

be granted for transactions that fell within certain categories. This shift reduced the number of serious disputes arising out of the extraterritorial application of the CACR.

What the Mack Amendment attempted, and the Torricelli Bill achieved, was a prohibition on the issue of licences. This has removed the possibility of negotiating, case by case, the issuance of licences. When the licensing procedure was in place, it allowed the Canadian and American governments to continue to disagree on the principles of jurisdictional reach, while permitting Canadian-based subsidiaries to trade with Cuba.

The basis for the U.S. legal position for exerting jurisdiction is widely recognized and relatively uncontroversial; a recognition that states may exercise control over persons on the basis of territory and nationality. The objection of Canada and other countries to the post-1975 CACR is that it represents an unacceptable extension of these basic principles in that the measures extend the nationality principle to enable U.S. law to proscribe conduct not only by U.S. citizens, but any corporations owned and controlled by U.S. citizens, wherever the corporations are organized.

Canada, like most western countries, rejects this extension of the nationality principle to enable a state to regulate conduct of corporations organized in foreign states on the basis of ownership or control by its citizens. For Canada, such corporations become "nationals" of Canada by the act of incorporation in Canada. We do not accept the contention that the fact that investment enabling such companies to be created came from outside the jurisdiction acts as a basis for the laws of the originating country to follow them over the border. This Canadian position voids the so-called balancing tests used by the U.S. in cases where it takes the position that it exercises a concurrent jurisdiction over such subsidiaries with the territorial state.

To combat this and other unacceptable American assertions of extraterritorial jurisdiction, Parliament passed the FEMA in 1984. It provides the government with a legislative basis to counteract the extraterritorial assertion of jurisdiction by foreign law in a number of instances, including discovery of documents, anti-trust regulation and the application of foreign laws that purport to regulate conduct in Canada. The Torricelli Bill represented such an unacceptable assertion of extraterritorial jurisdiction and clashed with Canadian law and trade policy. That justified the issuance of the FEMA order, a blunt