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

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows in the Caribbean

Promoting Regional Cooperation and Identification of Good Practices

Concept Note

1. Background

Migration across the globe has become increasingly more complicated. The traditional flows of people from South to North are now matched by migratory flows within regions, notably South to South. The factors leading to migration have likewise grown more complex.

For decades people have emigrated from and within the Caribbean, including tens of thousands who have embarked on risky sea crossings, in search of safety or a better life. Like other regions, the Caribbean has more recently experienced increasingly mixed migratory flows whose humanitarian, economic, political and social causalities are often difficult to unbundle. Part and parcel of this complexity are factors such as narcotics trafficking, arms smuggling, violent crime and human trafficking in the region. The result is a highly complex panorama of economic migrants, asylum-seekers, refugees, and others difficult to categorize so clearly.

Since the 1950s, political crises, natural disasters, and economic and social factors in the Caribbean have prompted hundreds of thousands of people, mainly Cubans, Dominicans, Haitians and Jamaicans, to leave their countries. Many travel frequently by sea, but also by air and by land, as demonstrated by the flow of Haitians to the Dominican Republic. Their destination countries are primarily the United States, the French, Dutch & British overseas territories and Canada as well as Caribbean countries, chiefly the Dominican Republic, The Bahamas, Turks & Caicos Islands and Jamaica[1]. While scores of Caribbean countries receive undocumented migrants and other vulnerable persons, some are more affected than others. For instance, The Bahamas and Turks and Caicos Islands receive (and repatriate) hundreds of undocumented persons annually. While the majority of these people are seeking improved economic standing, many are asylum-seekers and refugees, or are on the move "pushed" by deteriorating overall security conditions and to some extent "pulled" by the existence of a large diaspora.

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[1] For instance, during a seven-month period in 1980, 125,000 Cubans and 25,000 Haitians arrived by boat in South Florida in a mass migration that became known as the Mariel boatlift. *See* Ruth Ellen Wasem, *U.S. Immigration Policy on Haitian Migrants*, Congressional Research Service, May 17, 2011, available at http://www.fas.org/sgp/crs/row/RS21349.pdf. It is further estimated that more than 60,000 Haitians arrived in South Florida between 1971 and 1981. See Encyclopedia of Immigration, *Haitian immigration*, Feb. 15, 2011, available at http://immigration-online.org/121-haitianimmigration.html. It is also estimated that 160,000 Haitians left their country following the devastating January 2010 earthquake.

A particularly salient characteristic of migration in the Caribbean is movement by sea. Tens of thousands of people were – and are being - intercepted on the high seas and in territorial waters and subsequently repatriated[2]. While the flows have been diminishing, considerable numbers of people still take to the Caribbean Sea in an attempt to reach another country, principally the USA. As undocumented migrants travel quite often in small and unseaworthy vessels a significant number of maritime incidents have been reported. Interdiction and rescue at sea operations are conducted by the US Coast Guard and Coast Guards of Caribbean countries, either individually or jointly with the US Coast Guard. Unfortunately, deaths on the high seas and territorial waters are common[3].

2. Challenges

With respect to protection and assistance for refugees and asylum-seekers, all but four States in the Caribbean have ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*. When it comes to management of the growing phenomenon of mixed migration, however, countries in the region do not yet have systems and mechanisms in place which ensure protection for vulnerable migrants. The UNHCR and IOM have collaborated over the years on a number of conferences in the region in an effort to help build governmental capacity and regional cooperation in this connection.

At the global and regional levels, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) have encouraged States to establish cost-effective systems to manage mixed migration flows and have suggested elements and frameworks for such systems[4]. UNHCR has a particular concern for ensuring adequate treatment of asylum and refugee issues in a mixed migration context. Nevertheless, there are numerous factors which complicate the creation of such frameworks in the Caribbean. Authorities in the region state that their island countries, with small populations, long and porous borders and limited resources make it very difficult to effectively manage complex migration movements. Some of the other factors raised by Caribbean governments that contribute to States' difficulties in this regard include:

- inadequate resources for sheltering and processing (screening, interviewing, referring, as applicable), and later return them to their home countries, if necessary, and in accordance with international norms;
- the amount of time involved in returning migrants not given leave to remain (including sometimes inadequate cooperation from the presumed countries of origin), which frequently results in prolonged – and costly - periods of time in detention;

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[2] According to estimates, over 100,000 undocumented Haitian migrants were intercepted at sea in the past two decades, particularly during the 1991-1994 period of military rule when more than 67,000 were interdicted. http://www.state.gov/r/pa/ei/bgn/1982.htm. Since the return of civilian rule in Haiti, in September 1994, the exodus of Haitians has slowed and the number of interdictions decreased significantly, averaging fewer than 1,500 annually. http://www.oas.org/juridico/english/gavigane.html According to the US Coast Guard website (Migrant Interdiction (CG-5313)), 2,474 migrants were interdicted during FY 2011. http://www.uscg.mil/hq/cg5/cg531/amio/FlowStats/currentstats.asp

