The Berne Initiative

Berne Initiative Regional Consultations for
Europe and Central Asia
24-25 June 2004
Budapest, Hungary

REPORT

This report was prepared by IOM's Migration Policy and Research Department
which serves as secretariat for the Berne Initiative.
Further information and documentation on the Berne Initiative are available in
English, French and Spanish at the IOM website www.iom.int.

IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

Introduction

The Berne Initiative Regional Consultations for Europe and Central Asia were held 24 - 25 June 2004 in Budapest, Hungary. Some 100 participants representing 40 countries, representatives of international, regional and non-governmental organizations and individual migration experts were in attendance. The main objective of these second regional consultations of the Berne Initiative was for participants from Europe and Central Asia to explore the concept and to contribute to the development of an International Agenda for Migration Management.

Participants acknowledged the complexity and sensitivity of migration-related issues, especially in a part of the world where there are multiple patterns of flows, and – most importantly - where developments towards political, social and economic integration have had and will continue to have major impacts on migration management policies. In this light, participants welcomed the opportunity to explore avenues for international cooperation from a comprehensive perspective. Particular emphasis was placed on the complementarity of the Berne Initiative's global approach with on-going regional dialogues and integration efforts on migration, most notably in the European Union.

The participants stressed that international migration was one obvious feature of a globalising world, and government after government called attention to the fact that it is not possible to manage migration alone. Most countries now recognise the need for cooperation in order to manage migration effectively. This new acknowledgement that migration is a fact of modern life and that all countries are in it together brings new possibilities for the development of a common platform on migration based on cooperation between states. The central challenge, therefore, is how to work together most effectively to manage migration so as to reduce its negative impacts and maximize its positive and beneficial impacts. Open dialogue is the first step to true cooperation and collaboration. Participants saw value in the development of a common language on migration, but emphasised the importance of accurate formulations. They also noted the need to ensure that the agenda is consistent with existing international law in this field, including applicable regional instruments such as those developed within the framework of the European Union.

The debate in Europe, of course, differs from the one in other regions of the world, not least due to the central role of the European Union in forging a common policy and legal framework on migration for its member states. This road to common policy development among the 25 member countries will certainly have a strong influence as well on the development of legislation and accompanying measures in neighbouring countries. It was noted that the distinction between legal and illegal, regular and irregular migration, and how to eventually find effective responses to irregular migration are priority concerns for both EU Member States and those that form part of its vast "migratory neighbourhood".

The Berne Initiative offers a complementary approach. Through its process of open dialogue and fostering of inter-state cooperation based on the sovereignty of individual states, participants are able to learn from each other and explore innovative approaches. In the process, all countries represented, i.e. those of Western, Central and Eastern Europe, as well as Central Asia, were asked to express and discuss their specific interests and needs drawing on their varying perspectives and levels of experience in migration management.

Participants appreciated the fact that the Berne Initiative created a non-negotiating environment offering the opportunity to emphasise their own national views and experiences without the requirement to reach unanimity of thought. As a result, participants pointed out that the Berne Initiative adds value to efforts at the regional level to promote effective management of migration and can help draw the lessons learned from experience together for a comprehensive whole.

Opening Session

Welcome remarks and keynote addresses were made by Mr. Gabor Brodi, Deputy State Secretary, Ministry of Foreign Affairs, Hungary, Dr. Istvan Szent-Ivanyi, Chairman of the National Assembly on European Integration Affairs, and recently-appointed member of the European Parliament, and Ambassador Dominik Langenbacher, Delegate for Migration Dialogue, Federal Office for Refugees, Switzerland. In addition, introductory addresses were made by Richard Perruchoud, Legal Adviser/Executive Officer of the International Organization for Migration (IOM), Rick Towle, Special Adviser in the Department of International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), and Dr. Willibald Pahr, Chair of the Advisory Board of the International Centre for Migration Policy Development (ICMPD).

