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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION

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

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C O N T E N T S

		PAGE NOS
I.	Introduction	1-1
II.	AALCO's work programme on the Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties	2-9
		2-4
	A. Backdrop	
	B. Unilateral Sanctions, Executive Orders and Presidential Proclamations	4-7
	C. Legal Implications of Extra-Territorial Jurisdiction	8-9
III.	Consideration of the Item from 36th to 41st Session of AALCO	10-14
IV.	Response of the International Community on the "Extra-territorial Application of National Legislation: Sanctions Imposed against Third Parties"	15-40
	A. 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 58th Session of the General Assembly	15-39
	B. Final Document of the XIII Conference of Heads of State or Government of the Non-Aligned Movement, Kuala Lumpur, 24-25 February 2003	39-40
V.	Secretariat Comments and Observations	41-44
VI.	*Annex*: United Nations General Assembly Resolution 58/7 of 4 November 2003 on the "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba"	45-46

THE EXTRATERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

I. INTRODUCTION

1. The item "Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties" was placed on the agenda of the 36th Session (Tehran, 1997) of the Asian-African Legal Consultative Organization (hereinafter called the AALCO) following upon a reference made by the Government of the Islamic Republic of Iran in accordance with Article 4 (c) of the Statutes and sub-Rule 2 of Rule 11 of the Statutory Rules of the Organization.

2. Thereafter, the item had been considered at the successive sessions of the Organization. Owing to the rationalization of the agenda of the Organization, the item was categorized as a non-deliberated item at the 42nd Session of AALCO (Seoul, 2003). In view of the statement made by Prof. Djamchid Momtaz, the Delegate of Islamic Republic of Iran that the item should be retained on the agenda of the Organization, with a view to carrying and enriching the already concluded extensive study of the issue[1], the agenda item "The Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties" is being considered as a deliberated item at the forthcoming Forty-third Session (Bali, 2004).

3. Resolution RES/42/6 adopted at the Seoul Session directed the Secretariat to continue to study legal implications related to the Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties and the executive orders imposing sanctions against target States. The Resolution also urged upon Member States to provide relevant information and materials to the Secretariat relating to national legislation and related information on this topic.

4. 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 endeavor, towards 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. 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.

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[1] For text of the statement delivered by Prof. Djamchid Momtaz see AALCO, *Verbatim Record of Discussions,* Forty-Second Session, 16-20 June 2003, Seoul, Republic of Korea, AALCO/42/SEOUL/2003/VR at p. 211.

II. AALCO'S WORK PROGRAMME ON THE EXTRA-TERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

A. Backdrop

5. The Government of Islamic Republic of Iran while referring the item submitted an Explanatory Note that enumerated four major reasons for the inclusion of this item on the agenda of the AALCO, namely: (i) that the limits of the exception to the principle of extraterritorial jurisdiction was not well established; (ii) that the practice of States indicates that they oppose the extraterritorial application of national legislation; (iii) that extraterritorial measures violate a number of principles of international law; and (iv) that extraterritorial measures affect trade and economic cooperation between developed and developing countries and also interrupt co-operation among developing countries. The Explanatory Note had furthermore *inter alia* requested the AALCO "to carry out an in-depth 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".

6. Accordingly, a preliminary study prepared by the Secretariat was considered at the 36th Session (Tehran, 1997) of the AALCO which had pointed out that in the claims and counter claims that arose in exercise of extraterritorial jurisdiction involved the following principles: (i) principles concerning jurisdiction; (ii) sovereignty-in particular economic sovereignty – and non-interference in internal affairs of a State; (iii) genuine or substantial link between the State and the activity regulated; (iv) public policy and national interest; (v) lack of agreed prohibitions restricting State's right to extend its jurisdiction; (vi) reciprocity or retaliation; and (vii) promoting respect for rule of law. Notwithstanding the national interests of the enacting State, grave concern had been expressed on the promulgation and application of national legislation whose extraterritorial aspects affect the sovereignty of other States.

7. The preliminary study had pointed out that while a growing number of other States had applied their national laws and regulations on extraterritorial basis, fora such as the General Assembly of the United Nations, the Group of 77, the Organization of Islamic Conference, the Inter-American Juridical Organization and the European Economic Community, had, in various ways expressed concern about promulgation and application of laws with extraterritorial effects, as they affected sovereignty of other States, the legitimate interests of entities and persons under their jurisdiction and the freedom of trade and navigation.

8. Further, the preliminary study apart from referring to some recent instances of extraterritorial application of national laws (without resolving the other questions, including the question of economic counter measures), had furnished an overview of the limits imposed by international law on the extraterritorial application of national laws, and *inter alia* spelt out the response of the international community to such actions. The study also drew attention to the opinion of such bodies, as the Inter-American Juridical

Organization, the juridical body of the Organization of American States[2] and the International Chamber of Commerce.[3]

9. The Secretariat study had also shown that the topic touched upon the political, legal, economic and trade aspects of inter-State relations. It recalled in this regard that the AALCO Secretariat study on the "Elements of Legal Instruments on Friendly and Good-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. Some of these principles enumerated *inter alia* were: (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.[4]

10. The Secretariat brief had pointed out that the Declaration[5] and Programme of Action[6] adopted by the Sixth Special Session of the General Assembly, the Charter of Economic Rights and Duties of States, 1974[7], the United Nations Convention on the Law of the Sea, 1982 and several other international instruments retain many of the traditional aspects of sovereignty. These instruments also reaffirmed principles of economic sovereignty wherein rights and interests of States in the permanent sovereignty of their natural resources would be protected.

11. The study had submitted that it may, 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 Organization on this item. It had asked for consideration to be given to the question, as to whether it should be a broad survey of questions of extraterritorial application of municipal legislation 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 had recalled in this regard that, at the 44th Session of the International Law Commission (1992), the 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 one of the topics included in the open-selected lists was the Extraterritorial Application of National Legislation.

12. An outline on the topic "Extraterritorial Application of National Legislation" prepared by a Member of the Commission had *inter alia* suggested that "it appears quite

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

[3] Dieter Lange and Gary Borne (eds.), *The Extraterritorial Application of National Laws* (ICC Publishing S.A. 1987).

[4] The Secretariat Study on "Elements of a Legal Instrument on Friendly and Good Neighbourly Relations Between States of Asia, Africa and the Pacific" was prepared in 1987 and is reprinted in *AALCC Combined Reports of the Twenty-sixth to Thirtieth Sessions* (New Delhi, 1992), p. 192.

[5] Resolution 3201 of May 1, 1974, Sixth Special Session.

[6] Resolution 3202 of May 1, 1974, Sixth Special Session.

[7] Resolution 3281, 29th Session.

clear that a study of the subject of Extraterritorial Application of National Laws by the International Law Commission would be important and timely. There is an ample body of State practice, case law, national study on international treaties, and a variety of scholarly studies and suggestions. Such a study could be free of any ideological overtones and may be welcomed by States of all persuasions.

13. The Secretariat study had proposed that in determining the scope of the future work on this subject, the Organization should bear in mind the request of the Government of the Islamic Republic of Iran 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". The study also proposed that in considering the future work of the Secretariat on this item, Member States could consider sharing their experiences with the Secretariat on this matter.

B. Unilateral Sanctions, Executive Orders, and Presidential Proclamations

(a) Unilateral Sanctions

14. It is seen that promulgation of domestic laws having extraterritorial effects has largely been in the form of unilateral sanctions, executive orders and Presidential proclamations. It may be stated that the reasons for the imposition of unilateral sanctions have ranged from boycott activity[8] to the issue of worker rights[9] and have hitherto included such other issues as communism[10], transition to democracy[11], environmental activity, expropriation[12], harboring the war criminals, human rights[13], market reforms, military aggression, narcotics activity, political stability, proliferation of weapons of mass destruction and terrorism.[14]

15. During the past years there has been a sudden spurt in the number of Federal legislation in the United States invoked to impose unilateral sanctions and/or impose secondary boycotts.[15] Besides, there are number of other reasons ranging from human

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[8] See the Foreign Relations Act, 1994 (of USA).

[9] See the Andean Trade Preference Act.

[10] Aimed at Cuba and North Korea. See the Cuba Regulation and the North Korea Regulations (of USA).

[11] See the Cuban Democracy Act of 1992 (of USA).

[12] The Helms-Burton Act, 1996 (of USA).

[13] During 1993-96, human rights and democratization were the most frequently cited objective foreign policy reasons and 13 countries were specifically targeted with 22 measures adopted.

[14] The former Representative Toby Roth criticized the Iran-Libya Sanctions Act as "good politics … but bad law. It's only effect, he said, so far had been to unify the European Union, all 15 members, against the U.S. policy toward Iran and Libya."

[15] Some sanctions programmes have a secondary boycott effect; that is, sanctions are applied not only against a target state, but also against any person or state that maintains relations or engages in transactions with the target. In a secondary boycott, the secondary target is being sanctioned directly for dealing with the primary target, even though such dealings may have no jurisdictional relationship to the sanctioning state. Forced Abortion Condemnation Act, 1999 bans visas for Chinese government officials engaged in forced abortions; People's Republic of China Policy Act, 1999 bans issuance of visas for Chinese

rights, corruption to forced labour and denial of socio-economic rights as to the enactment of any legislation imposing sanctions.[16]

16. The period 1990-1996 was characterized by the US Administration and States promulgating a number of extraterritorial laws other than the Helms-Burton (against Cuba) and the Kennedy-D' Amato (against Libya and Iran) legislations.[17]

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government officials and monitoring of human rights situation in China; Nigerian Democracy and Civil Society Empowerment Act of 1999- seeks to restore some aid and support to the Government of Nigeria, although the ban on military sales and the training to Nigerian forces continues; S. (Senate) 226 North Korean Threat Reduction Act, 1999- the Bill seeks to restrict aid to North Korea an account of its nuclear programmes.

[16] The Foreign Operations, Export, Financing and Related Programs Appropriation Act, 1998 purported to impose economic sanctions when a government fails to ensure conduct of free and fair elections safeguarding civil and political rights. It provided that government prosecute officials involved in corruption and drug related activities; H.R. (House of Representatives) 2996 which proposes to withhold assistance to all CARICOM countries which support membership of Cuba in these Organizations; H.R. 3616 amendment 641 and H.R. 3616 (amendment 642) relate to prohibition of transfer of missile related technology and export of satellites respectively to China; H.R. 2647- provides for monitoring of commercial activities of companies run by People's Liberation Army (PLA) of China; S.1083 United States-People's Republic of China National Security and Freedom Protection Act- banned import of any product made by PLA); H.R.2176 Communist China Subsidy Reduction Act- requires Secretary of the Treasury to reduce amount paid to international financial institutions by an amount equal to that provided in loans and support for China; S.810 on China Sanctions and Human Rights Advancement Act requires visa limitation votes against loans to China by U.S. representatives in international financial institutions. It also prohibits import of ply or Norinco group products. Further, the Act requires reporting on human rights and religious persecution in China; H.R. 320 Chinese Slave Labour Act- prohibits importation of articles made with forced labour; H.R.2431 Wolf-Specter Freedom from Religious Act-the Act provides that the targeted countries (China, the Sudan, Laos, Iran, Cuba, Iraq and others) committing a breach of its provisions be denied visas for certain individuals from their countries and also exports of commodities. In this regard sanctions recommended against Sudan includes ban on flights, investments and imports; the U.S.1869 International Freedom from Religious Persecution Act provides sanctions against states persecuting their citizens; HR.2121 dealing on War Crimes Prosecution Facilitation Act; 1997 which restricts economic assistance to (Croatia, Yugoslavia and others) for harbouring war criminals; H.R. 1802 provides that no aid to be provided to India unless human rights concerns are addressed; H.R. 1132 stipulates that no military aid shall be provided to Indonesia, unless it improves its human rights in East Timor; the three Acts H.R. 2930 Iran Missile Proliferation Sanctions Act, 1997, H.R. 2709 Iran Missile Sanctions Act, and H.R. 2159 Foreign Operations, Export Financing and Related Programs Appropriation Act, 1998- provide for halting finances to the Russian Federation, if found aiding Iran's missile development programmes.

