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**“CONTRIBUTIONS TO THE TOPICS OF THE
HIGH-LEVEL DIALOGUE ON INTERNATIONAL
MIGRATION AND DEVELOPMENT”**



OIM Organización Internacional para las Migraciones
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CONTRIBUTIONS TO THE TOPICS OF THE HIGH-LEVEL DIALOGUE

The year 2006 constitutes a milestone in connection with the international analysis of the topics linked to migration, and its most transcendental event will be the *United Nations High-Level Dialogue on International Migration and Development*, which will be staged in New York City on 14 and 15 September. Other multilateral events will take place as well during the next months, whose thematic agendas have been duly discussed and agreed upon by governments. Nevertheless, these events ultimately lead to the *High-Level Dialogue*, the most significant multilateral activity in which South American countries will participate.

It is worth mentioning that the United Nations General Assembly, in its Resolutions 59/241 and 60/227, explicitly invites “appropriate regional consultative processes and other major initiatives undertaken by Member States in the field of international migration to contribute to the High-level Dialogue”. Therefore, this represents an invaluable opportunity for the South American countries which should not be missed, so as to establish the South American Conference on Migration (SCM) as the regional consensus level vis-a-vis the participation in international forums. In this regard, the contributions made by the SCM are extremely important if they are to be included by the *Dialogue* agenda as the input from the South American perspective to the debate on international migration and development.

At the Ibero-American level, we should consider another significant event for the region, namely, the *Ibero-American Meeting on International Migration*, where migration matters are one of the central concerns of the next Summit, reason why the Ibero-American General Secretariat has been instructed to carry out this *Meeting* in Madrid on 18 and 19 July.

The approach to the subjects which will be dealt with at the *High-Level Dialogue* and the *Ibero-American Meeting* should derive from the commitments made by the countries of the region at the recent multilateral activities, such as the Summit of the Americas and the Ibero-American Summit through their respective Declarations and Plans of Action, as well as the Declarations issued by Presidents within the framework of the MERCOSUR, the Andean Community and the South American Community of Nations. These instruments determine the agenda of topics to be addressed at the SCM.

Against this background, and on account of the near date of these multilateral events, the SCM should focus on one concern on which the Regional Conference on Migration or Puebla Process has already been working. This is the determination of relevant and/or priority topics for the countries of the Region, and the definition of mechanisms to reach agreed-upon stances on such topics. It is for this reason that in our opinion the

assistance lent by the Technical Secretariat of the SCM, task performed by IOM, is highly useful.

Moreover, the results and conclusions of the two meetings which preceded the VI Conference should be considered as contributions. The *Special Committee on Population and Development* met in Montevideo on 20 and 21 March within the framework of the XXXI ECLAC period of sessions. The Secretariat presented and put forward for the consideration of delegations a work paper formulated at the request of the Member Countries on “International Migration, Human Rights and Development”. On the other side, the 39^o period of sessions of the UN *Population and Development Commission*, held in New York from 3 to 7 April, included as priority topic a general debate in which national opinions and experiences on the issue of international migration and development were shared.

In view of the topics which will be analysed at the High-Level dialogue, this document elaborates on those which may be deemed as more important for the countries of the Region, and about which consensus is likely to be reached and a regional perspective achieved. With the aim of contributing ideas and inputs for this consideration, this paper addresses the following topics: 1) the link between migration and development; 2) the protection of the human rights of migrants; and 3) the smuggling of migrants and the trafficking in persons, according to the principles of the international instruments on the matter, which were ratified by most countries in the region. In addition, some remarks on the consolidation process of the South American Conference on Migration are also included.

The link between migration and development

Migration, globalization and development

Until now, the relationship between migration processes and the development process has not been analysed in depth. The first ones tend to be considered an external variable, pertaining more to the demand of faraway markets without relevant connections with internal circumstances. Moreover, it should be mentioned that a point of view which emphasizes only certain aspects of the phenomenon in detriment of a more comprehensive understanding still prevails at the general debate on the issue.

Bearing in mind that migration movements represent another flow within a general context including economic, cultural, technological, and ideological variables, the substantial contribution made by migrants (whatever their legal situation) should be acknowledged. This contribution is felt not only at the labour and production spheres but also in connection with the welfare and cultural enrichment of host societies.

In spite of what is mentioned above, and even though this interconnection is one of the most salient features of contemporary history, international migration seems to be excluded from the globalization process, thus casting doubts on the sustainability of the predominant development strategies.

Within a framework in which exchanges at real-time are multiplied and encouraged, the difficulties faced by migrants show the asymmetries of a globalization including

individuals, population groups, countries and regions, but at the same time leaving an equal number of these entities outside.

