in the field of human rights, as bodies implementing human rights treaties such as the United Nations Human Rights Committee, the European and American Court of Human Rights, stress that all rights apply at all times and that any derogations have to be strictly justified both as to their existence and as to their extent. As regards judicial guarantees, the importance of alternative safeguards are stressed by these bodies. It would therefore be useful to make a reference to the very restrictive conditions of derogation provided for in human rights treaties. In addition, most of the human rights instruments have incorporated the concept of inalienable or non-derivable "hard core" human rights which under any circumstances, shall not be derogated from or suspended. These non-derivable human rights come very close to some of the fundamental guarantees under the humanitarian law applicable to internal armed conflicts.

Mr. Chairman, in this connection, we appreciate that Prof. Greenwood considers it desirable to close that gap by adopting certain measures. Similar concerns led to production of the Declaration of Minimum Humanitarian Standards (the Turku Declaration) and other initiatives to elaborate a set of non-derivable standards drawn from both human rights law and the humanitarian law. The perception of the "gap" is today quite different compared to ten years ago when the Turku Declaration was drafted. The latter declaration would now seem a bit outdated. Therefore work on "Fundamental Standards of Humanity" as they are now called, is currently going on. The United Nations High Commissioner for Human Rights is worrying on this issue and is expected to produce a second report very shortly. Even is some principles are elaborated in course of time, it is always important to reaffirm existing law. In no way should such principles weaken today's hard law provisions.

Mr. Chairman, we appreciate the specific reference in the report (pages 74-75) to the need and importance of dissemination of international humanitarian law and to other measures which need to be taken in peacetime in order to ensure respect for this body of law when a conflict breaks out

and which might contribute to the creation of a culture of compliance. Prof. Greenwod had rightly referred to the duty of States to disseminate the provisions of relevant humanitarian law treaties. However, it might be useful to replace the reference to the relevant article from the Third Geneva Convention as an example with a more complete reference t the common article on dissemination found in all the four Geneva Conventions, namely, Article 47, 48, 127 and 144 of the first, second, third and fourth conventions respectively. A reference in this connection to article 83 of Additional Protocol I and article 19 of Additional protocol II would also be appropriate. However, a reference in the report to the role of Advisory services of the ICRC in International humanitarian law in disseminating this law may lead to some confusion. The Advisory Service is closely associated with national implementation of international humanitarian law.

Mr. Chairman, as mentioned earlier, we fully agree with Prof. Greenwood's conclusion that there is lack of implementation of existing international humanitarian law as a result of the lack of political will to fully apply the law. It is with this issue the Advisory Service of the ICRC is directly concerned with. The role and objective of this service is to secure the participation of the maximum number of states in international humanitarian law treaties. It also makes an attempt to advise States on all legal and administrative measures which they must take in order to comply with their obligations under the international humanitarian law. It is intended to supplement the governments' own resources by raising awareness of the need for implementing measures, to provide expert advice and to promote the exchange of information between governments themselves. In focusing specifically on legal advice to governments, it complements other ICRC activities aimed at increasing respect for international humanitarian law, notably its long standing dissemination activities.

Mr. Chairman, we now come to a very important recommendation made by Prof. Greenwood in his report (page 75). He has referred to the possibility of establishing a system of periodic reporting through an impartial body. In this regard, we

believe it might be helpful to recall that a proposal for the establishment of a possible reporting system for international humanitarian law had been raised in January 1995 by the Intergovernmental group of Experts for the Protection of War victims. This proposal was rejected by the majority of States that attended the Meeting. Instead, the experts proposed that States be encouraged to create national committees to advise their governments on implementation and dissemination of international humanitarian law, that States be invited to provide the ICRC with information regarding their efforts in the field of international humanitarian law implementation and dissemination and that the ICRC's capacity to provide advisory services to States in this regard be strengthened.