[17] These include the Andean Trade Preference Act; the Anti-Terrorism and Effective Death Penalty Act, 1996 (Anti-terrorism 1996); the Arms Export Control Act (AECA); the Atomic Energy Act; the Cuban Democracy Act, 1992; the Cuban Liberty and Democratic Solidarity Act, 1996 (Helms-Burton or LIBERTAD Act); the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1990 (Commerce Appropriations, 1990); the Department of Defence Appropriations Act, 1987 (Defense Appropriations Act, 1987); the Export Administration Act; the Export -Import Bank Act ("Ex-Im"); the Fisherman's Protective Act, 1967; the Foreign Assistance Act (FAA); Foreign Relations Act; the Foreign Relations Authorization Act; the Foreign Operations, Export, Financing and Related Programs Appropriation Act, 1995; the General System of Preferences Renewal Act (GSP); the High Seas Drift Net Fisheries Enforcement Act (Drift Net Act); the International Emergency Economic Powers Act (IEEPA); the Internal Revenue Code; the Internal Security and Development Cooperation Act, 1985 (ISDCA); the International Financial Institutions Act; the Iran-Iraq Non-Proliferation Act, 1992; the Iran and Libya Sanctions Act, 1996; the Iraq Sanctions Act, 1990; the Marine Mammal Protection Act, 1972 (Marine Act); the Narcotics Control Trade Act[17]; the National Defense Authorization Act, 1996 (Defense

(b) Extension of Iran and Libya Sanctions Act of 1996

17. On 3rd August 2001, the President of the United States of America signed into law H.R. 1954, the "ILSA Extension Act of 2001". The Act provides for a 5-year extension of the Iran and Libya Sanctions Act (ILSA) with amendments that affect certain of the investment provisions. Explaining the rationale for the extension of the Act, as regard Libya, George Bush said[18]:

> Libya must address its obligations under U.N. Security Council Resolutions. These relate to the 1988 Lockerbie bombing and require Libya to accept responsibility for the actions of Libyan officials, disclose all it knows about the bombing, renounce terrorism, and pay appropriate compensation. Cooperative action on these four issues would make it possible for us to begin to move towards a more constructive relationship.

As regards Iran, Bush was of the view:

> With respect to Iran, we continue to have serious concerns over its support for terrorism, opposition to the Middle East peace process, and pursuit of weapons of mass destruction.

18. It may be noted that although the US Administration favored a simple two-year extension, the US Congress recommended a five-year extension of ILSA. The pro-Israel lobby's influence can be seen from the fact that 236 of the 435 –member House and 74 of 100 Senators signed on to the five-year extension.[19]

19. On 5 January 2004, the President of the United States of America in a letter to the Speaker of the US House of Representatives and the President of the Senate wrote that despite "positive developments" [20] pertaining to lifting of UN Sanctions against Libya by the Security Council Resolution 1506 of 12 September 2003 and Libyan declaration regarding its renouncement of Weapons of Mass Destruction of 19 December 2003, he

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Authorization Act, 1996); the Nuclear Non-Proliferation Act (NNPA), 1994; the Omnibus Appropriation Act, 1997 (1997 Omnibus); the Spoils of War Act; the Trade Act, 1974 (Trade Act); and Trading With the Enemy Act (TWEA).

[18] Statement by the President of the United States of America, 3 August 2001, available on URL: http://www.whitehouse.gov/news/releases/2001/08/20010803-11.html.

[19] As to the Libya and Iranian response to the Extension of ILSA by the US Government see pp. 21-24 of AALCO/XLII/SEOUL/2003/S. 6.

[20] Some easing of tension between Libya and USA is evident in recent times following its written statement to the President of the UN Security Council in August 2003 in which Libya accepted responsibility for 1988 bombing of a PanAM airliner over Lockerbie, Scotland, that killed 270 people. Later the Libyan announcement in December 2003 that it was willing to renounce its programme on the Weapons of Mass Destruction, paved the way for the lifting of the US travel ban on Libya. For details see "US invites closer ties with Libya", available on URL: http://www.middle-east-online.com/English/libya// id=9054=9054 & format=0;"US-Libya ties warming", available on URL: http://www.middle-east-online.com/english/libya/?id=9058+9058 & format=0; "Libya accepts responsibility for Lockerbie bombing", available on URL: http://www.middle-east-online.com/english/libya/?id=9053=9053&format=0.

had "determined that it is necessary to continue the national emergency declared with respect to Libya and maintain in force the comprehensive sanctions against Libya.".[21]

(c) Executive Orders and Presidential determinations

20. During the past few years there have been instances of unilateral imposition of sanctions by Executive Orders and Presidential Determinations. These include: Executive Order 13047 of May 21, 1997 invoking a prohibition on new investment in Burma (Myanmar); Executive Order 13067 of November 3, 1997 imposing a comprehensive trade embargo on Sudan; Presidential Determination No. 98-22 of May 13, 1997 prohibiting the sale of specific goods and technology and United States Bank loans to the Government of India, terminating sales of defence articles and design and construction equipment and services, and shutting down Export – Import Bank for Overseas Private Investment Corporation (OPIC) and TDA; and Presidential Determination No. 98-XX of May 30, 1998 prohibiting the sale of specific goods and technology and United States Bank loans to the Government of Pakistan, terminating sales of defence articles and design and construction equipment and services, and shutting down Export-Import Bank, OPIC and TDA.

(d) Local Sanctions Acts

21. In addition to the federal legislation, local governments, in the United States have been increasingly inclined to impose sanctions against foreign countries in response to human rights practices. Some 12 U.S. states, counties, and cities had sought to establish their own measure against other countries and have imposed restrictions against sovereign States ranging from Myanmar to Switzerland. Thus, following the imposition of United States investments sanctions on Myanmar in May 1997[22], a dozen or so local governments restricted the granting of public contracts to companies that do business with Myanmar. These include the Commonwealth of Massachusetts, the cities of San Francisco and Oakland, California and several other Governments, which have enacted "selective purchasing ordinances" against domestic and foreign companies that do business with Myanmar.

22. There are a few recent instances of local states and counties have adopted economic sanctions and laws. The sanctions regulations too are in the form of either selective purchasing or selective investment and non-binding resolutions. Selective purchasing involves a penalty of up to 10 percent on firms operating in a targeting country or prohibition from bidding on governmental contracts. Selective investment in an entity (usually a bank) amounts to actively doing business in a targeted country. As regards non-binding resolutions, it involves a statement by a governing body opposing a country's policies, but no actual sanctions.

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[21] Text of the Presidential Letter dated 5 January 2004 available on URL: http://www.whitehouse.gov/news/releases/2004/01/20040105-4.html.

[22] See Executive Order 13047 of May 20, 1997. In imposing the investment ban, the President is said to have exercised authority given by an amendment to the fiscal year 1997 Foreign Operations Appropriation Act.

C. Legal Implications of Extra Territorial Jurisdiction

23. International law governs the relation of States between themselves and every State incurs responsibility when it violates rights granted by international law. In this regard, every state has a right to exercise jurisdiction provided such jurisdiction is rooted and based on the generally accepted norms of international law. However, there are instances when in the exercise of its territorial jurisdiction a State may regulate an act whose constituent elements may have occurred only in part in its territory, for example when an act is initiated abroad,[23] but consummated within its territory, also called *objective territoriality*. Conversely, an act could have been initiated within its territory and consummated abroad amounting to *subjective territoriality*. Besides, it is well known that without consent or treaty a State cannot take measures on the territory of another state.[24]

24. The adoption of the Helms-Burton or the Libertad Act, 1996 against Cuba and the Kennedy-D'Amato Act against Iran, by the United States has far reaching impact on the application of national laws outside their territory in a manner, which may lead to conflict with other States. The Helms Burton Act provides *inter alia* for legal proceedings before US Courts against foreign persons or companies deemed to be 'trafficking' in property expropriated by Cuba from American nationals. In addition, the legislation enables the US to deny visas to executives, their children, and spouses on the ground that activities in Cuba have a direct, substantial, and foreseeable effect.

25. These justifications seem being infirm in law, have evoked strong reactions from third States and entities that feel that their legitimate trading interests are affected by such unilateral sanctions or extraterritorial measures. Moreover, third States argue these two extra territorial measures violate their sovereign right to have peaceful trading relations with other States. The European Union[25] and Canada in retaliation passed a number of blocking legislation in response to Helms Burton Act[26] and other extra territorial measures.

26. It may thus be stated that extraterritorial legislation to be valid must: not violate the local law of a state, must not cast jurisdiction upon nationals of third States who do not fall under the jurisdiction of the prescribing state and must be in conformity with the basic norms of international law. To name a few the principles of the UN Charter such as sovereign equality, non-interference in internal affairs and peaceful settlement of disputes.

27. Against this backdrop, this report will briefly mention the consideration of the topic from 36th to 41st Session of AALCO; elaborate the consideration of the topic at the

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[23] US v. Aluminum Co. of America 148 F. 2d 416 (1945); and US v. Watchmakers of Switzerland Information Center Inc. 1133.

[24] The S.S. Lotus Case, PCIJ (Permanent Court of International Justice), Ser. A.No.10 (19207).

[25] EU Note date 12 Aug. 1966 and EU Press Release WE 27/96, 18 July 1996.

[26] The Canadian Foreign Extraterritorial Measures Act (FEMA), 1997.

58th session of the General Assembly of the United Nations and the Thirteenth Conference of Heads of State or Government of Non-Aligned Movement, held in Kuala Lumpur, Malaysia on 24-25 February 2003. Finally, it offers the comments and observations of the Secretariat.

III. CONSIDERATION OF THE ITEM FROM 36TH TO 41ST SESSION OF AALCO

28. Since the 36th Session of the AALCO when this item was placed on its agenda, it has been considered at successive sessions. An attempt is made to provide in brief, the substance of the discussions held.

29. During the course of the deliberations on the topic, at the **36th Session (Tehran, 1997)** delegates expressed a number of varied views on the topic. Chief among them being that promulgation and application of laws with extraterritorial effects, had no basis in international law as such laws were in contravention of the principle of non-intervention, political independence and territorial sovereignty enshrined in several treaties.

30. At the 36th session (Tehran, 1997), the AALCO *inter alia*, recognized the significance, complexity and implications of "Extra-Territorial Application of National Legislation: Sanctions Imposed against Third Parties". It requested the Secretariat to monitor and study developments concerning the Extra-territorial Application of National Legislation: Sanctions Imposed Against Third Parties and urged Member States to share such information and materials that may facilitate the work of the Secretariat. The AALCO also requested the Secretary-General to convene a seminar or meeting of experts and to ensure a scholarly and in-depth discussion, to invite a cross-section of professionals, thereto. The AALCO had further requested the Secretary-General to table a report of the seminar or meeting of experts on the subject at the next session of the Organization.

The Report on the Seminar on the Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties, Tehran, January 1998

31. In fulfillment of the mandate of the 36th Session the Secretariat of the AALCO organized a two-day seminar in Tehran in January 1998. A group of experts from Asia and Africa and experts from outside the region were invited thereto.

32. A Background Note prepared by the Secretariat for that seminar had included an overview of the United States: Iran and Libya Sanctions Act of 1996. Although 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 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 basic human rights of the people of the target State; and issues of conflicts of laws such as non-recognition, *forum non-conveniens* and other aspects of extra-territorial enforcement of national laws.

33. The deliberations had also touched upon a range of State responses to counter the possible impact of the US legislation in particular and the unilateral imposition of sanctions through extraterritorial application of domestic legislation in general. References were made in this regard to the response of the Inter-American Juridical Organization and the European Union and the measures discussed included 'blocking' legislation[27], statutes with 'claw-back'[28] provisions and laws providing for compensation claims, at the national level. At the international level, the responses noted included: diplomatic protests, negotiations for exemptions/waivers in application of the projected sanctions, negotiations for settlement of disputes, use of WTO avenues and measures to influence the drafting of legislation in order to prevent its adverse extra territorial impact.

34. The deliberations of the seminar revealed a general agreement that the validity of any unilateral imposition of economic sanctions through extra-territorial application and national legislation must be tested against the accepted norms and principles of international law. The principles discussed included those of sovereignty and territorial integrity, sovereign equality, non-intervention, self-determination, and the freedom of trade, the right to development and the principle of permanent sovereignty over natural resources.

35. As regards counter measures, it was agreed that the rules of prohibited counter measures as formulated by the International Law Commission in its draft articles on State Responsibility must be applied to determine the legality of counter measures purported to be effected by the extra territorial application of the two aforementioned impugned statutes. These rules include the prohibition of injury to third States; the rule of proportionality; and the rules relating to prohibited counter measures incorporated in Article 13 of the draft articles on State Responsibility as framed by the International Law Commission.

