

workers in the State of Qatar” states that the policy with regard to migrant workers is based on principles aiming to diversify the sources of national income through expanding industrial and agricultural production bases. Apart from these projects, Qatar is among the major leading oil producing nations. The State has been opening the corridors for large number of migrant workers from different origins and of numerous categories, in recognition of man powers’ importance to the process of building the nation, and as an important factor in implementing the States’ plans. It has sent to the AALCC Secretariat “Law no 141 of 19923 which concerns bringing foreigners to work for other employers. Immigration laws; “Law no 15 of 1997” by which foreigners working in Qatar can bring in their families, and “Labour law no(3) of 1962 which regulates the rights and duties in any contractual relationship existing between an employe and a workman in the State of Qatar.

In view of the Government of the Democratic Republic of Sri Lanka drafting of a Model Legislation aimed at the protection of the rights of migrant workers, will help them to gain recognition of their rights and alleviate considerable hardships that migrant workers are undergoing at present. Sri Lanka has acceded to the UN Convention on the Protection of Migrant Workers. Further the drafting of a Model Legislation will help formulate a framework for their protection in the labour recipient countries. It would also generate greater awareness of the UN Convention among the recipient countries and help to accelerate the process of ratification to bring the Convention into force.

The migrant worker is not a product of the twentieth century. Women and men have been leaving their homelands in search of work elsewhere ever since payment in return for labour was introduced. The difference today is that there are far more migrant workers (legal and illegal) than in any period of human history. Millions of people now earning their living - or looking for paid employment - came as strangers to the States where they reside. There is no continent, no region of the world, which does not have its share of migrant workers.

It is a fact universally acknowledged that migrant workers, be they documented or undocumented, do need protection as a matter of right so that

they are not exploited by unscrupulous elements in the sending country as also in the receiving country. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families defines the term ‘migrant’ worker as referring to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

The Proposed Framework of the AALCC Model Legislation

Some States encourage their citizens to go abroad to work; others actively recruit foreign workers. There are, in certain cases, bilateral agreements between states covering migrant labour. It is important, subject to bilateral or multilateral agreements between member countries, migrant workers remain adequately protected. It is thus necessary that suitable rules and norms are incorporated in the proposed AALCC model legislation which will not only have universal appeal, but will appeal to local requirements of Member States and will even extend to addressing the questions of finances for funding these efforts to protect migrant workers and their families.

Though member countries are willing to express general agreement with the position that there should be a model legislation to meet at least the basic minimum requirements for, protecting the migrant workers, there should be some concrete proposals in this behalf.

Migrant workers, whether under contract or other formal arrangements, or simply setting off on their own initiative, should be given basic understanding of the language, culture and legal, social and political structures of the State to which they are going. They should be informed in advance of the wages and working conditions and general living conditions they can expect to find on arrival.

Migrant workers are aliens. They may, on this account alone, be the targets of suspicion or hostility in the communities where they live and work. In most cases financially poor, they share the handicaps economic, social and cultural of the least favoured groups in the society.

Discrimination against migrant workers in the field of employment takes many forms. These include exclusions or preferences as regards the types of jobs which are open to migrants, and difficulty of access to vocational training. Different standards are many a times applied to nationals, on the one hand, and migrants, on the other, as regards job tenure, and contracts may deprive migrants of certain advantages.

Living conditions for migrant workers are often unsatisfactory. Low incomes, high rents, housing shortages, the size of the migrants families, and local prejudice against foreign elements in the community are the main factors which cause serious accommodation problems. The integration of migrant workers and their families into the social environment of receiving States without loss of their cultural identity is another problem. The education of children of migrant workers is another area which needs attention.

Migrant workers face the gravest risk to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law. Mass poverty, unemployment and under employment in many developing countries offer a fertile ground of recruitment to unscrupulous employers and private agents; in some cases, the undercover transfer of workers taken on the character of a criminal operation.

The illegal migrant is a target of exploitation. He or she is at the mercy of employers and may be obliged to accept any kind of job, and any working and living conditions. Illegal migrants rarely seek justice for fear of exposure and expulsion, and in many States have no right of appeal against administrative decisions which affect them.