Dr. Istvan noted that migration is one of the most important issues in the world today and is increasing day by day. The fundamental political importance of migration is seen all over the world, including in Europe and Central Asia. Migration provides new opportunities and challenges, whereas phenomena such as human trafficking and smuggling raise concerns. Migration, however, is not a problem but rather a natural phenomenon associated with globalisation, communication and transportation revolutions, as well as demographic and economic disparities. Migration is a potentially positive phenomenon and mobility is a way of life today. Opportunities exist therefore for individuals and for cooperation between governments. With the expansion of the European Union, Hungary can now participate in EU processes, including the 23 existing agreements for controlled, regular migration. Hungary would like to become a member of *Schengen* by 2007, the essence of which is regulation and control, and is preparing to join EURODAC and other relevant European systems.

Europe is facing the same challenges as Central Asia and the rest of the world in migration. Migration issues should be raised to the global level since in a global world there are no isolated phenomenon and migration can only be addressed effectively in a co-operative, global manner, to serve everyone's interests. The Berne Initiative is helping to foster better global cooperation and therefore what is done through this process will have a definite impact on the future of Europe and the rest of the world.

Ambassador Langenbacher introduced the Berne Initiative as a means to discuss elements needed for the development of a non-binding International Agenda for Migration Management to provide a common reference system at the national, regional and international level for managing migration. Migration presents similar challenges and opportunities for all countries. However, the complex nature of the issues has led to unilateral and uni-dimensional approaches. Fortunately, a new trend is now emerging. Today, the focus is on better management through practical cooperation.

The Berne Initiative Regional Consultations for Europe and Central Asia provide an opportunity for states of the region to provide input so that the resulting International Agenda for Migration Management can reflect the concerns, priorities and perspectives of the states of this region.

Mr. Perruchoud highlighted the special relationship between IOM and Hungary, and emphasised that Europe and Central Asia have moved to the level of diplomacy with respect to migration. It is recognised in this region that migration is a natural phenomenon, remaining within the sovereign domain of states but depending on cooperation to manage it effectively. It is necessary to address migration not as a series of isolated issues but in a comprehensive framework that takes into account its economic, security, demographic, humanitarian, and other aspects. IOM supports diplomacy between states on migration at the regional and international level, including through the IOM Council International Dialogue on Migration, aimed at identifying and sharing best practices to build greater understanding and stimulate co-operative and creative approaches to migration management. In addition, the normative side of migration – international migration law – focuses on rights and obligations in the field of migration and is an important element of comprehensive approaches to migration. A global normative framework on migration is not an immediate objective to be pursued at the international level. At the level of diplomacy, the objective of the Berne Initiative of stimulating more co-operative approaches, built on shared understandings and effective practices, is a more pragmatic and valuable approach today. Mr. Perruchoud confirmed the continued support and commitment of IOM to the process of the progressive development of an International Agenda for Migration Management.

Mr. Towle noted UNHCR's support of the Berne Initiative since its beginning. He highlighted that refugees are not migrants in the normal sense of the word and that a distinction needs to be preserved because refugees leave for reasons that are by nature involuntary. Refugees do not lose their protection needs and entitlements just because they are part of a mixed migratory flow. The causes of refugee and migratory movements are fundamentally different and refugee movement is by its nature irregular, with no time or opportunity for visas, etc. Refugees also are often caught up in smuggling. Mr. Towle stressed that the Berne Initiative is not the place for opening up discussions on refugee protection principles and asylum practices and principles as these are dealt with in other fora, namely in UNHCR's Executive Committee. However, it is important for the Berne Initiative to take account of the fact that there are well-defined laws, principles and responsibilities in the field of refugee protection.

Dr. Pahr of ICMPD called attention to the need for an international framework on migration and said that this would be a useful tool for the recently-convened Global Commission on International Migration. The resource document is a useful paper for facilitating discussion at all levels. Migration is a growing issue, and is indeed a campaign issue for many governments. By its nature, migration is a natural and global phenomenon that requires international and global solutions. There have been similar initiatives over the course of the last years but the Berne Initiative is unique in that it is comprehensive, addresses all aspects of migration, and takes a realistic approach to migration management. This is its unique contribution and advantage.