[3] It is very difficult to obtain accurate numbers but, in 2011, UNHCR recorded, in a single incident, at least 38 confirmed deaths at sea. Many bodies are not recovered in these maritime tragedies. http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/cuba/8977306/Cuba-military-searches-for-survivors-after-38-Haitian-migrants-die-on-boat.html

[4] IOM, *Irregular Migration and Mixed Migration Flows: IOM's Approach*, Oct 2009, http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_INF_297.pdf

- refusal of migrants who are intercepted and/or rescued at sea to cooperate with State officials, resulting in summary deportation;
- the relatively high number of undocumented migrants who have to be given material and other type of assistance pending their voluntary return or deportation;
- tensions with local populations manifested in xenophobic attitudes and behaviours, especially during difficult economic times by the presence of relatively significant numbers of undocumented migrants, asylum-seekers and refugees.

The management of mixed migratory movements requires, along the lines of UNHCR's 10-Point Plan of Action[5]:
1. cooperation among stakeholders;
2. establishing effective protection-sensitive entry systems;
3. temporary adequate reception arrangements;
4. mechanisms for profiling and referral;
5. determination of nationality of some of the interdicted persons;
6. differentiated processes and procedures;
7. solutions for refugees;
8. return arrangements for those not in need of international protection;
9. the necessary legal and administrative frameworks to manage the mixed migratory flows.
10. data collection and analysis

3. Good practices

Despite the significant challenges they face, several countries in the region have adopted legal and policy/administrative measures that are worth highlighting and sharing, even if they do not necessarily cover the entire spectrum of management of mixed migration in one single country. UNHCR is in the process of preparing, with the cooperation of IOM, a compendium of "good practices" that will serve as background/working paper at the Regional Meeting.

Commendable efforts have been made by IOM, UNHCR and other stakeholders to foster sharing of practices and information on the management of mixed migration, asylum, refugee and addressing the situation of victims of trafficking in the region. For example, in the Regional Conference on Refugee Protection and International Migration in the Americas, some participants had positive reports on the implementation of their profiling and referral mechanisms for new migrants[6]. At the same time a more deliberate and in-depth attention needs to be paid to good practices in different countries of the Caribbean. A "cross-fertilisation" of good practices amongst countries will be beneficial not only to individual State mechanisms but to the region as a whole.

4. Regional cooperation

Globally, the sharing of good practices in migration management has increasingly come to be seen as a tool for governments to learn from similar experiences elsewhere and jump-start thinking on policy responses to migration issues they face. In many regions, there are examples of informal, non-binding, State-driven migration dialogues – collectively known as Regional Consultative Processes (RCPs) - which have proven particularly practical and helpful in this

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[5] UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, http://www.unhcr.org/refworld/pdfid/4d9430ea2.pdf
[6] Held in San Jose, Costa Rica from 19-20 November 2009.

regard[7]. Although there is as yet no such State-driven RCP in the Caribbean, two do exist in the Americas, namely, the Regional Conference on Migration (RCM, known as the Puebla Process) and the South American Conference on Migration (SACM), from which the Caribbean region could draw lessons[8]. IOM and UNHCR have jointly convened a series of Caribbean Seminars (2002, 2003, 2004, 2005, 2007, 2008, 2009) on responses to mixed migration flows. These seminars aimed to foster regional dialogue, particularly about best practices, at the technical level.

With regard to refugees and asylum seekers, the need for international cooperation is referred to in the *Preamble* of the *1951 Convention relating to the Status of Refugees* as well as other regional and international instruments governing refugee protection. Mechanisms for cooperation can take many different forms. They may include small-scale, "targeted" arrangements between two or more States to address an imbalance in responsibility or capacity for one phase of the response to a particular situation or sub-group of refugees. At the 2010 *High Commissioner's Dialogue on Protection Challenges: "Protection Gaps and Responses*" held in Geneva, Switzerland, on 8 and 9 December 2010, participants recognised that the need for better international cooperation in the refugee area is a longstanding issue of concern to many States in all regions of the world.[9] The Mexico Plan of Action to Strengthen International Protection of Refugees in Latin America, which covers the periods of 2005-2010, is another template that can be referenced by the Caribbean to increase cooperation.
On the other end of the spectrum, cooperative arrangements could include "comprehensive regional approaches," or broad strategies adopted by certain interested States – often with the support from outside the region – to address a shared challenge.

With respect to irregular migration, a few countries in the region share formal cooperative agreements aimed at prevention and solutions, [10] although these are not widespread. Human trafficking and migrant smuggling, on the other hand, are two issues on which Caribbean countries have increasingly focused effort to institutionalize a multi-agency response. Most of the Caribbean countries have ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*, and have proceeded to enact national legislation that gives effect to the Protocol. Yet many of the countries do not have a clear multi-agency policy, cooperative agreements or an action plan on which stakeholders can rely.