Taking the aforementioned into consideration, the local conditions affecting migrant workers in each Member State have to be studied, unless this is done it will be difficult to prepare a text which will meet the common minimum agenda of each of the Member Countries and will, as such, be generally acceptable. The text to be, generally acceptable must, for instance, address the definition of a migrant workers and the categories of the migrant workers, social and cultural handicaps of migrant workers, must not only provide to them a right to return home, but also must ensure prevention of arbitrary

expulsion. The text must also give particular attention to the educational needs of the children of migrant workers. Again it must also address, apart from the integration of migrant workers and their families in regular situations, human concerns of illegal and clandestine migrants who face the gravest risks to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law. Still further it should clearly cover the conditions of employment, the conditions of work, labour administration and management, social security, legal remedies and fiscal matters.

The Proposed draft Structure of Model Legislation

1. Preamble
2. Definition of "Migrant workers" and categories of migrant workers.
3. Procedure for "Migrant Worker" status determination.
4. Principle of family unity and dependency status.
5. Non-discrimination.
6. Human Rights.
7. Protection of women migrant workers.
8. Conditions of employment.
9. Conditions of work.
10. Employment policy.
11. Social security.
12. Education.

13. Conditions of return.
14. Legal remedies.
15. Taxation and financial issues.

This is in fact the initial framework, which can have options of covering either a wide or narrow range of issues to be decided by the Committee and, which if approved by the Committee will be further elaborated, after a study of all existing international and national legislation on Migrant workers, in order to present a comprehensive piece of legislation which could be of immense benefit to the Member States. There is an urgent need for international legal instruments to be implemented at national level and further be supplemented and enforced through national legislation.

Initiatives to be Considered by the 37th Session of the AALCC

As suggested during the 36th Session, as a first step member States of the AALCC may consider the possibility of ratifying the UN Convention on the Protection of Migrant Workers and their Families. This Convention is a vitally important international instrument "providing the foundation" for migrant workers protection around the world.

The proposed AALCC Model Legislation still needs to be studied and deliberated upon thoroughly. Member Governments may consider to send their National Legislations concerning Migrant Workers. At the same time the Secretariat will highly appreciate if Member States could send their comments on the aforementioned framework and draft structure of the Model legislation suggested by the AALCC Secretariat. These comments could among other things possibly tackle the establishment of a tribunal with direct petitioning mechanisms from Migrant Workers, as was suggested by the Government of the Philippines.

During the recently concluded 52nd Session of the General Assembly, the representative of Tanzania, on behalf of the States Members of the Group of 77 and China, (A/52/628/Add.4 dated 2 December 1997) introduced a draft resolution entitled "International Migration and Development, including the convening of a United Nations Conference on International Migration and Development." The General Assembly while recalling its resolution 51/148 of 13 December 1996 has encouraged, where relevant, interregional, regional and sub-regional mechanism to continue to address the question of international migration and development. It further states that in spite of the existence of an already established body of principles, there is a need to make further efforts to ensure the human rights and dignity of all migrants and their families and that it is desirable to improve the situation of all documented migrants and their families.

Keeping the relevance of the topic in mind and as time available during the Session might not be enough to study, in depth, the issues involved, it would be desirable to constitute an "Open-ended Working Group". This Group could meet at a convenient time prior to the next AALCC Session. This would give an opportunity to examine the proposed Secretariat Draft Structure of the Model Legislation on the Legal Protection of Migrant Workers in detail. The Committee may wish to consider this Secretariat proposal and give necessary directions in this regard.