After a presentation by Ms. Altynshash Djaganova, Chairperson of the Migration Agency of the Republic of Kazakhstan outlining the migration situation of and challenges for her country, Gervais Appave, Director of Migration Policy and Research at IOM and Head of the Secretariat of the Berne Initiative, set the scene for the two-day consultation by defining objectives and clarifying expectations. He reviewed the major steps accomplished to date under the umbrella of the Berne Initiative: the convening of conferences and workshops, the production of a legal study on existing international legal norms on migration; the production of a CD-ROM of significant international statements on migration in a thematic compilation (as preparatory work to develop the concept of an IAMM), and the development of a resource document for the regional consultations.

Mr. Appave pointed out that the idea of the Agenda reflects the fact that the international community is at the *beginning*, not the *end*, of the process of developing its approach to the management of migration. He also emphasised that the Agenda was *aspirational* and not *prescriptive* in nature.

The Berne Initiative seeks to complement what is being done at the regional level by adding a global level perspective that draws input from each region together for a comprehensive whole, taking account of past experiences, for instance through the *Issyk-Kul Dialogue*.

General Discussion

The participants of the Berne Initiative Regional Consultations for Europe and Central Asia explored what these states would like to see included in the International Agenda for Migration Management. In general terms, they supported the proposed structure of the agenda, based on a set of common understandings on migration, followed by a set of elements of effective practice in a comprehensive approach to migration management while calling for language that is clear, precise and unambiguous.

It was emphasized that the Berne Initiative has its feet solidly on the ground. Its focus is on how governments manage migration, and includes all policy issues rather than isolated bits and pieces. The text is of a sufficient level of generality to be able to sustain agreement on policy approaches while leaving a workable margin for governments to determine what specific practices they wish to follow. Most importantly, a balancing of interests can only be met through a comprehensive approach. The question of the return of irregular migrants is a case in point; it is a complex and sensitive matter. However, if countries of origin and destination come together and engage in genuine partnership by, for example, considering return, plus labour migration, with both agreeing on the need to control irregular migration at the source and destination, it may be possible to join common interests and find a better way.

For many governments, migration is a new field of governmental activity. The concept of an International Agenda for Migration Management is flexible enough to recognise that states are at different levels of development and capacity with respect to managing migration. They are not all starting from the same place and we cannot expect a level playing field today. There is much work to be done to develop capacities to manage migration effectively.

The Agenda's approach is to address migration issues comprehensively and from all perspectives, making it relevant for all, in a non-binding way that does not require each country to address each issue. Rather, it could be used as a checklist to help governments think through the various issues related to migration without binding them to any particular position or item.

Common Understandings

Today, there is no global approach to the management of migration by states. But a great deal of convergence that did not exist in the past has been emerging. There is recognition that virtually all states are significantly affected by migration. Earlier distinctions between countries of origin, transit and destination now appear less significant. As a result, large spheres of joint interest and concern can be identified.

The Workshops on Common Understandings provided an opportunity for participants to explore these shared interests and concerns and to test the proposition that there are indeed assumptions, values and principles that are very largely understood and adhered to, and which could form the basis for more effective inter-governmental cooperation.

Participants agreed that the concept of common understandings has its place in an International Agenda for Migration Management and that it would be useful to identify principles to be applied to the field of migration. They found that, overall, the 20 or so draft understandings collectively capture a core of concepts that can be refined. They did not identify any fundamental understandings that appear to be missing from the list although certain issues such as root causes and internal migration and displacement are significant and may need more emphasis in the agenda. There were many requests for clarification of certain notions, e.g. security, family and family reunion, and capacity building. In terms of construction, some of the Common Understandings were considered too dense and in need of explanation and/or simplification. In terms of language, some of the proposed understandings could be sharpened: for instance, the development of national polices is not a *prerequisite* to international cooperation, but would certainly make it more effective.

Effective Practices

The identification and description of Effective Practices is intended to complement the Common Understandings. The list contained in the resource document is drawn from the experiences of governments. While it is not exhaustive it is meant to offer a wide range of possible practical solutions in specific areas of migration management.

After examination of the Effective Practices outlined in the Resource Document, participants found that each of the clusters presented, such as national migration policy, international dialogue and cooperation, temporary and permanent migration, irregular migration, integration, return, human rights and migration and development, was an important component of a comprehensive International Agenda for Migration Management. Some participants expressed reservations regarding the extent to which root causes, environmental and refugee issues should be included, as they may be better addressed through other fora. It was seen as important to be aware of the root causes of certain migratory movements but better to tackle them in other specialised fora.