As a consequence, despite the fact that human mobility is an inseparable constituent of globalization, the restrictions which constrain migration worsen some adverse outcomes for developing countries.

The transit of most workers and members of their families from one country to others disputes political and administrative borders, while at the same time it exposes the serious difficulties posed by unilateral approaches centred on control. Experience shows that such approaches, apart from being inefficient and unrealistic, constitute a practice which is incoherent with the harmonious functioning of democracy.

The fact that most migrants move, in spite of the persistence of these barriers against their entry, highlights the inconsistency between restrictive stances and a world which is heading towards a growing liberalisation of other flows. This inconsistency, to a great degree, is responsible for the increase in the number of undocumented migrants and the emergence of territories for migratory transit, while it opens the door to one of the most hideous crimes against human rights: the smuggling of migrants through borders.

Another fundamental aspect concerning the debate on international migration and development is poverty and its impact on the phenomenon of population mobility. In this regard, ECLAC states “The basic determinants of international migration lie in the inequalities which exist in levels of development, and the enormous magnitude, persistence and flagrancy of those inequalities in the globalized world of today heighten the so-called pressures for migration”.ⁱ Therefore, this is why this debate should be necessarily connected with the dialogue on the developmental possibilities of each country.

So, in order to analyze the link between migration and development other fundamental variables should be taken into account, for instance international trade and the effects produced by the restrictions implemented by developed countries on the economies and societies of less developed ones. These restrictions not only destroy production systems but also inhibit development, and as a result they give rise to the phenomenon of poverty and population displacement.

To prevent economic and social inequalities among countries and the high level of poverty from generating migratory movements, significant efforts should be undertaken at the field of international cooperation against poverty and the factors which hinder eliminating it. Within the framework of this debate, it is then necessary to consider international cooperation and co-development actions aiming at alleviating poverty in the countries originating migratory currents, and at ensuring that these vulnerability conditions are not reproduced at destination places.

Migration may substantially contribute to development, but only with the coordination and collaboration between origin and reception countries so as to adopt suitable and efficient policies which would increase the benefits of migration for all interested parties (IOM).ⁱⁱ

One of the distinctive facts of South American emigration is the remarkable role played by women in international migration flows. Hence, it is essential to consider this special characteristic when formulating and implementing migration policies. Moreover, better conditions for the empowerment of migrant women should be produced, thus acknowledging the contribution made by these women to their families, communities, and origin and destination countries, and identifying situations where gender inequalities are reproduced.

Migrant remittances

Migrant remittances are attracting an increased interest within the context of migration and development and constitute a substantial contribution of economic resources for some countries of the Region, as well as being an important income source for many emigrant families. While remittances as such only represent one of the issues of this debate, it is undeniable that they stimulate household and community development in a large number of countries.

The high volume of remittances may lead to a purely economic and financial analysis of the phenomenon, classifying it as an additional development factor. However, it should be considered from a social, more than an economic, standpoint bearing in mind the social, familiar and personal costs implied by emigration.

It is necessary to recognize remittances as flows of private resources sent home by migrants, who then contribute to the welfare of the people who receive them and the internal savings of the country.

Regarding the well-known topic of the high cost of remittances affecting migrant resources, and in spite of the efforts undertaken by some countries of the region and the Inter-American Development Bank in the promotion of banking programmes for the migrant population in destination countries and beneficiary populations in home countries, as pointed out by UN General Assembly Resolution 60/206ⁱⁱⁱ it is essential to lower the cost of remittance transfers, simplifying procedures and facilitating access to formal transfer means, and promoting if need be investment opportunities for development in reception countries for the beneficiaries who are willing and able to profit from them.

As regards the productive use of remittances, it should be recalled that in some sectors they are spent on consumption, and therefore, while it is true that it has a positive impact on household welfare, it does not produce lasting effects on development. Nevertheless, spontaneous enterprises are commonly found, although their economic sustainability is limited.

In addition, it is worth mentioning the experience of collective remittances (outside the region but in Latin America). These collective remittances are materialized through the link between migrant associations and communities of origin. These processes are considered an important factor regarding the development of such communities since in most cases they finance social and community infrastructure works in the places of origin and therefore carry a great potential for the contribution to development.