(Examples of initiatives taken by UNHCR encouraging countries to share burden and responsibilities abound. The most recent example is the Expert meeting organised by UNHCR on International Cooperation to Share Burden and Responsibilities, Amman, Jordan, in June 2011.)

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[7] More detailed information on these approaches could be found in UNHCR, *International Cooperation to Share Burden and Responsibilities*, June 2011, http://www.unhcr.org/refworld/docid/4e533bc02.html and UNHCR, *Regional Cooperative Approach to address Refugees, Asylum-Seekers and Irregular Movement*, November 2010. http://www.unhcr.org/refworld/pdfid/4e92d7c32.pdf

[8] Randall Hansen, *An Assessment of Principal Regional Consultative Processes on Migration*, 2010, IOM Migration Research Series, number 38, 2010,
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs_38_en.pdf

[9] UNHCR, *Breakout Session 2*: *International cooperation, burden sharing and comprehensive regional approaches – Report by the Co-Chairs*, 8 December 2010 http://www.unhcr.org/4d09e4e09.html. See also UNHCR, *High Commissioner's Closing Remarks*, *2010 Dialogue on Protection Gaps and Responses,* 9 December 2010 http://www.unhcr.org/4d0732389.html.

[10] Notable examples are The Bahamas-Haiti, The Bahamas-Cuba, The US-Cuba, The Operation Bahamas and Turks Caicos Islands (between the US, The Bahamas and the UK/Turks and Caicos Islands) agreements.

5. Objectives of the Regional Conference

Building on the on the joint UNHCR/IOM regional seminars of past years[11] organised for Government and NGO officials in the Caribbean, the Regional Conference may wish to:

- Identify specific challenges where better regional cooperation could be instrumental in responding to situations involving migrants with mixed migratory movements, including asylum-seekers, refugees, stateless persons and victims of trafficking.
- Examine the basic elements and partnerships for implementing an adequate screening mechanism for a rescue at sea/disembarkation, while reviewing to what extent the "Model Framework for Cooperation in Rescue at Sea Operations involving Asylum-Seekers and Refugees (Model Framework)"[12], could be adapted to the specific characteristics of movements at sea in the Caribbean region.
- Exchange national techniques for screening, referring, and assisting other vulnerable migrants, such as victims of trafficking and children in a mixed flow context.
- Examine how regional cooperation could help to address the challenges of obtaining effective and rapid consent from States in re-admitting their nationals (and a regional coordination mechanism to address questions of nationality.
- Examine good practices in the area of assisted voluntary returns for those determined not to be in need of international protection.
- Highlight some of the good practices in the region on asylum, refugee and statelessness issues. To this effect the Regional Conference will review a document[13] on Good Practices in the Caribbean region on asylum, refugee and statelessness issues prepared by UNHCR, with the cooperation of IOM.
- Identify areas for improved regional cooperation on contingency planning for mass arrivals by sea inclusive of a review of good practices to assist and find solutions for victims of trafficking.
- Review good practices in the region to implement alternatives to detention for cases in need of international protection.
- Discuss mechanisms which could assist countries participating in the Regional Conference to respond in a timely and effective manner to boat arrivals and which would share regularly statistics, lessons learnt, and contacts.
- Examine potential sub-regional or more targeted strategies to prevent risks associated with irregular movements in the Caribbean Sea and human trafficking,
- Review and draw lessons from the Mexico Plan of Action in efforts to address realities of the Caribbean region.
- Consider mechanisms to foster regular, non-binding interstate dialogue on migration issues in the Caribbean.

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[11] The themes of these regional seminars included migration management and refugee, contingency planning for mixed migratory flows: effective practices and tools, strengthening collaborative responses to migration, refugee protection and trafficking in persons, etc.

[12] See UNHCR, *Refugees and Asylum-Seekers in Distress at Sea – how best to respond?* Expert Meeting in Djibouti, 8 to 10 November 2011. Summary Conclusions http://www.unhcr.org/refworld/pdfid/4ede0d392.pdf.

[13] See footnote 4 above. This document uses the "outline" of the UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, February 2011, http://www.unhcr.org/refworld/docid/4d9430ea2.html.

6. Convener and Host

The Regional Conference will be jointly convened by UNHCR and IOM and hosted by The Commonwealth of The Bahamas on 22-23 May 2013. It is funded with the support of the United States Department of State.

7. Suggested Participants

- Government representatives from interested States in the region.
- NGOs and international organisations (e.g. International Maritime Organisation, International Committee of the Red Cross, National Red Cross Societies, OAS, CARICOM).
- Academics (from maritime as well as human rights and refugee law perspectives).

8. Documentation

A document on "Good Practices" on asylum, refugee and statelessness in the Caribbean region, copies of the UNHCR 10 Point Plan, the IOM Discussion Note on Mixed Flows, the Mexico Plan of Action as well as the Model Framework will be made available to facilitate discussions at the Regional Meeting.

Additional documentation will include materials relating to past examples of cooperative arrangements, relevant international and regional legal texts and policy guidance.

April 2013