AALCO/51/ ABUJA/2012/SD/S 6
For Official Use Only

EXTRATERRITORIAL APPPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

Prepared by

The AALCO Secretariat
29 C, Rizal Marg,
Diplomatic Enclave, Chanakyapuri,
New Delhi – 110 021
(INDIA)

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

CONTENTS

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

I. INTRODUCTION

A. Background

1. The agenda item entitled, "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed first on the provisional agenda of the Thirty-Sixth Session at Tehran, 1997, following a reference made by the Government of Islamic Republic of Iran.

2. Thereafter the item had been considered at the successive sessions of the Organization.[1] The Forty-Eighth Annual Session of the Organization (Putrajaya, Malaysia, 2009) vide resolution AALCO/RES/48/S 6[2] directed the Secretariat "to continue to study legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States". The Resolution also urged upon the Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject.

3. The Secretariat in preparation of the study on this agenda item relies largely upon the materials and other relevant information furnished by the AALCO Member States. Such information provides useful inputs and facilitates the Secretariat in examining and drawing appropriate conclusions on the impact and legality of such extraterritorial application of national legislation, with special reference to sanctions imposed against third parties. The Secretariat acknowledges with gratitude the comments and observations in this regard received from the State of Kuwait, Republic of Korea, Republic of Mauritius and Japan[3]. In this regard, the Secretariat reiterates its request to the Member States to provide it with relevant legislation and other related information on this topic.

B. Issues for Focused Deliberations at the Fifty-First Annual Session of AALCO:

(i) Unilateral Sanctions imposed against third parties are violative of principles enshrined in the Charter of the United Nations and other principles that are recognized through soft laws like the right to development and Friendly Relations Declaration

(ii) Extraterritorial application of national legislation on third parties is per se illegal.

---

[1] It was last considered as a deliberated item at the Forty-Seventh Annual Session (HQ, New Delhi, 2008).

[2] For the full text of Resolution see AALCO, "Report of the Forty-Eighth Annual Session (17-20 August 2009, Putrajaya, Malaysia) India, p.261a.

[3] The text of the views and comments received from these Member States have been reproduced in the Secretariat doc. AALCO/45/HEADQUARTERS SESSION (NEW DELHI)/2006/SD/S 6 and Yearbook of AALCO, Vol. III (2005), pp. 802-807.

II. IMPERMISSIBILITY OF UNILATERAL SANCTIONS

A. Introduction

4. Sanctions could be divided into multilateral/collective sanctions and unilateral sanctions. Collective sanctions can be generally defined as "collective measures imposed by organs representing the international community, in response to perceived unlawful or unacceptable conduct by one of its members and meant to uphold standards of behaviour required by international law."[4] Imposing sanctions as per provisions of Charter of the United Nations is permissible. From a legal standpoint, multilateral sanctions in the form of economic sanctions, as measures of collective security in accordance with the provisions of the UN Charter are permissible. However, they are to be distinguished from unilateral sanctions which have not been mentioned under the UN Charter. Article 41 of the UN Charter which deals with collective measures/sanctions reads thus:

> "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

5. As per Article 41 of the Charter, economic and other kinds of non-military measures for maintaining or restoring international peace and security, without using the term sanctions to designate such measures collectively have been mentioned. These measures are coercive and binding for all member states and have been mentioned under Chapter VII of the Charter. The application of Chapter VII has become more prominent in the light of the 1991 Gulf War. The use of economic coercion is a prior step to military force as provided for in Article 42. Interestingly, the Charter grants the Security Council a monopoly over definitions in this field; the Security Council decides on its own whether a threat to peace, a breach of peace or an act of aggression exists. However, such an approach of multilateral sanction in order to restore/maintain international peace and security has been criticized for being a collective punishment against civilian population[5].

6. It remains undisputed that sanctions receive legal recognition as specific countermeasures to violations of international law and that, in the event of such a violation, contractual obligations to the "law-breaking" state which otherwise apply are invalidated. The problematic nature of this issue has been thoroughly treated by the International Law Commission of the United Nations under the heading "Legitimate application of a sanction". Under Article 30 of the "Draft articles on State responsibility" (1979), the Commission recommended a formulation of this normative priority of

[4] N. Schrijver, 'The Use of Economic Sanctions by the UN Security Council: An International Law Perspective' in H.G. Post (ed.), International Economic Law and Armed Conflict (1994), p. 125

[5] Hans Kochler (1995), "The United Nations Sanctions Policy and International Law," in: Hans Köchler, *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Selected Papers Published on the Occasion of the Fiftieth Anniversary of the United Nations,* (Springer, Vienna and New York).

sanctions in international law; the revised title of this article reads "Countermeasures in respect of an internationally wrongful act."

7. Two decisive factors that influence the ethical evaluation of such measures:
(a) whether the economic sanctions are partial or comprehensive;
(b) the special economic circumstances of the country subject to these measures. From a legal standpoint, sanctions which represent measures of collective security (multilateral sanctions) in accordance with the provisions of the UN Charter are to be distinguished from unilateral sanctions.

8. It is striking that the formulations of the UN Charter provide for coercive measures only in connection with international peace and security. Human rights are doubly disregarded in this context: (a) they are not given as a reason for imposing coercive measures; (b) they are not taken into account as concerns the impact of such measures upon the living conditions indeed, upon the chances of survival of the targeted people. In the normative logic of the UN Charter and especially of Chapter VII peace apparently assumes priority over human rights, as has become especially evident in the sanctions policy of the Security Council since the end of the East-West conflict. As regards (a), the Security Council has admittedly drawn an indirect connection between human rights and its sanctions policy in so far as it views grave and systematic human rights violations as threats to international peace.

9. Comprehensive economic sanctions which heavily impact the life and health of the civilian population need to be analyzed.

Firstly, coercive measures like economic sanctions represent a form of collective punishment[6] and thus do not comply with the ethical principle of individual responsibility, i.e. with the ability to attribute behaviour to an individual. The punishment of people not responsible for political decisions is most akin to a terrorist measure; the aim of such a measure is to influence the government's course of action by deliberately assaulting the civilian population. Purposefully injuring the innocent is, however, an immoral act per se, one which cannot be justified by any construction of utilitarian ethics.

Secondly, respect for rule of law. Zarif points out that in the context of Non-Aligned Movement being more vehement, there was a conviction that there was a very urgent need for development of international law, promotion of acceptance of its principle and enhancing of respect for the rule of law in international affairs. The expectations of the international community following the end of Cold War for emergence of such a rule based global order were also manifested at the United Nations Congress on Public International Law, which emphasized that international law should become the common language for international relations.[7]

[6] Ibid.
[7] M. Javad Zarif (1998), "Extra-Territorial Sanctions in International Law", *Report of the Seminar on the Extra-Territorial Application of National Legislation*, (New Delhi: The Secretariat of AALCC, 1998.)