The migration of qualified personnel

The migration of qualified human resources to other world regions is extremely important in connection with South American migratory flows and therefore entails a serious loss for the countries of the region. The loss of these workers undermines the development potential of the countries of origin, and as a result the cooperation with the destination countries is crucial to counteract the negative effects of the brain drain and promote the circulation of competences (IOM).^{iv}

While there are proposals and initiatives aimed at stimulating the circulation and exchange of qualified human resources which try to profit from the opportunities opened up by globalization, their realization is jeopardized by several factors such as the relaxation of laws on employment applied by great corporations, the presence of best students at the universities of the developed world, the huge disparity between work conditions and salaries offered by the two types of countries, as well as the lack of proper fields for re-linkage.

Qualified migrants are in a better position to actively participate in contemporary mobility. However, as mentioned by the ECLAC^v, this is not always so since many of them are unable to maximize their benefits owing to the difficulties to validate their degrees. This situation constrains the possibilities of the countries of origin to benefit from return and the linkage to the diaspora.

In this sense, it should be mentioned that the region has taken steps in this direction through measures facilitating the mobility of South American professionals in the region and the joint postgraduate programmes.

As posed by ECLAC,^{vi} the demand for highly qualified human resources will continue in developed countries, thus their retention will be limited to their scientific-technological capacities. It is essential then to implement efficient policies counteracting the negative effects of this situation.

Experience suggests that the initiatives undertaken until now, such as support programmes and the linkage and repatriation of scientists have produced little impact on the region. As a consequence, original and new strategies should be formulated, making it possible to draw upon the potential benefits implied by technical, professional and scientific diasporas.

An alternative could be to develop and strengthen academic bonds, fostering electronic communication and temporary visits, and promoting and actively supporting the formation of networks of researchers and shared research programmes.

The governance of migration

The different issues related to the relationship between migration and development call for a clear interpretation of this link. Migration policies and management are closely connected with this problem since current people movements are mostly due to causes such as poverty, unemployment, destitution, and the increasing gap between income and living standards among the different regions of the world and different social classes in each country.

The governance of migratory currents has a basic condition which consists in the solution of the problems generating migration which are directly linked to the asymmetries of the social and economic development characterizing the contemporary process of globalization.

It is then necessary to promote at international forums the incorporation of migration and its vinculation with development to the agenda of the international community with the purpose of achieving broader consensus on the matter.

In addition, it is important to consolidate and enlarge the areas of competence on migration matters included in the several regional and subregional agreements, as well as continue with the promotion of the exchange of experiences in international events on migration so as to achieve a comprehensive understanding of the phenomenon, attend to its multiple dimensions and strengthen its positive outcomes.

The Human Rights of Migrants

There is an international law framework for the protection of human rights which regulates state obligations. This normative framework comprises all international and regional human rights treaties, whereby human rights are inherent to every human being and therefore to migrants as well.

In order to analyze the migration phenomenon from the human rights perspective, gender equity considerations should be taken into account, since the fact that the migration process is not experienced in the same way by women and men, girls and boys, cannot be overlooked. Likewise, the United Nations Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001) has declared that migrant populations are highly vulnerable to discrimination, abuse, and xenophobia.

A definition of “migrant” based on human rights should first and foremost be concerned about the existence or non-existence of legal, social and political protection for migrant rights.

Legal protection is afforded through some fundamental United Nations instruments on human rights, particularly the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention of the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the United Nations Convention against Transnational Organized Crime, the Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Supplementary Protocol against the Smuggling of Migrants by Land, Sea and Air. Similarly, in the regional system (OAS) we find the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women and the Inter-American Convention on International Trafficking in Minors.

One of the essential institutional hindrances against the full and effective protection of the human rights of migrants is the absence of homologation of the international norms explicitly acknowledging migrant human rights in national legislations. Many countries have incorporated human rights norms to their international law systems but they restrict its application to citizens.

Among the social obstacles confronted by migrants, we can mention: social exclusion; housing concentration in deprived urban areas; difficulties in the access to education, health care and employment; segregation; stereotyping; and xenophobia and racism. In addition, migrants are subject to ill treatment under administrative detention; poor detention conditions; non-observance of basic guarantees for a lawful trial; difficulties for arrested migrants to receive consular protection; forced repatriation of unaccompanied minors; migrant and refugee expulsion without the possibility of resorting to a law court; among others.

Migrant workers^{vii}

The United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) was ratified by the following South American countries: Bolivia (2000); Chile (2005); Colombia (2005); Ecuador (2002); Peru (2005); and Uruguay (2001). Even though Paraguay signed it in September 2000, Argentina in August 2004 and Guyana in September 2005, these countries have not ratified it yet. Finally, Brazil, Surinam and Venezuela have neither signed the Convention nor ratified it.