36. While considering the issue of countermeasures, it was emphasized that the presiding peremptory norm must be the peaceful settlement of disputes. The discussion also highlighted the inter play between counter measures and non-intervention, and between counter measures and unilateral imposition of economic sanctions. The participants agreed that counter measures could not be a façade for unilateral imposition of sanctions in respect of matters that fell within the purview of Chapter VII of the Charter of the United Nations or the sanctions competence of other international organizations. It was argued that the differences between counter measures and sanctions of the nature of international sanctions should be recognized.

37. The debate in the seminar had also revealed a divergence of views on three main issues viz. (i) whether the subject should be confined to secondary sanctions through extraterritorial application of national laws; (ii) the distinction between the prescriptive

[27] The centerpiece of any blocking legislation is that the national courts would not recognize or enforce any judgment made under legislation that results in unjustified extraterritorial application. The objective of such legislations is to neutralize the effects of extraterritorial legislation promulgated by the sanctioning State.

[28] A "claw back" provision allows nationals who have been sued under a sanctioning legislation to recover damages and costs.

jurisdiction and the enforcement jurisdiction of every State; and (iii) the applicability of WTO disputes settlement procedure to resolve disputes relating to Helms-Burton Act and the Kennedy D'Amato Act in their extraterritorial application.

38. The Seminar of the group of experts had also addressed the question of the work to be undertaken and a number of proposals were advanced by the participants for the consideration of the AALCO. The proposals with regard to the future work on the subject included: (i) further study on all aspects of the subject; and (ii) the formulation of principles.

39. The Secretariat with the financial assistance of the Islamic Republic of Iran, published the Report and proceedings of the Tehran Seminar which incorporates the papers presented and the oral presentations made by the Group of Experts.[29]

40. At its **37th Session (New Delhi, 1998)** the Secretariat continued its study of the legal issues relating to the Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties and examined the issue of "executive orders" imposing sanctions against target States. The Organization urged the Member States to provide relevant information and materials to the Secretariat of the Organization.

41. The Secretariat Report submitted for the consideration of the Session stressed that the United States of America had armed itself with a plethora of laws, which had hitherto allowed the Administration to extend its jurisdiction and impose unilateral sanctions against more than 70 States.[30] According to report of the Latin American Economic System (SELA), which groups 28 Latin American and Caribbean States, 76 States put up with or were seriously threatened by one or more trade sanctions. Unilateral trade sanctions, it was stated, severely threatened or punished 68 percent of the world population. The President's Expert Council report on sanctions listed 73 States, which, as of January 1997, had been subjected to some form of unilateral sanctions.

42. A report commissioned and published by the United States National Association of Manufacturers (NAM) had, in March 1997, revealed, "from 1993 through 1996, 61 U.S. laws and executive actions were enacted authorizing unilateral sanctions for foreign policy purposes. Thirty-five countries were specifically targeted".[31] The report had

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[29] AALCC, *Report of the Seminar on the Extra-Territorial Application of National Legislation: Sanctions Imposed Against Third Parties held in Tehran, Islamic Republic of Iran in January 1988*, (AALCC, 1998).

[30] The targeted States then were: Afghanistan, Algeria, Angola, Armenia, Azerbaijan, *Bahrain*, *Bangladesh*, Belarus, Belize, *Burma*, Burundi, Cambodia, Canada, *China*, Columbia, Costa Rica, Cuba, Djibouti, *Egypt*, *Gambia*, Georgia, Guatemala, Haiti, Honduras, *Iran*, *Iraq*, Italy, *Japan*, *Jordan*, Kazakhstan, *Kuwait*, Kyrgyzstan, Laos, *Lebanon*, Liberia, *Libya*, Maldives, Mauritania, Mexico, Moldavia, Morocco, *Nigeria*, *North Korea*, *Oman*, *Pakistan*, Panama, Paraguay, *Qatar*, Romania, Russia, Rwanda, *Saudi Arabia*, *Somalia*, *Sri Lanka*, *Sudan*, *Syria*, Taiwan, Tajikistan, *Tanzania*, *Thailand*, Turkmenistan, *Uganda*, Ukraine, *United Arab Emirates*, Uzbekistan, Vanuatu, Venezuela, Vietnam, *Yemen*, Federal Republic of Yugoslavia and Zaire. In addition to these States, unilateral sanctions have also been targeted at other newly independent States of erstwhile Soviet Russia and *India*. In addition to these States, *Indonesia* and *Malaysia* are considered to be among the possible targets.

[31] See, *A Catalog of New US Unilateral Economic Sanctions For Foreign Policy Purposes 1993-96 (*With *Analysis and Recommendations)*, March 1997. The Catalog was prepared under the direction of Professor

concluded that all economic sanctions "should be multilateral except the most unusual and extreme circumstances".

43. The Organization at its **38th Session (Accra, 1999),** considered, and surveyed the local acts of USA, which sought to impose unilateral sanctions. The Secretariat brief had also enunciated four categories of executive orders and had expressed the hope that the Session would guide the Secretariat on the future course of the topic. On the issue of local acts of States having extraterritorial effects, it was felt that as few of them had been declared *ultra vires* of the constitution of the land, their validity could also be questioned as international law, which guided relations between States and required conformity with certain basic norms.

44. At the **39th Session (Cairo, 2000)** of the Organization, the Secretariat study focused on executive orders, particularly the Burma Massachusetts Law of 1996. The study reiterated the view that extraterritorial sanctions violated a State's sovereignty and a number of core principles of the UN Charter and a number of delegates condemned the promulgation of national legislation with extra-territorial effects and called for the immediate repeal of such laws, as such extraterritorial extra-territorial measures, violated a number of well established principles of international law such as those of sovereignty and territorial integrity, sovereign equality, non-intervention, self-determination, principle of peaceful settlement of disputes and freedom of conducting normal trade.

45. The Organization at its **40th Session (New Delhi, 2001)** continued its discussion on the topic. It is generally held that the discussions revealed that promulgation of extra-territorial measures were violative of the core principles of territorial integrity and political independence of States. Besides violating the principles enshrined in the UN Charter, extra-territorial sanction hindered peaceful and economic relations between States.

46. At the **41st Session (Abuja, 2002)**, of the Organization the item was introduced by the **Deputy Secretary-General Amb. Dr. Ali Reza Deihim.** He said that promulgation of domestic laws having extra-territorial effect, including imposition of unilateral secondary boycotts were violative of the sovereignty and economic interest of a State. It also violated the core principles of territorial sovereignty and political integrity of a State and constitutes interference in the internal affairs of a State. They also hamper trade and economic cooperation among States. Drawing attention to the much criticized D'Amato-Kennedy Act and the Helms-Burton Act, Ambassador Deihim said that in an increasingly interdependent world, unilateral sanctions against States besides possessing infirmities in law were bad as a foreign policy tool. Unlike multilateral sanctions, unilateral sanctions were inherently ineffective and lacked the collective will of the international community. For these reasons, Dr. Deihim said it was imperative that all States must reject the promulgation and application of this dubious form of legislation.

Barry Carter of Georgetown University Law School. Marino Marcich of the NAM Trade and Technology Policy Department prepared the analysis and recommendations.

47. In the deliberations on the agenda item the delegates were of the view that unilateral sanctions and extraterritorial measures against other countries were inadmissible under international law. Such actions, violated the principles set out in the UN Charter; the Declaration on the Inadmissibility of Interference in the Internal Affairs of States and the Protection of their Independence and Sovereignty (adopted in 1969); the 1979 Charter of Economic Rights and Duties of States; and the Friendly Relations Declaration of 1980. They also violate many other resolutions of UN General Assembly and Economic and Social Council (ECOSOC) resolutions that express grave concern over the negative impact of unilateral extraterritorial coercive economic measures and call for their immediate repeal. Further, it was stressed out that such illegal measures impede free international trade and negatively impinge upon social and human development in the targeted developing countries. Delegates were also critical of the United States of America for enacting and implementing legislations having extraterritorial application and they emphasized that many developing countries were affected by imposition of such legislations.

IV. RESPONSE OF THE INTERNATIONAL COMMUNITY ON THE EXTRA-TERRITORIAL APPLICATION OF NATIONAL LEGISLATION: SANCTIONS IMPOSED AGAINST THIRD PARTIES

A. 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 58th session of the General Assembly (2003)

48. The item "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" has been under the consideration of the United Nations General Assembly since 1991. The resolutions adopted by the Assembly since then call overwhelmingly for the necessity of ending the four-decade old economic, commercial and financial embargo imposed by the United States of America against Cuba.

49. The 57th session of the General Assembly vide its resolution 57/11 of 12 November 2002 reiterated its call upon all States, in conformity with their obligations under the Charter of the United Nations to refrain from applying laws and measures of a type similar to the Helms-Burton Act of 12 March 1996 (of the USA) the extraterritorial effects of which affected the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation. It called upon all States to refrain from promulgating and applying laws and measures, the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation. The Resolution urged all States applying laws and measures with extraterritorial effects to take the necessary steps to repeal or invalidate such laws as soon as possible. It also called upon the Secretary-General to present a report on the implementation of the resolution.

50. In the following part important aspects of the Report of the Secretary-General, the deliberations at the 58th Session of the General Assembly and the resolution, in as much as they relate to the agenda item "Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties", are highlighted.

(a) Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba: Report of the Secretary-General

51. The Report of the Secretary-General[32] on the implementation of the resolution 57/11 reproduces the replies of Governments[33] and organs and agencies of the United

[32] UNGA, *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba: Report of the Secretary-General,* UN Doc. A/58/287 dated 18 August 2003.

[33] In response to the UN Secretary-General request dated 21 April 2003 following Governments had submitted their responses by 16 July 2003:Algeria, Angola, Antigua and Barbuda, Argentina, Armenia,

Nations[34]. Herein an attempt is made to extract from the replies of the States, the statements— which are reflective of the state practice—that seek to validate the view that promulgation and application of laws having extraterritorial effects is contrary to the well-established norms of international law and the principles of the United Nations Charter.

52. **Algeria:** … the Government of Algeria has not promulgated or applied any laws or measures the extraterritorial effects of which affect the sovereignty of other States.

53. **Antigua and Barbuda:** … is a full practitioner of the freedom of trade and navigation and imposes no form of economic sanction on any country; consequently, there are no laws in Antigua and Barbuda of the nature identified.

54. **Argentina:** … On 5 September 1997, the Government of Argentine Republic promulgated Act No.24, 871, which establishes the legislative framework governing the scope of application of foreign legislation within national territory. Under that act, foreign legislation which is aimed, directly or indirectly, at restricting or impeding the free flow of trade and the movement of capital, goods or persons to the detriment of a given country or group of countries shall neither be applicable nor have legal effects of any kind within the national territory.

Article 1 of the Act provides that foreign legislation which seeks to have extraterritorial legal effects, through the imposition of an economic embargo or limits on investment in a given country, in order to elicit a change in the form of government of a country or to affect its right to self-determination shall also be wholly inapplicable and devoid of legal effects.

Bahamas, Barbados, Belarus, Belize, Benin, Bolivia, **Botswana**, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cape Verde, Chile, **China**, Colombia, Congo, Costa Rica, Cuba, **Cyprus, Democratic People's Republic of Korea**, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, **Egypt**, **Gambia,** Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Holy See**, India, Islamic Republic of Iran**, Jamaica, **Japan**, Kazakhstan, **Kenya**, Lao People's Democratic Republic, **Lebanon**, **Libyan Arab Jamahiriya**, Liechtenstein, Mali, Mexico, Mozambique**, Myanmar**, Namibia, Norway, **Pakistan**, Panama, Paraguay, Peru, **Philippines**, Poland, **Qatar**, Russian Federation, Rwanda, Saint Kitts and Nevis, San Marino, Sao Tome and Principe, Seychelles, Slovakia, South Africa, **Sri Lanka**, **Sudan**, Switzerland, **Syrian Arab Republic**, **Thailand**, Trinidad and Tobago, Tunisia, **Turkey**, **Uganda**, Ukraine, **United Republic of Tanzania**, Uruguay, Venezuela, Viet Nam, Zambia and Zimbabwe. In all 86 Member States of the United Nations submitted their replies to the Secretary-General. 23 of which are AALCO Member States.

