

Europa-Kolleg Hamburg
Institute for European Integration

Research Report

**Migration Challenges for the Pre-accession
Countries of South East Europe**

Yulian Tsolov

August 2012

Europa-Kolleg Hamburg
Institute for European Integration

The *Europa-Kolleg Hamburg* is a private foundation. The foundation has the objective of furthering research and academic teachings in the area of European integration and international cooperation.

The *Institute for European Integration*, an academic institution at the University of Hamburg, constitutes the organizational framework for the academic activities of the *Europa-Kolleg*.

Research reports should make results of research accessible for the public, partly also in provisional versions. The views expressed in these reports are those of the authors only and do not necessarily reflect positions shared by the Institute for European integration. Research reports are mainly written by guest researchers of the Institute for European integration.

Abstract

*This paper sets out to explain the drivers shaping the migration management systems in the pre-accession countries of South East Europe. It lays emphasis on the post-conflict experience of the associated regional states in facilitating mass displacement and points out cooperative patterns on migration in the Western Balkan countries of Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia. A compelling argument put forward for this paper is that the Western Balkan states represent a region with rare compilation of factors and events that have produced all types of migration and have had a huge impact on the migration dynamics in Europe. Focusing on the most recent period, together with the mass forced migrations caused by the ethnic conflicts in former Yugoslavia and Kosovo, it could be literally indicated all forms of migration: emigration and immigration, legal and illegal, labor, transit, asylum seekers, human trafficking and smuggling, returnees under the readmission agreements with the European Union and internal, causing depopulation of some economically weak regions. Within these circumstances, as candidate or potential candidate countries, the government authorities of the Western Balkans must also align their policies and legislation with the evolving immigration and asylum policies of the European Union. Recent developments in the institutional and legislative set-up have heightened the need for legal approximation to the EU migration related *acquis communautaire*. Genuinely, top priority on the migration agenda for the pre-accession South East Europe states remains to find durable solutions for the war affected refugees from the 1990s and the Internally Displaced Persons (IDP), and the development of coherent mechanisms for reintegration of the increasing numbers of returnees under the readmission agreements with the European Union member states.*

Key Words: migration, asylum, per-accession countries, Western Balkans, EU migration *acquis*, regional cooperation, readmission agreements, refugees, Internally Displaced Persons

Acknowledgements

The original idea for this research paper derived from views and knowledge exchanged at the *“Migration Challenges for the Pre-accession Countries of South East Europe”* seminar held in Belgrade in March 2010. The event was co-organized between the Commissariat for Refugees of the Republic of Serbia and DG Enlargement of the European Commission. The seminar gathered more than 100 representatives of relevant government institutions managing migration in Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Turkey. Also in attendance were experts from the European Union member states of Belgium, Great Britain, Germany, the Netherlands and Sweden. The event was also attended by officials of the international community based in the region – European Delegation, UNHCR, IOM, UNDP, the OSCE, ICMPD, as well regional initiatives MARRI and RCC, and finally participants of the academic community and civil society in the region were present too.

To this extent, the author would like to express his sincere gratitude to the Commissioner of the Commissariat for Refugees Vladimir Cucic and Deputy Commissioner Svetlana Velimirovic for the provided documentation and assistance for the realization of this paper. Additionally, he would like to thank his colleagues Olivera Mijuskovic Kortas, Maja Simeonovska and Olga Mitrovic from IOM *“Capacity building project of Institutions involved in Migration Management and Reintegration of Returnees in the Republic of Serbia”* for their contributions and comments. The editing and final review of Rainer Tetzlaff and Konrad Lammers as well as the support of Europa-Kolleg Hamburg, Institute for European Integration at the University of Hamburg is also gratefully acknowledged. The author is responsible for any remaining errors and inaccuracies. Substantial parts of the paper were written during a research stay at the Institute for European Integration with the financial support of DAAD.

Table of Contents

List of Abbreviations	6
1. Introduction	9
2. The Human Factor and the Particularity of the Region	12
2.1 Forced Migration after the break-up of Yugoslavia	13
2.2 The Kosovo Crisis: Human Security and Internally Displaced Persons	18
3. The EU Perspective towards the Pre-accession Countries of South East Europe	23
3.1 The Domain of the EU Immigration and Asylum Policy	27
3.2 Legal Approximation to Chapter 24: Justice, Freedom and Security	31
3.3 The Process of EU Visa Facilitation and Readmission Agreements for the Pre-accession Countries of South East Europe	45
4. Regional Cooperation on Migration in South East Europe	51
5. Conclusion	54
List of Annexes	57
Assessment of Sources	59
References	60

Abbreviations

AP	Action Plan
AP	Autonomous Province
B&H	Bosnia and Herzegovina
BPS	Border Police Station
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	Criminal Code
CEFTA	Central European Free Trade Agreement
CEI	Central European Initiative
CFSP	Common Foreign and Security Policy
COE	Council of Europe
EC	European Commission
ECHR	European Court of Human Rights
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EU	European Union
EUSR	European Union Special Representative
FDI	Foreign Direct Investments
FPRY	Federal People's Republic of Yugoslavia
FRY	Federal Republic of Yugoslavia
FYRM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
GRC	Geneva Refugee Convention
HoR	House of Representatives
HR	High Representative
ICJ	International Court of Justice
ICMPD	International Center for International Migration Policy Development

ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
ILO	Immigration Liaison Officer
IOM	International Organization for Migration
IPA	Instrument for Pre-Accession Assistance
LT	Treaty of Lisbon
MAP	Membership Action Plan
MARRI	Migration, Asylum, Refugees Regional Initiative
MM	Migration Management
MMS	Migration Management Strategy
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
ODIHR	Office for Democratic Institutions and Human Rights
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
RA	Readmission Agreement
RACVIAC	Center for Security Cooperation
RCC	Regional Cooperation Council
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SCG	Serbia and Montenegro
SECI	Southeast European Cooperative Initiative
SEE	South East Europe
SEECF	South-East European Cooperation Process
SEPCA	Southeast Europe Police Chiefs Association
SFRY	Socialist Federal Republic of Yugoslavia
TCN	Third-Country National
TEC	Treaty establishing the European Community
TEU	Treaty establishing the European Union
TFEU	Treaty on the Functioning of the European Union
ToA	Treaty of Amsterdam

UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
USA	United States of America
WB	Western Balkans

1. Introduction

In recent years, the development of the European Union (EU) immigration and asylum policy has gained increasing importance for the EU political agenda towards the pre-accession process of the Western Balkan (WB) states.¹ Within this realm, one of the most sensitive topics, both politically and legally, is migration, visa policy and readmission – particularly visa facilitation agreements and readmission agreements (RAs) between third countries and the European Community (EC, hereinafter referred to as the Community or, since entry into force of the Lisbon Treaty (LT) – European Union). In offering more relaxed travel conditions in exchange for the endorsement of an EC readmission agreement and reforms in domestic justice and home affairs, the EU has found a new way to encourage institutional transformations in the political systems of these countries. The countries in this region, whose aim is to become members of the European Union, have the obligation to comply with the EU migration *acquis communautaire* prior to accession and demonstrate that they have well functioning migration managements systems. In this context, the EU member states have increased their concerns regarding illegal immigration and thus, have put considerable pressure on the candidate and prospective candidate countries of South East Europe (SEE)² to set up efficient immigration and asylum systems, and more importantly, strict border controls.