XIII. INTERNATIONAL TRADE LAW

A. Legislative Activities of the United Nations and Other Organisations Concerned with International Trade Law

B. World Trade Organisation (WTO)

(i) Introduction

The AALCC Secretariat presents a report on the "Legislative Activities of the United Nations and other international Organisations concerned with International Trade Law" at its annual sessions. Such reports, are intended to keep Member Governments abreast of the recent developments in the field of international trade law. The Committee takes note of the Secretariat report and inter alia "request the Secretary-General to continue to monitor the developments in the area and present the same to its next session"

The Secretariat at its thirty-fourth session (1995) held at Doha, Qatar presented a brief of documents on the then concluded Marrakesh Agreement 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) It focussed on the salient features of this Agreement on three crucial areas, viz., WTO, TRIPS, and TRIMS. Besides outlining the major policy initiatives which had actually shaped the Final Agreement, the Secretariat brief called for a closer scrutiny of the implications arising out of the agreements in the light of the practices that they may establish. The Committee took note of the Secretariat document and "requested the Secretary-General to continue to monitor the developments in the area and to report thereon to its thirty-fifth session".

Accordingly, the Secretariat at the thirty-fifth session (1996) held at Manila, presented a comprehensive brief of documents on "WTO as a Framework Agreement and Code of Conduct for the World Trade" During the course of the deliberations on this item at the thirty-fifth session, a view was expressed that the issues raised in the Secretariat brief were extremely

important and complex. It was proposed that the Secretariat should concentrate on some select issues arising from the WTO and prepare studies for discussion either by a group of experts or in the Trade Law Sub-Committee. In a resolution adopted on this item, the Committee directed the Secretariat "to continue to monitor the developments related to the code of conduct for the world trade" and decided to place the item on the agenda of its thirty-sixth session."

The Secretariat at the thirty-sixth session (1997) held at Tehran, reported on the outcome of the WTO 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. In a resolution adopted on this subject, (Res. No. 36/10) the Committee 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"

In fulfilment of this mandate, the brief of documents for New Delhi Session prepared by the Secretariat provides 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 will focus on 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 analysing the comparative merits of the WTO mechanism vis-a-vis the GATT dispute resolution system, particular emphasis is laid on the Special Procedures involving the Least Developed Countries.

The Thrity Seventh : Discussion (A)

The Assistant Secretary General Dr. M. Al'Gaa'tri introduced the Secretariat Document and said that the main objective of this Report was to keep the Member Governments abreast of the legislative developments in the field of international trade law. As regards, the work of UNCITRAL at its thirtieth session in 1997, he elaborated on the Model Law on Cross Border Insolvency as adopted by the General Assembly of the United Nations. He also referred to the progress made by UNCITRAL in the preparation of a

'draft legislative guide' on privately-financed infrastructure projects, electronic commerce and assignments receivables financing; and the Commission's proposal to commemorate in 1998, the thirtieth anniversary of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

He outlined the activities undertaken by UNCTAD and UNIDO for the year 1997. With regard to the work of UNIDROIT he drew attention to the preparation of uniform rules on international interests in mobile equipment and the legal guide on international franchising. As regards the activities of the Hague Conference on Private International Law, he appraised the Committee of the progress made in the preparation of a preliminary draft convention on International Jurisdiction and the Effects of Foreign Judgements, scheduled to be adopted in the year 2000.

The President reflected that rapid changes leading to creation of new legal regimes were occurring in the field of international trade law. Expressing regret that the participation of developing countries in the process was woefully inadequate, he urged the Member States to actively associate themselves in the international law-making process.

The Delegate of India expressed his appreciation to the Assistant Secretary General and the Secretariat for the informative report presented on this subject. Commenting on the Model Law on Cross-Border Insolvency, he was of the view that the Model Law reflected a realistic compromise between the preferred positions of different legal systems and would contribute to meeting the objective of setting out a model for a modern and efficient insolvency system in a unified manner. Elaborating on other salient features of this legislation, he observed that the strength of the Model Law lay in its flexibility, which paved way for wider acceptance and adoption by enacting States. In the light of the existing authoritative pronouncements by the Indian courts on this subject, he was of the view that the Model Law needed to be assessed as to its compatibility with Indian enactments.

While agreeing with the preliminary conclusion of the Working Group on Electronic Commerce as to the preparation of draft uniform rules on 'digital signatures' and "Certification authorities", he proposed that the future work on