This Convention applies fundamental human rights to all migrant workers, either documented or undocumented, and establishes additional rights for workers in a regular situation and their families. It also includes provisions aimed at the elimination of exploitation for every migrant and the eradication of clandestine situations and movements. This instrument constitutes an important milestone for the protection of the human rights of migrants as it shows a broad perspective integrating migrant families and the situation of women and children, and openly recognizes the rights of undocumented migrants. Although it is a Convention regulating worker rights, its scope is not limited to the labour framework since it deals with the whole range of rights benefiting workers.

Migrant women

Several factors influence the current feminization of migration, for example family reunification; unemployment and income disparities for women in the countries of origin; and the incorporation of women to the labour force in destination countries. These factors lead to the insertion of migrant women in sectors such as domestic work, personal care for the elderly; and other non-qualified jobs.

With reference to children, it should be pointed out that there exist family disintegration problems, above all in those cases where mothers work in irregular conditions and it is therefore unlikely for them to visit their relatives home often enough.

Unaccompanied minors

The main causes for child labour emigration are poverty and household violence. Other reasons are family breakdown due to poverty; the absence of a salaried mother or father; or a dead/handicapped mother or father. Unaccompanied minors are more exposed to violence, exploitation, trafficking, forced begging, drug sale, and prostitution by the actions of criminal organizations. It is crucial, then, to bear these circumstances in mind so as to safeguard first and foremost the interests of unaccompanied minors in the cases of detention, repatriation procedures, and family reunification.

Discrimination against migrants

Disturbing new instances of intolerance, discrimination, racism and vile xenophobia against migrants have been registered in almost all regions of the world. These situations may worsen on account of the unequal distribution of riches, marginalization, and social exclusion.

The discrimination against migrants in the field of labour shapes itself in several forms, for instance as omissions or preferences on the type of jobs they carry out. Migrants are excluded from certain advantages under the terms of some contracts and the norms regarding job tenure which apply to them differ from those for nationals. In addition, they are frequently left out from regulations on work conditions.

Final comments

States should examine and/or review all migration policies incompatible with the international instruments on human rights, so as to eliminate policies and practices which discriminate against migrants. Hence, they would fully comply with the obligations derived from the said instruments, especially those promoting and protecting the rights of migrant women and unaccompanied migrant minors.

In spite of the above, the South American region has moved forward significantly in connection with the formulation of policies, harmonization of norms, and inter-state cooperation in favour of the protection of the human rights of migrants. By contrast, in other regions of the world migration policies have followed different approaches which underline other dimensions of the migration phenomenon.

Moreover, it is necessary to make progress regarding measures for the materialization of the commitment made by Presidents at the Declaration of the Summit of the Americas carried out in Mar del Plata on 5 November 2005: “all migrants, regardless of their immigration status, should be accorded the full protection of human rights and the full observance of labour laws applicable to them”, and “promote (...) decent work for migrant workers” and “encourage support for the Inter-American Programme for the Promotion and Protection of the Human Rights of Migrants”.

On the basis of these developments and against the background of growing insecurity generated by terrorism in several regions of the world, the inadequate analysis of migration flows due to the ever-increasing association between security and migration at the global level should be avoided.

Smuggling of Migrants and Trafficking in Persons

Migrant smuggling

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, stipulates in its Art. 3 a) that “smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

Migrant smuggling constitutes an infringement of the migration legislation of a country and a form of facilitating irregular migration assisted by third parties. The activities of smugglers may consist only in the clandestine introduction of migrants in other State by simply crossing international borders or, depending on the distance between origin and destination countries, the provision of lodgings before or after the crossing and finally the transportation to a certain city.

The violations against the human rights of migrants committed by smugglers are frequent and they include torture, ill treatment, injuries, and abandonment before destination, and they may end up in tragedy. In these cases, the Protocol stipulates that there are aggravating circumstances in the cases when smuggling includes violations against human rights and then becomes the crime of human trafficking. Likewise, this Protocol refers to other related crimes such as falsified documentation and illegal residence.

Smugglers, or in other words organized criminal groups, are active subjects. Smuggling is a crime against state sovereignty and therefore the passive subject is the state and not the migrant. As a result, the legal entity which is protected is the sovereignty of the State concerned. The fact that trafficked migrants lend their consent is irrelevant in legal terms, according to the Protocol, and does not turn them into co-participants.

The programmes to prevent migrant trafficking should take into account the provision of lawful documents for nationals in the country of origin, the issuing of safe passports, and the awareness campaigns to inform population about legal migration channels and the risks of smuggling. The idea that smuggling is something normal to emigrate or “help” to emigrate should be abolished.