Thirdly, that the rule of law requires collective decision-making in the international community and as far as possible even collective implementation. It is only through this process that the views and interests of all could be maintained and ensured. Progressive development of international is inherently a collective exercise and can only find meaning when it is done through a process of consensus formulation in the international community. Yet, there was a growing tendency among very few powerful states to insist on unilateral measures. One of the most extreme forms of such unilateral measures take the form of extraterritorial application of national legislation in the form of economic sanctions imposed against third parties which has become an instrument of foreign policy to advance national agenda.

Fourthly, practice of applying national legislation extraterritorially as a means of unilateral sanctions does not evolve around a consensus-building process and therefore creates no legal norm or obligation for members of the international community.

10. In these contexts, extra-territorial sanctions disturbs the conduct of normal international economic relations.

B. Violation of United Nations Charter Principles

11. The concept of unilateral sanctions violates certain core principles of the Charter of the United Nations, namely; principle of sovereign equality and territorial integrity, principle of non-intervention, and duty to cooperate. These principles are briefly mentioned hereunder.

i. Principle of Sovereign Equality and Territorial Integrity

12. It is interesting and important to understand the meaning and importance of the term "sovereign equality" in international law. The principle of sovereign equality of States is one of the most crucial principles of international law which is recognized through Article 2 (1) of the UN Charter under which reads thus:

> "The Organization is based on the principle of sovereign equality of all its members."

13. The equality of States, in its relations means - dignity, personality and independence of a State as well as its territorial integrity are duly respected by the other States, which shall not be violated. The three tenets of this principle is: sovereignty, equality and reciprocity[8]. According to Oppenheim, there are four rules to this principle:

[8] Reciprocity as embodied in Article 36 para 3 of the Statute of the International Court of Justice. It means that nay right of legal position claimed by a state under general international law would imply recognition of a corresponding identical right claimable by other States.

(i) Whenever a question arises which has to be settled by consent, every states has a right to vote, but..to one vote only..

(ii) Legally although not politically the vote of the weakest and smallest States has, unless otherwise agreed by it, as much weight as the vote of the largest and most powerful. Any alteration of international law by treaty has legal validity for the signatory powers and those only who later on accede expressly or submit to it tacitly through custom..

(iii) According to the rule par in *parem non habet imperium*- no States can claim jurisdiction over another. Therefore, although States can sue in foreign courts, they cannot as a rule be sued there, unless they voluntarily submit to the jurisdiction of the court concerned..

(iv) The courts of one state do not, as a rule, question the validity or legality of the official acts of another sovereign States or the officially avowed acts of its agents, at any rate in so far as those acts purports to take effect within the sphere of the latter State's own jurisdiction and are not in themselves contrary to international law.[9]

14. When the word "equality" is used with reference to the law of nations, particularly when it is used as a term of juridical significance, it indicates commonly either of two important legal principles. In the first place, it may mean what is perhaps best described as the equal protection of the law or as equality before the law. International persons are equal before the law when they are equally protected in the enjoyment of their rights and equally compelled to fulfill their obligations. Equal protection of the law is not inconsistent with the grouping of states into classes, each of which the law regards differently. The legal condition of each class is its status, and that status is shared by each member of the class and becomes the measure of each member's capacity for rights. In the second place, the word "equality" may be used to mean an equal capacity for rights. This is commonly described in the law of nations as an equality of rights and obligations, or more often simply as an equality of rights. The equality of states in this sense means, not that all have the same rights, but that all are equally capable of acquiring rights, entering into transactions, and performing acts. When used in this significance equality may be said to constitute the negation of status.[10]

15. Dickinson opines that the States are equally entitled to be protected in the enjoyment of their rights and equally compelled to fulfill their obligations[11]. Insisting on the legal quality principle at the Montevideo Convention, 1933, States said that -

> "States are juridically equal, enjoy the same rights and have equal capacity in their exercise. The rights of each do not depend upon the power which it posses to assure its exercise, but upon the simple fact of its existence as a person under international law."[12]

---

[9] L. Oppenheim (1955), "International Law: A Treatise" Lauterpacht, ed., (New York, edn. 3, Vol. I, pp: 163-267.

[10] Edwin De Witt Dickinson (1920), "The Equality of States in International Law", (Cambridge, Massachusetts), p: 334-335.

[11] See note 6, at p. 4.

[12] P E Corbett (1954), "Social Basis of a Law of Nations" Collected Courses, vol. 85, p.509.

Alongside this, the 1970 Declaration on Friendly Relations provides:
"All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding the differences of an economic, social, political or other nature.

The principle of sovereign equality generates a range of operational rules. It obligates States to respect each other's sovereignty, each other's sovereign attributes, each other's political independence and international obligations. It casts a duty on a State not to frustrate the lawful agreements and other relations between other States. The respect for each other's territorial integrity and other attributes of sovereignty encompasses a duty of a State not to transgress upon the domestic jurisdiction of other States."

16. Anand while pointing out the pitfalls of this principle and how often have been violated by the strong and powerful countries, contends that "international law must adjust to new situations of a new extended but totally interdependent international community. In the extended worldwide society, emphasis should be less on sovereignty and equality and more on the means to cooperate in the shrinking global village. International law must develop from a law of co-existence to a new law of cooperation if we want to survive and prosper in the dangerous thermo-nuclear age."[13]

17. The concept of unilateral sanctions does not respect the principle of sovereign equality. Within the framework of international law, a State's jurisdiction within its territory is absolute and exclusive. The exercise by a State of its rights to jurisdiction is determined by the principles of territoriality, and nationality, the protective principle and the principle of universality. Therefore, a valid exercise of State jurisdiction based on any of the other principles must bear on matters, most closely related to, or having a direct, immediate and substantial nexus with the legitimate interests of a State, taking into account the legitimate interests of other States or the international community *in toto*.

ii. Principle of Non-Intervention

18. The principle of non-intervention has not been specifically mentioned under the United Nations Charter, however, it has been recognized to be embedded in the UN Charter system. Article 2 paragraph 7 of the Charter of the UN implicitly says that:

> "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

19. The Charter absolutely prohibits any form of intervention. In as much as the sovereign and juridical equality of a state and respect for its personality and political independence are infringed by an act of intervention. The principle has been

[13] R. P. Anand, (2008), "Sovereign Equality of States in International Law", (Hope India, Publishing, New Dlehi).

characterized as a "great juridico-political" principle born of the vicissitudes of history[14]. Intervention and interference in both internal and external affairs of other States, in view of either transforming the economic or political policy of such countries have been clearly prohibited. This principle supplements the principle of sovereign equality of States.