Participants stressed that the International Agenda for Migration Management should be aiming at management of migration in a planned, balanced and comprehensive approach. As examples of some of the substantive themes discussed, participants:

- Stressed the positive potential of migration, if it is properly managed, for both countries of origin and destination, as well as for individual migrants and their families;
- Emphasised the importance of measures to reduce irregular migration and to combat migrant smuggling and trafficking;
- Acknowledged the need to establish linkages between migration and related policy domains such as trade, environment and health, without seeking to resolve these related issues in migration fora;
- Highlighted the importance of targeted research and data to migration policy development, and the need to share and disseminate that information widely;
- Identified the need for a comprehensive and managed approach to migration, at national, regional and international levels;
- Emphasised the importance of integration – social, cultural, and economic – particularly to reduce the incidence of racism and xenophobia;
- Stressed the need for more dialogue and cooperation between all states and engaging other relevant stakeholders; and
- Highlighted the potential richness of migration for development as migrants transfer skills, investment and resources back home to support the development of their countries of origin.

The enclosed matrix summarises the extensive and substantive comments provided by the participants during the working groups in identifying essential elements of practice. The breadth and depth of the comments provided will contribute constructively to the further development of the International Agenda for Migration Management, and ensure that the concerns, perspectives and experiences of European and Central Asian nations are reflected.

<u>Use of an International Agenda for Migration Management</u>

With respect to the possible uses of the International Agenda for Migration Management, each of the working groups drew attention to the value of the process itself as well as to the utility of the agenda. The opportunity for informal and free exchanges of information and perspectives, outside of a negotiating context, was seen as a particular contribution of this forum. It was recognised that the Berne Initiative will have to remain flexible to accommodate future changing needs, dynamics and priorities. Participants emphasised the value of creating networks between government officials. They stressed that it is important to avoid duplication with work going on elsewhere. In this connection, they noted positively that as the first purpose of the agenda is to increase understanding of migration, to foster a shared understanding of its nature and a common language, the Berne Initiative adds value to other migration efforts.

Participants identified the agenda as a useful tool in the development of comprehensive national strategies and as a valuable source of policy ideas. New structures are being created in some countries, taking into account the experiences of other countries. The agenda can provide a valuable format for developing new ways of tackling issues.

Particular emphasis was placed on using the Agenda as a capacity-building tool for governments developing migration management policies and structures and for those considering adjusting their existing mechanisms. Participants said that it could help at the bilateral and regional level by serving as a common reference in dialogue and discussions. There was widespread support for follow-up work, such as through thematic workshops or further regional meetings on the basis of the agenda.

There was much focus on what the end product will be, to be able to stimulate further ideas about what uses it can be put to. Early circulation of the Agenda in a revised form after the conclusion of the four regional consultations will be helpful preparation for the international conference "Berne II".

Conclusion of the Consultations

After a statement by H.E. Ms. Astemirova, Minister from the Ministry of Refugees and Accomodation in Georgia, outlining the migration realities and challenges of her country, Ambassador Langenbacher thanked the participants and noted with pleasure that there is now a shared appreciation for the concerns of Europe and Central Asia on migration. He noted that the concerns of this region regarding the importance of precise language and the need to base that on existing law and documents have been heard. Ambassador Langenbacher stressed that dialogue is key and is at the heart of the Berne Initiative. Government after government said that it could not manage migration alone; dialogue is the first step to cooperation and collaboration. This is especially so with respect to the need for a comprehensive and managed approach to migration, which will only become more significant in the years ahead.

With regard to next steps of the Berne Initiative, the timeline leading to "Berne II" in December 2004 and beyond was discussed. A number of governments volunteered to participate in an open-ended support group, which will be constituted after the series of regional consultations and activated for the preparation of "Berne II". The participants of the European and Central Asian Regional Consultations will be kept informed of further developments in the Berne Initiative process, including regarding the results of the consultations planned in other regions and of preparations for the Second Berne Conference on International Migration.

