

cooperation in combatting deforestation.⁸ (i) This purpose is stated in Article 2, paragraph 1 of the Convention, wherein, the objective is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels supported by international co-operation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to development in affected areas;

The principles of the Convention⁹ which would guide Parties towards achieving the objectives, include increased community and local participation at national level; a spirit of international solidarity and partnership at national, subregional, regional and international level; increased co-operation at governmental, and non-governmental level; and special consideration for the needs of affected developing and least developed countries;

The Convention provides for three sets of obligations: (i) general obligations; obligations of affected country parties and obligations of developed country Parties and a special priority section on Africa¹⁰ However, the developed country Parties are under an obligation to provide the technical knowhow, and mobilize additional financial resources from the private sector and nongovernmental organisations for capacity building and relief measures;

The Convention provides for action programmes in three ways¹¹ which include: (i) a basic approach common to all affected country Parties; (ii) national action programmes, and (iii) sub-regional and regional action programmes. A basic action programme shall take into consideration all available data, information on science and technology, financial resources and the need for achieving sustainable development.

⁸ See para 12 of the Preamble of the Convention

⁹ Article 3

¹⁰ Articles 4, 5, 6 and 7

¹¹ Article 9, 10 and 11

The national action programme shall involve a, long-term strategy to combat desertification by addressing the underlying causes of desertification and the proposing preventive measures.

Sub-regional and regional action programmes call upon affected country Parties to consult, co-operate and prepare programmes according to the Regional Annexes¹², provided in the Convention, in order to harmonize and complement national action programmes; The commitments from national government will include, strengthening of laws pertaining to security of land tenure and investment, food security and sustainable irrigation programmes;

Unlike traditional, top-down development planning, the Convention adopts a novel, bottom-up approach¹³ by strengthening local community participation, as they have native knowledge, valuable experience and a special understanding of their environment.

The Convention establishes a Committee on Science and Technology¹⁴ Modern communication networking that provides, satellite imagery, remote sensing will help in establishing linkages between desertification and climate, soils, water and people, thereby providing a better understanding to arrest drought and desertification;

The Convention provides for a Global Mechanism which unlike the Global Environmental Facility (GEF) that funds areas of biological diversity, climate change and international rivers, is not to be the sole channel for funding. The Convention instead, makes the Global Mechanism responsible for "increasing the effectiveness and efficiency of existing financial mechanisms and channeling of substantial financial resources, which would include transfer of technology and other

¹²The Convention provides for Regional Implementation Annexes for Africa, Asia, Latin America and the Caribbean and Northern Mediterranean, which are an integral part of the Convention.

¹³Articles 3, 5, 9, 10 and Regional Implementation Annexes for Africa, Articles 6 and 9.

¹⁴Articles 8, 16, 17, 24 and 25 of the Convention

concessional loans"¹⁵. It shall function under the authority and guidance of the Conference of Parties. Besides, the COP shall identify the organisation to house the Global Mechanism at its first session. The COP, as provided by the Convention shall also ask the Global Mechanism to: (i) identify and draw up an inventory of relevant bilateral and multilateral co-operation programmes; (ii) provide advice, on request, to Parties on innovative methods of financing; and (iii) co-ordinate with relevant intergovernmental and non-governmental organisation, as regards, availability of funds;

The Convention establishes a Conference of Parties which will be the supreme decision-making body, comprising all ratifying governments, including the European Union. It shall meet once a year for its first four sessions. One of the main functions of the COP is to review reports submitted by the Parties, as regards their commitments under the Convention. It also has power to make amendments to the Convention or to launch negotiations, for new annexes, such as additional regional implementation annexes.

The COP shall be assisted by a permanent secretariat. The ICND-10 had before it three contenders, namely, Montreal (Canada), Bonn (West Germany) and Murcia (Spain). ICND-11 which will be convened in August 1997, may decide the location of the Secretariat.

AALCC's Views and Comments

The UN Convention on Desertification which came into force on 26 December 1996, is a watershed in the consistent efforts of the international community against drought and desertification. Some notable characteristics of the Convention are (i) it gives priority to the African region, which is the worst affected; (ii) it provides for a participatory, bottom-up approach, that shall ensure use of traditional knowledge by local population; (iii) it adopts a long term approach, that includes the socioeconomic dimension of desertification and; (iv) it also

¹⁵ External financial assistance is in the form of ODA. Loans on a commercial basis come from multilateral financial institutions, regional development banks and the World Bank, IFAD, UN organisations, and non-governmental organisations.

commitments need a follow-up by way of providing sufficient funds, especially by the developed country Parties. The modalities for the constitution, housing and the disbursement of funds, through the envisaged Global Mechanism is an important task on the agenda of the Conference of Parties.

Having shown their willingness to ratify the Convention, the developed world endeavour come forward to provide the developing and least developed countries, especially Africa, with the much needed finances, technical know-how and information, if they are to translate their international obligations into reality.

