

Information Note II

A GLOBAL CONSULTATIVE PROCESS FOR INTER-STATE CO-OPERATION ON MIGRATION MANAGEMENT

I. Introduction

Today, one of every thirty-five persons in the world is a migrant.¹ Migratory movements are an important feature of today's global political and economic reality. Governments are becoming more aware of both the positive and the negative impacts of migration, as well as the links between migration and other key economic, social, political and humanitarian issues. As a consequence, they are searching for ways to build and strengthen their national capacities for migration management.

One aspect of a State's responsibility to protect its own population and territory is the authority to determine who may enter and remain in its territory, according to the constitutional provisions, national legislation and international obligations. In exercising this sovereign responsibility, most States have pursued a unilateral approach to migration, accompanied by bilateral arrangements or agreements on an ad hoc basis. They have sought to manage migration in the interest of their population and of maintaining friendly relations with other States. As a consequence, there is no comprehensive and harmonised system regulating international migration, and different national migration policies and practices have evolved autonomously.

However, due to the trans-national nature of migration and its relationship to issues such as security, social, political and economic stability, trade, employment and health, Governments increasingly recognise their shared migration interests and the value of strengthened co-operation and co-ordination to effectively manage migration. They are aware of the fact that migration cannot be managed effectively in the long-term through national measures alone and that collective efforts are required to strengthen national capacities in this area.

Concurrently, Governments want to maintain freedom and flexibility of action in this sphere and therefore are reticent to enter into binding international legal obligations beyond those to which they are already committed. Bearing this in mind, international co-operation among States would need to be based on a genuine partnership fully respecting the sovereign rights and legitimate interests of each State.

The Berne Initiative

Stemming from these considerations, the Swiss Authorities launched the "Berne Initiative" with the International Symposium on Migration, 14-15 June 2001. The objective of the Berne Initiative is to institute a States' owned consultative process to stimulate an exchange of views and promote mutual understanding of different migration realities and interests. This effort is intended to lead to better management of migration at the practical level through enhanced co-operation between States.

¹ IOM News, No. 4, 2002.

At the International Symposium on Migration, it was concluded that it may be of use to develop an informal international framework of guiding principles to facilitate the management of migration. These principles would not establish new binding obligations for States, but rather identify effective practices to serve as a guide for Governments in developing migration policies and programs. They could thus enhance States' efforts to manage migration more effectively at the national and international levels.

II. The Berne Initiative consultative process in 2002

For the identification of possible guidelines and best practices for managing migration through international partnership and co-operation, the Swiss Authorities, in co-ordination with IOM, undertook the preparation and publication of an expert stocktaking study on existing international law norms relevant to migration. In addition, IOM prepared a collation of common understandings emanating from regional consultative processes and relevant international conferences on migration.

Furthermore, it was deemed necessary to consult governments in all regions to assess the desirability of developing a common framework of principles. For this purpose, over the course of 2002, extensive regional consultations with Governments and other interested actors have been carried out.

1. Stock-taking for the development of guiding principles

To be most useful and effective, guiding principles to facilitate the management of migration would derive from common understandings between Governments, found mostly at the regional level and would be based on already existing international and regional norms *inter alia* on the protection of the human rights of migrants, refugees and displaced persons. Such principles should identify common interests and objectives of countries of origin, transit and destination, taking into account their diverging concerns and needs as well as the interests and perspectives of other stakeholders such as non-governmental organisations, international organisations, employers and migrants groups. In light of the fact that migration remains largely within the sovereign realm of States, a set of guidelines and best practices should be elaborated with due regard for national decision-making and the need to maintain flexibility in order to adapt to future trends and policies.

a. International law norms relevant to migration

While it is frequently noted that there is no comprehensive international legal regime for migration, there are nonetheless many existing international law norms and principles relevant to the management of migration. As these had not been compiled in one place to date, an essential pre-requisite for the development of guidelines and best practices was a thorough stocktaking of existing international law norms with relevance to migration.

To this end, a stocktaking entitled "International Legal Norms and Migration"², identifies the legal norms that constitute the framework of and for co-operative management in the interest of States, their citizens and interstate relations. It concludes that there is both more and less international law than might be supposed. On a number of issues, there are easily identified norms relating to migration – either enshrined in inter-state conventions or evolved over time and thus forming part of customary international law. Furthermore, there are a number of international, regional and bilateral agreements pertaining to migration that establish reciprocal obligations for ratifying States. On other issues, international norms are less clear or have not yet full crystallised. Overall, there is no comprehensive international legal framework on migration.

² The expert study was edited by T. Alexander Aleinikoff, Senior Associate at the Migration Policy Institute in Washington, D.C. and Professor of constitutional and immigration law at Georgetown University Law Center.

The introductory analytical chapter is drawn from 17 distinct papers submitted by international law experts on different migration issues reviewing the present international legal and policy framework relating to migration and the movements of people. It helps to identify gaps or grey areas not adequately covered by international law, but where inter-state co-operation could usefully be further developed.