The present article will focus on the migration challenges associated with the EU enlargement process for the five regional states involved in the visa-liberalization agreement- Albania, Bosnia and Herzegovina (B&H), the Former Yugoslav Republic of Macedonia (FYROM, hereinafter referred to as Macedonia), Montenegro and Serbia.³ A compelling

¹ The region of Western Balkans includes: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia (including Kosovo)

² The pre-accession countries of South East Europe are: Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Turkey

³ Clarification: Republics of Croatia and Turkey will not be subject of examination. Croatia is highly advanced in comparison with the rest of the countries in the region on its EU integration path (as an official date of entering the EU is already defined). Turkey did not signed an EC readmission agreement and it is not part of the visa liberalization process, which means that the EU possess less instruments to stimulate needed changes as well as does not have a legal basis to send back irregularly residing Turkish nationals

argument for this research is that the Western Balkan states are a region with rare compilation of factors and events that have produced all types of migration and have had a huge impact on the migration dynamics in Europe. To this we should add, the economic and social crisis of the 1990s and the military conflicts that also determined strong repercussions on the volume of the migration process.

The pre-accession countries of South-East Europe face similar challenges in facilitating migration flows on the way to European integration. The analysis argues that very often this process is followed by a broad range of implications. While the normative and institutional framework might be in place, the development of an adequate migration management system in compliance with the EU standards remains a problem. This complex set of relationships highlights the need for an understanding and approach to migration management that will take into account the relationship between migration and other contemporary issues of a social, economic, security and political nature of the region. This illustrates the interrelationship between areas and components that help to recognize the contributions that can be made by a range of ministries and agencies responsible for implementing the policy measures that make up a functioning migration management system. It must therefore be recognized that, if we take into account the fact that since early 1990s the EU has been a major external partner exerting considerable transformative power over the region- it is only natural to ask how this process affected the evolution of the asylum and immigration policies in the SEE states.

The development of coherent migration management systems in compliance with the EU migration *acquis* requires relevant legislative acts and institutional reforms to be in place. This is a requirement of the EU Commission in regards to a prospective accession to the Union (refers to the European Union). The SEE states have been predominantly countries of emigration which reflects mainly the development of policies targeting illegal emigration of its own nationals to the EU. However, integration into the EU structures requires also the development of a migration system that deals with “third country/foreign nationals”.⁴ This means that the SEE states have to deal not only with reception of its own nationals but also with illegal immigrants entering their

⁴ In the EU terminology the term “third country national” refers to nationals outside the EU countries

territory. Indeed, this is the policy area where the majority of the states in this region experience great difficulties.

A concise overview of these trends points to dynamic population movements both in the form of internal migration and international migration that took place through waves of emigration or through immigration flows, in all regional states but predominantly in the Republic of Serbia and B&H⁵, where forced migration⁶ during military conflicts in the territory of the former Socialist Federal Republic of Yugoslavia (SFRY) in the last decade of the 20th century had special socio-economic impact.⁷

This paper aims to share information on the past and current migratory dynamics in the pre-accession countries of South East Europe. The document should in turn contribute to the coordination of the pre-accession strategies and migration activities within the region which is of a particular importance to the overall stability and security in Europe. The division of the chapters reflects the vulnerable challenges associated with the past forced migrations through the creation of coherent mechanisms for the successful migration management in the countries under examination. The chronological analysis follows the issues with the post conflict mass displacement, the emerged EU perspective and patterns of cooperation on migration among the former rival regional states. Although that finding durable solutions to the thousands of refugees remains a top political priority, the recent legal approximation process to the EU migration *acquis* has received increasing importance. Given this fact, the EU integration process for the SEE states is additionally hindered when compared to previous accession rounds which will be examined in the following chapters.

⁵ Half of the population of B&H was either internally displaced or fled the country, on the other hand, Serbia received the highest numbers of refugees

⁶The term forced migration refers to asylum-seekers, refugees and internally displaced persons. It may be the result of, e.g., conflict, human rights violations, state fragility, development policies and projects, and natural and man-made disasters

⁷ The Migration Profile of the Republic of Serbia (2010), Belgrade p.6, available at : http://www.kirs.gov.rs/docs/mp_rs_2010e.pdf

2. The Human Factor and the Particularity of the Region

The following chapter will examine the consequences of the regional ethnic conflicts over the forced migratory flows after the collapse of Yugoslavia, the Kosovo (UN Security Council Resolution 1244/1999, hereinafter referred to as Kosovo) crisis and the crisis with the Albanian minority in the Former Yugoslav Republic of Macedonia, without examining the conflicts themselves. This section will focus on some of these context factors in order to seek to provide some elements to think of when exploring the present and future prospects of the migratory process in the region.

The pre-accession WB states are faced with all forms of migration: external and internal, forced and voluntary, legal and illegal, migration of highly qualified and unqualified workers, readmitted persons, internally displaced persons (IDPs), immigration and emigration. This poses a number of different but clearly linked challenges to the modern management of migration. These migration challenges have been strongly influenced by the countries' economic, demographic, security, cultural and social environment.

The dissolution of Yugoslavia and the followed armed wars (1991-1995) led to the displacement of nearly four million people within and beyond the borders of Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The Kosovo crisis in 1999 caused that more than 800,000 people left homes seeking temporary safety in other countries.⁸ Out of these numbers, 618,000 refugees from the former republics of Yugoslavia sought refugee within the borders of Serbia.⁹ Additionally, the Kosovo crisis resulted in more than 210,000 internally displaced persons from Kosovo relocated to other parts of Serbia.¹⁰ According to the United Nations High Commissioner for Refugees (UNHCR), in South-East Europe, by the end of 2002, more than one

⁸ UNHCR – The Balkans (2003), available at www.unhcr.ch

⁹ UNHCR census 1996

¹⁰ Migration Management Strategy of the Republic of Serbia ("Official Gazette of the RS", No. 59/2009), p.24, available at:

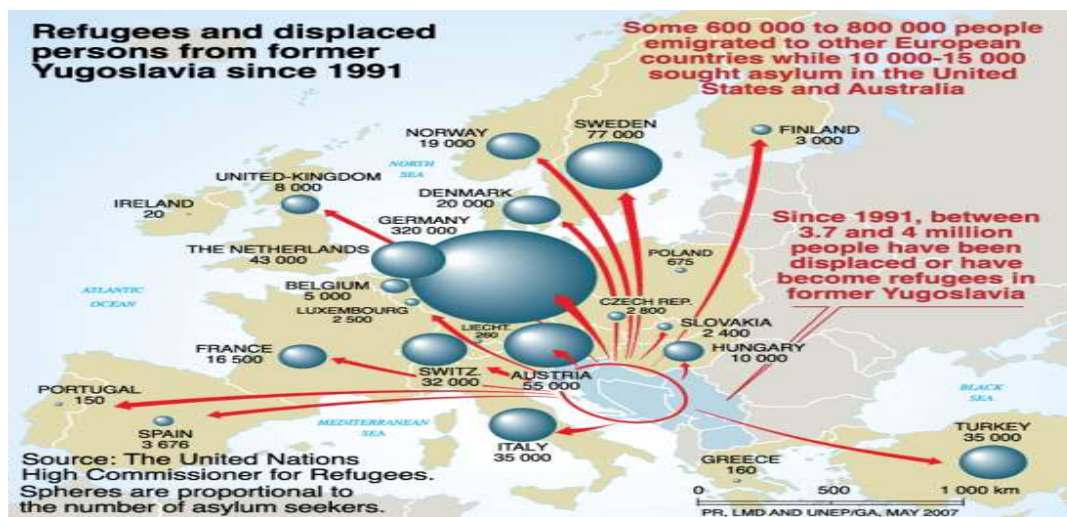
<http://www.kirs.gov.rs/docs/Migration%20Management%20Strategy%20English%20translation%20July%202009.pdf>

million of refugees and displaced persons were still seeking durable solutions.¹¹ Insofar, this is the biggest humanitarian disaster that took place in the recent European history after the World War II. The break-up of Yugoslavia and the Kosovo crisis have made up the Republic of Serbia the state with the largest numbers of refugees and internally displaced persons in Europe.¹²

In addition to this, the number of migrants transiting through the territories of the SEE states in an attempt to enter one of the European Union member states has been on the increase in the past decade. The existing situation is further compounded by the annual inflow of foreign seasonal workers and persistent human trafficking. The readmission agreements signed with the EU and the Western Balkans also implies the possibility of the return of thousands of illegally residing SEE nationals, which already struggle with one of the highest unemployment rates in Europe. In this sense, these migration challenges having a clear cross-border dimension should best be approached from a regional perspective.

2.1 Forced Migration after the break-up of Yugoslavia

Figure 1: Refugees and displaced persons from former Yugoslavia since 1991¹³



¹¹ UNHCR – The Balkans (2003)

¹² Migration Management Strategy of the Republic of Serbia, p. 24

¹³ The official data may differ depending on the source

In the early 1990s the state of Yugoslavia began to disintegrate, a process which is still not fully resolved and has resulted in a series of civil wars. The conflicts have been characterized by violence between the different ethnic groups in the region, resulting in massive displacement with a protracted refugee situation.

The wars in former Yugoslavia brought sudden and massive forced movements on a scale not seen since the World War II. By the end of December 1993 they had led to an “estimated 4.24 million migrants, including 819,000 refugees, 1.6 million displaced persons and 1.79 million assisted war victims”.¹⁴ Over half of Bosnia and Herzegovina’s population was displaced. Almost twenty years on, the vast majority of those uprooted migrants have returned home or found other durable solutions, but nearly half a million people still remain displaced or in a need of protection (incl. Kosovo).¹⁵

In the 1990s, various socio-economic and demographic factors regarding Balkan migration have emerged, adding new significance to population movements in the area. These elements have not always been considered sufficiently important, with attention being focused on the impact of the forced migrations caused by the conflicts. It seems that the development of migration flows has also followed the guiding lines of consolidated historical and cultural links and the more recent trade flows between the Balkan sending countries and the European receiving countries.¹⁶ Due to conflicts and economic weakening in the region, economic productivity and the volume of trade have been reduced, unemployment has increased, and the standard of living has decreased. All of these factors as a whole have become increasingly important when analyzing the migration flows in the region.

On the eve of the Balkan wars the phenomenon of ethnic cleansing was well studied and documented issue. However, the collapse of Yugoslavia resulted in falling apart state institutions into several newly formed government bodies often unable to produce and collect official statistics or there were indices of deliberate concealment or misrepresentation of data. In this context, information produced by the concerned newly proclaimed independent states needs to

¹⁴ Werner, Haug; Compton, Paul; Courbage, Joussef (2002) “*The Demographic Characteristics of Immigrant Populations*”, p.25, Strasbourg, published by the Council of Europe

¹⁵ UNHCR – The Balkans (2003)

¹⁶ Bonifazi, Corrado; Mamolo, Marija, (2004) “*Past and Current Trends of Balkan Migrations*”, p. 526, Espace populations societies, Rome, Italy

be analyzed carefully: on the one hand, self-accusation or admission of certain human rights violations by the responsible government may carry great weight; on the other hand, the newly formed governments often tried to justify their actions or not mention certain human rights violations at all. Some crucial areas of the mass displacement and war casualties were - according to human rights NGOs evidence¹⁷ - misinterpreted or, simply, left out of scope, either of state statistical offices or particular state agencies. Thus, figures on displacement of large ethnic groups were being concealed or manipulated. UNHCR statistics proved to be the most reliable source for data on refugees, displaced persons and returnees at the time.

The conflicts that accompanied the dissolution of Yugoslavia were characterized by the use of forced displacement as the strategic centerpiece to establishing “ethnically pure” political units. Tadeusz Mazowiecki, the first United Nations Special Rapporteur for the former Yugoslavia, urgently stressed in his second report to the UN Commission on Human Rights that “the principal objective of the military conflict in Bosnia and Herzegovina is the establishment of ethnically-homogenous regions. Ethnic cleansing does not appear to be the consequence of the war but rather its goal.”¹⁸ In addition to the refugees, concern to the Bosnia and Herzegovina authorities, is the considerably larger population of internally displaced persons, which is estimated to 113,000.¹⁹

Population cleansing in former Yugoslavia and succeeding states corresponds with all mentioned dimensions of cleansing on ethnic and/or religious basis. It was deliberate, planned, deployed by governments, in certain instances assisted by international forces and sometimes negotiated between two or three major “parties”- Serbian – Yugoslav and Croatian plus Bosnian authorities. Throughout the conflicts, the “push out” side of these forced migrations was more or less erratic and hastily deployed, while the current consequences with the “pulling back” (in other words, reintegration of refugees to the former habitual residence) is, on most instances,

¹⁷ During the Balkan wars, reports by (international) NGOs could have been considered reliable, or less reliable, depending on their mandate, reporting methodology and advocacy stance. Generally speaking, NGOs representing the interest of a particular group-ethnic or religious- are more difficult to assess than NGOs that report widely and extensively on a number of human rights issues and regions

¹⁸ *Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, UN Doc. E/CN.4/1992/S-1/10 (27 October 1992), para. 6.

¹⁹ Data provided by the Ministry for Human Rights and Refugees of Bosnia and Herzegovina at the “*International Donor Conference*” held in Sarajevo in April 2011

slow and carefully planned process on multilateral or bilateral basis and agreed upon the regional governments and the international community.