[34] Following organs and agencies of the United Nations submitted their responses: Office of the resident coordinator of the United Nations system for operational activities for development; Economic Commission for Latin America and the Caribbean; International Fund for Agricultural Development; International Atomic Energy Agency; International Civil Aviation Organization; Universal Postal Union; International Telecommunication Union; International Labour Organization; United Nations Children's Fund; United Nations Conference on Trade and Development; United Nations Educational, Scientific and Cultural Organization; United Nations Environment Programme; Food and Agriculture Organization of the United Nations; United Nations Human Settlement Programme; United Nations Industrial Development Organization; United Nations Population Fund; United Nations Office on Drugs and Crime; World Health Organization/Pan American Health Organization; and World Food Programme.

55. **Armenia:** The Armenian legal regime contains no laws or measures of the kind referred to in General Assembly resolution 57/11.

56. **Bahamas:** ….The Bahamas has not promulgated or applied laws or measures against Cuba that would prohibit economic, commercial or financial relations between the Bahamas and the Republic of Cuba.

57. **Belarus:** …The Republic of Belarus has consistently supported the invalidation of laws and measures unilaterally promulgated and applied by Member States, the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation.

Pursuant to the fundamental principles of international law, including the provisions of the Charter of the United Nations, the Republic of Belarus has never applied, does not apply and has no intention of ever applying any of the laws or measures referred to above.

58. **Belize:** Belize has not promulgated or applied any law, regulation or measure, the extraterritorial application of which would affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation.

59. **Bolivia**: The Government of the Republic of Bolivia has not adopted any laws or measures of the kind referred to in the aforementioned resolution. Consequently, there are no provisions, measures or laws which the Government of Bolivia would have to repeal or invalidate in this regard.

60. **Botswana:** …Botswana is opposed to the continued adoption and application of such extraterritorial measures and, in this regard, supports the immediate lifting of the economic, commercial and financial embargo against Cuba.

61. **Brazil:** Brazil reiterates its position that discriminatory trade practices and extraterritorial application of domestic laws run counter to the need for promoting dialogue and ensuring the prevalence of the principles and purposes of the Charter of the United Nations.

…Brazil has not promulgated or applied any law, regulation or measure the extraterritorial effects of which could affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation. Brazil's legal system does not recognize the validity of the application of measures with extraterritorial effects.

Companies located in Brazil are subject exclusively to Brazilian legislation. Measures by any country which violate the provisions of resolution 57/11, and which attempt to compel the citizens of a third country to obey foreign legislation, affect the

interests of the international community as a whole and violate generally accepted principles of international law. They should be reviewed and changed, where appropriate, in order to bring them into conformity with international law.

Governments not complying with resolution 57/11 should urgently take further steps to eliminate discriminatory trade practices and bring to an end unilaterally declared economic, commercial and financial embargoes.

62. **Bulgaria**: …The Republic of Bulgaria does not accept the application of laws and unilateral punitive measures against any State which have not been adopted by the Security Council or the General Assembly of the United Nations.

63. **Burundi:** …. Government of the Republic of Burundi has never promulgated and intends never to promulgate laws or measures to strengthen or expand the economic, commercial and financial embargo imposed against Cuba.

64. **Cape Verde:** Cape Verde, …. has never promulgated or applied any laws or measures of the kind referred to in the preamble to General Assembly resolution 57/11.

65. **Chile:** …. The Government of Chile has not promulgated or implemented laws or measures of the kind referred to in the preamble to the aforementioned resolution.

66. **China:** Sovereign equality, non-interference in other countries' internal affairs and other relevant norms governing international relations should be duly respected. Every country has the right to choose, according to its national circumstances, its own social system and mode of development, which brooks no interference by any other country.

The differences and problems that exist among countries should be resolved through peaceful dialogue and negotiation on the basis of equality and mutual respect for sovereignty. The economic, commercial and financial embargo imposed by the United States on Cuba, which has lasted for too long, serves no other purpose than to keep high tensions between two neighbouring countries and inflict tremendous hardship and suffering on the people of Cuba, especially women and children. The embargo, which remains unlifted, has seriously jeopardized the legitimate rights and interests of Cuba and other States as well as the freedom of trade and navigation and should, in accordance with the purposes and principles of the Charter of the United Nations and relevant resolutions of the United Nations, be ended.

67. **Colombia:** The Government of the Republic of Colombia, ……, has neither promulgated nor applied unilaterally any laws or measures against Cuba or any other State which could affect the free development of that State's economy or trade.

68. **Congo: …**The Republic of Congo has never adopted measures prohibiting economic, commercial or financial relations with Cuba.

69. **Costa Rica:** Costa Rica has not promulgated or applied any laws that might promote economic embargo against Cuba.

70. **Cuba:** […]

The primary goal of the embargo is quite simply that of effecting the economic and social asphyxiation of the Cuban nation, by depriving it of the basic means of survival. The prohibitions and restrictions imposed on the Cuban people by the embargo are totally lacking in any legal, moral or ethical basis. Pursuant to article 2, subparagraph (c), of the Geneva Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, the embargo imposed against Cuba qualifies as an act of genocide, and thus constitutes a crime under international law.

[…]

The economic war against Cuba began long before the embargo was formally established through an executive order of the President of the United States. Its extraterritorial nature, institutionalized through the 1992 Torricelli Act, has always affected trade, financial relations and investments not only between the United States and Cuba, but also between Cuba and third countries.

The embargo abruptly and drastically cut Cuba off from all ties with the United States, our closest market, the country with which Cuba had historically carried out the bulk of its foreign trade, and to which we were technologically linked as well.

Cuba was then obliged to redirect its economic ties, and search out new sources of supplies and markets for its exports in much more distant regions of the world. All of this entailed enormous expenditures on transportation and freight costs, and oversized inventories and reserves, with the high cost implied by the tying-up of resources.

The problems faced by the Cuban economy as a result of the embargo were even further aggravated when, after the disintegration of the socialist economic cooperation system and of the Soviet Union itself, Cuba was hit once again by the rupture of ties with its traditional trade partners, this time, the USSR and the countries of Eastern Europe. As far as the United States was concerned, this was the perfect moment to deal a final blow to the Cuban Revolution.

Thus, in 1992,the Torricelli Act was passed, abruptly cutting off Cuba's purchases of food and medicine from subsidiaries of United States companies based in third countries and establishing strict prohibitions against ships entering Cuban ports.

Still not satisfied, however, due to their failure to bring about the collapse of the Cuban economic and political system, the United States passed the Helms-Burton Act in 1996. This legislation endorsed all the embargo's prohibitions with the status of law and sought to prevent foreign investment in Cuba. At the same time, it institutionalized subversion, financed and directed by the United States Government, as a means of breaking the independent will of the Cuban people.

This legislation, which extended to the entire international community, has been complemented by subsequent provisions and measures aimed at even further reinforcing the embargo.

The United States Government's declared disrespect for the rule of international law did not end with the adoption of the Helms-Burton Act in 1996. In open violation of the legislation and commitments of the United States regarding intellectual property, and particularly the Agreement of Trade-Related Aspects of Intellectual Property, the United States Government passed Section 211 of the Omnibus Appropriations Act of 1999. Section 211 is being used in an attempt to steal the Havana Club brand name from its legitimate owners, with the goal of grating the right to market Havana Club rum, first in the United States and then in third countries, to spurious and illegal claimants.

[…]

While these economic sanctions and restrictions have been accompanied throughout more than four decades by initiatives to create, finance and direct internal subversion on the island, this particular administration has increased open support for the subversion of the Cuban constitutional order to unprecedented levels. The United States Interests Section in Havana has been used to provide resources and financing and issue instructions to groups of mercenaries paid by and working for the super-Power, with the aim of fomenting subversive and pro-annexation activities within Cuba. This is a clear violation and challenge to Cuban institutionality and the Vienna Convention on Diplomatic Relations.

[…]

In 1992, as a result of the triumphalism reigning in the United States after its strategic victory in the so-called Cold War, the prevalent view among the country's imperialist circles was that the time had come to destroy the Cuban Revolution once and for all. This was what led to the adoption of the Cuban Democracy Act, better known as the Torricelli Act.

At the time the Torricelli Act was signed, Cuba acquired vital goods like medicine and food from foreign branches or affiliates of United States companies based in third countries. In 1991, the volume of trade with these subsidiaries was about $ 718 million, of which 91 per cent comprised food and medicine. This trade was drastically cut off as a result of the Torricelli Act.

By virtue of this legislation, ships registered in any nation that touched port in Cuba or transported goods to or on behalf of Cuba were prohibited from entering United States ports for a period of 180 days, under threat of inclusion on a "blacklist", in open violation of the basic norms of freedom of trade and navigation enshrined in international law, international agreements and United Nations provisions on this matter.

As if this contempt and violation of international law were not sufficient, in 1996 the United States adopted the so-called Helms-Burton Act, aimed not only at obstructing trade between Cuba and the rest of the world, but also at halting the incipient process of foreign investment in Cuba in the form of capital, technology and markets.

With this legislation, the United States assumed the right to decide, officially and publicly, on issues that should be exclusive attributes of the sovereignty of other States.

In addition, the Act instructs the Secretary of State to prohibit entry into the United States for all officials and executives of companies that violate the iron-clad embargo against Cuba, denying them free access to United States territory and obliging the Secretary of State to compile a list of "excludables".

While both pieces of legislation intensified and aggravated this unacceptable violation of international law, by giving it a congressional seal and presidential approval, the provisions that preceded them and their practical application had always entailed transgressions against the sovereignty of other nations.

The United States Government has applied its own legislation on an extraterritorial basis, in contempt of third countries' legitimate interests in investing in and developing normal economic and commercial relations with Cuba. It has unleashed persecution on companies and their personnel for establishing or even proposing to establish economic, commercial or scientific and technical relations with Cuba.

Not a single sector of the Cuban economy has escaped the extraterritorial effects of this policy. Of the $ 625 million in damages to Cuban foreign trade in the year 2002 as a consequence of the embargo, $178.2 million, or 26 per cent, were a direct result of its extraterritorial effect.

[. . .]

The extraterritorial application of the United States Government's embargo against Cuba, institutionalized and systematized through the Torricelli and Helms-Burton Acts, in addition to violating international law, has provoked serious additional damages to the national economy over the last decade.

[. . .]

For all of the above reasons, Cuba calls on the international community once again to unequivocally express its support for an end to the economic, commercial and financial embargo imposed by the United States of America against Cuba. In this way, it will be defending the ideal of a better world, where justice and the rule of law prevail for everyone equally.

71. **Cyprus**: Cyprus does not favour any attempt to enforce laws in its territory that are promulgated by other States. It is therefore opposed to the adoption of any measures that have extraterritorial application on its territory.

72. **Democratic People's Republic of Korea:** To oppose the imposition of unilateral sanctions on a sovereign State is the consistent position of the Government of the Democratic People's Republic of Korea.

Unilateral and extraterritorial sanctions imposed by the United States of America against Cuba are the result of the hostile policy of the United States against Cuba and constitute a violation of the principles of respect for sovereign equality of States, non-intervention and non-interference in their internal affairs and freedom of international trade and navigation embodied in the Charter of the United Nations and international law.

73. **Democratic Republic of the Congo:** … Respects the principles of international law and maintains that it has neither promulgated nor applied any laws of the kind referred to in General Assembly resolution 57/11, or the extraterritorial effects of which affect the sovereignty of other States.

74. **Dominica:** The Commonwealth of Dominica has never promulgated nor applied any laws or measures which in any way hinder the freedom of trade and navigation in Cuba.

75. **Dominican Republic:** In its international relations, the Dominican Republic acts in accordance with the standards and principles governing relations of cooperation and exchange among nations, based on the Charter of the United Nations and other rules of international law. It therefore does not enact or implement laws, which contravene those standards and principles.

76. **Egypt:** Egypt has voted in favour of the resolutions, in line with Egypt's consistent view that unilateral sanctions outside the United Nations framework are not a course of action that Egypt can condone.

77. **Gambia:** The Gambia has no intention of promulgating or applying the laws or measures referred to in the preamble to the resolution. The Gambia has not promulgating or applied such laws.

78. **Greece:** Greece… has never thus far promulgated and applied laws and regulations of the kind referred to in resolution 57/11, by which an economic, commercial and financial embargo against Cuba would be applied.

79. **Grenada:** The Government of Grenada does not promulgate or apply any law or measure which would encroach on or undermine the sovereign rights of any State.

80. **Guatemala:** There are no legal or regulatory impediments in Guatemala to the freedom of transit or trade with the Republic of Cuba. Also, it is the policy of the

Government of Guatemala to oppose any coercive measure that runs counter to the provisions of international law.