20. The principle of non-intervention is the mirror image of the sovereignty of States. As Oppenheim says, the prohibition of intervention "is a corollary of every state's right to sovereignty, territorial integrity and political independence". What is prohibited is dictatorial interference in what the International Court of Justice referred to in Nicaragua as "matters 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." Since the reach of international law is constantly changing, so too is the line between what is, and what is not, covered by the principle of non-intervention. The principle of non-intervention has been elaborated by the International Court of Justice (ICJ) in the Nicaragua case[15] in 1986, which said that:

> "The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law."

21. The Court further observed that:

> "There is also the key doctrine of non-intervention in the affairs of States which is equally vital for the peace and progress of humanity being essentially needed to promote the healthy existence of the community. The principle of non-intervention is to be treated as a sanctified absolute rule of law. States must observe both these principles namely that of non-use of force and that of non-intervention in the best interests of peace and order in the community."[16]

22. The principle of non-intervention as embodied in the Friendly Relations Declaration of 1970 is:

> "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. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.
>
> No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from its subordination of the exercise of its sovereign rights and to secure from its advantage of any kind.
>
> Every State has an inalienable right to choose its political, economic, social and

[14] V. S. Mani (1993), "Basic Principles of Modern International Law: A Study of the United Nations Debates on the Principles of International Law Concerning Friendly Relations and CO-operation among States" (Lancer Books: New Delhi).

[15] Case Concerning Military and Paramilitary Activities in and against Nicaragua, ICJ 1986, p. 108

[16] In Corfu Channel case, ICJ Reports 1949, Para 4 at p. 35. Also this principle was discussed and elaborated.

cultural systems, without interference in any form by another State."

23. Hence, it is very imperative that intervention in all forms and manifestations is strictly prohibited under international law. It is further drawn that although the principle of non-intervention could be expounded even independently of Article 2 para 7 of the Charter of the United Nations, what is prohibited for the UN under the provision, must also imply *a fortiori* a prohibition as between States.

24. Extraterritorial application of national legislation in the form of unilateral sanctions, which also in turn affect the bilateral relations with other States of the targeted State, contravenes the principle of non-intervention. The principles of non-intervention clearly states that no State shall interfere in the internal or external affairs of a State which shall be a violation of sovereignty of the State. The gamut of legal instruments like the UN Charter, the precedence in the form of ICJ decisions, Friendly Relations Declaration which is a soft law instrument, etc., are very pertinent in support of this principle and its blatant violation when unilateral sanctions are imposed.

iii. Duty to Cooperate

25. Cooperation among States is an essential feature of maintenance of international peace and security. The establishment of the League of Nations pointed to the need for cooperation among states for settlement of political differences. However, with the adoption of the Charter of the United Nations, international cooperation became "an essential part of international life". In accordance with the Charter[17], the duty to cooperate is a well established rule of conduct for states. In fact, when the League of Nations emphasized on the special role of political cooperation in dispute settlement, the United Nations demonstrates the increasingly significant part cooperation is called upon to play in economic and social fields. Further, the principle of "good-neighbourliness" is also recognized as per Article 74 of the UN Charter, which reads thus;

> "Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters."

26. The Friendly Relations Declaration, 1970 proposes that:

> "States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences."

27. The basic objectives of the concept of cooperation are maintenance of international peace and security; promotion of universal respect for and observance of

[17] See Preamble, Article 1, 11, 13 and Chapter IX of the United Nations Charter.

human rights and fundamental freedoms for all and the elimination of all forms of racial discrimination and all forms of religious intolerance; development of international cooperation in the economic, social, cultural, technical and trade fields; encouragement of joint and separate action by States towards implementation of the above objectives. The principle of non-discrimination has also been identified as a necessary element of the principle of the duty to cooperate. The expressions "irrespective of the differences in state's political, economic and social systems" and international cooperation free from discrimination is based on such differences, as per the Friendly Relations Declaration, 1970. Cooperation in legal, political and economic sense is very much dealt with. In that regard, at political sphere, the duty to cooperate mainly addresses the issues of maintenance of international peace and security. In economic sphere, it emphasizes on the duty to cooperate in the promotion of economic growth throughout the world, especially that of developing countries. The Declaration mentions:

> "States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries."

28. International economic cooperation is vital to the economic development of all countries of the world, and particularly of the developing countries. On those notes, cooperation in international trade and economic relations is also a very significant aspect of this principle. When one speaks of cooperation in every sphere, scientific and technical sphere is regarded as vital.

29. Unilateral sanctions imposed against third parties, affects adversely the development both socially and economically of the citizens collectively as many of the economic relations with imposing State would be affected. Further, such State has a duty to cooperate with other countries especially developing countries as adherence to this principle. Therefore, such sanctions are violative of this principle because it deprives the targeted State with many of the economic benefits. Moreover, unilateral sanctions imposed for many decades should be regarded as collective punishment against the citizens of the country. Human rights consideration of peoples should also be taken into consideration.

iv. Conclusion

30. The above mentioned principles mentioned under the UN Charter are being violated while imposing unilateral sanctions. These principles are very essential in order for the targeted State to develop and progress economically and socially. Principle of sovereign equality and territorial integrity of a State and principle of non-intervention in the internal affairs of the State are core principles, because through imposing unilateral sanctions, imposing countries are actually trying to influence the policy making by the governments of such countries. Such sanctions also are directed towards changing the political decision-making or general will of the peoples of the targeted countries to choose their own government. Hence, consensus by the international community stating

that unilateral sanctions are violative of such principles and also the principle of duty to cooperate should be regarded as rule of law.

C. Violation of General Principles of International Law

31. The unilateral sanctions imposed against third parties by virtue of application of one's own national legislation extra-territorially also breach certain basic tenets of general principles of international law. These include, principle of self-determination, right to development of the citizens and individuals residing in the targeted territory, and countermeasures and dispute settlement.

i. Principle of Self-Determination

32. Principle of equal rights and self-determination is explicitly referred to in the Charter of the United Nations. Article 1 (2) of the UN Charter, under the purposes and principles of the United Nations is to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. Further, Article 55 sets out certain objectives the United Nations shall promote, "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination.