Human trafficking

The purposes of the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, are the following three: a) to prevent and combat trafficking in persons, paying particular attention to women and children; b) to protect and assist the victims of such trafficking, with full respect for their human rights; and c) to promote international cooperation in order to meet these objectives.

In terms of its Art. 3, trafficking in persons “shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other

forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

Trafficking in persons is always a serious crime in the field of human rights because it includes elements of coercion, physical or psychological violence, abuse, and labour or sexual exploitation. It is a crime against persons. The legal entity protected varies in each instance, but they can be: life (Art. 6, International Covenant on Civil and Political Rights; Art. 4, American Convention on Human Rights; Art. 2, European Convention on Human Rights); personal liberty, implicit in the prohibition against slavery and servitude, and including sexual freedom (Art. 8, International Covenant on Civil and Political Rights; Art. 6, American Convention on Human Rights; Art. 4 European Convention on Human Rights) and dignity and physical integrity, inherent to the right against torture and inhuman or degrading treatment (Art. 7, International Covenant on Civil and Political Rights; Art. 5, American Convention on Human Rights; Art. 3 European Convention on Human Rights). By definition, slavery, servitude and forced labour victims are deprived from the right to liberty of movement and the freedom to choose their residence (Art. 12, International Covenant on Civil and Political Rights). In addition, in the more terrible cases victims are deprived from their identity, forced to speak in a foreign language or change their religion; and cannot get married, start a family, own or inherit property.

Therefore, traffickers are organized criminal groups who are the active subjects and victims are at the same time passive subjects and material objects of the crime.

Unlike the smuggling of migrants, this crime does not require the crossing of international borders; consequently, trafficking may have an international nature (involving two or more States) or national (within a State). The dynamics of trafficking cover several independent stages and are therefore much more complex than in smuggling.

The definition of “trafficking” comprises three penal elements: the typical action; the use of forms of coercion; and the purpose of exploitation. The model of organization functions in three stages: the recruitment of migrants in the origin countries/places; the transportation and related services for the transit; and the insertion and integration in destination countries/places. As regards the purpose of exploitation, it exceeds sexual work as other forms of exploitation such as the following have been identified: forced domestic, industrial, and agricultural work; debt servitude; forced marriage; child servitude; and organ trafficking. If the passive subject of this crime is a child, any recruitment, transportation, harbouring or reception action for the purpose of exploitation constitutes trafficking, regardless whether any of the forms of coercion listed has been used or not.

Frequently, victims willingly give their consent at the first stage of the trafficking mechanism, i.e, the recruitment stage. However, for this consent to be valid and influence legal procedures, it should be full and invariable. That is to say, it should not have any fault due to objective or subjective circumstances and be given and remain

valid during all the stages, from recruitment, to transportation, reception and exercise of any form of labour, even under exploitation conditions.

The formulation of specific policies and the generation of public policies on the matter at the national level, coupled with the increase in intergovernmental cooperation in this domain, should be supplemented with measures for the protection of the rights of the victims. These measures may include the facilitated access to legal representation; the protection of witnesses; the rehabilitation of victims; and opportunities to remain in the destination countries.

One of the most substantial contributions which the SCM might make to the High-Level Dialogue could be to identify the good practices undertaken by South American countries in this regard, when analyzing the migration phenomenon and the modern violations to fundamental rights.

It is then necessary to redouble efforts in the combat against these two crimes through its categorization in national legislations; the prosecution of perpetrators; the elimination of the demand for exploitation services; and the prevention, protection and assistance to victims, in agreement with the international instruments on human rights and the commitment of the Presidents at the last Summit of the Americas.

The Consolidation of the SCM

Summary of the SCM process

The *South American Conference on Migration* (SCM) is a regional consultative process ensuring the insertion of the South American region into the international stream of dialogue mechanisms and consensus on migration matters at the global level. Its origins, as regards the implementation of subregional, multilateral and bilateral actions both by the Andean Community and the MERCOSUR, can be traced back to the commitment made by Governments at the Cairo World Population Conference^{viii}. The countries which participate in this process are: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Guyana, Paraguay, Peru, Surinam, Uruguay and Venezuela.

The SCM was initiated by the “South American Meeting on Migration, Integration and Development” carried out in Lima, Peru, in 1999. At this event assembled governments recognized the importance of migratory movements within the region and the need to hold regular consultations among them, on which future conferences would be based. This regional consultative process continued with the organization in Buenos Aires, in 2000, of the First South American Conference on Migration. Later, the Second, Third, Fourth and Fifth Conferences were staged in Santiago, Quito, Montevideo, and La Paz, in 2001, 2002, 2003 and 2004, respectively.