81. **Guinea:** …Guinea has always refrained from, and will continue to refrain from promulgating or applying economic or trade laws and regulations affecting the freedom of international trade.

82. **Guyana:** Guyana has not promulgated or applied any laws or regulations the extraterritorial effects of which affect the sovereignty of other States. It is thus fully in observance of resolution 57/11 and is committed to continuing support.

83. **Haiti:** The Government of the Republic of Haiti …. has never promulgated any laws or regulations restricting free trade with the Republic of Cuba. It is the Government's policy to respect the principles of sovereign equality of States and non-interference in their internal affairs.

The Government of Haiti, disturbed by the detrimental effects of the embargo on the Cuban population, will continue to urge the lifting of this unilateral and extraterritorial measure. The embargo constitutes a violation of international law and the Charter of the United Nations.

84. **Holy See:** The Holy See has never applied any economic, commercial or financial laws or measures against Cuba.

85. **India:** India has not promulgated or applied any laws of the type referred to in the preamble of the above-mentioned resolution and, as such, the necessity of repealing or invalidating any such laws or measures would not arise.

India has consistently opposed any unilateral measures by countries which impinge on the sovereignty of another country. These include any attempt to extend the application of a country's laws extraterritorially to other sovereign nations.

India recalls the final documents adopted by the Thirteenth Summit Conference of Heads of State or Government of the Movement of the Non-Aligned Countries, held in Kuala Lumpur in February 2003 on this subject, and urges the international community to adopt all necessary measures to protect the sovereign rights of all countries.

86. **Islamic Republic of Iran:** Unilateral economic measures as a means of political and economic coercion against developing countries, historically, have been in contradiction with the spirit of the United Nations Charter in promoting solidarity, cooperation and friendly relations among the nations of the world.

In existing conducive environment such measures contravene all laws, principles and norms governing international relations in the field of global trade and increasing extensive commercial and economic interactions among countries.

The use of unilateral measures as a means of political and economic coercion against developing countries has been condemned by decisions and resolutions of various bodies of the United Nations particularly the General Assembly and Economic and Social Council. The international community should become more vocal about the necessity of repealing them and prevention of similar actions.

Adoption and application of unilateral coercive measures impedes the full achievement of economic and social development by the population of the affected countries, in particular children and women, and hinders their well-being and creates obstacles to sustainable development and the full enjoyment of their human rights, including the right of everyone to a standard of living adequate for health and well-being, and their right to food, medical care and the necessary social services. It must be ensured that food and medicine are not used as tools for political pressure.

Since resort to unilateral economic coercive measures jeopardizes the legitimate economic interests of the targeted developing countries and while the United Nations system and other relevant international and multilateral organizations are redoubling their endeavors towards the creation and strengthening of a conducive international economic environment capable of providing equal opportunities for all countries to benefit from international economic, financial and trade system, it is also necessary that the international community consider ways and means for compensating the losses of targeted countries by those who resort to such unilateral measures.

87. **Jamaica:** … The Government of Jamaica has not promulgated any law, legislation or measure that would infringe on the sovereignty of any State or its lawful national interests or obstruct the freedom of trade and navigation.

88. **Japan:** The Government of Japan has not promulgated or applied laws or measures of the kind that are referred to in paragraph 2 of resolution 57/11.

…Japan shares the concern, arising from the Cuban Liberty and Democratic Solidarity Act of 1996 (known as Helms-Burton Act) and the Cuban Democracy Act of 1992, regarding the problem of extraterritorial application of jurisdiction, which is likely to run counter to international law.

89. **Kazakhstan**: The Republic of Kazakhstan has not promulgated or applied any provisions, the extraterritorial effects of which affect the sovereignty of other States.

90. **Kenya**: Kenya fully supports resolution 57/11 and it has never promulgated or applied laws and measures which hinder freedom of international trade and navigation.

91. **Lao People's Democratic Republic:** …. Lao People's Democratic Republic …. has neither promulgated nor introduced any laws and measures of the kind referred to in paragraphs 2, 3 and 4 of resolution 57/11.

92. **Libyan Arab Jamahiriya**: …It is sad to observe that the United States Government persists in implementing the provisions of H.R. 3107, better known as the D'Amato-Kennedy Act, despite continuing condemnation by the international community through numerous international and regional organizations, including the Movement of Non-Aligned Countries, the Group of 77, the Organization of the Islamic Conference and the League of Arab States, and the General Assembly of the United Nations, which has adopted several resolutions, the most recent being resolution 57/5 of 16 October 2002 in which the Assembly reaffirms that all peoples have the right to self-determination and that by virtue of that right they freely pursue their economic, social and cultural development. In that same resolution, the General Assembly expresses its deep concern at the negative impact of unilaterally imposed extraterritorial coercive economic measures on trade and financial and economic cooperation, including at the regional level, because they are contrary to recognized principles of international law, and calls for the repeal of unilateral extraterritorial laws that impose coercive economic measures contrary to international law on corporations and nationals of other States.

Considering that the imposition of these iniquitous measures is contrary to the purposes and principles of the United Nations and the principles of international law, the Libyan Arab Jamahiriya reaffirms the terms of paragraphs 2 and 3 of General Assembly resolution 57/11 and declares that the State concerned must refrain from promulgating and applying laws and measures such as those imposed against Cuba or any other country and must take the necessary steps to repeal or invalidate them.

93. **Liechtenstein:** The Government of the Principality of Liechtenstein has not promulgated or applied any laws or measures of the kind referred to in the preamble to resolution 57/11. The Government of the Principality of Liechtenstein is furthermore of the view that legislation, the implementation of which entails measures or regulations that have extraterritorial effects is inconsistent with generally recognized principles of international law.

94. **Mali:** … Mali has always refrained and will continue to refrain from promulgating or applying laws and measures of the kind referred to in the preamble to the abovementioned resolution, in accordance with paragraph 2 of that resolution.

95. **Mexico:** …Mexico has not promulgated or applied laws or unilateral measures relating to an economic or financial embargo against any country.

96. **Mozambique:** Mozambique has never promulgated, applied or contributed for the application of any of the laws or regulations mentioned in resolution 57/11.

97. **Myanmar**: …The Union of Myanmar is of the view that the promulgation and application by Member States of laws and regulations, the extraterritorial effects of which affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction as well as the freedom of trade and the freedom of navigation, violate the universally adopted principles of international law.

98. **Namibia:** …. The Government of the Republic of Namibia … does not have laws and measures referred to in the preamble of resolution 57/11 and reiterated in paragraph 3 of the said resolution.

99. **Norway:** Norway has not enacted any economic embargo against Cuba or adopted other measures contradictory to General Assembly resolution 57/11.

100. **Pakistan:** Pakistan is fully in observance of resolution 57/11.

101. **Panama:** …The Helms-Burton Act is not valid under international law: This was confirmed by the opinion presented to the Permanent Council of the Organization of American States by the Inter-American Juridical Committee (IAJC), which concluded unanimously that "the bases for and the prospective enforcement of the legislation forming the subject of this opinion (…) are inconsistent with international law". The IAJC was requested to present that opinion in resolution 1364(XXXVI-O/96), entitled "Free Trade and Investment in the Hemisphere", of the General Assembly of Organization of American States, which met in Panama in June 1996.

With regard to the Free Trade Area of the Americas of which Panama is hoping to host the headquarters of the Administrative Secretariat, resolution 1364 is significant because it recognizes that economic integration is one of the objectives of the inter-American system and that, in this context, it is essential to expand trade and investment at the regional and sub regional levels. For this reason, respect for multilateral rules and disciplines within the framework of agreements on economic integration and free trade is fundamental.

The application of extraterritorial legislation such as the Helms-Burton Act is contrary to the concept of the Free Trade Area of the Americas. Given that economic integration is one of the objectives of the inter-American system, it is essential to expand trade and investment in the hemisphere. In this context – not excluding its negative implications of a political and legal nature – the HelmsBurton Act is detrimental to free exchanges and the transparency of international trade and constitutes an obstacle to the process of regional integration and a veiled restriction on international trade.

Panama's position was reaffirmed in the context of the Declaration of the Tenth Summit of Heads of State and Government of the Rio Group (Cochabamba, Bolivia, September 1996), in which the States members of the Rio Group gave their view on the

extraterritorial application of national legislation and rejected "any attempt to impose unilateral sanctions of an extraterritorial nature in application of a country's domestic law, as this contravenes the rules governing the coexistence of States and ignores the basic principle of respect for sovereignty, in addition to constituting a violation of international law". The Rio Group also rejected the Helms-Burton Act and endorsed the unanimous view expressed by the IAJC "to the effect that the bases and the prospective enforcement of the Act are inconsistent with international law".

In the Declaration on the Helms-Burton Act, made at the second ordinary meeting of the Ministerial Council of the Association of Caribbean States (ACS, Havana, December 1996), Panama's position was in line with the statement made by ACS in which it stated its "most energetic rejection of the passing of the Helms-Burton Act by the United States of America, which violates principles and standards of international law and of the United Nations Charter [and] is contrary to the spirit of the World Trade Organization". In that respect, unilateral coercive measures such as the Helms-Burton Act are detrimental to free exchange and transparency in international trade, hamper regional integration processes and violate fundamental principles of international law and State sovereignty. Similar views were expressed in the Declaration of Vina del Mar (paras. 9 and 10) of the Sixth Inter-American Conference of Heads and State and Government (Chile, November 1996), which was endorsed by Panama.

Consequently, and in conclusion, Panama is in compliance, in letter and in spirit, with the provisions of General Assembly resolution 57/11, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", insofar as the action it has taken complies with the provisions of paragraph 2 of the resolution: it has refrained from promulgating and applying laws and measures of the kind referred to in the preamble to that resolution. Therefore, Panama's domestic legal regime does not include any current (or pending) legislation that implements laws and measures of the kind referred to in paragraph 3 of resolution 57/11.

In addition with regard to the scope of resolution 57/11, the Republic of Panama, in accordance with its obligations under the Charter of the United Nations and international law, declares that it has no domestic legislation that needs to be repealed or invalidated pursuant to resolution 57/11 (para. 3) and that it strictly complies with and observes, inter alia, the freedom of trade and navigation laid down by international law.

102. **Paraguay:** …Government of Paraguay considers that the extraterritorial application of domestic laws constitutes an attack on the sovereignty of other States, the legal equality of States and the principle of non-intervention; it also has an impact on international free trade and navigation.

103. **Peru**: …The Government of Peru does not agree with the application of unilateral and extraterritorial measures which seek to affect the internal political process of any one State. Peru considers that, in accordance with the principles of international law concerning non-intervention and non-interference in the internal affairs of States, due respect for the domestic constitutional regime is essential in international relations.

104. **Philippines:** The Republic of the Philippines has neither promulgated nor applied any laws or measures referred to in resolution 57/11.

105. **Poland:** Poland,…. Neither promulgates nor applies any legal measures referred to in General Assembly resolution 57/11.

106. **Qatar**: The State of Qatar has not enacted or applied any laws or regulations of an extraterritorial character or that affect the sovereignty of other States or the legitimate interests of entities or persons under their jurisdiction, or the freedom of international trade and navigation, and it has taken no other measures that are contrary to General Assembly resolution 57/11.

107. **Russian Federation**: …Russian Federation has thus repeatedly expressed its disagreement with United States attempts to tighten the embargo and to expand the extraterritorial implementation of the Helms-Burton Act. In our view, this Act is rightly described as discriminatory and contrary to the Charter of the United Nations and the norms of international law, insofar as its extraterritorial effects impinge on the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the generally recognized freedom of trade and navigation.

108. **Seychelles:** The Government of the Republic of Seychelles… does not have nor applies any laws and measures which may in any manner or form constitute or contribute to an imposition of economic, commercial or financial embargo against Cuba.

…The Government of Seychelles is of the view that legislation whose implementation entails measures or regulations having extraterritorial effects is inconsistent with generally recognized principles of international law.

109. **Slovakia:** The Slovak Republic does not pass or enforce laws or regulations with extraterritorial effects and affecting the sovereignty of other States, legal rights of citizens, or the freedom of trade and navigation.

110. **South Africa:** …. South Africa views the continued imposition of an economic, commercial and financial embargo as a violation of the principles of the sovereign equality of States and of non-intervention and non-interference in each other's domestic affairs. We are guided by these basic norms of international conduct in our principled support for the need to eliminate coercive economic measures as a means of political and economic compulsion.

