



Regional Conference on Migration
Conferencia Regional sobre Migración

Compilation of Actions relating to Extra-continental Migration Implemented by RCM since its Inception Draft for Discussion (June 3, 2011)

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I. Background

In addressing Conclusion No. 9 of the Meeting of the Regional Consultation Group on Migration (RCGM),

“To take note of the status of the study on extraregional migrants that is being carried out by UNHCR and IOM in accordance with decisions from the XV RCM, and to request that the study be submitted in the first quarter of 2011. In this regard, to urge Member States of Central America and Mexico to provide relevant information for the study and to thank the delegations for the commitment they have expressed regarding this matter. In addition, to request that the Technical Secretariat collect information about the actions that have been carried out within the framework of RCM to address challenges relating to extraregional migration in the past”

the Technical Secretariat has prepared the following overview of agreements, efforts, and proposals relating to extraregional migration that have been presented within the framework of RCM.

It should be highlighted that the topic of extra-continental or extraregional migration has been closely linked to broader discussions on migrant smuggling. Therefore, agreements on this topic have been highlighted as well, in some cases.

II. Compilation of the Primary Agreements

Since the I RCM (Puebla, 1996), the first parameters for regional cooperation to address this topic were established in the Joint Communiqué, cited below [*text underscored by the author*]:

[7] To promote regional cooperation and other forms of cooperation in order to establish programmes which enable meeting the basic needs of populations of undocumented migrants that are in custody of immigration authorities in each country while their migration status is established.

[14] With full respect for the national sovereignty and territorial jurisdiction of each country and within the framework of legal agreements with other States, to coordinate efforts to combat criminal organizations engaged in migrant smuggling. To this end, governments commit to exchanging information in a timely manner to enable countries in the region to take appropriate actions aimed at combating migrant smuggling networks and their connections; and to exchange additional information to prevent and identify such criminal organizations.

[17] To strengthen regional cooperation in matters of technical assistance and training with the aim of improving national investigation systems, management of evidence, and prosecution of migrant smugglers.

[20] To promote information exchange and regional cooperation for technical assistance and training of human resources, with the aim of controlling the flows of extraregional undocumented migrants.

With the objective of implementing the agreements on information exchange, it was agreed at the II RCM (Panama, 1997) that focal points should be appointed by Member States of RCM to exchange specific information about migrant smuggling, including information about the persons engaged in this crime and fraudulent documents that are commonly used in migrant smuggling.

In that same year information was provided at work meetings about the fund that the Immigration and Naturalization Service (INS) (a former agency of the Government of the United States) had made available through its office in Mexico for the return of extracontinental migrants. In addition, the International Organization for Migration (IOM), with resources from the Bureau of International Narcotics and Law Enforcement Affairs (INL) of the State Department supported the return of extraregional migrants as well, mainly from China and India. Furthermore, information was provided on efforts implemented through INS in Mexico City with various Embassies of extraregional countries to expedite travel document issuance processes for foreign nationals intercepted in various countries in the region. In addition, the need for equipment and training was discussed to enable a more effective response by relevant institutions in the region.

In 1998, a Seminar on Migrant Smuggling was held in Managua Nicaragua, with participation of Member States of RCM as well as representatives from Colombia, Ecuador, and Peru as observers. The activity was carried out through 4 working groups that discussed the following topics: a) issues relating to enforcement of current legislation on migrant smuggling; b) altered or forged documents: the need for relevant training and equipment in the region; c) changes required in migration policy and legislation to enable combating migrant smuggling; and d) government actions to prevent migrant smuggling at a national, regional, and international level. During the Seminar the challenges relating to migration flows from China, Korea, and India were discussed in depth, as well as those relating to less significant flows from Ghana, Nigeria, North Vietnam, and Zambia. the report submitted by the Government of Honduras – Secretariat of the Interior and Justice, General Directorate of Population and Migration Policy – highlights the following [quote]:

In regard to the routes that are used, it should be pointed out that migrant smuggling through Honduran territory occurs by land, in most cases, and to a lesser degree by air and sea. In addition, experience in managing this problem has shown that not all migrants travel in an irregular manner; some leave their countries with the required visas. For others, it is relatively easy to arrive in a Central American country where restrictive immigration controls do not exist, such as the requirement for a “consulted visa”. Once they are in these countries, they decide to continue their journey in an irregular manner by hiring “coyotes”, who charge significant amounts of money for the “little job” of transporting them illegally until they reach their final destination, with or without identify documents or with false documents.