33. Mani opines that equal rights and self-determination, like all human rights, is essentially of philosophical origin. It goes to the root of all law and justice and is based on the collective self-expression. It is deeply linked to the concepts like human freedom, human fundamental notions of democracy, individuality and equality of peoples and so on. It has been thus, mainly based on provisions of the Preamble, Article 1 (2), and Articles 55 and 56, and Chapters XI, XII and XIII of the United Nations. International law guarantees the right of self-determination. The United Nations Declaration on the Granting of Independence to Colonial Territories and Peoples, states that: "All people have the right to self-determination; by virtue of that right, they determine their political status and freely pursue their economic, social and cultural development".[18]

34. The Friendly Relations Declaration on self-determination reads thus:

> "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

35. It is considered an authoritative indication of customary international law. Article 1, common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), reaffirms the right of all peoples to self-determination, and lays upon state parties the

[18] See Mani, supra note 10.

obligation to promote and to respect it. The right to self-determination was first recognised in the context of decolonisation; however, numerous human rights instruments, including conventional law, such as common Article 1 of ICCPR and ICESCR, as well as several GA Resolutions coupled with state practice, have extended its application beyond the colonial context.

36. A people can be said to have realised its right to self-determination when they have either (i) established a sovereign and independent state; (ii) freely associated with another state or (iii) integrated with another state after freely having expressed their will to do so. The definition of realisation of self-determination was confirmed in the Declaration of Friendly Relations. The right of self-determination puts upon states not just the duty to respect and promote the right, but also the obligation to refrain from any forcible action which deprives peoples of the enjoyment of such a right. In particular, the use of force to prevent a people from exercising their right of self-determination is regarded as illegal and has been consistently condemned by the international community. The obligations flowing from the principle of self-determination have been recognised as *erga omnes,* namely existing towards the whole international community. The International Court of Justice (ICJ) has recently reiterated the *erga omnes* status of the general principle of self-determination in its Advisory Opinion on the "Wall"[19]. Additionally, scholars and commentators have indicated that the principle has acquired the status of *jus cogens* – a peremptory norm of international law.

37. The main purpose while imposing unilateral sanctions is to cause another State to change its policies or other practices within their State. The right to self-determination is an important fundamental right of the developing countries, which is recognized as a right of the peoples of the country to determine its own political, economic, social and cultural system, and no State can interfere in another State's relations so as to dictate a particular form of government or to advise and ask for any changes in the exercise of sovereign rights of a country. Therefore, any unilateral measures restricting the right of the peoples of the target States to determine their approach is violation of the basic principles of international law.

ii. Right to Development

38. The origin of the concept was set in the ideological debates of the 1960s and 70s. The Non Aligned Movement (NAM) campaigned for the creation of a more just international economic order (the New International Economic Order which is explicitly mentioned in the 1986 Declaration). NAM countries declared development to be a human right and used United Nations mechanisms to try to influence international economic relations and the international human rights system. In addition, the debate was also marked by the consequence of the Cold War, which reinforced the distinction between on the one hand civil and political rights, and on the other, social and economic rights. The Declaration on the Right to Development (DRTD), 1986 places the human person at the

[19] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports dated 9 July 2004.

centre of development. Development is not defined solely in terms of economic growth, but as a "comprehensive" and multi-faceted "process", with social, cultural, political as well as economic elements (Art. 2(1), 4(2), and 8(1)).

39. The development process should be respectful of all human rights and fundamental freedoms, and help the realisation of rights for all (Art. 1 and 6). Failure to observe rights constitutes an obstacle to development (Art. 6(2)). The realisation of the RTD cannot justify violations of human rights. The DRTD requires that states and the international community formulate appropriate development policies. As the human person is at the centre of development, the processes through which such policies are developed should be participative.

40. The DRTD also requires that the development process to promote social justice, including the "fair distribution of the benefits" of development for individuals (Art. 2(3)) and "equality of opportunity for all" in access to basic resources and services, and the eradication of all social injustices (Art. 8(1)). The realisation of the RTD requires not only appropriate national policies, but also suitable international conditions for development, with appropriate international policies and co-operation (Art. 3 and 4). This requirement also includes the creation of a New International Economic Order (Art. 3(3)) as well as international peace and security, including disarmament (Art. 7).

41. The DRTD establishes that development and "implies the full realisation of the right of peoples to self determination" (Art. 1(2)). The provisions on self-determination have been interpreted by some not just to refer to a reaffirmation of the independence and equality of nations, but so as to strengthen the rights of persons belonging to minorities and indigenous groups to determine for themselves the processes and forms of development that are appropriate for their cultures and circumstances. Self-determination here means that, as a minimum, minorities must enjoy the right to participate in the design and implementation of a genuine sustainable development policy

42. The right to development has become a "universal and inalienable right and integral part of fundamental human rights"[20]. The application of unilateral sanctions, in the form of economic coercion when applied especially developing countries, infringes the international law of human rights. In these contexts, in one of the resolutions of UNCHR has expressly mentioned that such "restrictions on trade, blockade, embargoes and freezing of assets as coercive measure constituting human rights offenses"[21].

iii. Countermeasures and Dispute Settlement

43. The concept of countermeasures, were traditionally described as retorsion, which implies that the right of a victim state to resort to self-help against another state which has committed an internationally wrongful act against it. The ICJ in the Nicaragua case[22]

[20] Vienna Declaration and Program of Action of June 25, 1993.
[21] Paragraph 4 of the Human Rights Commission Resolution entitled "Human Rights and Unilateral Coercive Measures" dated 4 March 1994 of the UN Commission on Human Rights.
[22] See Nicaragua Case, IC Report 1986.

ruled that "while an armed attack would give rise to an entitlement to collective self-defense, a use of force of a lesser degree cannot.. produce any entitlement to take collective counter measure involving the use of force." Also in the Air Services Agreement of 27 March 1946 between the United States of America and France[23], the arbitration tribunal in its award while discussing countermeasures held that:

> "Countermeasures are measures a states may take against another state for the latter's breach of an obligation owed to the former, failing which they are illegal. Further, they are illegal against third states and they must be resorted to with moderation and with a view to facilitating a peaceful settlement of the dispute. They must confirm with rules of proportionality otherwise they are illegal."

44. The Tribunal further said: "it is generally agreed that all counter-measures must, in the first instance, have some degree of equivalence with the alleged breach: this is a well-known rule. The Tribunal further recognized that the potential of counter-measures to aggravate the dispute. Hence it observed: "Counter-measures therefore should be a wager on the wisdom, not on the weakness of the other party. They should be used with a spirit of great moderation and be accompanied by a genuine effort at resolving the dispute.