The recognition of displacement as an outcome of the regional conflicts was an important element of conceptualizing the wars. In many cases such as B&H and Kosovo, displacement was not only a form of collateral damage but also an instrument of war.²⁰ In the meantime, however, return flows became the most important agenda in stabilizing the area. Under the EU and international pressure, Bosnian, Croatian, Montenegrin and Serbian authorities are being required to comply with return and reintegration.²¹

Over the past decade steady progress has been made in finding durable solutions for the hundreds of thousands of persons displaced after the dissolution of Yugoslavia. The majority of the relocated persons having found solution during the past ten years have been refugees and internally displaced people displaced by wars in Croatia and Bosnia & Herzegovina in the first half of the 1990s. However, large number of the remaining displaced persons still resides on Serbian territory. The proportion of refugees coming from the former republics of SFRY (mainly from B&H and Croatia) within the Republic of Serbia “has reduced by more than 80% in the period between 1996 and 2008. From nearly 600,000 displaced persons in 1996 to approx.70,000 in the index of 2011.”²² The reduction of the number of refugees is mainly a result of their integration into the territory of Serbia. The process of acquiring Serbian citizenship and integration into the society has been marked as the largest integration process of that kind in the recent European history.

Apart from being among the countries with the most preponderate refugee-IDP problem in Europe, the Parliamentary Assembly of B&H has adopted the Revised Strategy of Bosnia and Herzegovina targeting to take care of the thousands of refugees, coming from the neighboring countries in the region. An assistance scheme has been provided for durable solutions through a

²⁰ Betts, Alexander; Loescher, Gil, (2010) “*Refugees in International Relations*”, p.15, Oxford University Press

²¹ Special focus on finding durable solutions for the war affected refugees and IDPs will be devoted in the last chapter on Regional Cooperation on Migration

²² Official statistics provided by the Commissariat for Refugees of the Republic of Serbia, website: www.kirs.gov.rs

variety of projects primarily designed to support the sustainability of the return process – rehabilitation of properties, basic utilities and social infrastructure.²³

Not quite to the same extent, Montenegro has sheltered some numbers of displaced persons from ex-Yugoslav republics of Bosnia and Herzegovina and Croatia - and internally displaced persons from Kosovo, who were forced to leave their homes. According to the Ministry of Internal Affairs and Public Administration currently there are 4,020 refugees from Bosnia and Herzegovina and Croatia, who still hold a legal status of “displaced person”. In addition to this, Montenegro hosts 9,930 internally displaced persons from Kosovo.²⁴

When it comes to the return to the land of previous residence the process is faced with more obstacles and requires joint efforts by the regional states, particularly B&H, Croatia and Serbia. On the one hand, for the millions displaced by the conflicts of the 1990s, the sustainability of their return depends largely on the access to all social rights, economic opportunities and job creation. On the other hand, the largest part of the remaining refugees and internally displaced people in the region were displaced during the 1999 conflict in Kosovo and their situation still needs to be resolved.

Although the Western Balkan states have successfully overcome the immediate post-conflict stabilization and reconstruction phase, finding durable solutions to the remaining persons involuntarily displaced during the disintegration of Yugoslavia still remains a predominant issue on the migration agenda in South-Eastern Europe. As the period of reconstruction and stabilization drew to an end, migration issues will continue to weigh significantly on national and regional political agendas in many of the SEE states. The process of formulating migration policies in the region will increasingly be influenced by responses to commonly faced challenges

²³ Ministry for Human Rights and Refugees of Bosnia and Herzegovina- “*International Donor Conference*”, Sarajevo 2011

²⁴ Data provided by the Ministry of Internal Affairs and Public Administration of the Republic of Montenegro, at the “*International Donor Conference*”, Sarajevo 2011

arising from the post-conflict period, demographic peculiarities, social and economic developments of the entire region and the whole of Europe.²⁵

2.2. The Kosovo Crisis: Human Security and Internally Displaced Persons

It has been held that the Yugoslav crisis started in Kosovo²⁶. The Kosovo Albanians make up almost 90 percent of the population of Kosovo and they have long maintained and cultivated distinct characteristics from other groups inhabiting the territory of the former Yugoslavia. They speak a common language²⁷, have their culture and traditions, and share the same customs. For these reasons, Kosovo was granted autonomy within the framework of SFRY, with its status being upgraded from an autonomous region to a province by the 1974 SFRY Constitution,²⁸ although the province was not granted the same official status as the other Yugoslav republics. However, in early 1990s the level of autonomy of the Kosovo province was reduced which marked the beginning of a crisis that later will result in a mass displacement of hundreds of thousands people.

For years the international community has consistently been reluctant to support independence for Kosovo, mostly out of fear – according to the expressed reasons – that the backing of such secessionist claims would open a “Pandora’s Box” of problems consisting in an overall process of disintegration and instability to other territories round the world.²⁹ However, in February 2008, Kosovo unilaterally declared independence, and confirmed recognition by the United States of America (USA) and the majority of the EU member states.

²⁵ *Migration Management in Central and South-Eastern Europe* (2006), International Organization for Migration (IOM), Mission with Regional Functions for Central and South-Eastern Europe, Budapest, Hungary, available at: <http://www.iom.hu>

²⁶ Malcolm, Noel, (1998) “*Kosovo: A Short Story*”, p.11, in Macmillan

²⁷ Dialect of the Albanian language

²⁸ 1974 SFRY Constitution, *The Fundamental Principles and Elements of Autonomous Provinces under the SFRY Constitution*, available at: http://hague.bard.edu/reports/hr_kristan-pt2.pdf

²⁹ Kumbaro, Danjena, (2001) “*The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention*”, p.41, North Atlantic Treaty Organization

From February 1998 until the end of the North Atlantic Treaty Organization (NATO) air strikes in June 1999, the world has witnessed a frequent and deliberate violence in Kosovo, whose principal victims were mainly civilians from both sides, ethnic Albanians and ethnic Serbs. Throughout the conflict, the pattern of displacement was fast changing and unpredictable as people fled to neighboring Albania, B&H, Macedonia, Montenegro and some other parts of Serbia in response to the actions and real or perceived threats of the security forces.

Against this background, it is desirable to examine briefly the definition of internally displaced persons:

- according to UNHCR definition, internally displaced persons are:

“.....persons who, as a result of persecution, armed conflict or violence, have been forced to abandon their homes and leave their usual place of residence, and who remain within the borders of their own country.....”³⁰

Judging from the abovementioned definition, one could conclude that if these persons had crossed an internationally recognized border then they would be considered as refugees. Correspondingly, there is no doubt that had the 170,000 internally displaced Kosovar³¹ Albanians crossed an internationally recognized border, they would have been considered refugees, as it happened with more than 75,000 who have sought refuge in the neighboring countries of Albania, B&H, Macedonia as well as to the territory of Montenegro³² and the tens of thousands of Kosovars seeking asylum in other countries, mainly Western Europe (UNHCR, 1998).³³ In September 1998, however, Montenegro, which by then had already accommodated

³⁰ *The State of the World's Refugees: A Humanitarian Agenda* (1997) New York: Oxford University Press, p. 99, Office of the United Nations High Commissioner for Refugees

³¹ Native inhabitant of Kosovo

³² At the time Montenegro was part of FYR

³³ The UNHCR reported 241,700 refugees by 1 September 1998. See UN Inter-Agency Report no. 59, Document no: YUGBE/MS/HCR/1341. The UN Secretary General's Report of 3 October 1998 gives the number of refugees and displaced persons at 280,000 people. Cf. UN Secretary General, "Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council", UN Document no: S/1998/12. For more information regarding statistical data visit: <http://reliefweb.int/report/albania/un-inter-agency-update-kosovo-situation-report-59>

more than 35,000 refugees from Kosovo decided to deny further access to refugees and deal with the issue on a case-by-case basis.³⁴