AALCC's Future Work-Programme in the field of Environment

The AALCC has had a long history of addressing issues concerning environmental law. From its Tokyo session (1974), wherein the item 'Environmental Protection' was included on its agenda, to the last session in Manila (1996), it has covered a wide range of environmental issues. An illustrative list includes marine pollution by noxious liquids, UNEP Regional Seas Programme, dumping of wastes, transboundary movement of hazardous wastes and the IMO Conventions on Civil Liability and Oil Pollution Fund.

Expert groups constituted in 1978, 1979 and in 1982 considered issues pertaining to regional action programme, promotion of ratification of IMO Conventions besides adherence and acceptance of important international environmental conventions in the field of marine environmental protection.

The AALCC was actively involved in the preparatory phase of the United Nations Conference on Environment and Development (UNCED), 1992 to assist Member Governments. As a follow-up to UNCED the Secretariat is engaged in monitoring the developments of the implementation of Agenda 21 of the three environmental conventions, namely, the UN Framework Convention on Climate Change, the UN Convention on Biological Diversity and the UN Convention to Combat Desertification.

The foregoing account is indicative of the fact that the AALCC has kept pace with the recent developments in international environmental law and related issues of topical importance. To sustain and further build upon the earlier work done by the Secretariat in the field of environmental law and bearing in mind the relevance of the Special Session of the UN General Assembly to "Review and Appraise the Implementation of Agenda 21",¹ it is suggested that the Committee may wish to consider the following areas:

- (i) Preparation of studies on important environmental conventions with a view to promoting their wider adherence by AALCC Member States;
- (ii) Establishment of cooperative programmes with UN agencies and other intergovernmental organisations and research institutions, engaged in activities related to environmental issues; and
- (iii) Organization of training programmes for officials of Member Governments to promote awareness and skills, while dealing with legal problems concerning environment.

The implementation of such a vast programme can only be undertaken with the financial and material support of Member Governments. In this regard it may be recalled, that the Committee has already established a Special Environmental Fund in 1991. The Governments of Saudi Arabia and Myanmar generously contributed US \$ 25,000 and US \$500 respectively to this Fund. This has been utilised to meet the expenses of participation by the officials of the Secretariat in environmental meetings. This Fund now needs urgent replenishment. This would help launch new initiatives related to the AALCC's future work programme in environmental law.

VIII. Legal Protection of Migrant Workers

(i) Introduction

The item "Legal Protection of Migrant Workers" was taken up by the AALCC at its 35th Session held in Manila (1996) following upon a reference made by the Government of Philippines. In its reference to the Secretariat the Government of Philippines had invited attention to the plight of migrant workers and the denial and abuse of their basic human rights. A preliminary study Prepared by the Secretariat for the 35th Session had outlined some basic issues concerning migrant workers in Asia and Africa. Reference was also made to available legal framework within the UN System and initiatives taken therein. At its Manila Session, the AALCC after exchange of views, urged member States to transmit their views to the Secretariat as to how legal protection of migrant workers could be effectively implemented.

Thirty Sixth Session: Discussion

The Assistant Secretary General, Dr. Ahmed Al-Ga'atri while introducing the Secretariat report on the item stated that the item was included in the provisional agenda of the 35th Session in response to a reference made by the Government of Philippines. During that Session, H.E. Fidel V Ramos, President of the Republic of Philippines, while calling for a more sensitive approach by governments of their host countries proposal, in order to Facilitate a comprehensive programme of implementation and adherence to the international conventions and standards, had proposed the following: (a) survey of laws and mechanisms in receiving countries to protect migrant workers with a view to harmonizing them at a later stage; (b) bilateral arrangements; (c) system of legal assistance to migrant workers; (d) and constitution of an impartial international or regional tribunal with petitioning mechanism and procedusres-specific means by which an aggrieved migrant worker may seek redress of his grievances.

¹ UN General Assembly Doc. No. A/51/605/Add.2; resolution 47/190 of 22 December 1992. decided to convene a Special Session not later than 1997.

These proposals he stated, could be deliberated upon at length, in a spirit of mutual co-operation, so that a general consensus emerges among AALCC Member States, and a suitable mechanism or mechanisms brought into existence for offering willing and effective legal assistance and protection to migrant workers, by both sending and receiving countries. These proposals he felt, held an important key to reorienting policies both to make international migration more manageable and to promote efficiency in the world economy.

He observed that as a first step, Member States of the AALCC may consider the possibility of ratifying the UN Convention on the Protection of Migrant Workers (1990). The proposed basic rights tribunal, on the other hand, needed thorough consideration. As pointed out by the delegation of Philippines during the 35th session of the AALCC, it would be worthwhile to examine laws and mechanisms in receiving countries to protect migrant workers with a view to harmonization at a later stage. For this, Member governments may consider sending their comments on this proposed examination which may eventually tackle the establishment of such a tribunal with direct petitioning mechanisms from migrant workers.

He further stated that the Committee should consider giving the Secretariat an appropriate mandate to draft a model legislation among AALCC member countries so as to protect the rights of migrant workers, if not more, at least within the framework of international Labour Conventions and recommendations. This in his view, would go a long way in facilitating the movement of the migrant workers, more particularly in the countries of the Asian-African region.