111. **Sri Lanka**: Sri Lanka has not promulgated any laws and measures referred to in the preamble of resolution 57/11. Therefore the question of repealing such laws does not arise.

112. **Sudan**: …Sudan opposes the imposition of sanctions on developing countries for their devastating impact on the efforts of those countries to achieve sustainable development and because they constitute a violation to the Charter of the United Nations.

The Sudan opposes the economic and commercial embargo imposed by the United States against Cuba, which has caused great damage to the Cuban people and violated its legitimate rights and interests, being a flagrant violation of international law and the Charter of the United Nations and showing disregard for their lofty and noble principles.

The Sudan itself continues to suffer from the unilateral economic sanctions imposed on it by the United States pursuant to the executive order signed by former President Clinton in early November 1997. It was unfortunate that the United States, in order to exert pressure on the Government of the Sudan, imposed these sanctions on the basis of ungrounded suspicions and accusations that have remained unsubstantiated for many years. Such unilateral sanctions are in violation of the legitimate right of the Sudan and Cuba and their people to choose their own political, economic and social system that fully respond to their aspirations.

113. **Syrian Arab Republic**: …Communique of the Heads of State and Government at the Summit of the Movement of Non-Aligned Countries, held in Kuala Lumpur, Malaysia on 24 and 25 February 2003, in which the Heads of State and Government called upon the United States to put an end to the embargo against Cuba, which, in addition to being unilateral and contrary to the Charter of the United Nations, international law and the principle of neighbourliness, is causing huge material losses and economic damage to the people of Cuba.

…Declaration adopted at the South Summit of the Group of 77 and China, held in Havana, in which the participants categorically rejected laws and regulations with extraterritorial impact and all other forms of coercive economic measures, and expressed grave concern over the impact of economic sanctions on the development capacity of the targeted countries. The Summit also adopted a special appeal from all the leaders of the developing countries for the immediate lifting of this embargo, given that it is causing the Cuban people enormous material losses and inflicting huge economic damage, in addition to being a unilateral measure and in contravention of the Charter of the United Nations, international law and the principle of good neighbourliness.

The international community has frequently stated that it rejects the maintenance of the sanctions unilaterally imposed on Cuba and the so-called Helms-Burton Act, which exceeds the jurisdiction of national legislation and encroaches on the sovereignty of other States that deal with Cuba. This is incompatible with the principle of the sovereign equality of States. Experience has shown that, for the ‘most part, sanctions regimes have

caused enormous material damage and major economic losses for the civilian inhabitants of the countries targeted.

114. **Thailand:** …Thailand disagrees with the extraterritorial imposition of unilateral measures by one State against another State that have implications upon other third States, as it is contrary to the norms of international law and the principles of the Charter of the United Nations.

Thailand neither maintains any legal provisions under its domestic laws nor applies any measures which have such extraterritorial effects.

115. **Tunisia:** The Government of Tunisia does not apply unilaterally any laws or measures that have extraterritorial effects.

116. **Turkey**: The Republic of Turkey does not have any laws or measures of the kind referred to in the preamble to resolution 57/11 and reaffirms its adherence to the principle of freedom of trade and navigation in conformity with the Charter of the United Nations and international law.

117. **Uganda**: Uganda has never and does not intend to promulgate and apply laws and measures of the kind referred to in the preamble to resolution 57/11. This has been a consistent position of principle which is in conformity with Uganda's obligations under the Charter of the United Nations and international law.

118. **Ukraine:** Ukraine does not have any legislation or regulations whose extraterritorial effects could affect the sovereignty of other States and the legitimate interest of entities or persons under their jurisdiction, or the freedom of trade and international navigation.

Equally, the Government of Ukraine does not accept the use of economic measures as a means of achieving political aims and upholds, in its relations with other countries, the fundamental principles of the Charter of the United Nations, the norms of international law and the freedom of trade and navigation.

119. **United Republic of Tanzania:** …..The Government of the United Republic of Tanzania has never promulgated any law or measures that would restrict free commerce with the Republic of Cuba.

120. **Uruguay**: …Uruguay… does not recognize in its legislation the extraterritorial application of domestic laws that violate the principle of non-intervention in the internal affairs of other States or the rules of the World Trade Organization relating to the development of world trade. Accordingly, the Government of the Eastern Republic of Uruguay has not applied any measures or laws of the kind referred to in resolution 57/11.

121. **Venezuela**: …Venezuela has consistently and repeatedly rejected the promulgation and implementation of laws and regulations with extraterritorial effects that

infringe upon the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction and which have a negative impact on the freedom of international trade and navigation.

…unilateral measures such as the embargo imposed on Cuba, which is of a coercive and extraterritorial nature, have an adverse impact on the legal framework defining economic and commercial exchanges between nations and undermine the efforts that have been made to achieve continental and subregional economic integration.

[…]

The Heads of State and Government of the European Union, Latin America and the Caribbean, meeting in Madrid, adopted a political declaration, the "Madrid Commitment", on 17 May 2002 whereby they firmly rejected all measures of a unilateral character and with extraterritorial effect, which are contrary to international law and the commonly accepted rules of free trade, and agreed that this type of practice poses a serious threat to multilateralism.

122. **Zimbabwe:** Zimbabwe rejects the application of laws or unilateral measures relating to the economic embargo against Cuba by the United States of America.

Zimbabwe's foreign relations are based on the principles of international law which governs coexistence among nations and are established in its constitution: self-determination of all peoples, non-interference in the internal affairs of other sovereign States, peaceful settlement of disputes, prohibition of the threat or use of force in international relations, legal equality of States and the struggle for international peace and security. Zimbabwe has always rejected the use of coercive measures as a means of exerting pressure in international relations.

(b) Deliberations at the Fifty-eighth Session of the General Assembly

123. The fifty-eighth session of the General Assembly for the twelfth successive year considered this agenda item. Representatives of Mexico, Morocco, **China**, Jamaica, **Malaysia**, United States of America, Vietnam, Cuba (the sponsor of resolution), Namibia, South Africa, **United Republic of Tanzania**, Venezuela, **Sudan**, **Islamic Republic of Iran**, Guinea, Zambia, **Libyan Arab Jamahiriya**, Myanmar, Zimbabwe, **Syrian Arab Republic**, **Indonesia**, and Lao People's Democratic Republic participated in the deliberations. Delegates from the following States gave their explanation of vote: Russian Federation, Italy (on behalf of European Union), **Japan**, Uruguay, Australia, Belarus, Norway and Cuba.[35]

124. During the course of the debate majority of Members States rejected the promulgation or application by any State of any law affecting the sovereignty of other

[35] For full records of the meeting see UNGA, *Official Records* of the 58th Session, 54th Plenary Meeting, 4 November 2003, UN Doc. A/58/PV.54. The names of AALCO Member states are indicated in bold.

States and urged all States to refrain form promulgating and applying such laws and to repeal those that have already been enacted.

125. The Representative of **Mexico** said that his country based its foreign relations on the principles of international law that govern the fellowship among nations, and which were also enshrined in the Mexican Constitution. These principles included the self-determination of peoples, non-intervention, the peaceful resolution of disputes, the prohibition of the threat or use of force, the legal equality of States, international cooperation in development and the struggle to achieve international peace and security.

For the foregoing reasons, his Government had unequivocally voiced its rejection of the imposition of political, economic or military sanctions that have not been explicitly approved by the Security Council or by the General Assembly.

Mexico had therefore rejected the economic, trade and financial blockade imposed unilaterally against Cuba and had for more than a decade now consistently supported all resolutions adopted by the General Assembly regarding the need to end that blockade.

He said that his country believed that the Helms-Burton Act was contrary to the norms of international law, a position that was in full accord with the opinion of the Inter-American Judicial Committee of the Organization of American States, issued on 4 June 1996.

126. The Representative of **Morocco** speaking **on behalf of the Group of 77 and China**, reiterated the position of the Group of 77 that the economic, commercial and financial embargo imposed against Cuba was a unilateral act, the extraterritorial effects of which have no validity in international law. He said that it was therefore necessary that the embargo be lifted to allow a free flow of international trade. The South Summit of the Group of 77 held in April 2000 expressed its conviction that national laws should not have extraterritorial applicability. He reiterated the following points made at the Summit.

First, that the elimination of laws and regulations with adverse extraterritorial effects and other forms of unilateral economic coercive measures is imperative, as they are inconsistent with the principles of international law, the United Nations Charter and the principles of the multilateral trading system.

Second, the Group of 77 reiterated its concern about the impact of economic sanctions on the civilian population and the development capacity of targeted countries. It therefore calls on the international community to exhaust all possible peaceful methods of dialogue before resorting to sanctions, which should only be considered as a last resort. If there is no alternative to sanctions, then sanctions may only be imposed in strict conformity with the Charter of the United Nations. In addition, sanctions must contain clear objectives, time frames and provisions for regular review, along with precise

conditions for their lifting, and must never be used as punishment or other form of retribution.

Thirdly, the Group of 77 would like to recall the South Summit's sincere appeal to the Government of the United Stats of America to lift the economic embargo imposed on the Republic of Cuba since 1960. That embargo, which has gone on far too long, serves no other purpose than to preserve a state of tension between two neighbouring countries and to impose untold hardship and suffering on the people of Cuba, especially its women and children.

Finally, the South Summit emphasized its conviction that replacing the embargo with renewed dialogue and cooperation would undoubtedly contribute not only towards the removal of tension between the two countries, but would also promote meaningful exchanges and partnerships between those countries, already closely linked by history and geography and a common destiny.

127. The Representative of **China** stated that the extraterritorial effects of the financial embargo imposed by the United States against Cuba violated international law and the principles, objective and rules of international trade. It also ran counter to the principle of free trade encouraged by the United States itself. He said that currently, 78 countries had suffered economic losses as a result of the embargo. The international community should be seriously concerned about the embargo and sanctions and demand their immediate end.

128. The Delegate of **Jamaica** said that his country remained opposed to the extraterritorial application of national legislation that sought to impose artificial barriers to trade and cooperation, and which was contrary to the principle of the sovereign equality of States.

129. The Representative of **Malaysia** said that Malaysia was fundamentally opposed to all forms of unilateral economic, commercial and financial sanctions and embargoes. It therefore joined the rest of the international community in calling, yet again, for an immediate end to the embargo imposed by the United States on Cuba and its people. He mentioned that for many years now, the General Assembly had consistently adopted, by an overwhelming majority, resolutions which called for an immediate end to the economic, commercial and financial embargo imposed by the United States against Cuba. The adoption of such a resolution had clearly and unambiguously shown the international community's total rejection of the unilateral action taken by the United States against Cuba.

The Non-Aligned Movement (NAM) had also consistently reiterated the developing countries, collective rejection of this policy. NAM had expressed its deep concern at the extraterritorial application of laws, in particular the Helms-Burton Act of 1996, on Cuba and the other legislative measures designed to intensify the blockade. Consistent with this position, Malaysia had joined other NAM member countries at the thirteenth Conference of Heads of State or Government of NAM in Kuala Lumpur in

February 2003 to call upon the government of the United States of America to put an end to the economic, commercial and financial embargo against Cuba.

He said that the application of laws by the United States, which were intended to, inter alia, restrict Cuba's access to much-needed markets, capital, technology and investment, in order to exert pressure on Cuba to change its political and economic system or orientation, is not consistent with the universally accepted principles of international law, the Charter of the United Nations, World Trade Organization principles and relevant United Nations resolutions. It is discriminatory in nature and undermines the principles of sovereign equality of States, fundamental human rights and good-neighbourliness among States.

He was of the view that the economic blockade against Cuba was indeed a violation of International Law. It also violated the right of the people of Cuba to life, to well-being and to development.

Malaysia once again reaffirmed its commitment to the respect for fundamental principles of sovereign equality among States, non-interference in their internal affairs and freedom of international trade and navigation.

130. Justifying his country's continued imposition of embargo against Cuba, the Representative of the **United States of America** said that it stood firmly opposed to the resolution. He further stated that whatever opinion one might have about the embargo, it must be clear that this was a bilateral issue between the United States and Cuba. It was important to bear in mind that the embargoes were imposed after the illegal large-scale expropriation of United States properties for which the Cuban Government had never offered any indemnification whatsoever. This embargo had been reaffirmed by successive United States Administrations with a view to keeping the pressure on for restoring democracy in Cuba. He said that it was not a blockade, as Havana asserted in its official pronouncements, inasmuch as it does not affect trade with other nations. Cuba was free to trade with any other country in the world, a freedom which, indeed, it was exercising.