The creation of such a significant amount of refugees and internally displaced persons has a number of consequences for the further development of the conflict and the possibility and shape of any future solution. First, refugees in these numbers are likely to upset carefully maintained ethnic balances in the neighboring republics and states. The number of ethnic Albanian refugees from Kosovo crossing into Macedonian territory represented an immediate danger of erupting into a violent ethnic conflict. Albanians are the largest ethnic minority group in Macedonia accounting to twenty-five per cent of the total country's population. The coexistence of the two ethnic groups in Macedonia has been a source of concern for many years now. The ongoing tension in the country is twofold: the large size of the ethnic Albanian minority, and the rising proportion of ethnic Albanians to ethnic Macedonians in the general population. Both these factors have contributed to the unstable power relations between the two groups. Within these circumstances the arrival of even more ethnic Albanians had an immediate effect on the fragile situation in the country.

Although, Macedonia separated peacefully from Yugoslavia in 1991, the war in Kosovo seriously destabilized Macedonia as thousands of Kosovo Albanians sought refuge in the country. This was followed by an armed conflict between the Macedonian government and the Albanian minorities, lasting few months in 2001. Under the EU and international pressure ceasefire was achieved through the Ohrid Agreement of August 2001,³⁵ giving a basis of dealing with unresolved minority problems, including the improvement of the overall situation of the rights and freedoms of the Albanian minorities and preparing the country on the way to EU membership.

With the end of the NATO air strikes and the withdrawal of the Yugoslav troops in 1999, over 245,000 Kosovo Serbs and Roma, Ashkali or Egyptian (RAE) people fled into Serbia or within ethnically populated Serbian parts of Kosovo. At the end of 2011, there were still 18,000 IDPs in Kosovo. Slightly over half were Kosovo Serbs, around forty per cent Kosovo Albanians,

³⁴ An average figure based on figures provided by the Montenegrin Ministry of Interior and the Montenegrin Red Cross, statistics as of August 1998

³⁵ Ohrid Framework Agreement (2001), available at: http://faq.macedonia.org/politics/framework_agreement.pdf

and six per cent from RAE communities. Most Kosovo Serb IDPs were in northern Kosovo, relying on a parallel system of education, social and health care supported by Serbia. Other IDPs remained in small areas where their ethnic group was in a majority, but where they had limited freedom of movement and little access to land or livelihoods.³⁶ And if in the 1990s, there was a widespread political exclusion of ethnic Albanians and their political self-exclusion from Serbian citizenship and creation of a parallel society, since the proclaimed independence in 2008 the situation has been reversed. Now many members of the Serb minority refuse to be integrated into the new political and social order in Kosovo or to accept Kosovan citizenship, often referring to it as illegitimate, which has created a new parallel society.

More than ten years after the ceasefire in Kosovo, numerous issues related to the human security remain open. According to data of the Commissariat for Refugees of the Republic of Serbia (CRS) there are currently 209,722 displaced persons (75% Serbs, 10.87% of Roma origin, 3.9% Montenegrins, 2.5% Muslims and Bosniaks, 1.5% Gorani, while others below 1% Albanians, Ashkali, Egyptians, Hungarians, Macedonians, Turks, Croats, etc.) residing on Serbian territory which makes it the most affected country in the region by IDPs flows. However, when it comes to the return of IDPs to Kosovo and the realization of their human rights and freedoms provided under the relevant international documents, numerous problems hinder their return to their place of origin. There is, in the first place, security issue, that is, the frequent threat to the right to life, the physical integrity and freedom of movement when returning to their homes, but also there are many problems related to the realization of property rights, such as reconstruction and the entry into possession of properties and the access to other socio-economic rights.³⁷ Additionally, some of the ethnic IDPs groups have been faced with the problem of obtaining documents. The lack of personal documentation presents an enormous obstacle in the realization of all aforementioned rights. All of this contributes to the very small number of displaced persons having returned to Kosovo.

Currently, the talks sponsored by the European Union between Serbia and Kosovo have reached partial success. Since Kosovo's declaration of independence in 2008, there has been no

³⁶ *“Internal displacement in Europe, the Caucasus and Central Asia”* (2011), Internal Displacement Monitoring Center (IDMC), Norwegian Refugee Council (NRC), chapter Kosovo, p.68

³⁷ Commissariat for Refugees of the Republic of Serbia, documents and strategies, available at: <http://www.kirs.gov.rs/articles/navigate.php?type1=17&lang=ENG&date=0>

new mass displacement, and although Serbia continues not to recognize the independence, in 2011 an EU-facilitated dialogue between Kosovo authorities and the government of the Republic of Serbia led to agreements on issues including property rights and freedom of movement. Both the Serbian and Kosovo authorities have supported the construction of homes and social housing to facilitate the local integration of IDPs. However, finding durable solutions for the mass displaced persons caused by the conflicts, will require considerable efforts not only from the two parties involved but it will need a deeper involvement of the international community and, in particular, the European Union.

The events that accompanied the dissolution of Yugoslavia, the regional ethnic conflicts in Kosovo and Macedonia resulted in a multi-level crisis that have made the countries of South-East Europe to experience a significant fall in the population, generally blamed on emigration losses. In addition to this, we should add the negative population growth in the majority of the states combined with the demographic tendency of internal migration- “village towards the city” which results in the depopulation of some less developed regions within the countries themselves. In the light of what has been said so far, in the last decade and of the more recent situation (the economic crisis in the region, the visa liberalization, geographical location, etc.) the Western Balkan states will obviously maintain a significant role in the European migration dynamics of the coming years.

As an argument forward one should consider that the WB region, despite the efforts and commitment of the European Union and the international community, is a region still characterized by serious political and economic instability. Within this context, its geographical location and the recent global tendency, the region has had a large influence on the development of transit routes for illegal migration, which has been on a steady increase in the last few years. The countries of SEE Europe are on some of the main transit routes for illegal migration towards the EU. In addition to this, the weakened economic situation, high unemployment rates and the transition period in the majority of the regional countries on both institutional and legal levels, have contributed to the proliferation of all types of illegal immigrations from the region towards

some of the EU member states- such as labor immigration, increased number of false asylum seekers, trafficking and smuggling.

Altogether, the present migration dynamics are hard to forecast the outcome, seeing how it closely depends on the stabilization processes under way and the EU prospective. The successful facilitation of migration flows in the most unstable areas of the Western Balkans depend on the outcomes of the more general commitment for accession to the Union, the political will for dispute settlement and the social and economic development of the countries of the region.

The countries of South-East Europe not only have to make great efforts to overcome the most pressures current and past problems but they need to shape their policies to address the very complex aspects of the migration issues. As candidate or potential candidate countries they must also progress in the alignment of their policies and legislation with the evolving EU immigration and asylum policies and the related EU migration *acquis*. The EU member states currently find themselves in a situation of dynamic change, due to increasing immigration and large flows of transit migrants through the frontiers of the Union. In the Western Balkans, genuinely durable solutions remain fragile, especially for internally displaced persons and refugees. To all of this, we should add the increasing number of returnees under the readmission agreements with European Union and their reintegration into the society.