The expert study, commissioned by IOM and sponsored by the Swiss Federal Office for Refugees, the Swiss Department of Foreign Affairs and the Swiss Agency for Development and Cooperation, was carried out by the Migration Policy Institute (Washington, D.C.) and the Institut Universitaire de Hautes Etudes Internationales (Geneva). Its publication (by Asser Press) is expected in early 2003. An analytical overview prepared by T.A. Aleinikoff will form the introductory chapter of the expert study and will also be published separately by IOM as part of IOM's International Dialogue on Migration (or "red book") series. The Analysis will be published in English in time for IOM's Council, and shortly thereafter in French and Spanish, as the need to understand the existing legal regime on migration has been frequently cited by IOM's membership as important to enhancing international co-operation in the management of migration.

b. Common understandings emanating from regional consultative processes and relevant international conferences

The expert study clarifies the international legal foundation for the development of a framework on migration. To complement this effort, IOM prepared a compilation of non-binding common understandings emanating from Regional Consultative Processes on migration and selected international migration-related conferences. This compilation contains significant substantive statements on migration matters from the declarations, plans of action, and other such conclusions adopted at the identified conferences, presented thematically for ease of reference. Taken together, these provide an indication of the migration subjects of concern to the international community and where consensus on the international level could be possible. The "Compilation of Significant International Statements on Migration" will be made available at the IOM Council in December 2002 and is intended to be updated regularly to serve as a resource for migration practitioners and policy-makers.

The compilation indicates that on a number of issues there is a convergence of interests and many common understandings on migration, as well as some divergence in view of differing national or regional experiences and perspectives. It provides a tool for the identification of good or effective practices in migration management. Thus, together with the international legal foundation, these practices could be drawn upon to form an international framework of effective practices on migration management.

2. Regional consultations

The Berne Initiative seeks to engage the active participation of States from every region of the world, representing a wide-range of migration perspectives, through a broad-based consultative process. This bottom-up approach, over the course of 2002, consisted of regional consultations carried out in the context of conferences and workshops to explore the concept of an international framework for the management of migration. The Berne Initiative has been introduced and discussed at a number of regional conferences and workshops to seek the input of policy-makers from around the world. These deliberations were intended to serve as an opportunity for informal brainstorming on the complex issue of migration management and to stimulate discussions. Participants were asked to reflect upon what "migration" means in their regions, what are the principal issues of concern, and to explore how migration management could be improved at the national, regional and international levels. Many such consultations took place in the context of inter-agency International Migration Policy Programme (IMP) activities within developing regions and regions in transition.

The valuable input received at the conferences and workshops has contributed to shaping the direction of the Berne Initiative. The feedback has been remarkably favourable and supportive for both the concept of the Berne Initiative and the bottom-up consultative process it is employing. Many States indicated their desire to be closely associated with the further development of the

Berne Initiative. A few States expressed a need for caution in the development of the initiative to ensure that it had a practical and realistic focus.

A large majority of Government representatives considered that strengthening international co-operation on migration would be of benefit to all States and were in favour of pursuing the development of an international framework of guiding principles for the management of migration. Furthermore, some States placed emphasis on the critical importance of fully associating developing countries in the process of defining guidelines and best practices, and to ensuring their full partnership in this effort.

On the whole, the concept of the Berne Initiative has received widespread interest and support over the course of the year 2002. It has become clear that the Berne Initiative constitutes an appropriate platform for co-operation and dialogue among countries of origin, transit and destination at a time when States are recognising the absolute need for more regular dialogue and co-operation on migration matters. The year 2002 has, moreover, confirmed that most States are prepared, or even eager, to develop a framework of guidelines and best practices for the management of migration.

III. Next steps

In 2003, the Berne Initiative will continue the bottom-up approach pursued in 2002, as there is still need for better understanding and identification of common interests in the field of migration. To this end, it is essential to ensure the active involvement of States and other stakeholders all over the world in the identification of common interests. The positive results achieved in 2002 through this consultative approach augur well for its continuation in 2003.

The year 2003 will also be the time for the development of a possible framework of guidelines and best practices for migration management. One objective is, moreover, to organise a second International Symposium on Migration – “Berne II” that is planned to take place in 2004. Like the first Symposium on Migration in 2001, participation in “Berne II” would be broad-based and representative, with Governments, inter-governmental organisations, NGOs and academics from each region of the world and from each migration circumstance. For this reason, and as this task will require the collaboration and support of States all around the world, preparatory meetings will take place to discuss the elaboration of guidelines and best practices and possible ways of implementation. These meetings will, again, serve as an international platform for dialogue and co-operation on migration matters.

The Berne process has shown the broad interest in continued joint efforts and co-operative approaches to enhance understanding of migration and to contribute to channelling this dynamic and complex phenomenon to the benefit of migrants and countries of origin, transit and destination.