Ambassador Langenbacher noted that there is constant communication between the Berne Initiative and the Global Commission on International Migration to ensure that these efforts will complement each other. The results of "Berne II" will be presented and made available to the Global Commission for its report to the Secretary General.

Participants expressed their appreciation to the Hungarian hosts, to the Government of Switzerland, and to IOM for the opportunity to engage in an open and informed dialogue on migration. They noted that the constructive environment of the discussions facilitated possibilities for identifying new avenues of policy approach and collaboration. The active contributions of the European and Central Asian governments will be reflected in the further development of the Berne Initiative process and in the International Agenda for Migration Management.

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Annex

Berne Initiative Regional Consultations for Europe, 24-25 June 2004, Budapest, Hungary

Workshops on Effective Practices

	Does this issue belong in an International Agenda for Migration Management?	What are the essential elements of practice?
International Co-operation including Co-operation and Dialogue among States, Partnerships in Managing Migration	Yes	♦ Start with regional and sub-regional cooperation before international cooperation ♦ All must be willing to share the burden ♦ Need dialogue on causes of migration and consider use of other fora
National Migration Policy including Interrelationships with other Policy Domains, Components of a Comprehensive National Migration Policy	Yes	♦ International and national migration are related and can only be properly addressed with help from neighbours ♦ Cooperation is needed with help from international organizations and an international framework ♦ Effective policies require prioritization, allocation of responsibilities and legislation that is consistent with international obligations ♦ Migration is a political issue that brings together many ministries, requiring integration of policies at the national level ♦ Establish hierarchy of key issues that all agree to, e.g. border control, migration policy ♦ Establish rules for regular migration
Management of Entry and Stay Including Visa Requirements, Border Control, Residence	Yes	♦ Visa policies should remain the responsibility of national governments

Regular Migration (Temporary Migration) including Migration for Educational or Training Purposes, Business Visitors, Family Visits, Temporary Labour Migrants	**Yes**	♦ Clarify the distinction between temporary and permanent ♦ Establish categories for temporary migrants that are precise with their intent, e.g. business, family visits, short stay ♦ Assistance by IOM in providing background/establishing legislative frameworks at the national and international levels ♦ Need to inform migrants about their rights/opportunities/responsibilities ♦ Need for data collection and analysis on temporary migration
Regular Migration (Permanent Migration) including Immigration Programmes, Family Reunification, Humanitarian Resettlement	**Yes**	♦ Family reunification is important as it is a continuation of family life ♦ Definition of family belongs to receiving not sending countries due to cultural differences ♦ Need to be careful with definitional questions to help avoid issues such as forced marriages
Labour Migration including Labour Market Needs, Regulation of Labour Flows, Conditions for Migrant Workers, Access to Labour Markets	**Yes**	♦ Consider mutual recognition of qualifications ♦ Green card system for specialists ♦ Facilitate naturalization of skilled migrants and consider allowing them to keep their original citizenship
Irregular Migration including Human Trafficking and Migrant Smuggling, Protection of Victims of Trafficking in Persons	**Yes**	♦ Irregular migration and trafficking need to be dealt with separately because trafficking is illegal and some irregular migrants should have the opportunity to legalize their status ♦ Need for international cooperation to combat trafficking and consideration of approaches to share responsibility for reintegrating trafficked persons ♦ Special attention needed to issues of gender and age ♦ Multilateral exchange of information
Human Rights of Migrants including Basic Human Rights, Principle of Non-Discrimination, Principle of *Non-Refoulement*, Internally Displaced Persons	**Yes**	♦ Legislative, judicial and executive level attention required by local government, civil society and NGO`s ♦ Non-discrimination based on the 1951 UN Convention relating to the Status of Refugees; consideration should also include the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all Forms of Racial Discrimination ♦ Develop institutions of civil society to enhance rights of migrants ♦ International community should help if there is an issue of capacity, i.e. limited infrastructure and employment