45. Zarif opines that recourse to dispute settlement procedure is mandatory norm in nearly all bilateral, multilateral and global instruments dealing with various subject matters of political, cultural, social, economic, scientific and technical nature. Therefore, any state has to exhaust all available dispute settlement procedures before taking a unilateral action or countermeasures.[24] Further, Chapter VI of the Charter of the United Nations on Pacific Settlement of Disputes mandates Member States to resolve the dispute, if any, in a peaceful manner. Article 33 of the Charter of the UN reads thus,

> "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
>
> The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

46. The imposing States of unilateral sanctions refer to the principle of countermeasures as a justification of application. However, extraterritorial application of national legislation cannot be justified. Countermeasure is a tool that enables an injured State to take measures against a State which was responsible for an internationally wrongful act in order to induce that State to comply with its obligations. There are some conditions that need to be addressed like, there must be an injury against the imposing State, there must be an internationally wrongful act and so on. In

[23] Elizabeth Zoller (1984), "Peacetime Unilateral Remedies: An Analysis of Countermeasures" (Dobbs Ferry, N.Y.).
[24] See Zarif, note 7.

circumstances of imposing sanctions, such conditions are given to substantiate such sanctions.

47. Countermeasure should not affect the basic principles of international law, in particular human rights law and international humanitarian law. It must also be considered that countermeasures must be proportional. Contemporary international law restricts the extent to which an injured State may resort to economic or political coercion by way of countermeasures. Firstly, only the injured or victim State is entitled to resort to countermeasures as defined and limited by international law. Secondly, resort to specific types of countermeasures is prohibited. The ILC listed the "extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State" among the outlawed countermeasures.

iv. Conclusion

48. The right to self-determination and right to development though recognized through soft-law instruments, it must be regarded as general principles of international law. The unilateral imposition of sanctions by States deprives the peoples of the target States with basic human rights and also their right to development. The right of self-determination puts upon states not just the duty to respect and promote the right, but also the obligation to refrain from any forcible action which deprives peoples of the enjoyment of such a right. Coercive economic sanctions affect the growth trajectory of the individuals and the economy as a whole and the burden of sanctions should not be put on the succeeding generations. International community recognizes that any dispute should be solved peacefully and bilaterally. Failing which there shall be measures taken to address the issue through various international forums. The argument of countermeasures by the imposing States is not legally valid in the context of extraterritorial application of national legislation on third parties.

III. RECENT DEVELOPMENTS

A. Imposition of Sanctions against AALCO Member States

49. This section of the report covers some of the recent sanctions imposed against the AALCO Member States.

i. Sanctions against Myanmar by the United States of America

50. It may be recalled that the United States of America (USA) had first imposed sanctions against Myanmar in September 1996 by issuing an Executive Order 13047 on 20 May 1997, certifying under the authority of the Foreign Operations, Export Financing, and Related Programs Act, 1997 and the International Emergency Economic Powers Act. This Executive Order prohibits "U.S. persons" from making new investments in Myanmar and facilitation of new investment in Myanmar by foreign persons. On 14 May 2009, the Government of the United States had extended the sanctions on Myanmar for one year which would include the prohibition of new investments.

51. However, since the elections in Myanmar on 30 March 2011, the US[25] has said that they would ease restrictions on investment to Myanmar[26]. It was stated that the change in the government would be "the beginning of the process" of a targeted easing of ban on the export of US financial services and investment. The step on investment was part of a broader effort to help accelerate economic modernisation and political reform. However, it was also mentioned that sanctions and prohibitions will stay in place on certain individuals and institutions.

ii. Extension of Sanctions against Syrian Arab Republic by the United States of America

52. In May 2004, the President of the United States of America signed Executive Order 13338 implementing the Syria Accountability and Lebanese Sovereignty Restoration Act which imposes a series of sanctions against Syrian Arab Republic for its alleged support for terrorism, involvement in Lebanon, weapons of mass destruction programs, and the destabilizing role it is playing in Iraq. In continuation to it, on 4 May 2010, the Government of U.S. extended its sanctions against Syrian Arab Republic for its alleged role in supporting terrorist organizations and pursuance of weapons of mass destruction and missile programmes. In retaliation, the Syrian Government had strongly rejected all the allegations and criticized the sanctions imposed and stated that the U.S. action lost its credibility.

iii. Extension of sanctions against Islamic Republic of Iran by the United States of America

53. It may be recalled that on 29 October 1987, the President of the U.S.A had issued an Executive Order 12613 imposing a new import embargo on Iranian-origin goods and services, on the alleged ground of Islamic Republic of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, pursuant to Section 505 of the International Security and Development Cooperation Act of 1985 ("ISDCA") which gave rise to the Iranian Transactions Regulations, Title 31, Part 560 of the U.S. Code of Federal Regulations (the "ITR").[27]

54. In 1995, the U.S. President issued an Executive Order 12957 prohibiting U.S. involvement with petroleum development in Iran. Further, he signed an Executive Order 12959, pursuant to the International Emergency Economic Powers Act ("IEEPA") as well as the ISDCA, substantially tightening sanctions against Iran. Later in 1997, the President signed Executive Order 13059 by confirming all trade and investment activities with Iran by U.S. persons, wherever located, are prohibited. Further in 2001, the President of the U.S. signed in to law H.R. 1954, the "ILSA Extension Act of 2001". The Act provides for

[25] The US Secretary of State Ms. Hillary Clinton visitied Myanmar 0n 1 December 2011 and made positive remarks in terms of easing out the sanctions imposed against Myanmar. See http://www.reuters.com/article/2011/12/01/us-myanmar-idUSTRE7B00F720111201.
[26] http://www.aljazeera.com/news/asia-pacific/2012/04/20124419585627384.html.
[27] Details are drawn from: http://www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml

a 5 year extension of the Iran and Libya Sanctions Act with amendments that affect certain of the investment provisions.

55. In September 2010, the Government of the United States of America through an Executive Order 13533 blocked property of certain persons on the allegations of serious human rights abuses by the Government of Iran[28]. Further, in January 2011, the US Treasury Department imposed new sanctions against 22 Iranian companies affiliated with the Islamic Republic of Iran Shipping Lines (IRISL) and two other companies related to Iran's Aerospace Industries Organization (AIO) over its nuclear energy program[29].

56. Replying to the recent sanctions imposed, Iranian President stated that the sanctions imposed on Iran over its peaceful nuclear energy program are illegal and ineffective. Further, Iran fully cooperated with IAEA and its nuclear program is completely peaceful. He pointed out that dialogue is the only way through which the West can resolve its dispute with Iran[30]. Supporting Iran, Russian Government announced that it could longer support future sanctions against Iran. The Russian Foreign Minister Sergei Lavrov stated that the sanctions imposed on the Islamic Republic of Iran over its nuclear program will undermine cooperation within the Iran and UN Security Council aimed at settling the issue.[31] India and the People's Republic of China consistently voiced against such sanctions against Iran in the past. Indian Prime Minister stated that "we don't think sanctions really achieve their objective. Very often, the poor in the affected country suffer more…." Further, the Government of the People's Republic of China has all along held that the Iranian nuclear issue needs to be resolved peacefully through dialogue and negotiations by diplomatic means.