Mr. Chairman, in this connection it is also pertinent of note that further to the 26th International Red Cross and Red Crescent Conference, the National Red Cross European Legal Group put forward another proposal for a voluntary reporting procedure which is being currently examined. While the ICRC feels it is useful to explore all new initiatives which might serve to reinforce respect for international humanitarian law, it nevertheless considers that it would be premature to launch in the very near future an initiative to establish universal comprehensive reporting system, even if on a voluntary basis. In fact, many States have not only failed to adopt basic implementation measures such as legislation for repression of war crimes, legislation to protect the emblem of the red cross and red crescent, etc. What is more alarming is that many states may be unaware of their obligations under international humanitarian law. We, therefore, feel that it would be appropriate to focus primarily on ensuring the adoption of basic implementation measures through the already existing mechanisms and through, for example, the technical support from the ICRC Advisory Service on international humanitarian law, prior to considering the promotion of any new and perhaps more complex mechanism for ensuring adequate implementation of international humanitarian law. At present we are doubtful how far the proposed system will be acceptable to majority of states. However, when the time is ripe, such extra mechanism could well be useful.

Mr. Chairman, we agree with Prof. Greenwood's important conclusion that one of today's main challenge is not development of new rules, but adequate and effective implementation of the existing humanitarian law. However, at the same time we consider development of new norms of humanitarian law to meet the new humanitarian challenges equally important. In this connection, Mr. Chairman, the recently observed dynamic development of new norms reflects the willingness on the part of the community of states to constantly improve protection for the victims, for instance by banning "on humanitarian grounds" certain weapons, such as anti-personnel mines and binding lasers, as well as by creating an International Criminal Court which, in complement to the national courts, will help strengthen implementation of humanitarian law.

Mr. Chairman, may I now refer to an issue which is very closely associated with the process of revisiting the entire international humanitarian law, namely, the status of customary norms of humanitarian law at present. The ICRC has undertaken an extensive study on such customary norms in collaboration with experts from different part of the world. The preliminary findings of these experts are being examined by governmental experts. This research, which is important to the clarification of contemporary international humanitarian law, will be on the agenda of the 27th International Conference of the Red Cross and Red Crescent Movement. this conference "the high point of this exceptionally significant year from humanitarian law" will enable the International Red Cross and Red Crescent Movement to intensify its indispensable dialogue with the States party to the Geneva Conventions in regard to humanitarian action and implementation of humanitarian law.

Mr. Chairman, before I close, may I refer to one more development which is very closely associated with international humanitarian law. August 12, 1999 will mark the 50th Anniversary of the Geneva Conventions which, with their Additional Protocols, remain the cornerstone of protection for the victims of armed conflict. To mark the occasion, the ICRC has launched a world wide survey - the first of its kind-aiming

populations and persons affected by war. Its aim is to make people's voices heard by asking them to describe their personal experiences and express their opinions on principles limiting the use of force, as well as their expectations regarding what must be done to deal with such situations. We hope that this survey, whose slogan is "Even Wars have Limits" will spark a wide-ranging debate, to be carried on at the 27th International Conference and thereafter, on humanitarian law and the suffering caused by war.

Mr. Chairman, we hope that the reassessment of international humanitarian law on the occasion of the Centennial Commemoration and also the marking of the 50th Anniversary of the Geneva Convention will afford an opportunity to appreciate the importance and contribution of international humanitarian law, to reaffirm their faith in this law and to strengthen this law to make it more effective and useful to the New World order.

Mr. Chairman, on behalf of the ICRC, I thank you for giving us an opportunity to express our views on this occasion.

IV. EXTRA - TERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

(i) Introduction

At the 36th Session of the Asian African Legal consultative Committee (AALCC) the topic "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed on the Provisional Agenda as a reference was made by the Government of the Islamic Republic or Iran in accordance with Article 4 (c) of the Statutes and sub-rule 2 of Rule 11 of the Statutory rules of the Committee. In an Explanatory Note submitted to the AALCC Secretariat the Government of the Islamic Republic of Iran had enumerated the following four major reasons for including this item: (i) that the limits of the exception to the principle of extraterritorial jurisdiction are not well established; (ii) that the practice of States indicates that they oppose the extraterritorial application of National Legislation; (iii) that extraterritorial measures infringe various principles of international law: and (iv) that extraterritorial measures, on the one hand, affect trade and economic co-operation between developed and developing countries and interrupt cooperation among developing countries, on the other.

The Explanatory Note *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 rationale for calling a comprehensive study of the legality of unilateral actions was that national legislation with extraterritorial effect violates the principles of international law including the impermissibility of unilateral imposition of sanctions. The Explanatory Note had maintained that "the actions of States to unilaterally exert coercive economic measures against other States have no foundation in international law. Various resolutions adopted by the United Nations organs affirm this point". It also demonstrated that the imposition of "unilateral sanctions

infringe upon the right to development" and that "the imposition of sanctions violate the principle .of non-intervention".