3. The EU Perspective towards the Countries of South East Europe

With the Central and Eastern European countries becoming new EU member states, the stabilization of the neighborhood has gained importance. Migration issues are considered as of a high priority when it comes to the EU integration process, duly reflected in the EU political agenda in the areas of Justice and Home Affairs as well as Enlargement. By definition when it comes to the countries of SEE, the migration challenges have had a clear cross-border dimension and should best be addressed from a regional perspective. Regional cooperation is also the basis of the EU enlargement policy towards the region as a whole. Thus, harmonized regional

approaches and enhanced cooperation in the area of migration between the countries of South-East Europe have been promoted through various EU strategies and documents.

The European Council convened in Thessaloniki on 16 June 2003 adopted the “Thessaloniki Agenda for the Western Balkans: Moving towards European Integration”³⁸ where a series of instruments including the European Partnership were promoted to intensify the Stabilization and Association Process (SAP)³⁹ in the region. The countries of the Western Balkans, including Kosovo (under Resolution 1244 of the UN Security Council), were promised a European perspective through compliance with the criteria set by the Copenhagen European Council of 1993⁴⁰. Once again it has been reassured, that the “principles of "own merits" and "catch up" will be applied, in parallel with the regional approach, which remains an essential element of EU policy towards the region”. In promoting regional peace and cooperation in finding durable solutions for the mass displacement after the conflicts, the EU will continue to support “activities and initiatives in the Western Balkan countries promoting social cohesion, ethnic and religious tolerance, multiculturalism, return of refugees and internally displaced persons and combating regressive nationalism”. In the efficient fight against illegal migration (through the region and from the region), the EU encourages “co-operation between the appropriate authorities of the Western Balkan countries and the Immigration Liaison Officers (ILOs) of the EU member states...” In regards to the implementation of the readmission agreements the Council continues, that the “EU will also carry forward its policy of concluding readmission agreements with all the countries of the region...”, supports conclusion of such agreements among the SEE states themselves and between SEE states and third countries (The Thessaloniki Agenda, 2003).

³⁸ For more information see the “*Thessaloniki agenda for the Western Balkans*” (2003), General Affairs & External Relations Council (GAERC)- Council Conclusions, available at: http://ec.europa.eu/enlargement/enlargement_process/accesion_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm

³⁹ The stabilization and association process is the framework for EU negotiations with the Western Balkan countries. It has three aims: stabilizing the countries and encouraging their swift transition to a market economy; promoting regional cooperation and eventual membership of the EU

⁴⁰ Stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities; the existence of a functioning market economy; the capacity to cope with competitive pressure and market forces within the Union, and the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. For a detail list of the criteria please see the European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, available at: http://www.europarl.europa.eu/summits/copenhagen/default_en.htm

The decision of the EU member states to put the SEE countries on the so-called EU accession track is expected to strengthen the efforts of the countries of the region in the direction of accession, especially if accompanied by appropriate policies, cooperation, reforms and usage of the pre-accession funds.

Taking into consideration the particularity of the region, special membership or, at least, different pattern of the EU integration process would represent an attempt of the Union to reconcile the specific nature of the unfinished business of the post conflicts in the Western Balkans. In this sense, justifiably appears the regional approach in the EU enlargement policy towards the countries of SEE. “The major difference with the countries of Central Europe is not just a time-lag or the degree of democratic consolidation but the question of statehood and state capacity. A democratic policy requires first of all a consensus on its territorial framework. As long as this was not established in the aftermath of the break-up of Yugoslavia and as long as state differences pertaining to borders”⁴¹, national minorities, unresolved refugees issues and the Kosovo question shaped high on the political agenda of the majority of the SEE states, the chances of democratic consolidation and solid regional cooperation remain slim.

Generally speaking, the EU deals with two main categories of countries: potential candidate and candidate countries. Macedonia, Montenegro and Serbia have been given a candidate status, while Albania and Bosnia & Herzegovina have been considered as potential candidate countries. As regards to B&H and Kosovo, they remain the most difficult cases of belated transition from protectorates, as the situation with Kosovo is further complicated due to its questionable status, which legality will not be a subject of further analysis. At this stage, however, it is still too early to talk about grouping as it happened in the last two enlargements. The pace and completion of the EU integration process depends on each country’s capacity to deliver their respective responsibilities in a clear, consistent and politically correct way.

The Stabilization and Association Process and the EU enlargement to Central and Eastern Europe have offered objective lessons in refugee and migration prevention. From the eastward enlargement perspective, it is worth mentioning that most new EU member states in Central

⁴¹ Rupnik, Jacques (2011) “*The Western Balkans and the EU: ‘the hour of Europe’*”, p.9, Institute for Security Studies of European Union, Paris

Europe have undergone a period of rapid change from being countries of origin to countries of transit and destination. There are indications that migrants increasingly perceive Central European countries as attractive destinations because of their political stability, economic growth and newly acquired membership of the EU.⁴² In this context, as lessons learned from the previous two accession rounds, integration and employment of foreign nationals and protection of minorities are receiving increased attention on the enlargement agenda for the WB states. Avoiding repetitive mistakes that unfinished business would be settled down once inside the structures of the Union, the EU demands from the SEE states to develop all necessary preconditions to avoid marginalization of any social group from the society, including migrants.

Another important aspect of the South East enlargement process is the territorial prospective for the EU frontiers. In relation to this, substantial financial means have been invested through various programs, funded by the Instrument for Pre-Accession Assistance (IPA)⁴³, with an aim of strengthening the capacities of the border management authorities and preventing illegal immigration.

A common feature of the current migration flows into and through the WB region is that a large proportion of migrants find themselves, at least at a certain point of their migration process, in an irregular situation. This tendency is due to the fact that in the majority of the SEE states the migration management systems are not fully functioning, there are yet bureaucratic obstacles in obtaining appropriate documentation, the government policies are still rather restrictive and there is no systematic way in delivering communication messages regarding migrant rights to the public in wide. On the other hand, from an EU perspective, the pre-accession SEE states are key geographical areas of concern when it comes to combating irregular migration and in particular, trafficking and smuggling of migrants. “These phenomena are directly linked to organized crime and therefore also pose significant security problems for the states concerned.”⁴⁴ In this respect,

⁴² *Migration Management in Central and South-Eastern Europe* (2006), IOM, p.10

⁴³ The Instrument for Pre-Accession Assistance (IPA) offers assistance to countries engaged in the accession process to the European Union for the period 2007-2013. The aim of the IPA is therefore to enhance the efficiency and coherence of aid by means of a single framework in order to strengthen institutional capacity, cross-border cooperation, economic and social development and rural development

⁴⁴ *Migration Management in Central and South-Eastern Europe* (2006), IOM, p.12

the EU puts considerable pressure on the national authorities of the SEE states to make every effort to prevent and combat human trafficking and illegal immigration.