131. The delegate of **Viet Nam** said that his delegation shared the view that this 43-year-long embargo, with the extraterritorial application of domestic law against the tiny island, not only contravenes international law and the most basic norms of international relations but flagrantly violated the fundamental purposes and principles enshrined in the Charter of the United Nations as well.

132. The delegate of **Cuba** said that the economic, commercial and financial blockade imposed by the United States of America against Cuba must be lifted. He said that under the 1948 Geneva Convention, the blockade against Cuba qualified as a crime of genocide. The blockade was a legal aberration. It violated the Charter of the United Nations. It was detrimental to international trade and hindered free navigation. It went as far as to penalize entrepreneurs from other countries investing in Cuba.

He said that the embargo was the greatest obstacle to Cuba's social and economic development and had caused his country the loss of $ 72 billion, no less than $ 1.6 billion per year. The embargo was a cruel and absurd policy that had no support within or outside the United States.

133. The delegate of **Namibia** said that in recent years the world community had witnessed the strengthening of the embargo and the broadening of its extraterritorial implementation, as institutionalized by the Torericelli, and Helms-Burton Acts, which had in addition to violating the sovereignty of third-party States and international law, were continuing to cause serious damage to the Cuban economy.

134. The Representative of **South Africa** called upon all countries to reject the unilateral, extraterritorial measures imposed against Cuba, as they stood in stark contrast to international law, which guided all civilized States. She said that her delegation also firmly believes in a strong multilateral system, based on clear and mutually accepted rules and principles, in which small and big nations are treated as equal sovereign States. The United Nations Charter embodies the vision, mission, principles and obligations that all signatories to the Charter must abide by.

135. The Delegate of **United Republic of Tanzania** was of the view that the extraterritoriality of the embargo, as institutionalized by the Torricelli and Helms-Burton Acts, in addition to breaching the sovereignty of third-party States as well as international law, had caused further severe damage to the economy of Cuba over the past 10 years. The effects were damaging to trade relations between Cuba and third-party nations and their private companies. The embargo had seriously affected Cuba's economic and social Sectors.

136. The Representative of **Venezuela** said that like most of the States Members of the United Nations, it completely rejected the promulgation and application of laws and regulatory provisions with extraterritorial effects, because they violated the sovereignty of other States and ran counter to the legitimate interests of juridical entities and of the natural persons under their jurisdiction and had a negative impact on the freedom of international trade and navigation.

His country was of the view that the application of national laws and regulatory provisions such as the Helms-Burton or the Torricelli Acts, given their extraterritorial effects, adversely affected the sovereignty of States and constituted a flagrant violation of the human rights of the Cuban people. This he said was reiterated through the declarations of the Ibero-American Summit, the Summit of the Movement of Non-Aligned Countries, the Group of 15 and the Group of 77, inasmuch as illegal and discriminatory measures such as those that have been applied against Cuba produced effects harmful to the Cuban people. Moreover, they seriously jeopardized multi-lateralism.

He said that the International community had consistently repudiated such extraterritorial laws, which infringe on the sovereignty of other States, which in turn

maintained diplomatic, trade and all other kinds of ties with the Cuban Government. This was incompatible with the principle of the sovereign equality of States, because illegal measures of this kind impeded the social and economic development of the Cuban people, striking hardest at the most vulnerable among them, such as children and the elderly. By the same token, they also adversely affected housing, education and health and food programmes, to mention just a few of the social sectors involved.

137. The Delegate of **Sudan** said that over the course of those 12 years the Assembly had constantly reiterated its belief in the right of peoples of self-determination and had made an appeal to all States not to accept or implement unilateral national decisions with negative extraterritorial effects, which were a clear violation of the principles of international law.

138. The Representative of **Islamic Republic of Iran** stated that the use of unilateral measures as a means of political and economic coercion against developing countries had been condemned by decisions and resolutions of various bodies of the United Nations, particularly the General Assembly and the Economic and Social Council. The International community should become more vocal about the need to repeal such measures and prevent similar actions.

The adoption and application of unilateral coercive measures impeded full achievement of economic and social development by the populations of the affected countries, particularly children and women. It hindered their well-being and created obstacles to sustainable development and the full enjoyment of their human rights, including the right of all individuals to a standard of living adequate for their health and well-being and their right to food, medical care and necessary social services. It must be ensured that food and medicine are not used as tools for political pressure.

Resort to unilateral economic coercive measure jeopardized the legitimate economic interests of the targeted developing countries. The United Nations system and other relevant international and multilateral organizations were redoubling their efforts to create and strengthen a conducive international economic environment capable of providing equal opportunities for all countries to benefit from international economic, financial and trade systems. It was also necessary that the international community considered ways and means of compensating the losses of targeted countries caused by those who resort to such unilateral measures.

139. The Delegate of **Guinea** said that his delegation believed that promulgating and enacting extraterritorial unilateral coercive measures was unacceptable.

140. The Representative of **Zambia** said that his Government did not support the use of coercive measures as a means of exerting pressure in international relations, as the use of such measures was contrary to the practice of international law and the principle of peaceful coexistence among nations. It also regarded the extraterritorial nature of the Helms-Burton Act as an infringement on the territorial integrity of States. It was also an impediment to international navigation and free trade, as embodied in the World Trade

Organization Final Act. The principles of free navigation and trade were welcomed by all freedom-loving nations.

141. The Representative of **Myanmar** said that his country continued to maintain its consistent policy of strict adherence to the principles of the Charter of the United Nations and to the view that the promulgation and application by Member States of laws and regulations whose extraterritorial affected the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as freedom of trade and freedom of navigation, violated the universally adopted principles of international law.

142. The Delegate of **Zimbabwe** said that his delegation firmly rejected the imposition of laws and regulations with extraterritorial impacts and all other forms of coercive economic measures - including unilateral sanctions against Cuba – and reaffirmed the urgent need to eliminate them immediately. He said that his country called upon the international community neither to recognize such measures nor to apply them. In the spirit of fostering North-South relations, he underlined the need for developed countries to eliminate laws and regulations with adverse extraterritorial effects and other forms of unilateral economic coercive measures, which were inconsistent with the principles of international law, the Charter of the United Nations and the principles of the multilateral trading system.

143. The Representative of **Indonesia** observed that since the forty-seventh session of the General Assembly, Member States had increasingly rejected the deployment of unilateral trade measures by any Member State to attempt political reforms in another Member State. His country was of the view that embargoes imposed through unilateral trade measures ran counter to the spirit of the Charter of the United Nations and must therefore come to an end.

144. The Delegate of **Lao People's Democratic Republic** said that the extraterritorial application of the domestic laws of one country clearly ran counter to the purposes and principles of the Charter. In accordance with relevant General Assembly resolutions, a Member State must neither promulgate nor apply rules, regulations or measures, the extraterritorial effects of which would harm the sovereignty of other Member States, as well as to free trade. He said that as a matter of sovereignty, each nation was entitled to participate freely in the international financial and trading systems. Mindful of the internationally recognized principles of national sovereignty, no country had the right to interfere in the domestic affairs of another, despite the fact that the other had a different economic and social system.

145. The Delegate of **Russian Federation** said that his country had repeatedly expressed its disagreement with United States attempts to tighten the embargo and to expand the extraterritorial implementation of the Helms-Burton Act. In their view, the Act was rightly described as discriminatory and contrary to the Charter of the United Nations and norms of international law, insofar as its extraterritorial effects impinge on

the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the generally recognized freedom of trade and navigation.

146. The Delegate of **Italy on behalf of European Union** reiterated that the opposition of European Union to the extraterritorial aspect of the United States embargo that had been implemented in accordance with the Cuban Democracy Act of 1992 and the Helms-Burton Act of 1996. The European Union could not accept that its economic and commercial relations with third countries be restricted through unilateral measures imposed by the United States on specific countries, in this case Cuba. Therefore, in November 1996, the Council of Ministers of the European Union adopted a regulation and a joint action aimed at protecting the interests of natural or legal persons from the European Union against the extraterritorial effects of the Helms-Burton Act.

It was encouraging that, during their summit in London in 1998, the European Union and the United States agreed on a packages of measures involving, inter alia, agreement by the United States to suspend Tittles III and IV of the Helms-Burton Act and to not adopt any further extraterritorial legislation of that kind, as well as agreement on both sides to increase investment protection. The European Union trusted that the United States Government would continue to act in accordance with the commitments made.

147. The Delegate of **Japan** said that his country shared the concerns expressed by many delegations regarding the extraterritorial application of jurisdiction arising from the Helms-Burton Act of the United States, which was likely to run counter to international law.

148. The Representative of **Uruguay** stated that the application of unilateral coercive measures contradicted the norms of international law, and at the same time hurt the interest of third countries, raised international tensions and weakened the fight against shared threats.

149. The Delegate of **Australia** said that his country had consistently expressed its opposition to the promulgation and application by Member States of laws and measures whose extraterritorial effects impinge on the sovereignty of other States, the legitimate interest of entities or persons under their jurisdiction, as well as freedom of trade and navigation. In Australia's view such laws and measures were not justified by the principles of international law and comity.

150. The Representative of **Belarus** stated that his country had always favoured the abrogation of unilateral legislation by Member States the extraterritorial nature of which affected the sovereignty of other States, as well as the legal and financial interests within their jurisdiction and freedom of trade and navigation.

151. The Delegate of **Norway** said that there was a clear distinction between unilateral measures, on the one hand, and sanctions adopted by the international community, through the United Nations, on the other. In his country's view, no country should impose its legislation on third countries.

152. Finally, the General Assembly adopted resolution 58/7 of 18 November 2003 entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States against Cuba". The resolution was adopted by 179 in favour to 3 against, with 2 abstentions. Israel, Marshall Islands and United States of America voted against while Morocco and Micronesia abstained from voting.

(c) Resolution Adopted by General Assembly

153. The resolution inter alia reaffirmed among other principles, the sovereign equality of States, non-intervention and non-interference in their internal affairs and freedom of international trade and navigation. It urged upon States that had and continued to apply such laws and measures to take the necessary steps to repeal and invalidate them as soon as possible in accordance with their legal regimes. The Resolution reiterated its call upon all States to refrain from applying laws and measures with extraterritorial effects to take the necessary steps to repeal or invalidate such laws as soon as possible.

B. Declaration of the XIII Conference of Head of States and Governments of the Non-Aligned Movement, Kuala Lumpur, 24-25 February 2003

154. The Final Document adopted by the XIII Conference of Heads of State or Government of the Non-Aligned Movement[36], states the following as regards the Extra-territorial Application of National Legislation:

> 126. The Movement remained firmly opposed to evaluations, certifications and other coercive unilateral measures as a means of exerting pressure on Non-Aligned Countries and other developing countries. Coercive unilateral measures and legislation are contrary to international law, international humanitarian law, the United Nations Charter and the norms and principles governing peaceful relations among States and thus are to be further decried by the international community. The Heads of State or Government reiterated the Movement's rejection of the increasing trend in this direction. The Movement also strongly objected to the extra-terrtitorial nature of those measures, which, in addition, threaten the sovereignty of States and call on States applying unilateral coercive measures to put an immediate end to those measures.
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> 127. The Heads of State or Government condemned the continued unilateral application, by certain powers of coercive economic and other measures, including the enactment of extra-territorial laws, against a number of developing countries, with the view to preventing these countries from exercising right to decide, by their own free will, their own political, economic and social systems. The Movement called on all countries not to recognize the unilateral extraterritorial laws enacted by

[36] The Final Document is available at URL: http://www.nam.gov.za/media/030227e.htm.

certain countries, which impose sanctions on other States and foreign companies and individuals. They reaffirmed that such legislation contradicts the norms of international law and run counter to the principles and the purposes of the United Nations, as well as the basis of the "Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Amongst States in Accordance with the Charter of the United Nations", adopted on 24 October 1970 by the General Assembly. They further expressed their regret at the continued enforcement of these laws, in total disregard for the calls of the Movement, the General Assembly and other International Organizations.

128. The Heads of State or Government called on all States to refrain from adopting or implementing extraterritorial or unilateral measures of coercion as a means of exerting measures on Non-Aligned and other developing countries. They noted that measures such as Helms-Burton Laws, D'Amato-Kennedy Acts and other laws recently enacted related to other issues, constitute flagrant violations of international law, the established principles of the multilateral trading system and the Charter of the United Nations, and called on the international community to take effective action in order to arrest this trend.