The priority points agreed by governments at the *Buenos Aires Conference* (2000) established a “regular forum for consultation and coordination on migration matters”, the need to combine efforts to guarantee the protection, the defense and promotion of migrant rights, and the urge for the modernization of migration management and national legislations on the issue. In addition, delegates officially requested IOM assistance for the materialization of this process. At the *Second Conference* (Santiago,

2001), governments worked on the consolidation of the “Forum” and IOM received increased demands for support. At the same time, it was decided to carry out a Technical Meeting with the participation of all the governments of the region with the purpose of elaborating a plan of action to be submitted at the Third Conference.^{ix}

At the *Third Conference*, organized in Quito (2002), the said Plan of Action was analysed and unanimously approved as a Work Programme for the Conference.^x At the *IV Conference* (Montevideo, 2003), government representatives ratified the will to consolidate the SCM ‘as the political space of the region, whose purpose is to generate and coordinate initiatives and programmes seeking to promote and develop policies about international migration and its link to regional development and integration’. In addition, they emphasized the importance of the Plan of Action, granting it the role of operationally developing and facilitating the accomplishment of strategic objectives.

Governments gathered at the last meeting (*V Conference*, La Paz, 2004) reaffirmed the programmatic and operational significance of the Plan of Action by restructuring its objectives and activities and restating as priority goals the free circulation within the South American region and the protection of the human rights of South American nationals outside the hemisphere, whereas headway was made regarding more specific issues such as migration, cooperation, development and integration in South America; the strengthening and development of the South American Observatory on Migration; the harmonization and coordination of information systems; and the training on migration matters.

A fundamental topic which should be defined by governments at the VI SCM is the evaluation and decision-making regarding the so-called “Consolidation or Institutionalization Process of the SCM”. In this sense, it is worth mentioning that in 2003 several participants voiced their concern on the need to initiate a dialogue process among countries on different operational and political aspects related to the development of the Conference, at what was called the “Consolidation or Institutionalization Process”. During the Fourth Conference when Uruguay exercised the Pro Tempore Presidency, the question of the lack of a permanent political level for the regional consultative process of the SCM was put forward by some delegates. This level is present at the Puebla Process because, besides technical meetings, higher political meetings are organized by means of the meeting of Vice-Ministers in charge of endorsing the Final Declaration.^{xi} Moreover, representatives proposed a greater commitment on the part of South American countries so as to fund the several Conference activities and events, which are currently covered with the US Bureau of Population, Refugees and Migration and IOM funds, and to a lesser degree and voluntarily, by participating countries.

In 2004, the Pro Tempore Presidency, in charge of Bolivia, reiterated the need to strengthen the SCM as a consultation, coordination and cooperation forum on migration matters in South America. As a result, it was suggested to begin with this consolidation and institutionalization process, while in parallel to look for income sources granting a higher commitment and the necessary funds for the SCM to accomplish its goals.

The consolidation of the SCM

As time went by, the SCM has become the South American Regional consultative process on migration, recognized as such inside and outside the region. Examples of this fact are found in the numerous references made to this process by international papers.^{xii} In this regard, it should be mentioned that the *Ayacucho Declaration*, signed at the III Meeting of South American Presidents in December 2004, in its 11b Article, calls for the articulation of lines of action in order to approach the multiple dimensions of the migration phenomenon, taking into consideration the development, initiatives and recommendations of the Fifth South American Conference on Migration.

On the basis of the consensus achieved and inscribed into the Plan of Action, and in the light of the experience gained regarding the organization and development of this process, the need for the SCM to have a permanent political level, as most regional consultative process on the matter, has been often posed.^{xiii} This level would provide the Conference with a capacity and a mandate, and therefore, with the necessary legitimacy to fully participate in political forums, the UN main and specialized bodies, and development banks, among other entities. In this regard, it should be recalled the UN General Assembly through its Resolutions 59/241 and 60/227 requests regional consultative process to contribute to the *High-Level Dialogue on International Migration and Development* and that the *Ibero-American Meeting on Migration* invites the South American Conference on Migration to convey its experiences. Consequently, this is a very favourable and timely scenario to strengthen, consolidate, and institutionalize the SCM as a South American regional consultative process.

According to the Report of the Global Commission, “although (regional consultative processes) vary in several respects, all of these processes involve network of states, coming together on a regular basis for the purposes of confidence-building and consensus-building, as well as the exchange of information, ideas, experiences and good practice in the domain of international migration. The key feature of these processes is their informal and non-binding nature. (...) By ensuring that member states come to the table on an equal basis, they have facilitated dialogue, helped governments to identify common interests and concerns, underlined the importance of establishing national migration policies and reinforced an awareness of the need for these policies to be the basis for regional cooperation”. The document also highlights that these processes have enabled governments to profit from the expertise of international organizations, helped to formulate legislation on migration and to exchange information, a role which has seemed to aid in reducing irregular migration in some regions.