57. The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 enacted July 1, 2010 is a law passed by the U.S. Congress that applies further sanctions on the government of Islamic Republic of Iran. Major provisions of this Act are:

- Amends the Iran Sanctions Act of 1996 to direct the President to impose two or more current sanctions under such Act if a person has, with actual knowledge, made an investment of $20 million or more (or any combination of investments of at least $5 million which in the aggregate equals or exceeds $20 million in any 12-month period) that directly and significantly contributed to Iran's ability to develop its petroleum resources.
- Directs the President to impose: (1) sanctions established under this Act (in addition to any current sanctions imposed under the Iran Sanctions Act of 1996) if a person has, with actual knowledge, sold, leased, or provided to Iran any goods, services, technology, information, or support that would allow Iran to maintain or expand its domestic production of refined petroleum resources, including any assistance in refinery construction, modernization, or repair; and (2) sanctions

[28] Federal Register/Vol.75, No. 190/Friday, October 1, 2010/Presidential Documents.
[29] www.guardian.co.uk/world/2010/may/04/barack-obama-extends-sanctions-syria/
[30] See the US Department of Treasury Website: http://www.treasury.gov/resource-center/sanctions/OFACEnforcement/Pages/20110113.aspx
[31] http://www.presstv.ir/detail/148966.html

established under this Act if a person has, with actual knowledge, provided Iran with refined petroleum resources or engaged in any activity that could contribute to Iran's ability to import refined petroleum resources, including providing shipping, insurance, or financing services for such activity.

- Establishes additional sanctions prohibiting specified foreign exchange, banking, and property transactions.

58. In this regard, the latest sanctions imposed on Islamic Republic of Iran since May 2011, calling for oil embargo and trading in oil by other countries, was been opposed by India and China stating that they would not reduce the purchase level of oil from Islamic Republic of Iran.[32]

59. Further, in an Executive Order signed on 23 April 2012, the United States has imposed sanctions against Syrian Arab Republic and Islamic Republic of Iran stating that the governments seek to target their citizens for grave human rights abuses through the use of information and communications technology.

60. These unilateral sanctions that adversely affect the trade relations and economic development of a country are illegal per se and has been condemned by various countries and international organizations too.

B. Consideration of the Ministerial Declaration adopted by the Thirty-Fifth Annual Meeting of the Ministers of Foreign Affairs of Group of 77 (New York, 23 September 2011)

61. The Ministers of Foreign Affairs of the Member States of the Group of 77 and China met at the United Nations Headquarters in New York on 23 September 2011 on the occasion of their Thirty-fourth Annual Meeting to address the development challenges facing developing countries. It had adopted a Declaration which inter alia stated on the agenda that:

> "The Ministers firmly rejected the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries, and reiterated the urgent need to eliminate them immediately. They emphasized that such actions not only undermine the principles enshrined in the Charter of the United Nations and international law, but also severely threaten the freedom of trade and investment. They, therefore, called on the international community neither to recognize these measures nor apply them."[33]

C. Consideration of the Resolution on the "Necessity of Ending the Economic, Commercial and Financial Embargo imposed by the United States of America against Cuba", at the Sixty-sixth Session of the United Nations General Assembly

[32] http://www.thehindu.com/business/article3288265.ece.
[33] Para 39 of the Ministerial Declaration, accessible at http://www.g77.org/doc/Declaration2011.htm.

62. On 25 October 2011, the United Nations General Assembly at its Sixty-sixth Session, voted in favour of ending the United States economic, commercial and financial embargo against the island nation, which they said had crippled its development and whose justification was morally indefensible. The General Assembly - by a recorded vote of 186 in favour to 2 against (United States, Israel), with 3 abstentions (Marshall Islands, Federated States of Micronesia, Palau) - adopted a resolution[34] for the twentieth consecutive year, calling for an end to the embargo and reaffirming the sovereign equality of States, non- intervention in their internal affairs and freedom of trade and navigation as paramount to the conduct of international affairs.

63. The General Assembly expressed concern at the continued application of the 1996 "Helms-Burton Act" - which extended the embargo's reach to countries trading with Cuba-and whose extraterritorial effects impacted both State sovereignty and the legitimate interests of entities or persons under their jurisdiction. It reiterated the call on States to refrain from applying such measures, in line with their obligations under the United Nations Charter, urging those that had applied such laws to repeal or invalidate them as soon as possible.

64. It was expressed that the basis of the (embargo's) policies and measures was a violation of the right of a people to self-determination and that all people had the right, among other things, to determine their own political system and their path to development. Further, the resolution urged the Member States to put an end to the trade embargo on Cuba, which, among other things, called on all States to refrain from promulgating laws in breach of freedom of trade and navigation, and urged Governments that had such laws and measures to repeal, or invalidate them. It also requested the Secretary-General to report in the light of the purposes and principles of the Charter and international law and to submit it to the General Assembly at its sixty-seventh session.

Statements of AALCO Member States

65. The Representative of Argentina on behalf of the Group of 77 developing countries and China, noted that that last year's announcement by the United States on the relaxation of travel restrictions and transfer of remittances had given hope that steps were being taken in the right direction. But a year later, it was clear that those measures had had only limited effect and that the embargo was still in place. Largely unchanged, it continued to impose severe economic and financial restrictions on Cuba that negatively impacted the well-being of its people. Further, it frustrated efforts towards achieving the Millennium Development Goals.

66. He added that the embargo against Cuba contravened the fundamental norms of international law, international humanitarian law, the United Nations Charter and the norms and principles governing peaceful relations among States, violating the principles of the sovereign equality of States and of non-intervention and non-interference in each other's domestic affairs, as the Group of 77 and China had pointed out many times

[34] A/RES/66/6 dated 8 December 2011.

before. Moreover, at the second South-South Summit in Doha in 2005, the Group had rejected the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries.