3.1. The Domain of the EU Immigration and Asylum Policy

The development of the EU immigration and asylum policy would inevitably affect the enlargement process of the countries of SEE. Historically, this is a policy area where the member states have maintained sovereignty. However, for some time now the member states of the European Union have been moving towards a common immigration and asylum policy. It is a policy supported by some of the liberal parties in the European Parliament (EP) but it is a hot political issue and many questions still remain unanswered. On the one hand, a united approach to immigration and asylum makes sense in a Union where the free movement of people is a basic principle. On the other hand, immigration is a complicated subject and it is important to draw a clear line between legal and illegal migration. The current intense debate at European level is trying to find a balance between the two categories- protecting the EU citizens with strict border controls thus preventing illegal immigration and, at the same time, helping people/asylum seekers who are in a need of protection.

It was at the Treaty of Amsterdam (1997)⁴⁵ and the Tampere European Council (1999)⁴⁶ that the EU received the responsibility for setting a common immigration and asylum policy, with the principal aim of making migration manageable, legally controlled and coordinated among its member states. The new developments included, minimal standards on facilitation of asylum seekers, enhanced partnership with the countries of origin and transit (this paragraph refers to the SEE states as well), a common European asylum system- confirming the state responsible for the examination of an asylum application, as the principle of non- refoulement is maintained, rules on uniform format for visas and border control, standard procedures for the issue of long term visas and residence permits in the member states, fair treatment of third

⁴⁵ For more information regarding the Treaty of Amsterdam (1997) see:
<https://www.europarl.europa.eu/topics/treaty/pdf/amsten>

⁴⁶ Council Conclusions (1999) available at: http://www.europarl.europa.eu/summits/tam_en.htm#a

country nationals based on enriched rights and the principle of non-discrimination as well as generally more coordinated approach in the management of migration flows (Tampere Council Conclusions ¶ 10-27; Treaty of Amsterdam articles 73j and 73k).

Since 1997, the EU aim to promote, at least minimum standards in the area of immigration and asylum, has marked slow progress in developing a common position on all these issues, particularly on the more sensitive ones. The dilemma in the European Union has always been how to ensure that the external borders are well protected against unwanted migration and mass refugee flows and, at the same time, how to maintain an efficient system on internal borders that does not undermine the concept of free movement of persons within the EU internal market.

Nevertheless, the goal of promoting the EU common immigration and asylum policy continued with the adoption of the Hague Program in 2004⁴⁷ establishing the European common asylum system by 2010 (not reached), a common asylum procedure and increased cooperation between the EU states in managing their external borders. The Hague Program was replaced with the Stockholm Program for 2009-14⁴⁸, which similarly aims to increase cooperation among member states in the area of immigration and asylum. On the first place, the Program states that the EU should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms as soon as possible. It continues that the EU should promote the development of a dynamic and sustainable migration policy, and that well managed migration can be positive for all concerned. The importance of a flexible migration policy to meet future labor needs in the EU is emphasized. Migration issues will be integrated more clearly in more EU policy areas, including enlargement and the common foreign policy. The direction of the asylum policy remains unchanged, with the goal of establishing a common asylum system by 2012 (The Stockholm Program 2009-2014).

With the adoption of the Treaty of Lisbon (2009)⁴⁹ the Charter of Fundamental Rights was introduced into European primary law, which promotes Europe of rights and values,

⁴⁷ For more information regarding the Hague Program (2004) see: http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/116002_en.htm

⁴⁸ For more information regarding the Stockholm Program see: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XG0504\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XG0504(01):EN:NOT)

⁴⁹ Full text of the Lisbon Treaty (2009) available at: http://europa.eu/lisbon_treaty/full_text/index_en.htm

freedom, solidarity and security of all citizens. This gives a basis for endorsed rights and freedoms towards migrant communities as well.

Throughout the development of the EU migration policy the need for coherent migration management and control has been emphasized. The EU member states have realized that they cannot manage irregular flows on their own, but are dependent on cooperation with neighboring countries and, in particular, these from which the immigrants come from. To this we should add the probability of increased labor migration from the WB countries to existing EU states which has been a thorny question for many EU governments prior to enlargement. Annually, tens of thousands illegal immigrants transit through the territories of the countries of SEE out of which approx. 15,000 come from the region itself.⁵⁰ As a result, the member states have seen the EU cooperation as a means of promoting burden-sharing, or what has been termed as “solidarity” between countries in bearing the consequences of asylum-seeking and illegal migration. This approach has been further incorporated in the European Pact on Immigration and Asylum (2008)⁵¹ stressing the need of mutual responsibility and solidarity between EU countries and enhanced partnership with non-EU member states. The document gives a new impetus to the continued development of a common immigration and asylum policy that will take account of both the collective interest of the EU and the specific needs of its countries.

The EU harmonization of policies on asylum and immigration has also been seen as a means of setting standardized approach towards migration. The idea is that establishing common standards, norms and procedures among member states should eventually improve the effectiveness of national policies in areas such as asylum reception, integration of persons granted a refugee status, managing illegal immigration or labor migration. The general goal is to enable individual EU countries to better meet shared goals through common responsibilities, such as socially and economically beneficial management of migration flows.

Another aspect of the EU policy objectives in the field of asylum and immigration is to avoid the creation of a wide gap between EU citizens and third-country nationals which could seriously endanger the integration of immigrants into the social, economic and political life of

⁵⁰ Smith, Karen E. (2003), “*European Union Foreign Policy in a Changing World*”, p.173, Cambridge Polity Press

⁵¹ Full text of the European Pact on Immigration and Asylum available at:

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/j10038_en.htm

the host country. In a number of occasions the EU policy makers have stressed the need of coherent mechanisms for integration of third-country nationals into the society. However, apart from developing common standards, the EU left the very concrete measures of how this policy should look like into the liability of the member states. As a consequence, there are yet discrepancies in the level of integration instruments available among the current member states.

This approach, however, is different when it comes to the enlargement process of the countries of South East Europe. Prior to accession all regional states are required to develop consistent tools for integration of foreign nationals. In the last few years, the countries in SEE have received more and more transit migrants (which after accession might become economic migrants targeting the region), therefore the stance of the EU and the international organizations operating in the region, is that the WB states need to develop policies and practices towards creating ways in which migrant communities participate in the host country's social and economic life, while respecting their values and fundamental norms. According to the International Organization for Migration (IOM) guiding principles, this approach should be holistic and advocate employment, education, language training, health and social services, involvement in social and political life, while taking into consideration relevant demographic developments. The failure to develop such policy objectives from an early stage may, in the long term, create serious social problems, reinforce exclusion, discrimination and racism, and subsequently increase the potential for criminal behavior among immigrant groups. This is important also in light of Europe's general need for immigrants in order to improve its demographic situation and overcome labor market shortages.

Nevertheless the EU "soft" policy stance, in the majority of the leading European countries, national migration politics has promoted and implemented a series of restrictive policy instruments, erecting stronger external borders and more resistant internal rights regimes against potential asylum applicants. Similar policy responses have increasingly come to be used in a number of EU member states, such as detention centers where asylum-seekers are held while their asylum applications are being processed, the use of 'offshore processing' where asylum-seekers are detained in island camps (for instance, these in Greece and Italy) where their applications can be processed without admission to the national territory and fast-track asylum and deportation procedures without clear country of origin information. Does this mean that

“best practices” in restrictive policy measures transfer from country to country quicker than those that promote the best interest of the migrants, respecting their rights and freedoms? On the one hand, very often the EU points a finger to the pre-accession SEE states if any of the fundamental principles have been misinterpreted which could be, on the other hand, a practice in many of the member states themselves.

