

Information Note I

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

I. CONTEXT

Governments in all regions of the world are acutely aware of the growing importance of international migration and the fact that global population mobility is unlikely to yield in the near future. While policies regarding international migration remain largely a matter of sovereign prerogative, and there are natural differences in migration interests between origin, transit and destination countries in developing and industrialised regions, the ever-growing number of migrants and complexity of migratory movements within and across regions highlight **the need to develop a co-operative inter-State approach**. The time has come to explore basic parameters of a possible international framework aimed at facilitating co-operation between States in planning and managing the humane and orderly movement of people.

The fundamental premise for such a possible framework is that inter-State collaboration should be based on common understandings, recognition of national and regional interests, State sovereignty, respect for the rule of law and internationally recognised principles, shared appreciation of sound practices in migration management, mutual trust and partnership, transparency, predictability and coherence.

It is with this in mind that the Government of Switzerland took the initiative, in 2001, to launch a consultative process with governments of migrant source, transit and destination countries, inter-governmental agencies, non-governmental agencies and academics, to analyse and define common policy interests in migration management and co-operation. The process is intended to ascertain the feasibility of elaborating a Framework of Guiding Principles that could in the future serve as guidelines to facilitate co-operation among States for managing international migration. As a first step, a symposium was convened to launch the debate on this crucial issue.

II. THE INTERNATIONAL SYMPOSIUM ON MIGRATION -- BERNE, 14 TO 15 JUNE 2001

Some eighty government officials and experts from international agencies, NGO's and academia attended the Symposium, which reviewed current migration dynamics and trends, including demographic developments, the impact of globalisation on migration, foreign labour demand, irregular migration, trafficking in human beings, the gender dimension of migration, and other relevant contemporary aspects of international migration.

II.1. Government Interests and Perspectives

The Symposium identified interests common to all States, as well as mutual benefits that can be derived from enhanced inter-State co-operation. Concurrently, it considered the diverging interests and perspectives of origin, transit and destination countries, recognising the need for these differences to be bridged.

Interests common to all countries were recognised as follows:

Maintaining good inter-State relations; fostering national and international security and stability; strengthening joint management of borders; encouraging economic growth and maintaining financial stability; combating migrant trafficking and smuggling; ensuring protection and equal and fair treatment of migrants; managing migration on the basis of state sovereignty and the rule of law; and encouraging cultural enrichment through migration.

Mutual benefits from enhanced inter-State co-operation were identified as follows:

Meeting labour market needs in receiving countries and labour demands in source countries; responding to demographic developments; developing mutually beneficial return and reintegration policies; maximising the effective use of remittances; increasing and facilitating development co-operation, direct foreign investment and reducing barriers to trade in services; more effectively combating irregular migration, including migrant smuggling and human trafficking.

Principal migration interests of origin, destination and transit countries respectively, were identified as follows:

Countries of origin: Relieving pressure on national labour markets through out-migration; promoting skills of national work forces; avoiding negative effects of brain drain while taking advantage of positive effects of skilled workers' out-migration; ensuring protection of migrants abroad; fostering economic development through migrant training, planned and regular flow of remittances, reduction of trade obstacles and promotion of foreign direct investment, and benefits from increased development co-operation.

Countries of destination: Encouraging legal migration and discouraging irregular migration, including migrant smuggling and human trafficking; effective integration of immigrants; return of non-authorised migrants; planned immigration to compensate for labour shortages and population decline; and protection of refugees and other vulnerable groups

Countries of transit: Effective combating of human trafficking by criminal organisations; minimising the negative financial, social and economic effects of unauthorised movement of migrants across national territory; maintaining good relations and strengthening common action with neighbouring countries.

II.2. A Balanced Approach to Migration

The Symposium recognised the need for a balanced approach in facilitating regular migration and preventing irregular migration, and emphasised that the root causes of migration are related to broader economic, social and development issues. Regulated migration contributes to, *inter alia*, fostering economic growth, good neighbourly relations, security, the rule of law and cultural diversity. However, there is growing dissatisfaction as to how irregular migration is occurring at present, in particular regarding the increasing involvement of international criminal organisations in smuggling and trafficking. The undermining of State sovereignty and security by uncontrolled and irregular migration was recognised as a major concern for many countries, both in developing and industrialised regions, with important financial, economic, social and legal implications. The need for enhanced understanding and interest in co-operation on all of these matters were identified as considerable.

While participants recognised that States should not unduly restrict cross-border movements, they have an obligation to ensure the security, social stability and economic and general well-being of their own nationals. Concurrently, they are bound under international law to protect refugees and the rights of migrants. All States thus face the common challenge of developing migration policies that reconcile these objectives, while contributing towards sustainable development, promoting global economic growth, fostering democracy and preventing conflicts. The Symposium participants decided to take further the idea of developing a framework of guiding principles for the management of migration, through an on-going and broadened process of consultations.

III. Basis of Understanding for the Elaboration of a Possible Framework

The basis of understanding to elaborate a possible framework could include the following general considerations:

- Active involvement and participation of interested States in all regions, acting in a spirit of partnership, trust, transparency, good neighbourly relations, and in respect of the sovereignty and interests of all States;
- Recognition that migration must be addressed in a balanced manner, considering that its root causes are related to a broader economic, social, developmental and environmental context, including lack of employment, insufficient access to education and health, and international trade and financial policies;
- Recognition that migration is in general beneficial to societies and migrants, that regular migration and integration of migrants should be encouraged, and that irregular migration should not constitute an alternative to regular migration;
- Respect for the human rights of all migrants;
- Respect for the principle of *non-refoulement* of refugees and providing protection to other persons in need of protection;
- Recognition of the importance of systematic exchange of timely and accurate information and data on all forms of migration, including irregular migration and illegal employment; and further analysis of existing procedures, laws and 'best practices' for migration management;
- Combating all forms of terrorism and criminality linked to migration.