The preliminary study prepared by the Secretariat, and considered at the 36th Session (Tehran, 1997) of the AALCC, had pointed out that in the claims and counter claims that had arisen with respect to the exercise of extraterritorial jurisdiction the following principles have been invoked (i) principles concerning jurisdiction; (ii) sovereignty in particular economic sovereignty - and non-interference; (iii) genuine or substantial link between the State and the activity regulated; (iv) public policy and national interest; (v) lack of agreed prohibitions restricting States right to extend its jurisdiction; (vi) reciprocity or retaliation; and (vii) promotion of respect for law Notwithstanding the national interests of the enacting State, grave concern was expressed on the promulgation and application of municipal legislation whose extraterritorial aspects affect the sovereignty of other States.

While a growing number of other States have applied their national laws and regulations on extraterritorial basis, such fora as the General Assembly of the United Nations, the Group of 77, the Organization of Islamic Countries, the Inter-American Juridical Committee and the European Economic Community have in various ways expressed concern about promulgation and application of law and regulations whose extraterritorial 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.

The study prepared by the Secretariat drew attention to the opinions of such august bodies, as the Inter-American Juridical committee, the Juridical Body of the Organization of American States[1] and the International Chamber of Commerce.[2]

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[1] For details see 35 *International Legal Materials* (1996) p.1322.

[2] Dieter Lange And Gary Borne (Eds.): *The Extraterritorial Application of National Laws* (ICC Publishing S.A. 1987).

The preliminary study had demonstrated that the topic covered a broad spectrum of inter-State relations, that is to say, political, legal, economic and trade.

It recalled in this regard that the AALCC study on the "Elements of Legal Instruments on Friendly and God-Neighbourly Relations Between the States of Asia, Africa and the Pacific" had *inter alia* listed 34 norms and principles of international law, conducive to the promotion of friendly and good Neighbourly relations. The 34 principles enumerated *inter alia* included; (i) independence and state sovereignty; (ii) territorial integrity and inviolability of frontiers; (iii) legal equality of States; (iv) non-intervention, overt or covert; (v) non-use of force; (vi) peaceful settlement of disputes; (vii) peaceful coexistence; and (viii) mutual cooperation.[3]

The study also pointed out that the use of unilateral action, particularly those with extraterritorial effects, can impede the efforts of developing countries in carrying out trade and macro-economic reforms aimed at sustained economic growth.

At that Session it was submitted that it might perhaps, be necessary to delimit the scope of inquiry into the issue of extraterritorial application of national legislation in determining the parameters of the future work of the Committee on this item. It had asked for consideration to be given to the question whether it should be a broad survey of questions of extra territorial application of municipal legislation and, in the process, examining the relationship and limits between the public and private international law on the one hand and the interplay between international law and municipal law on the other. It recalled in this regard that, at the 44th Session of the International Law Commission, the

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[3] AALCC Secretariat Study on "Elements of a Legal instrument on Friendly and Good Neighbourly Relations Between States of Asia. Africa and the Pacific "Reprinted in *AALCC Combined Report of the Twenty Sixth to Thirtieth Sessions* (New Delhi. 1992) p.192.

Planning Group of the Enlarged Bureau of the Commission had established a Working Group on the long-term programme to consider topics to be recommended to the General Assembly for inclusion in the programme of work of the commission and that one of the topics included in the pre-selected lists was the Extraterritorial Application of National Legislation.

The Secretariat had proposed that in determining the scope of the future work on this subject, the Committee may recall that the request of the government of the 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 position and reactions of various governments, including the position of its Member States". It was proposed that in considering the future work of the Secretariat on this item Member-States should consider sharing their experiences with the Secretariat on this matter.

In the course of deliberations on this item at the 36th Session a view was expressed that sanctions could only be imposed by the Security Council after it had determined the existence of a threat to peace, breach of peace and act of aggression and that unilateral sanctions were violative of the Vienna Declaration and Programme of Action of 1993[4] which inter alia recognize the right to development. It was pointed out that unilateral sanctions were violative of the principle of non-intervention.

It was also stated that national laws having extraterritorial effect had no basis in international law and that such laws primarily aimed at individuals or legal persons, were violative of the principle of non-intervention political independence and territorial sovereignty enshrined in several

[4] The World Conference on Human rights held in Vienna in 1993 had *inter alia* reaffirmed the right to development, as established in the Declaration on the Right to Development as a universal and inalienable right and an integral part of fundamental human rights.

treaties. Such acts it was observed were aimed at weaker developing countries.

