

Chapter 1

INTRODUCTION

1.1. Overview of the AALCO's Work on the 'Extraterritorial Application of National Legislation: Sanctions imposed against Third Parties'

The topic 'Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties' has been on the agenda of the Asian-African Legal Consultative Organization (hereinafter AALCO) since 1997, when it was first introduced at the Thirty-Sixth Annual Session of the Organization, held in Tehran, Iran, at the behest of the Islamic Republic of Iran itself. Since then the topic has been considered at the successive sessions of the organization, as a subject that the Member States have considered relevant and pertinent for discussions, and an area where further research by AALCO in the context of Asian African States have been found to be timely and useful by the Member States.

1.1.1. AALCO's Preliminary Study on Extraterritorial Application of National Legislation

Since the inclusion of the topic 'Extraterritorial Application of National Legislation: Sanctions Imposed against Third Parties' on the Agenda of the AALCO at the Thirty-Sixth Session (Tehran, 1997), following a reference made by the Islamic Republic of Iran as per Article 4 (c) of the Statutes and sub-Rule 2 of Rule 11 of the Statutory Rules of the organization, the topic has attracted much attention by the Member States.

The Government of the 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 principles 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 co-operation among developing countries. The Explanatory Note had furthermore *inter alia* requested 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 position of its Member States.

Accordingly, a Preliminary Study prepared by the Secretariat was considered at the Thirty-Sixth Session of AALCO which pointed out that the claims and counterclaims that arose in exercise of extraterritorial jurisdiction included the following issues: (i) sovereignty – in particular economic sovereignty – (ii) 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 concerns had been expressed on the promulgation and application of national legislation whose extraterritorial aspects affected the sovereignty of other States.

The said Study further pointed out that in spite of fact of various international forums 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 time and again expressing grave concerns over the promulgation and application of laws with extraterritorial effects, as they affect sovereignty of other States, the legitimate interests of entities and persons under their jurisdiction and the freedom