129. The Heads of State or Government rejected all attempts to introduce new concepts of international law geared at internationalizing the essential elements contained in extra-territorial laws through multilateral agreements.

155. Regarding the embargo imposed by the United States of America against Cuba, the Final Document states:

The Heads of State or Government again called upon the Government of the United States of America to put an end to the economic, commercial and financial embargo against Cuba which, in addition to being unilateral and contrary to the UN Charter and international law, and to the principle of neighbourliness, causing huge material losses and economic damage to the people of Cuba. The Heads of State or Government once again urged strict compliance with the Resolutions 47/19, 48/16, 49/9, 50/10, 51/17, 52/10, 53/4, 54/21, 55/20, 56/9 and 57/11 of the United Nations General Assembly. They expressed deep concern over the widening of the extra-territorial nature of the embargo against Cuba and over continuous new legislative measure geared to intensifying it.

V. SECRETARIAT COMMENTS AND OBSERVATIONS

156. The response of the international community as evident from the Report of the UN Secretary-General, the deliberations at the 58th Session of the United Nations General Assembly, as well as in the Final Document adopted by the XIII Conference of Heads of State or Government of Non-Aligned Movement clearly demonstrates that there is a clear crystallization of state practice that considers extra-territorial application of national legislation as violative of the principles of sovereign equality of States, non-intervention and non-interference as enshrined in the United Nations Charter, as well as the principles of freedom of international trade and navigation. It is also considered to be detriment to the right of development of the people of the targeted State. Furthermore, most of the States have neither enacted any law nor promulgated any measures, which had extra-territorial application.

157. Eminent international lawyer Professor Georges Abi-Saab[37] identifies following three elements for a coercive measures to be taken against a target State or entity in application of a decision by a socially competent organ:

> 1. "Coercive measures" involve coercion whether armed or not, material (military, economic) or moral (condemnation, censure) or purely legal (loss of status, suspension or expulsion from membership of an international organization, though these may have material consequences).
>
> "Coercive" also means taken against the will of the target State at least without its consent; the ultimate purpose being, as with all forcible execution or enforcement measures, precisely to bend its will in order to bring it back to a conduct compatible with legal prescriptions. It is as a target and not as a party in a legal relation that these measures are aimed at it.
>
> 2. These measures are taken against, *i.e.* at the detriment of the target State, involving a deprivation or a loss (a negative value) in relation to its prior situation, a diminution of its material or moral patrimony.
>
> 3. They are taken in application of a decision or recommendation of a competent social organ. They thus fall outside or beyond the measures of "private justice". This is because such a decision must be based on a "finding" and not on a mere "contention" or "allegation" resulting from the "self-interpretation" of the situation by the other party. Moreover, this "determination" must be accompanied by a "decision", ordering or recommending the measures to be taken on the basis of this finding. Such measures are thus a function of the degree of institutionalization of international law, because they depend on the existence of a conventional

[37] Georges Abi-Saab, "The Concept of Sanction in International Law", in Vera Gowlland (ed.), *United Nations Sanction and International Law* (The Graduate Institute of International Studies, Geneva, published by Kluwer, The Hague, 2001), pp. xiv + 408 at p. 39.

framework providing for such organs. They are special regimes of sanctions, whose legal profile and modalities vary with the organization.

158. Professor Abi Saab thus defines sanction as a coercive response to an internationally wrongful act authorized by a competent social organ. James Crawford is of the view that it may be inferred from the definition of Abi-Saab that a "competent social organ" is not an individual state acting in its own right, or even a small group of states so acting. Instead it seems to refer to some competent social organ authorized to act on behalf of a collective interest, such as, for example, the Security Council.[38] Imposition of national legislation having extra-territorial application are thus contrary to this norm and as such undermine the collective authority of the Security Council, which is the only competent social organ mandated by the international community to impose coercive measures in accordance with the procedures of Chapter VI and VII of the UN Charter.

159. In the light of the preceding references to the sanctions imposed by the United States of America, it may be useful to enunciate the definition of these terms from an American perspective and this perspective is reflected in the recent work of an American author Michael P. Malloy's *United States Economic Sanctions: Theory and Practice*. The book deals elaborately with the imposition of the Economic Sanctions by the United States of America. Herein some excerpts from this book highlighting the US position on the issue are reproduced:

160. Malloy is of the view that "Economic sanctions have become an increasingly prevalent feature of U.S. international economic and foreign policy".[39] By the term "economic sanction" Malloy means "any country-specific economic or financial prohibition imposed upon a target country or its nationals with the intended effect of creating dysfunction in commercial and financial transactions with respect to the specified target, in the service of specified foreign policy purposes. The term "sanction" in the present context therefore includes a range of trade and financial measures that may be imposed in varying combinations, administered by a number of agencies."[40]

161. He emphasizes that instrumentally, the historical objective of most sanctions imposed by Western countries has been to induce change in another country's behavior by inflicting economic damage. Referring to the generic policy objectives, he states "economic sanctions can be said to be directive or defensive. In directive economic sanctions, the objective is to create calculated economic pressure to alter behavior of a target state. In defensive objective it is to reduce or slow development of an adversary's military or strategic capabilities by raising the economic cost of acquiring imports or import substitutes.[41]

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[38] James Crawford, "The Relationship between Sanctions and Countermeasures", in *ibid*., p. 57.
[39] Michael P. Malloy, *United States Economic Sanctions: Theory and Practice* (Kluwer Law International, The Hague/London/Boston, 2001), pp. xxv+ 738; p. 3.
[40] *Ibid*., p. 10.
[41] *Ibid*., p.18.

162. Malloy believes that "economic sanctions are not a part of U.S. economic policy and are antithetical to the basic rubrics of that policy". He feels that the imposition of economic sanctions impedes the progress of any principle of transparency in the free flow of private international financial services and transactions, thus rendering economic sanctions inconsistent with the stated U.S. policy in favor of nondiscriminatory, "national treatment" of private participants in international financial services. In his opinion, this inconsistency is part of the potency of sanctions. He states that without its dissonance in relation to the expectations of the international financial system, a program of economic sanctions would lose much of its potential for inducing dysfunction in the service of its foreign policy objective.[42]

163. As regards the extraterritorial applicability of sanctions[43], he is of the view that: first, (O)utside conventional arrangements, arguments to the effect that international law prohibits extraterritorial economic sanctions have remained speculative and without serious practical consequence. Secondly, (r)ecent efforts in this regard have suggested that the intended extraterritorial effect of such sanctions renders them legally suspect.[44] He further adds that this extraterritoriality argument has been vigorously disputed by representatives of the U.S. Government, at least to the extent that the argument denies that a state has the legal authority and jurisdiction to prescribe a rule of law affecting extraterritorial transactions.[45]

164. Malloy is of the view that "in principle economic sanctions are ineffective and should not be imposed is to confuse the assessment of the effectiveness of policy with the assessment of the instrumental effectiveness of sanctions. The rhetorical use of international economic sanctions for domestic political purposes subverts the appropriate role of sanctions as instruments of foreign policy".[46]

165. Malloy categorically states that discerning the legality of unilateral sanctions under customary principle is difficult due to the "apparent indeterminacy" of law in this regard and observes:

> As a general matter, one would expect that unilateral economic sanctions, as a type of "nonforcible countermeasure," ought to be invoked by a state only in situation in which the target state has breached some obligation or duty owed to the invoking state. In addition, there should be a demand for redress by the invoking state, which has not been satisfied by the target state, prior to the invocation of countermeasures.

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[42] *Ibid*., p. 23.
[43] *Ibid*., pp.322-23.
[44] *Cf.*, Burchill, *Remarks* in Malloy (Reporter), *Extraterritoriality: Conflict and Overlap in National and International Regulation*, 1980 Proceedings of the American Society of International Law, 30, 36 (1980):

> U.S. insistence on exercising the extent of extraterritorial jurisdiction it claims, in the absence of international consensus, invites or even requires an increasingly radical response on the part of other governments, a cause and effect that, in total, detracts from the operation of the rule of law in international relations.

Cited by Malloy at f. n. 933 at p. 322.
[45] See, e.g., Robinson, *Extraterritoriality and Other Problems Affecting Foreign Policy and National Security Controls* (Presentation before the Treasury Department Conference on Sanctions and Settlements, Nov. 17, 1983). Cited at f. n. 934 by Malloy at p. 323.
[46] *Ibid*., p. 340.

> Finally, the countermeasures invoked should be proportional to the violation or breach suffered.

Elaborating on the two basic difficulties with the "nonforcible countermeasure" approach to the analysis of economic sanctions, he observes that

> first, under what customary principle of public international law is a countermeasure justification required when a state decides to interdict commercial or financial intercourse with another state? That there is such a customary principle is often tacitly assumed but rarely discussed in the secondary literature. Second, even accepting *arguendo* that such a customary principle exists, a difficulty remains in identifying situations, particularly *post facto*, in which a state has imposed sanctions in violation of this rubric; states normally construct at least a colorable justification for the imposition of sanctions.[47]

166. Today, in an increasingly interdependent world, with close to 200 sovereign States as members of the international society, the effects of globalization and liberalization dictate the course of economic relations among States. The imposition of unilateral sanctions and secondary boycotts that affect nationals of third States are seen a retrograde step retarding the economic progress of the sanctioning, as well as the target State.

167. Extraterritorial measures, besides being infirm in law are also bad as an instrument of foreign policy. Unlike multilateral sanctions enforced by the Security Council, extraterritorial measures are inherently ineffective in a global society as target States often are able to find new investors and entities, other than those from the sanctioning State, to carry out their business activities.

168. It may also be stated that extraterritorial application of national legislation having effects on third Parties, poses a serious challenge to the efforts of the international community to establish an equitable multilateral, non-discriminatory, rule based trading system and question the very basis of the primacy of international law. It is imperative that all States must reject promulgation and application of this form of dubious legislation.

[47] Ibid., p. 305.

VI. ANNEX

58/7. Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba

The General Assembly,

Determined to encourage strict compliance with the purposes and principles enshrined in the Charter of the United Nations,

Reaffirming, among other principles, the sovereign equality of States, non-intervention and non-interference in their internal affairs and freedom of international trade and navigation, which are also enshrined in many international legal instruments,

Recalling the statements of the heads of State or Government at the Ibero-American Summits concerning the need to eliminate the unilateral application of economic and trade measures by one State against another that affect the free flow of international trade,

Concerned at the continued promulgation and application by Member States of laws and regulations, such as that promulgated on 12 March 1996 known as the "Helms-Burton Act", the extraterritorial effects of which affect the sovereignty of other States, the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation,

Taking note of declarations and resolutions of different intergovernmental forums, bodies and Governments that express the rejection by the international community and public opinion of the promulgation and application of regulations of the kind referred to above,

Recalling its resolutions 47/19 of 24 November 1992, 48/16 of 3 November 1993, 49/9 of 26 October 1994, 50/10 of 2 November 1995, 51/17 of 12 November 1996, 52/10 of 5 November 1997, 53/4 of 14 October 1998, 54/21 of 9 November 1999, 55/20 of 9 November 2000, 56/9 of 27 November 2001 and 57/11 of 12 November 2002,

Concerned that, since the adoption of its resolutions 47/19, 48/16, 49/9, 50/10, 51/17, 52/10, 53/4, 54/21, 55/20, 56/9 and 57/11, further measures of that nature aimed at strengthening and extending the economic, commercial and financial embargo against Cuba continue to be promulgated and applied, and concerned also at the adverse effects of such measures on the Cuban people and on Cuban nationals living in other countries,

1. *Takes note* of the report of the Secretary-General on the implementation of resolution 57/11;[1]

2. *Reiterates its call upon* all States to refrain from promulgating and applying laws and measures of the kind referred to in the preamble to the present resolution in

[1] A/58/287.

conformity with their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation;

3. *Once again urges* States that have and continue to apply such laws and measures to take the necessary steps to repeal or invalidate them as soon as possible in accordance with their legal regime;

4. *Requests* the Secretary-General, in consultation with the appropriate organs and agencies of the United Nations system, to prepare a report on the implementation of the present resolution in the light of the purposes and principles of the Charter and international law and to submit it to the General Assembly at its fifty-ninth session;

5. *Decides* to include in the provisional agenda of its fifty-ninth session the item entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".

54th plenary meeting
4 November 2003