Different views were expressed such as: "extraterritorial application of national legislation would affect international trade" and "in a changing scenario of globalizaton of trade and privatization of economies extraterritorial application of national laws would affect interdependence".

Also that extraterritorial application of national legislation infringed the soverign right of states, violated the principles of non-intervention and affected the economic and political relations amongst states. Elaborating that sanctions would disturb the North-South relations the member States were called upon to voice their protest.

The United Nations General Assembly 'Friendly Relations Declaration' was recalled and it was stated that although no State had the right to intervene directly or indirectly in the internal or external Affairs of other State and every State had an inalienable right to choose its political economic, social and cultural systems without interference in any form by another state, large and powerful States were using it as a weapon. It was pointed out that a particular country had within a short span of four years imposed around sixty-four unilateral sanctions against thirty-five countries. In the present era, the notion of inter-dependency among states had become quite obvious and the principles of non-intervention and non-aggression, the two principles of the well known five principles of peaceful coexistence have become all the more obvious and were universally accepted by nations big or small rich or poor. It was categorically stated that extraterritorial application of national laws had no basis whatsoever legal, moral or political. It blatantly violated the rules of international law and the rules of civilised law and amounts to infringement of internal affairs of other countries.

It was observed that the Helms-Burton Act relating to trade with Cuba. Kennedy-D'Amato Act relating to Libya, Iran and Iraq were examples of extraterritorial application of

national law in the form of sanction against third parties. Even though superficially one might think that these national laws relate to actions by individuals, their object is the imposition of sanctions against States.

It was also pointed out that extraterritorial application of national legislation was not entirely a new thing but had deep roots. It is the legacy of the colonial period. While the AALCC as a legal consultative body was not in a position to talk about political issues, underlying the extraterritorial application of national legislation it however could consider the legality of such actions. Under the United Nations Charter and international law, the Member-States of the United Nations had the obligation to support and implement the sanction measures taken by the Security Council against the law-breakers, in accordance with Chapter VII of the United Nations Charter.

As to the future course of action to be followed by the AALCC, it was pointed out that due to the complexity of the topic of extra-territoriality, an overall study of the subject was ruled out. To this end, it was felt that organizing one or two seminars in the inter-sessional period would be very useful.

Recognizing the significance, complexity and implications of "Extra Territorial Application of National Legislation: Sanctions Imposed Against Third Parties", the Secretariat was requested to monitor and study developments in regard to the Extraterritorial application of National Legislation: Sanctions Imposed Against Third Parties and urged Member States to share such information and materials that would facilitate the work of the Secretariat. The Secretary General was requested to convene a seminar or meeting of experts and, to ensure a scholarly and in-depth discussion, by inviting a cross section of professionals thereto.

The Secretary General was also requested to table a report of the seminar or meeting of experts on the subject at the next session of the Committee; and it was decided to inscribe the item "Extra-territorial Application of National

Legislation: Sanction Imposed Against Third Parties" on the Agenda of the 37th Session of the Committee.

In fulfilment of this mandate the Secretariat of the AALCC organized, with the financial assistance of the Government of the Islamic Republic of Iran a two day seminar in Tehran in January 1998. A Group of Experts from the Asian and African and experts from outside the region were invited to participate.

A Background Note prepared by the Secretariat for that Seminar included an overview of the United States: Iran and Libya Sanctions Act of 1996. References were also made to some of the earlier US laws such as the anti-trust legislation, the Regulations concerning Trade with USSR, 1982, and the National Defense Authorization Act, 1991. The legality of the two 1996 US enactments (the Helms Burton Act and the Kennedy-D'amato Act) were examined in terms of their conformity with the peremptory norms of international law; the law relating to counter-measures; 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 basis human rights of the people of the target state; and issues of conflicts of laws such as non-recognition, *forum non-convenience* and other aspects of extraterritorial enforcement of national laws.

The 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. References were made in this regard to the response of the Inter-American Juridical committee and the European Union and the Measures discussed included 'blocking' legislation, Statutes with 'claw-back' provisions and laws providing for compensation claims, at the national level. At the internatonal level, the responses noted included diplomatic protests, negotiations for exemptions, waivers in application of the projected sanctions, negotiations for Settlement of disputes,