if approved by the Members of the AALCC, would require close co-operation of the Members with the AALCC Secretariat.

Rapporteur
(V.S.Mani)

Tehran
25th January 1998

XI. UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT : FOLLOW UP

(i) Introduction

The topic "United Nations Conference on Environment and Development: Follow Up"has been considered by the Committee at its 32nd (Kampala, 1993), 33rd (Tokyo, 1994), 34th (Doha, 1995), 35th (Manila, 1996) and 36th (Tehran, 1997) Sessions. The Secretariat studies prepared for these Sessions focussed on matters concerning implementation of Agenda 21 in general, and the UN Conventions on Climate Change, Biological Diversity and Desertification in particular.

At the 36th Session, the Committee taking note of the General Assembly Resolution 47\190 of 22 December 1992 which had decided to convene a special session on Environment for the "Purpose of an Overall Review and Appraisal of the Implementation of Agenda 21", directed the Secretariat to "continue to monitor the progress in environmental matters, particularly towards the implementation of Agenda 21 and the follow-up work to the recent environmental Conventions. The Secretariat brief for the New Delhi Session furnishes an overview of : (I) The special session of the General Assembly for the Purpose of an Overall Review and Appraisal of the Implementation of Agenda 2 1; (ii) The United Nations Framework Convention on Climate Change, COP-III held in Kyoto; (iii) The Convention on Biological Diversity; and (iv) The first session of the Conference of Parties to the United Nations Convention to Combat Desertification.

Thirty Seventh Session : Discussion

The Deputy Secretary General Mr. Ryo Takagi introduced the Secretariat Document and recalled that the item had been on the agenda of the Committee since the Kampala session(1993). He added that at that session the Secretariat had been directed to monitor the developments related to the implementation of Agenda 21, and in particular the United Nations Conventions on Climate Change, Biological Diversity and Desertification. He also recalled the Special Session on General Assembly for the Purpose of an Overall Review

and Appraisal of the Implementation of Agenda 21. Making a special reference to the United Nations Framework Convention on Climate Change, he said that the third Conference of Parties to the Convention met at Kyoto, Japan from 1-10 December 1997. This Conference, he added, after contentious bargaining adopted a protocol on 9 December 1997 towards quantified emissions limitations reductions objectives by Annex-1 Parties. He also said that the Ad hoc Working Group on Bio-safety (BSWG) has prepared a draft text of a protocol which would be adopted by the fourth session of the Conference of the Parties to the Convention on Biological Diversity scheduled to meet from 4-15 May, 1998 in Bratislava, Slovakia. He stated that in a rapidly changing world, a number of environmental treaties had been concluded. The AALCC, he felt, could serve the Member States with information and material on state practice in the implementation of environmental treaties. He also suggested that the Secretariat would like to organise a programme or training course on environmental law in cooperation with some agencies of the United Nations especially the UNEP in the course of 1998.

The Representative of UNEP expressed the view that strengthening of international law called for integration of environment and development. He said that this could be done in two areas which include dissemination of information on materials on environmental law and capacity building in environmental law, along with training. Referring to his organization's expertise in the field for the last twenty five years, he felt this could be used for strengthening closer co-operation between UNEP and AALCC. In this regard, he suggested some key areas involving, environmental convention processes, environmental impact assessments, international economic instruments and the role of the judiciary in promoting sustainable development. He pledged the support of his organization to the compilation of an "AALCC handbook on Environmental Law," by the AALCC Secretariat.

The Delegate of Tanzania highlighting the importance of the subject, wholeheartedly supported the suggestion of the UNEP Representative to convene a programme for training on environmental law and also the compilation of an AALCC Handbook on Environmental Law.

The Delegate of India stated that he would like to dwell on the two

important issues of special concern to developing countries of the region. These included, firstly the principle of common but differentiated responsibilities occurring in UN Conventions such as those on Climate Change, Biological Diversity, Desertification and the proposed Bio-safety Protocol; secondly, he added that the fulfilment of socioeconomic needs of developing countries, would entail transfer of technologies and additional financial resources. On the question of bio-safety, he expressed the view that as the matter was a sensitive one, involving living modified organisms of important interest to developing countries rich in biological resources, his Government solicited the support of other countries concerning compensation and liability and the issue of socioeconomic consideration, provided in the Protocol.

The Delegate of Sri Lanka congratulated the representative of UNEP for his suggestions to strengthen ties with the AALCC. Furthermore, he felt that the proposed training programme in environmental law and the Handbook, would help countries of the region in addressing issues relating to sustainable development.

The Delegate of Uganda supported the suggestion for organising a training programme in environmental law for AALCC Member States.

The Delegate of Pakistan welcomed the initative taken by the UNEP and called for greater interaction with in the AALCC on matters concerning environmental law.