The conclusions and recommendations from this seminar-workshop establish the following [quote]:

- a. To typify and punish migrant smuggling in Member States of the Regional Conference on Migration that still have not done this, and the urgent need to take similar actions at an international level.
- b. To institutionalize the regional mechanism agreed on at the II RCM to efficiently exchange information on migration routes, migrant smuggling networks, modus operandi, identifying false documents, and circulating the data base on migrant smugglers and/or persons suspected to be involved in this crime.
- c. To promote international cooperation, particularly technical and financial assistance, to help overcome deficiencies relating to budgets, infrastructure, technical equipment, and human resources, as well as the expedited repatriation of migrants that are victims of the crime and implementation of education programmes to raise the awareness of civil society regarding problems and risks associated to the crime of migrant smuggling.
- d. To promote policy to reduce the possibilities of subornation and administrative corruption.
- e. To foster strengthening inter-institutional coordination in each country, with the aim of optimizing efforts to combat migrant smuggling [end of quote].

At the III RCM (Canada, 1998), after discussing the objectives achieved in implementing the Plan of Action, Vice-Ministers agreed to include new actions to develop the objectives of the Plan. Among these actions, a seminar on the return of regional and extraregional migrants and reintegration of regional migrants, to be held in Honduras with support from IOM, should be highlighted.

At the IV RCM (El Salvador, 1999), Vice-Ministers emphasized that multilateral cooperation is the best way to achieve the shared objective of combating extraregional migrant smuggling networks. Therefore, it was decided to request that IOM submit a proposal to the governments of Member States of RCM for a general cooperation programme for the return of extraregional migrants, based on the mandate of the organization. It was established that each government should identify, together with IOM, the specific terms to implement this programme according to the needs of each country.

In that same year, at the meeting of the Regional Consultation Group on Migration (RCGM) the Government of the United States submitted a proposal for implementation of the return of extraregional migrants, to be implemented with support from IOM. The proposal established parameters for the return within the framework of national policy and national and international legal obligations, to be made effective only in cases where the migrant did not require international protection. In addition, alternatives were discussed for cases of interception of migrants at sea.

In 1999 a Seminar on Migration, Return, and Reintegration was held in Tegucigalpa, Honduras to address the topic of the return of extraregional migrants. At this seminar *“the concern was expressed for the respect of the human rights of extraregional migrants stranded in Member States of the Regional Conference on Migration, since they could be detained for prolonged periods of time, often in common prisons and receiving the same treatment as criminals”*. IOM was requested, as part of the follow-up actions, to develop a proposal for a *“Project for the Return of Extraregional Migrants”*. While the

project was approved by Member States, it was not successful in securing the funds required for its implementation. The objective of this effort stated that “the assisted return of smuggled migrants helps reduce the success rate of migrant smugglers, prevents others from attempting it, reduces the load for transit countries, reduces the costs for society in countries of destination, and finally, provides a humanitarian solution for migrants under the auspices of an international organization”.

From 1997-2001, upon request of interested countries and with financial support from the Government of Canada and participation of IOM, various studies on migrant smuggling were carried out for most Central American countries. The studies analyzed the general conditions of migrant smuggling and difficulties faced by governments in managing intercepted persons and migrant smugglers, from a legal perspective and in terms of infrastructure, among other aspects.

In 2001 (San José, Costa Rica), at the II Meeting of the “Liaison Officer Network for the Regular Exchange of Information about Actions to Combat Migrant Smuggling” as this working group was named at that time, the group proposed as the basic guidelines for its Plan of Action (Paragraph 2.1) “to organize joint actions to intercept extraregional migrants that are undocumented or unduly documented”. The guidelines established the following possible actions:

- Technical training on detection of fraudulent documents and bearers of such documents;
- Coordination between relevant local authorities and immigration control actions at entry and exit points;
- Assessing the results, with the aim of exchanging information.

The topic continued to be included on the agenda of RCM (and its various technical working groups) until the “**General Framework for Execution of the Multilateral Cooperation Programme for the Assisted Return of Extraregional Migrants Stranded within Member States of the Regional Conference on Migration (RCM), or Puebla Process**” (see Annex I) was approved at the IX RCM (Panama, 2004). At subsequent meetings held in 2005, 2006, 2007, and 2008 the importance of exchanging specific information on travel documents was reiterated, as well as the importance of continuously seeking mechanisms to facilitate repatriation, optimize resources, and assess the possibility of minimizing transfer costs, among other aspects.

Decision No. 4 of Vice-Ministers from the XV RCM (Tapachula, 2010) establishes the following:

“To address the concern of Member States of the Central American Commission of Directors of Immigration (OCAM) in view of the increase in extraregional migration flows and the associated challenges; and to request that the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) develop a proposal, in consultation with interested countries, for building capacity to address these developments; in addition, the proposal should explore actions to follow-up on the Regional Conference “Refugee Protection and International Migration in the Americas (10-Point Plan)” held in Costa Rica, to be submitted at the upcoming meeting of the RCGM.”

Follow-up actions on this study have been included on the agenda for the XVI RCM.

