

(ii) **Decision on "the Legal Protection of Migrant Workers"**

(Adopted on 23.4.1999)

The Asian African Legal Consultative Committee at its Thirty-eight Session,

Having considered Doc. No. AALCC/XXXVIII/Accra/99/S4 on "The Legal Protection of Migrant Workers";

Having heard the comprehensive statement of the Assistant Secretary General;

Mindful of the difficulties faced by the migrant workers;

Mindful also of the crucial issue of the protection of basic human rights of migrant workers;

1. *Requests the Secretary General to convene an "Open Ended Working Group" for an in depth consideration of issues related to Migrant Workers.*
2. *Decides to place the item "Legal Protection of Migrant Workers" on the agenda of its Thirty-ninth Session.*

(iii) Secretariat Study: Legal Protection of Migrant Works

During the 37th Session of the AALCC held in New Delhi, one of the initiatives put forward by the Secretariat was the constitution of an "Open Ended Working Group", the basic objective of which would be to examine the proposed Secretariat Draft Structure of the Model Legislation on the Legal Protection of Migrant Workers in detail.

The New Delhi Session had mandated the Secretariat to seek written comments from Member States on (i) the utility of drafting a Model Legislation on the Protection of Migrant Workers; and (ii) The constitution of an "Open Ended Working Group" for an in-depth examination of the issue. In pursuance of that mandate the Secretariat had urged member-States to transmit to the AALCC Secretariat their comments on the constitution of the Open Ended Working Group and the utility of drafting the model legislation on the Protection of Migrant Workers.

Summaries of the replies received since the 37th Session held in New Delhi, 1998.

At the very outset, the Secretariat is grateful to the seven member States i.e. Republic of Iraq; Islamic Republic of Iran; Nepal; Cyprus; Turkey; Jordan and Singapore who have responded to the Secretariat request by sending their comments.

The Government of the Republic of Iraq has supported the utility of drafting a Model Legislation on the Protection of Migrant Workers as well as the constitution of an "Open Ended Working Group", for an in-depth examination of the issues. Further, they have sent to the AALCC Secretariat, the Iraqi labour law No. 71 of 1987 along with law No. 39 of 1971 concerning Migrant Workers.

The Islamic Republic of Iran has informed the Secretariat that it supports the establishment of an Open

Ended Working Group for comprehensive examination of the subject and is of the view that the utility of drafting a model legislation could be discussed in the Working Group.

The State of Nepal has informed the Secretariat that it does not have any specific legislation on the subject of protection of Migrant Workers. Nevertheless it approves the decision of the AALCC to constitute an Open Ended Working Group to study the matter in greater detail for formulating suitable legislation to deal with the issue of the Protection of Migrant Workers.

The Republic of Cyprus in its communication to the Secretariat, has supported the idea that states should ratify the international instruments for the protection of migrant workers, (i) The ILO Migration for Employment (Revised) Convention, 1949, No 97; (ii) The ILO Migrant workers (Supplementary Provision) Convention, 1975, No. 143 and (iii) The ILO Discrimination (Employment and Occupation) Convention, 1958, No. 111. In their view the ratification of the above instruments by Member States of the AALCC, would be in their own best interest and would also minimize the need, for the Committee, for either drafting a model legislation on the Protection of Migrant Workers, or the constitution of an Open Ended Working Group for an in-depth examination of this subject.

The Republic of Turkey in its communication, informed the Secretariat that, the texts of the "European Social Charter" of 1961 and "International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families" should constitute the basis for drafting the Model Legislation. Furthermore a note on Turkish Migration Policies was also received by the Secretariat.

The Government of the Hashemite Kingdom of Jordan proposes the establishment of a working group, to study and follow up all the comments received from various Governments and to find out a standard model text, "which will be able to protect the migrant workers in the receiving countries.

Further, the term of reference of this working group should not be limited by a period and it should be given all the necessary time and mandate to find solutions of any problems which may arise after implementing this "standard model text".

The Government of Singapore in its communication to the Secretariat has stated that as the topic is already being discussed at other fora, a model legislation on the protection of migrant workers by the AALCC may confuse rather than clarify or confirm the principles behind the proposal. The creation of a new international instrument to deal substantively with the same topic may not be appropriate at this time, because only twelve countries have so far ratified or acceded to the UN Convention, on the Protection of the rights of All Migrant Workers and Members of their Families, the existing mechanism has, therefore, not had the opportunity of qualitative analysis.

Singapore has proposed that a detailed analysis be first conducted on the existing national legislation of Member States to determine common trends, both in imposing burdens, privileges and protective mechanisms for workers, both migrant and indigenous. From the analysis and supporting documentation of national laws, the Secretariat may proceed, if Member States deem it appropriate, to propose a draft model law for evaluation and discussion. The note further states that there should be no duplication of work on the issues, but if member States determine that discussion on this topic should resume, a Working Group may need to be convened to analyze national legislation and to discuss and propose the appropriate language for the model legislation.

It is suggested that the membership of the Working Group should reflect the diverse legal systems of AALCC Member States (civil law, common law and social law) and should have equitable representation from both labour importing and exporting countries. The Working Group if established should also have a definite span co-relating with the conclusion of work of the Model Legislation, it could initially collect and analyse the various national laws and

mechanisms of Member States relating to the employment and protection of migrant and indigenous workers.

Consideration of the Item During the 38th (Accra, 1999) Session

Pursuant to the Resolution adopted at the New Delhi Session, the Secretariat by its two letters dated 25th April and 29th September 1998 had sought written comments from Member States on (i) the utility of drafting a model legislation on the item and (ii) constitution of an open ended Working Group for an in depth examination of the issue.