Asylum and International Protection of Refugees including Protecting refugees within broader migration movements and durable Solutions	**Yes**, a reference to the special responsibilities of States with respect to refugees is appropriate, as long as the distinct regime on refugee protection is maintained	♦ Flexibility is required since refugee flows are unpredictable ♦ Regulation at legislative level and establishment of steps of integration ♦ Legislation should be based on international protection commitments made by states ♦ Dialogue and cooperation between IOM and HCR as well as other relevant organizations is essential
Integration including Integration of Migrants, Social and Economic Rights, Access to Employment, Access to Health and Educational Services	**Yes**	♦ Focus integration on legal rather than illegal or irregular migrants ♦ Consideration of integration vs. assimilation
Naturalisation and Citizenship including Naturalization Procedures, Linkage with Immigration Programmes	**Yes**	♦ Added value of citizenship is political rights ♦ Integration and re-integration need to also be addressed
Return including Return Policy, Voluntary Return, Temporary Return, Reintegration, Mandatory Return	**Yes**	♦ Trend for people to maintain contact and affiliation with more than one country has implications on social security, access to health care and on their sense of belonging ♦ Need to provide employment and housing possibilities for those returning with help from ministries of health, labour, refugees and IOM ♦ Need cooperation on return and readmission and need an obligation to accept return of nationals ♦ Effectiveness of return depends on cooperation and efforts/responsibility of individual ♦ Need for information campaigns to prevent irregular migration; ♦ Need for organization of return and readmission ♦ Less return voluntarily because of difficult reintegration and travel costs $

Migration and Development including Development Co-operation, "Brain Drain" or "Brain Gain", Remittances, Diaspora Support	**Yes**	♦ Cooperate and plan so both sides can gain ♦ Diaspora support brings development from micro to macro level and can form community associations to create businesses at home ♦ Requires cooperation of migration, finance/development and labour/social affairs ministries ♦ IAMM should take cultural needs of migrants into account and migrants should have the opportunity to use their mother tongue to develop (? "preserve"?) their culture and sustain contacts with their home country
Migration and Trade Including temporary movement of persons as service providers, trade and investment opportunities for migrants, process of globalization	**Yes**	♦ Exchange of information and increased dialogue between trade and migration officials ♦ Need more information on the impact of migration on economies through other fora, e.g. WTO, OECD, UNCTAD
Migration Health Including Individual Health, Public Health, Research and Data Collection on Health, Health Assessment Procedures	**Yes**	♦ Migrants in an irregular situation pose particular challenges for the health system, especially in transit countries ♦ Need to include migrants in health systems ♦ International agreements should adhere to WHO Protocols on HIV/AIDS and Budapest Declaration on Public Health Hazards posed by trafficked persons ♦ The issue is becoming more important as eradicated diseases are coming back.
Migration and Environment Including Protection of National Resources, Disaster Reduction, Environmental Management	**Yes**	♦ Need for analysis on the nature of the link between migration and the environment, e.g. migration -- particularly mass migration -- as a strain on the environment and/or environmental factors leading to migration ♦ Impact of migration on health should be explored in other fora
Migration and International and National Security Including Political, Social and Economic Security and Stability	**Yes**	♦ Migration has security implications for both sending and receiving states ♦ Need for measures to ensure respect for dignity and human rights of those suspected of posing a threat to national security or public order and a respect for due process of law ♦ National security should be taken into consideration as migration officials process visa applications

Public Information including Information Campaigns	**Yes**	♦ Accurate and objective information is necessary to combat trafficking ♦ Need for more reliable data and research to ensure accurate and objective information ♦ Most important information a migrant needs is where to go for assistance in destination country
Research and Data including Research, Collection and Analysis of Data, Exchange of Information, Data Protection	**Yes**	♦ The existing research is not sufficiently practical or useful ♦ Make use of each country's data on migration while ensuring data protection
Capacity Building Including Cooperative Measures for Capacity Building	**Yes**	♦ Foremost a national responsibility but international cooperation is welcome, including NGO's and IOM, as it is in the common interests of sending and receiving states ♦ Training of government officials should also be included
Other Policy Linkages and Accompanying Measures including Conflict Resolution, Conflict Prevention, Poverty Alleviation, Training of Government Officials	**Yes**	♦ Recognition of links as well as limitations of trying to resolve these issues in migration fora and through migration mechanisms