IV. Next Steps

Based on the consensus in favour of this effort to increase international co-operation in the management of migration, the Government of Switzerland in close co-operation with IOM, UNHCR, IMP, ICMPD and other relevant international organisations is expanding the consultations launched at the Berne Symposium to a much wider audience. Over the course of 2002, there will be regional consultations with governments, in particular in developing countries, to explore the concept that there should be an international framework for the management of migration, in order to maximise the benefits of migration and create a more orderly movement of people. Concurrently, draft guiding principles upon which the possible framework could be based will be discussed. Wherever possible, these consultations will be carried out in the context of conferences and workshops already being planned by institutions affiliated with the Berne Initiative.

In parallel, to facilitate the development of principles and to contribute to international understanding of migration, a stock-taking is underway of existing international legal standards on migration management. This exercise is being conducted by recognised experts in the field of international migration, and will serve as a research tool in support of the development of principles and the identification of gaps or grey areas in current international law and practice. It is anticipated that this tool will be ready for use by mid-2002.

The Government of Switzerland is prepared to organise a further meeting, "Berne II," and a possible preparatory meeting. At "Berne II", and at any preparatory meeting, the draft Framework of Guiding Principles developed through the consultations would be open for further reflection and revision. Berne II would also serve to determine how next to proceed with the draft principles, and recommend any follow-up activity. Participation in Berne II would be broad-based and representative, with governments, inter-governmental organisations, NGO's and academics from each region of the world and from each migration circumstance. To allow sufficient preparation, Berne II could be held in 2003, and should preferably take place in a developing country to highlight the global character of the process.

V. IDENTIFYING KEY ELEMENTS FOR INTER-STATE CO-OPERATION ON MIGRATION MANAGEMENT

The proposed Framework of Guiding Principles is to be developed through extensive consultations with governments and other interested actors. The draft framework would consist of 1) existing principles and norms recognised in international law, and 2) principles deriving from 'best practices' based on present government policies and procedures in migration management. Attached to this document is a list of possible elements for inter-state co-operation in the management of migration. This list is **illustrative** only and is provided to stimulate and facilitate discussion on the feasibility of identifying principles for inter-state co-operation in the management of international migration and on the possible content of such principles.

Possible Elements for Guiding Inter-state Co-operation in the Management of Migration

For purposes of facilitating discussion, the proposed Framework of Guiding Principles could be structured around five areas. The first four areas would enumerate principles that are founded in international law, agreements and international resolutions and recommendations. The fifth area would reflect 'best practices' based on government policies and procedures in migration management. The draft elements suggested below are presented as an informal list to stimulate discussion, and should by no means be considered exhaustive.

Area I

STATE AUTHORITY AND RESPONSIBILITY

- 1. Determining Right of Entry**
- 2. Protection of the Health, Safety and Security of Society**
- 3. Securing Integrity of Borders, Controlling Irregular Migration, and Combating Smuggling of and Trafficking in Persons with Particular Attention to the Needs of Children and Women**
- 4. Readmission of Non-Authorised Migrants**
- 5. Non-refoulement of Refugees**
- 6. Granting Nationality**

Area II

INDIVIDUAL FREEDOM OF MOVEMENT

- 7. Freedom to Leave and Return to One's Own Country**
- 8. Freedom to Remain in One's Own Country**
- 9. Freedom of Movement within a Country and Obligation of Migrant to Respect the Rule of Law**

Area III

PROTECTION OF RIGHTS OF MIGRANTS

- 10. Protection of Fundamental Human Rights**
- 11. Protection from Racism and Xenophobia**
- 12. Equal Treatment without Discrimination**
- 13. Family Reunion**
- 14. Equal Access to Employment, Social and Legal Services**

Area IV

PROTECTION OF REFUGEES

- 15. Safeguarding Access to Asylum Procedures**
- 16. Non-refoulement of Refugees**
- 17. Temporary and Complementary Forms of Protection**
- 18. Special Attention to Vulnerable Groups**

Area V

**IDENTIFICATION OF BEST PRACTICES FOR A PLANNED,
BALANCED AND COMPREHENSIVE APPROACH TO MIGRATION**

- 19. Migration practice which benefits regular migrants, and societies, ensures orderly, predictable and safe migration, and discourages irregular migration**
- 20. Comprehensive approach to migration which includes both temporary and permanent migration, promotes ratification and ensures implementation of existing instruments and agreements, promotes integration of documented migrants, facilitates family reunification, facilitates naturalisation and citizenship of long-term regular migrants, ensures adequate protections for refugees and asylum-seekers including access to refugee status determination procedures, prevents domestic xenophobia and protects the rights of migrants, promotes voluntary, safe and dignified return of non-authorised migrants and sustainability of such return to ensure effective reintegration, respects basic readmission principles in the context of coherent return policies concerning non-authorised migrants, and ensures fair and non-discriminatory entry and exit procedures**
- 21. Balanced migration processes supporting sustainable development in source countries and linked to employment creation, productive use of remittances, development of migrant skills and skills application in source countries, trade policies, environmental preservation, foreign direct investment and development co-operation**
- 22. Alignment of domestic law to ensure consistency of national legislation and procedures with international responsibilities**

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