Annex I

GENERAL FRAMEWORK FOR EXECUTION OF THE MULTILATERAL COOPERATION PROGRAM FOR THE ASSISTED RETURN OF EXTRA-REGIONAL MIGRANTS STRANDED WITHIN MEMBER COUNTRIES OF THE REGIONAL CONFERENCE ON MIGRATION (RCM), OR PUEBLA PROCESS

1. Background

1.1 Introduction

This document has been prepared in response to the mandate formulated by the Vice Ministers during the Eighth Meeting of the Regional Conference on Migration (RCM), held in Cancun on May 29-30, 2003, wherein they agreed to:

“Continue the evaluation of the Multilateral Cooperation Program for the Assisted Return of Extra-Regional Migrants Stranded within the Member Countries of the Regional Conference on Migration (RCM). Mexico, after prior internal consultation and based on applicable international legislation, shall prepare a proposal for a general framework for execution, in collaboration with the IOM.”

Said Multilateral Cooperation Program was drawn up by the IOM, upon request from the RCM at its Fourth Meeting in San Salvador in January of 1999, and was endorsed by all of the Member Countries. Following up on the aforementioned, the updated Plan of Action adopted at the Fifth RCM Meeting in Washington, D.C., in March of 2000 set forth that each government, according to its needs, would identify with the IOM the specific terms for the instrumentation of the Program.

Subsequently, during the Sixth RCM Meeting in San Jose in March of 2001, it was agreed to “Invite the RCM Member Countries who so desire to adopt the document entitled *Framework for Execution of the Regional Conference on Migration’s General Cooperation Program for the Return of Extra-Regional Migrants*, as a basis of reference for the negotiation of agreements between the IOM and the RCM Member Countries, in conformance with the legal framework of each country.” Said agreement was confirmed at the Seventh RCM Meeting in Antigua, Guatemala, in May of 2002.

In concordance with repeated agreements adopted by the RCM, the development of the Framework for Execution shall ensure full respect for the rights of migrants, based on the applicable mechanisms set forth in international humanitarian law and international human rights norms.

1.2 International Law and Relevant Clauses

All operations related to the return of extra-regional migrants shall be carried out in conformance with the legislation and policies of the Member Country, and also in conformance with its obligations under those international treaties to which said country is a party.

1.3 Target Population

Upon request from a Member Country of the Regional Conference on Migration (RCM), the IOM shall provide assistance for the assisted return of extra-regional¹ migrants to their countries of origin or permanent residence, when such migrants fall under any of the following circumstances:

- a. Those who have entered the territory of a Member Country in an undocumented manner, and are not subject to such special protection as they would be entitled to in the event they were to request refugee status or political asylum, or in the event said Country were to unilaterally determine that they qualify for such migratory status, particularly in cases where the 1951 Convention on the Condition of Refugees and its 1967 Protocol are applicable, along with the principle of *non-refoulement*.²
- b. Those who have been detained in international waters, in conformance with the procedures set forth in Article 8 of the *Protocol against the Smuggling of Migrants by Land, Air, and Sea that Complements the United Nations Convention against Transnational Organized Crime*.

2. Negotiation and Coordination among the Countries and the IOM

Those RCM Member Countries who so desire should enter into multi and/or bilateral agreements with the IOM or other RCM Member Countries for purposes of putting into practice this General Framework for Execution with respect to the return of those extra-regional migrants who fall under the circumstances described in Paragraphs 1.3(a) and 1.3(b).

¹ Those migrants whose country of origin or permanent residence is not a Member Country of the RCM.

² Under the terms established by the 1951 Convention on the Condition of Refugees and its 1967 Protocol.

3. Logistical and Operational Aspects of the Return Process

3.1 Documentation

The IOM shall collaborate in obtaining the necessary entry permits or travel documents that the country of origin or permanent residence requires of the migrants, in order to ensure their prompt return.

3.2 Evaluation of Assistance Needs

The interested Countries shall be able to request collaboration from the IOM for purposes of sheltering and providing the proper care and maintenance for the migrants, with special attention being given to the needs of vulnerable groups such as women, children, disabled or sick persons, and victims of trafficking, until such time as they embark on whatever means of transport is used to return them to their country of origin or permanent residence.

3.3 Notification

Upon request from the Member Country, the IOM shall collaborate in informing the authorities of the migrants' countries of origin concerning the migrants' detention, especially in the case of those who have no diplomatic nor consular representation within the requesting country, without prejudice to the obligations undertaken by the Signatory States of the 1963 Vienna Convention on Consular Relations.

3.4 Transfer and Transportation

The Member Country in question may request assistance from another RCM country for the return of migrants to their country of origin or permanent residence.

Upon request from the Member Country, the IOM shall obtain discounted air transport rates for the return of extra-regional migrants, in conformance with such agreements as the IOM may have entered into with the corresponding airlines.

4. Information Exchange

The Member Countries, with support from the IOM, shall exchange information with respect to the extra-regional migratory flows and trends within the Region and, when applicable, in observance of their own domestic legislation, with respect to those traffickers or criminal organizations involved.