67. The Representative of **Arab Republic of Egypt**, speaking on behalf of the Non-Aligned Movement, recalled that, recently, "unexpected and profound" political changes in many parts of the world had been sparked by an entrenched longing for justice that had, for too long, been unduly denied. In that light, his delegation believed that the application of the principle of justice should not be confined to the national level, but should also extend to the international arena. It should not only govern relations between individuals, but also between Member States. For that reason, it was "utterly troubling" that, to this day, "the screws of an unfair and unwarranted blockade are still being tightened" against one of the Movement's members. The direct and indirect damages caused by the embargo were enormous, affecting all sectors of the economy including health, nutrition, agriculture, banking, trade, investment and tourism. Moreover, the unilateral blockade had an extended effect on companies and citizens from third countries, thus violating their sovereign rights. The Movement reiterated its deep concern over those harmful impacts, he said, adding that they constituted additional arguments in favour of the prompt elimination of sanctions. The Movement once again urged the United States to immediately and fully comply with all General Assembly resolutions calling for the end of the embargo, and "once and for all" listen to the will of the overwhelming majority of the international community.

68. The Representative of **Kenya**, speaking on behalf of the African Group, said that over the years the General Assembly had categorically and overwhelmingly rejected the imposition of laws and regulations with extraterritorial impact. Africa shared the views expressed by the international community in its continued opposition to sanctions against Cuba. The Assembly called upon all States, in accordance with the United Nations Charter and international law, to refrain from applying, and/or repeal, laws that had extraterritorial impacts affecting the sovereignty of other States, the legitimate interests of entities under their jurisdiction and the freedom of trade and navigation. Reiterating the need for complete and unequivocal lifting of sanctions and embargo against Cuba and urged the United States to pay heed to the repeated decisions of the international community. He said that whatever be the historical roots of this intergenerational embargo, surely the time has come for nations to find the courage and sense of global citizenry to overcome differences and nurture coexistence.".

69. The Representative of **India**, aligning with the Group of 77 and China, as well as the Non-Aligned Movement, said the Assembly had repeatedly rejected the imposition of laws with extraterritorial impact and all other forms of coercive economic measures. It also had called on States to respect the Charter and international law yet despite that, the United States' embargo against Cuba remained in full force, which severely undermined the credibility of the United Nations. Indeed, the embargo had brought immense suffering for Cubans and had transgressed a sovereign State's right to development. Moreover, it had adversely affected Cuba's economic prosperity, he said, by denying it

access to the United States' market, investment, technology and financial services, as well as to scientific, educational, cultural and sporting institutions. The embargo's extraterritorial application also had severely impacted health care, a Millennium Development Goal, as well as health assistance to developing countries. There was huge potential to strengthen economic and commercial ties. Steps taken this year by the United States to reduce restrictions on travel and remittances were positive developments, but they were far from enough to make a fundamental change. .

70. The Representative of **People's Republic of China** said that the Cuban embargo had severely violated the Charter and inflicted enormous economic and financial loss on Cuba. The embargo had impeded efforts to eradicate poverty and violated Cubans' basic human rights to food, health and education. It was also stated that dialogue and harmonious coexistence were the mainstream of international relations, and in that context, he hoped the United States would follow the tenets of the Charter and end its embargo as soon as possible. He also hoped the relationship between the United States and Cuba would improve with a view to promoting regional development.

71. The Representative of **South Africa** said the question of ending the embargo against Cuba had continued to be a problem for the United Nations despite many calls to eliminate the measures. The time had come for the embargo to be lifted, and the people of Cuba continued to bear the brunt of the sanctions. The blockade was a violation of the sovereign equality of States, non-intervention and non-interference in domestic affairs. It was a violation of international law and showed disregard of the United Nations Charter. The representative said that situation was further exacerbated by the global financial crisis, food crisis and climate change. His delegation condemned the seizing by the United States of over $4.2 million, in January 2011, of funding from the Global Fund to Fight AIDS, Tuberculosis and Malaria, which had been earmarked for the implementation of cooperation projects with Cuba. South Africa strongly opposed the actions of the United States regarding fines levied against foreign banking institutions for having conducted operations with Cuba.

72. The Representative of **Indonesia** called for the conclusion of the unilateral economic, commercial and financial embargo imposed against Cuba. The measures undermined the principles of the Charter and of international law, as well as the rights of people to life, well-being and development. In addition, although imposed unilaterally, the embargo impacted the economic and commercial interests and relations of third countries. It had also severely affected the daily welfare of Cuban citizens and posed an unnecessary burden to the attainment of the Millennium Development Goals. Since the imposition of embargo decades ago, much had changed. Globalization had created conditions for true global solidarity and partnership among nations. Lifting the embargo would be in keeping with the spirit of the times. He called on all countries to adhere to the principles of equality, mutual respect, peaceful co-existence and good-neighbourliness and respect for human rights.

Explanation after Vote on the Resolution

73. The Representative of **Nigeria**, aligning with the Group of 77 and China, as well as the Non-Aligned Movement, supported States' inalienable right to determine their own development model. Nigeria was "uncomfortable" with the embargo against Cuba, as it countered multilateralism, international law, sovereignty and free trade, principles the Assembly had championed for years. Nigeria opposed the punishment of innocent people and, thus, favoured the dismantling of both the structures that enforced the embargo and the logic underpinning its existence. For such reasons, Nigeria voted in favour of the resolution.

74. The Representative of **Myanmar** said that his delegation supported Cuba, particularly regarding the situation of that country's elderly, women and children. The hardships set in motion by the embargo affected the innocent people of Cuba, and went against the sovereign equality outlined in the United Nations Charter. Moreover, the measures deviated from international law.

75. The Representative of **Syrian Arab Republic** said the Cuban embargo contravened the principles of international law, including humanitarian law, the sovereign equality between States, non-intervention and freedom of navigation and trade. It was illegal and challenged the legal credibility of United States' policies. Such measures had been imposed by the United States and other European countries with the goal of weakening some States, attempting to force them to adopt certain measures or change their policies. He said the embargo had caused more than $10 billion in damage to the Cuban economy and violated human rights. Despite that the Assembly had issued resolutions for 20 years, the embargo remained. Sanctions imposed on developing countries, including Syria, constituted collective punishment under the pretext of maintaining human rights. He called for ending the embargo and hostile policies pursued outside the framework of international law. For such reasons, Syria voted in favour of the resolution.

76. In explanation of the vote, the Representative of **Gambia** said in light of the global economic crisis, that was neither the time nor the season to impose sanctions or reinforce them. Even in the best of times, they inflicted untold suffering. As the global financial crisis continued unabated all nations were under constant pressure from the negative impact of the crisis. The economic embargo could be characterized as "aggression" against a sovereign State, with a negative downstream effect, particularly on vulnerable groups.

77. **Sudan**'s representative said that the international community had rejected unilateral coercive measures that crossed borders. Continued support for the resolution revealed "total rejection" of the embargo, as it violated the basic principles of the Charter, international law and norms governing national economic and commercial relations between States, and inhibited development. Since 1997, Sudan too had suffered from such unilateral measures by the United States with deleterious effect on the people's well-being. He condemned the imposition of such measures on developing countries and called for a world where all States lived in peace. That required commitment to the

Charter's principles and to sound management of international relations. He urged States that had taken unilateral measures against other States to repeal them.