The countries which participate in the SCM are members of different integration schemes, such as the Andean Community of Nations and the MERCOSUR, in whose structure of government migration matters are analysed to a certain degree, and the CARICOM. Two clear characteristics are peculiar to the SCM: its wide participation field and its specificity regarding the issue of migration. On the other hand, the membership at the SCM is in harmony with the new subregional scene emerging in South America, distinguished by the tendency to the integration into a South American community or block.^{xiv} Other facts which should be mentioned are the political will expressed by some countries to join other regional blocks and the tendency to subscribe bilateral agreements between blocks such as the MERCOSUR with countries from the

subregion. These trends illustrate the course of foreign policy in the region, heading for association patterns similar to the European model.

This situation, leaving aside the prognosis about its feasibility and ways of materialization, shows a trend for the short, medium, and long term which can be envisaged as solid and irreversible and which will undoubtedly impact on the mobility of the persons in the subregion. It is for this reason that the decisions which countries might take regarding the strengthening and consolidation of the SCM should take into consideration the path of foreign affairs described above and contemplate effective links with the integration process which has started in South America.

In view of the above and bearing in mind the increasing attention paid by the international agenda to the issue of migration, it is necessary to make headway in the consolidation of the SCM process as the regional domain for political dialogue and consensus on topics related to international migration and its link to development, regarding the participation of South American countries in intergovernmental forums on migration. Hence, not only would this initiative be ratified, but also this process would be awarded the necessary legitimacy to be present at political levels. What is more, it would open up new possibilities of effective linking with the integration process described above.

From the political standpoint, the advantage of increasing the hierarchy of the SCM would allow for the reinforcement and consolidation of its activities while at the same time it would be possible for the SCM to adopt policies, set guidelines for improving its functioning, and approve and modify the Plan of Action establishing priorities, activities and actions. On the other hand and so as to achieve a convergence of efforts, the SCM would be able to report on the agenda of summits, make decisions on the matter and tailor its activities on the basis of the resolutions passed at these meetings. For instance, the Vice-Ministerial Meeting of the Puebla Process approved in March 2005: a) the participation of the RCM Pro Tempore Presidency in the UN High-level dialogue in order to present the best practices and lessons learned in the RCM; b) the document presented by the Pro Tempore Presidency at the Regional Hearing of the Global Commission on International Migration (Mexico, May 2005); and c) the participation of Canada, as Pro Tempore Presidency, and of the Technical Secretariat of the RCM in the Workshop on Regional Process which was held in Geneva in April 2005, co-hosted by IOM and the Global Commission on International Migration.

From the point of view of the sustainability of the actions allowing for the development and continuation of the process, the consolidation of the SCM would make it possible to reach international financial systems. In this regard, experience shows that one of the main risk factors for the sustainability and continuation of the process is rooted in the lack of safe and foreseeable funding structure, reason why it is necessary to consider supplementary alternatives to identify organic and equitable sources. It is important to bear in mind that, up to now, funds have been allocated mainly by IOM with additional funds added by participating countries, such as Argentina (2000), Chile (2001), Colombia (2001), Ecuador (2002), Paraguay (2003), Uruguay (2003), Venezuela (2004), Bolivia (2004), and Paraguay (2006) to organize Technical Meetings and Conferences.

Another aspect to ponder on is related to the possible ways for the SCM organization and functioning. In this connection, a feasible proposal –taking into account the experiences of other regional consultative processes and the current international structure – would be to have:

- a) an annual Conference or meeting attended by South American political decision makers, whose roles would be to adopt agreed-upon decisions; promote recommendations, issue and approve joint documents; supervise the compliance with the Plan of Action and the final decisions and declarations made by each SCM; reinforce regional initiatives on migration matters and facilitate joint decision-making at specialized conferences, forums and other similar events; elaborate and approve the Final Declaration at the closure of each Conference.
- b) a Pro Tempore Presidency or member country with the role of organizer, president and host of the SCM, which would be the main medium of communication for this consultative process with external organizations and entities and would act as representative before international forums, even upon the mandate of the SCM.
- c) a Technical Secretariat or body in charge of supporting the follow-up mechanisms of this Process, the initiatives and activities deriving from the SCM itself, and those approved at future Conferences; and of ensuring the communication, coordination and exchange of information among the SCM member countries. This responsibility would be assigned to IOM, as an expert international body. IOM will also operate as cooperation and advisory organization for the SCM.
- d) focal points or appointed persons within the participating agencies from each government, whose task would be to liaison with and contact participants about the SCM issues; guarantee the transmission of the information sent by the Pro Tempore Presidency, the Technical Secretariat and the Thematic Work Groups; and to ensure the adequate communication and dissemination of information to all concerned entities and ministries.
- e) the thematic work groups or specialized meetings centred on developing the goals, objectives, and activities of the Plan of Action, which would become the technical and discussion area of the CSM and include senior officials and government specialists in specific issues from the member countries, and invite experts from the observer agencies.