The Secretariat received comments from seven Member States, namely, Republic of Iraq; the Islamic Republic of Iran; Nepal; Cyprus; turkey; Jordan and Singapore. Among the replies received the member States of the Republic of Iraq, the Islamic Republic of Iran, Nepal, Turkey and Jordan are agreeable on the establishment of the open ended Working Group for an in-depth examination of the issue. Cyprus does not agree and Singapore has asked for a thorough study on many issues before, and if at all a Working Group has to be established.

In view of the responses received, the Secretariat would like to seek direction from the Member States on how to further proceed with the topic and an appropriate mandate in this regard.

XI. INTERNATIONAL TRADE LAW

A. Seminar Relating to Certain Aspects of the Functioning of the WTO Dispute Settlement Mechanism and Other Allied Matters, New Delhi, 17-18 November 1998

(i) Introduction

At the Thirty-fourth Session (Doha, 1995), the Committee considered a Secretariat study on the then recently concluded Marrakesh Arrangement, entitled, "The New GATT Accord: An Overview with Special Reference to World Trade Organization (WTO), Trade-Related Investments Measures (TRIMS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS)". At the Thirty-fifth Session (Manila, 1996), the Secretariat presented comprehensive brief of documents on "WTO as a Framework Agreement and Code of Conduct for the World Trade". At the Thirty-sixth Session (Tehran, 1997), the Secretariat brief reported the outcome of the WTO's First Ministerial Meeting held at Singapore between 9-13 December 1996. The Committee taking note of these developments reiterated the importance and complexity of the issues raised in the Secretariat study for the Member States and decided to focus its work on specific aspects of the WTO trade regime. Accordingly it directed the Secretariat "to continue to monitor the developments related to the code of conduct for the world trade, particularly the relevant legal aspects of dispute settlement machinery".

The Secretariat study presented to the Thirty-seventh Session (New Delhi, 1998) provided a comprehensive overview of the 'Understanding on Rules and Procedures Governing the Settlement of Dispute' as reflected in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations. This document entitled "World Trade Organization: Dispute Settlement Mechanism" dealt with the substantive and procedural aspects of the WTO dispute

resolution mechanism, in the light of the experience gained by the Dispute Settlement Body (DSB), since its establishment. Besides analyzing the comparative merits of the WTO mechanism vis-a-vis the GATT dispute resolution system, particular emphasis was laid on the Special Procedures involving the Least Developed Countries (Paragraph 24 of the Understanding).

At that session, the Member States spoke of their experience with the WTO's dispute settlement mechanism. The discussion revolved around the difficulties faced by developing countries, primarily that arise from the technicalities and high costs of the dispute settlement procedure; lack of adequate logistical and financial capacities for some countries; and the ambiguities inherent in certain provisions of the WTO Understanding. In line with the wishes expressed by the delegates during the deliberations, the Committee in its resolution on this subject, directed the Secretary General to "convene an inter-sessional meeting of the AALCC with a view to enable an in-depth study of the matters arising out of the establishment and the functioning of the World Trade Organization".

It is in fulfilment of this mandate that the AALCC in co-operation with the Government of India convened a two-day seminar on 'Certain Aspects of the Functioning of the WTO Dispute Settlement Mechanism and Other Allied Matters' at New Delhi (India) on 17 and 18 November 1998. A detailed Printed Report of the Seminar has been brought out by the AALCC Secretariat separately and circulated recently.

Thirty-eighth Session: Discussion

The Deputy Secretary General Ambassador Dr. W.Z. Kamil introduced the Secretariat document on this subject. While providing an overview of the developments since the 37th Session (New Delhi) he recalled the Declaration adopted by the Second WTO Ministerial Conference held in May 1998. Inviting attention to the Third Ministerial Conference scheduled to be held at the United States of America, in

November - December 1999, he said that this Conference, besides reviewing the status of implementation of the commitments under various WTO Agreements, would also take note of the progress made in the three Working Groups on Trade and Investment, Transparency in Government Procurement and Interaction between Trade and Competition Policy. He also invited attention to the ongoing review process on the dispute settlement mechanism within the WTO, scheduled to be completed by the end of July, 1999. In the light of the potential implications of these developments for the AALCC Member States, he said that the Committee may wish to consider directing the Secretariat to report to it on these aspects at the next Session.

At the AALCC New Delhi Seminar on WTO, views were expressed to the effect that the lack of national legislation in the field of intellectual property rights and the resulting legal uncertainty was a potential source of trade dispute within WTO. In this connection the Deputy Secretary General referred to the "Joint Initiative" launched by the WTO and WIPO to assist developing countries meet the commitment on intellectual property. The forms of technical co-operation under this initiative includes: assistance in preparing legislation, training, institution building, and modernizing intellectual property systems and enforcement. Ambassador Kamil suggested that the Committee consider mandating the Secretariat to convene a Seminar/Workshop, in co-operation with the WTO and WIPO to promote exchange of views between AALCC Member States and other organizations associated with intellectual property rights.

The Delegate of the People's Republic of China examined the relative merits of the GATT and WTO dispute settlement system. He felt that the WTO's Dispute Settlement Understanding was more automatic and enforceable. It gave the Panel and the Appellate Body more powers thus making it extremely difficult to block the adoption of panel report. Yet, the WTO system, in his view, contained loopholes that allow for sophisticated non-tariff barriers. The inclusion of trade in services within the WTO framework through the General