78. The Representative of the **Democratic People's Republic of Korea** said that the embargo was aimed at destroying the socialist system, even though the Cuban people had chosen that system freely. Therefore, the Democratic People's Republic of Korea condemned strongly the economic embargo as it violated the Charter and had been "flagrantly imposed" on the sovereignty of Cuba and its people. Once again, he urged the United States to lift the economic, commercial and financial embargo at the soonest possible time. Finally, he expressed support and solidarity with the Cuban people to preserve their sovereignty in the face of the embargo.

79. The Representative of the **United Republic of Tanzania**, aligning with the statement made on behalf of the Group of 77 and China, and with the Non-Aligned Movement, said that, as in past years, his delegation had voted against the embargo for the Cuban people who had suffered so long under it. Despite the call for the embargo's end, the people of Cuba continued to suffer as though the international community did not care. He also said that the embargo continued to severely constrain Cuba's development and improvement of the standard of living of its citizens. He supported direct dialogue between the parties to resolve their differences for the betterment of Cuba's citizens.

IV. COMMENTS AND OBSERVATIONS OF AALCO SECRETARIAT

80. It may be recalled that Summits of the Non Aligned Movement have always called upon the NAM Members to refrain from recognizing, adopting or implementing extra-territorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on the countries – threatening their sovereignty and independence, and their freedom of trade and investment – and prevent them from exercising their right to decide, by their own free will, their own political, economic and social systems, where such measures or laws constitute flagrant violations of the UN Charter, international law, the multilateral trading system as well as the norms and principles governing friendly relations among States.

81. Further, the Thirty-Fifth Annual Meeting of Ministers of Foreign Affairs of G 77 in 2011, also firmly rejected the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic measures, including unilateral sanctions against developing countries, and reiterated the urgent need to eliminate them immediately. Consequently, any legislation of a State that imposes unilateral sanctions extraterritorially violates the principles enshrined in the Charter of the United Nations and the general principles of international law. Moreover, such unilateral sanctions imposed on a particular country for more than a decade deprives the citizens of that country from their overall development, be it social, economical or political. The path to progress and development that situates in freedom of trade, navigation and movement of capital, which has a significant role to play in human development has been negated to whole a society for many years. The Friendly Relations Declaration 1970, Declaration on

the Right to Development (DRTD), etc., though form soft laws, still contribute towards the framing of the certain basic concerns like international cooperation, right to development and so on, which needs to be respected by the States within the international community. This also implies that a decision to condemn certain approach of a particular state against another state and attempt must be made to address the problems bilaterally and resolve them peacefully as the Charter provisions.

82. It is also to be noted that the imposition of extraterritorial measures is gross violation of the principles of sovereign equality of States and nonintervention in the internal affairs of another State and the right to development. Every State has an inalienable right to define its own model of the development of society. Any unilateral attempts by States to change the internal political system of other States using military, political, economic or other measures of pressure are unacceptable.

83. The unilateral sanctions have a particularly adverse effect on the sovereignty of other nations owing to its extraterritorial nature. Unfortunately, the target of sanctions imposed by the United States of America happens to be developing countries, particularly from Asia and Africa. Many of AALCO Member States have been and are prime targets of such unilateral imposition of sanctions having extraterritorial effects in the past and present times. These practices tend to have a very demoralizing effect on the innocent people of those countries who feel alienated and discriminated against in the fields of trade and economic relations particularly.

84. The States should reject application of such unilateral measures as tools for political or economic pressure against any country, because of the negative effects on the realization of all human rights of vast sector of their populations, inter alia, children, women, the elderly, and disabled and ill people; reaffirmed, in the context, the right of peoples to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.

85. The discussions at the UN General Assembly pertaining to the economic, commercial and financial embargo imposed by the Government of United States against Cuba provides an opportunity to elicit views of AALCO Member States on the subject item. The deliberation of the above said agenda shows clearly that the AALCO Member States are constantly opposing the unilateral imposition of sanctions. AALCO has been consistently considering the implications of the "Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties", since 1997. The Secretariat studies on the agenda item and the deliberations at successive sessions of the Organization affirm that such legislations apart from being at variance with the various rules and principles of international law and disrupts economic cooperation and commercial relations of the target States with other States. Therefore, it is the duty of free and independent States to continue to oppose the illegal extraterritorial application of national legislations of other States.

SECRETARIAT DRAFT
AALCO/RES/51/S 6
22 JUNE 2012

EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES
(Deliberated)

The Asian-African Legal Consultative Organization at its Fifty-First Session,

Considering the Secretariat Document No. AALCO/51/ABUJA/2012/SD/S 6;

Noting with appreciation the introductory statement of the Deputy Secretary-General;

Recalling its Resolutions RES/36/6 of 7 May 1997, RES/37/5 of 18 April 1998, RES/38/6 of 23 April 1999, RES/39/5 of 23 February 2000, RES/40/5 of 24 June 2001, RES/41/6 of 19 July 2002, RES/42/6 of 20 June 2003, RES/43/6 of 25 June 2004, RES/44/6 of 1 July 2005, RES/45/S 6 of 8 April 2006, RES/46/S 7 of 6 July 2007, RES/47/S 6 of 4 July 2008, RES/48/S 6 of 20 August 2009, RES/49/S 6 of 8 August 2010 and RES/50/S 6 of 1 July 2011 on the subject;

Recognizing the significance and implications of the above subject;

Expressing its concern that the imposition of unilateral sanctions on third parties is not in conformity with the Charter of the United Nations and the general principles of international law, particularly non-interference in internal affairs, sovereign equality, freedom of trade, peaceful settlement of disputes and right to development;

Declaring condemnation as regards the imposition against the AALCO Member States with additional and new series of sanctions against Syrian Arab Republic and Islamic Republic of Iran by the Government of the United States of America;

Being aware that extraterritorial application of national legislation in an increasingly interdependent world retards the progress of the Sanctioned State and impedes the establishment of an equitable, multilateral, non-discriminatory rule-based trading regime;

Reaffirming the importance of adherence to the rules of international law in international relations:

1. **Directs** the Secretariat to continue to study the legal implications related to the Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties and the executive orders imposing sanctions against target States.

2. **Also directs** the Secretariat to undertake a special study on this topic dealing with the legal implications of application of unilateral sanctions on third parties;

3. **Urges** Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this subject, and

4. **Decides** to place this item on the provisional agenda of the Fifty-First Annual Session.