ⁱ ECLAC, 2002, “International Migration and Globalization”, *Globalization and Development*, Chapter 8, XXIX Period of sessions, Santiago de Chile.

ⁱⁱ IOM (2005), Incorporation of Migration to Policy Agendas on Development, Geneva.

ⁱⁱⁱ UNO (2006), General Assembly Resolution 60/206 (“Measures for the facilitation and reduction of the cost of transfer of migrant remittances”), New York.

^{iv} See ii.

^v See i.

^{vi} See i.

^{vii} The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states: “The term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.

^{viii} In its chapter on international migration, the programme of action of the conference sets among its objectives: “to encourage more cooperation and dialogue between countries of origin and countries of destination in order to maximize the benefits of migration to those concerned and increase the likelihood that migration has positive consequences for the development of both sending and receiving countries”. (International Conference on Population and Development, Programme of Action, Cairo, 1994).

^{ix} At the II Meeting of South American Presidents (July 2002, Ecuador), the “*Guayaquil Consensus on Integration, Security and Infrastructure for Development*” was signed. Art. 29 of this instrument stipulates that “the III South American Conference on Migration, which will be held in Quito next 15 and 16 August, (should) adopt a Plan of Action on International Migration in South America determining, among others, the following objectives: the formulation of coordinated guidelines for the protection of the fundamental rights of South American migrants at the global level, especially concerning social security matters and including reciprocal consular support measures; as well as the basis for the implementation of coordinated regional policies to combat the smuggling of migrants; and to aim at the harmonization of the legislation of South American countries on migration matters”.

^x The general objectives approved by participating Governments were: 1) Definition and coordination of regional strategies and programmes in the field of migration; 2) Consolidation and development of the South American Observatory on Migration; 3) Harmonization and coordination of information systems on migration; 4) Harmonization and coordination of migration management; and 5) Harmonization and coordination of South American migration legislation.

^{xi} The Regional Conference on Migration organizes annual meetings attended by the Vice-Ministers of Foreign Affairs and Interior of Member Countries. This Vice-Ministerial Meeting is the political level of the RCM, where decisions are taken to define the goals, roles, tasks, doctrine bases, and aspirations of this forum. These meetings are closed meetings where the only participants are the Vice-Ministers. Decisions are then recorded in Joint Communiqués or Declarations issued when each meeting finishes.

^{xii} For instance, 1) OAS-CJPA, *Discussion of Best Practices Panel*, Special meeting on the Inter-American Program for the promotion and protection of the human rights of migrants, including migrant workers and their families CP/CAJP-2323/06 rev.1 corr.1, 14 February 2006; 2) OAS, *Inter-American Program for the promotion and protection of the human rights of migrants, including migrant workers and their families*, AG/RES. 2141 (XXXV-O/05); 3) IACHR (CIDH), Annual Reports Of The Inter-American Commission On Human Rights, years 2000, 2001, 2002, 2003 y 2004; 4) IACHR (CIDH), *Fourth and Fifth Progress Reports of the Special Rapporteurship on Migrant Workers and their Families in the hemisphere*, years 2002 y 2003.

^{xiii} Some of these processes are: Bali Ministerial Regional Conference on People Smuggling; Trafficking in Persons and Related Transnational Crimes; Regional Conference on Migration (Puebla Process); Asian-Pacific Consultations (APC) on Refugees, Displaced Persons and Migrants; Inter-Governmental Consultations on Asylum and Migration Policies in Europe, North America and Australia (IGC); 5+5 Dialogue on Migration in the Western Mediterranean; International Dialogue on Migration; Migration Dialogue for Southern Africa (MDSA); Berne Initiative; Budapest Process; Manila Process; Bangkok Symposium on Irregular Migration.

^{xiv} At the III Meeting of South American Presidents (December 2004, Peru), the *Cusco Declaration* establishing the South American Community of Nations was adopted.