The Delegate of Philippines commended the Secretariat for the comprehensive background paper prepared for the 36th session. He informed the meeting that the Senate of Philippines had ratified the UN Convention on the Protection of Migrant Workers last year. He also informed that the Republican Act No.8042(Migrant Workers Act) was fully implemented in his country. The delegate also proposed that the AALCC Secretariat be directed to draft a model legislation on the legal protection of migrant workers within the framework of UN Conventions and Recommendations.

The Delegate of Sri Lanka stated that his country had acceded to the UN Convention on the Protection of Migrant Workers on 7th March 1996. He stated that by virtue of the Foreign Employment Act, his country attempted to protect the migrant workers. His delegation was desirous that the AALCC draft a model legislation on the protection of migrant workers and present it at the next session.

The Delegate of Ghana observed that labour migration was not a new phenomenon. However, it would seem that more and more countries were not only finding new ways and means of closing their doors but also paying scant attention to the plight of migrants. He stated his delegation's support to the recommendation that the taking Secretariat be mandated to draft a model legislation on the issue into account the afore-mentioned Conventions and the peculiar problems being faced by migrant workers in the Asian-African countries. His delegation endorsed the suggestion that the Secretariat be directed to draft a model legislation on the legal protection of migrant workers within the framework of UN Conventions.

The Delegate of Bangladesh fully associated himself with the views of the delegations of Philippines, Sri Lanka and Ghana on the question of migrant workers. He noted that the subject required urgent attention during the deliberations in this Committee. In his view, the drafting of a model legislation on the subject was a timely initiative.

The Delegate of Singapore informed the Committee about recent developments on the subject since the last AALCC seminar held in Manila. The topic had been discussed at length in the UN Expert Group meeting on Violence Against Women Migrant Workers when it met in Manila from 27-31 May 1996. The report of the UN Secretary General contained in document No. E/1/1996/71 was presented to the substantive session of the ECHOIC for its consideration. As this report contained the views and concerns on the subject of his country he did not propose to repeat them. Subsequently the General Assembly at its 51st session in its Resolution 51/65 entitled Violence Against Women Migrant Workers was adopted at that session. This was available as document A/Res/51/65 dated January 28, 1997. In this resolution, the Secretary General was required to seek the views of member states on the subject. He understood that the views were

to be given not later than 30 April 1997. His delegation urged the Committee to take these facts and developments into account and to allow the UN to collate the information instead of proceeding as envisaged in the last paragraph of the Secretariat's study prepared for the Tehran Session.

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

(Adopted on 7.5.1997)

The Asian-African Legal Consultative Committee at its Thirty-Sixth Session

Having considered doc. No. AALCC/XXXVI/Tehran/97/S.7 on the Legal Protection of Migrant Workers;

Having heard the comprehensive statement of the Assistant Secretary General;

Expressing its appreciation for the study prepared by the Secretariat;

Mindful of the possible difficulties faced by the migrant workers, and the fact that protection of the basic human rights of migrant workers is very crucial;

Takes Note of the work done by the General Assembly pursuant to its resolution 51/65;

1. *Urges* Member States who have not already done so to ratify the UN Convention on the Protection of Migrant Workers (1990);
2. *Urges* the Member States to transmit to the AALCC Secretariat their comments on the proposed examination of laws and mechanisms in their countries to protect migrant workers;
3. *Mandates* the Secretariat to study the utility of drafting a model legislation aiming at the protection of the rights of migrant workers within the framework of labour Conventions and recommendations and of the relevant United Nations General Assembly resolutions;
4. *Decides* to place the item Legal Protection of Migrant Workers on the agenda of its thirtyseventh Session.

(iii) Secretariat Study

Legal Protection of Migrant Workers.

Afro - Asian Migration

Large scale labour migration from South and South-East Asia to the Middle East can be traced back to the 1970s. The Asian workers in the Middle East initially came from South Asia, predominantly from India and Pakistan, but were soon followed by flows from the Philippines, Thailand, and the Republic of Korea. In Asia itself, the four 'Asian dragons' (Republic of Korea, Taiwan, Hong Kong and Singapore) attract a great number of migrants.¹

The type, volume and direction of international Migration in Africa are closely related to complex historical and political experiences and to economic structures in the region. The characteristics of migrants reflect the types of migration : refugees, escaping from war, 'ethnic cleansing, famine and drought, are usually old people, women and children. Labour migration, especially in South Africa, is male dominated. In general, immigrants within Africa include a high proportion of Young adults of working age, who have lower levels of schooling than the population they join.²

With respect to migration in the Arab world, the emigration zones include Egypt, Jordan, Lebanon, The Syrian Arab Republic, Yemen, Algeria, Morocco and Tunisia. The immigration zones in this region are made up of oil producing countries with a small native population, as, for example, Saudi Arabia, Bahrain, the United Arab Emirates, Kuwait, Qatar, Oman, Iraq and Libyan Arab Jarnahiriya. These countries also need foreign workers because of the sudden developmental task they set for themselves.

¹To the Gulf and Back : Studies on the Economic Impact of Asian Labour Migration: Edited by Rashid Amjad: Chapter 1.

²International Migration in Africa: Legal and Administrative aspects by Sergio Ricca: The African Migration Phenomenon: p. 1.