3.2. Legal Approximation to Chapter 24: Justice, Freedom and Security

The most potent and far-reaching way the EU can exert influence to a country outside the Union is to use the incentive of the membership. Countries acceding towards a membership are expected to adhere to the EU *acquis*, including the directives and regulations on justice and home affairs. The EU position towards the pre-accession SEE states is that, the countries in the region need to develop laws to properly regulate migration, and also to align these laws with those of the EU before they could achieve membership, with the effect that their immigration and asylum policies are typically based on EU legislation and requirements in this area. The overall goal is that the candidate and potential candidate countries of SEE set up all necessary legislative and institutional prerequisites for functioning migration management systems before accession to the European Union.

In this context, approximation of the domestic legislation of the WB states to the EU migration *acquis* is a prerequisite for the EU integration. This process covers both, the legislative process and the implementation of new legislation.

While the problems of adopting the Copenhagen *acquis* are considerable, the problems of implementing the legislation are even more daunting.⁵² The framework within which such harmonization takes place may mean that this process is unable to take account of structural

⁵² Mayews, Alan, (1998) “*Recreating Europe. The European Union`s Policy towards Central and Eastern Europe*”, Cambridge University Press, p.221

economic problems⁵³ as severe as those faced by the pre-accession SEE states. As a corollary, one may draw the conclusion that the adaptation works are often part of wider process of legal reforms related to the political and economic transition and the general Europeanization of the domestic legal system.

It is interesting to note in the case of the Stabilization and Association Agreements (SAA)⁵⁴ with the WB states the word “approximation” is accompanied with an “effective implementation of legislation”. The same position is highlighted by EU experts in several meetings with relevant government representatives from Albania, B&H, Macedonia, Montenegro and Serbia, where very often is stressed that, “although approximation of legislation is the first step, what really counts is the actual implementation of the aligned legislation.”⁵⁵

All Western Balkan states have signed a Stabilization and Association Agreement. In terms of legislative approximation to the EU laws similar wording can be found in all agreements. If we take as an example the SAA between the EU and the Republic of Albania⁵⁶, according to Article 70 (1) “the Parties recognize the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community *acquis*. Albania shall ensure that existing and future legislation shall be properly implemented and enforced.”⁵⁷ This should be additionally interpreted as an obligation to all regional states to incorporate the relevant migration-related Community rules into their respective legal order to the fullest extent possible as an important condition for the future membership in the Union.

⁵³ Evans, Andrew, (1997) “*Voluntary Harmonization in Integration between the European Community and Easter Europe*”, 22ELRev., p.201

⁵⁴ The SAAs constitutes the framework of relations between the European Union and the Western Balkan countries for implementation of the stabilization and association process. The agreements are adapted to the specific situation of each partner country while establishing common political, economic and commercial objectives and encouraging regional co-operation

⁵⁵ Institution Building Unit (TAIEX), DG Enlargement, European Commission expert meeting on *Migration Challenges for Pre-Accession Countries in South East Europe*, March 2011 Belgrade, Serbia

⁵⁶ Selected in alphabetical order, as the migration related provisions in all regional SAAs have the same wording

⁵⁷ Stabilization and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, p.65, available at: http://ec.europa.eu/enlargement/potential-candidate-countries/albania/eu_albania_relations_en.htm

All agreements pay special attention to the area of Justice, Freedom and Security, including to the migration framework. As specified in Article 80 of the same Agreement (SAA Albania), “the Parties shall cooperate in the areas of visa, border control, asylum and migration and shall set up a framework for cooperation, including at a regional level, in these fields, taking into account and making full use of other existing initiatives in this area as appropriate.”⁵⁸ Although justice and home affairs has been identified in each of SEE pre-accession countries as a key area of cooperation, the individual priority areas of action depend on the specific domestic conditions.

In a number of bilateral and multilateral meetings between EU representatives and officials from the Western Balkan states the support for drafting legislation, exchange of information, knowledge and good practices in the legislative process, enhancing the efficiency of the institutions as well as training of staff has been emphasized. This cooperation is further endorsed by the SAAs focusing on, “in the field of asylum on the implementation of national legislation to meet the standards of the 1951 Geneva Convention and the 1967 New York Protocol, thereby to ensure that the principle of non-refoulement is respected as well as other rights of asylum seekers and refugees”, and as for the migration management framework notes have been made towards the field of “legal migration, on admission rules and rights and status of the person admitted. In relation to migration, the Parties agree to the fair treatment of nationals of other countries who reside legally on their territories and to promote an integration policy aiming at making their rights and obligations comparable to those of their citizens.”⁵⁹

In the European Union the general normative framework is comprised of the following instruments⁶⁰:

- The 1951 Geneva refugee Convention (and 1967 protocol)
- The 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR)⁶¹

⁵⁸ SAA of the Republic of Albania, p.75

⁵⁹ Ibid., p.76

⁶⁰ Note: All pre-accession countries of the Western Balkans are signatories and have ratified these international instruments

⁶¹ The ECHR constitutes the most significant legal framework for human rights protection within Council of Europe member states. The rights protected under the ECHR apply irrespectively of citizenship and thus also to migrants, refugees and asylum seekers under jurisdiction of the member states of the Council of Europe

- The 1984 UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)

In terms of the EU body law, the EU migration *acquis* consists mostly of directives (nineteen out of twenty two legal acts) and regulations in the area of asylum, visa policy, border control, legal and illegal migration and prevention and combating of trafficking in human beings (for a detail list of the EU *acquis* see the attached Annex I). Generally speaking, the European Union encompasses two separate legal regimes relating to migration- on the one hand there is highly developed EC legal framework regarding the right of nationals of the member states to migrate and seek employment in any of the other member states. On the other hand, the second regime relates to nationals of countries outside the EU which applies different rules with less clarity. As pre-accession countries (currently non-EU member states but with the potential to become) the WBs need to adhere to the rules regulating both legal regimes.

Likewise, the Commission assesses the general human rights situation in the countries of the region and addresses the question whether basic human rights norms and laws are enacted in the national legislation and applied in practice or whether the national laws in themselves might infringe fundamental human rights, safeguarded under the EU law.⁶² The national constitution, migration and asylum related legal acts, and national laws regulating citizenship, the rights of minorities, judicial guarantees and proceedings, laws regulating the freedom of association and assembly as well as registration and activities of political parties are crucial for the overall assessment of the human rights situation in the associated countries of the Western Balkans.⁶³

Promotion of human rights and access to remedies against human rights violations are important aspects of national mechanisms for the protection of migrant rights as well. Furthermore, it is not sufficient for human rights (relevant to migrants as humans too) laws to be merely adopted, as already mentioned they need to be applied in a non-discriminatory and non-arbitrary manner. Researching legal provisions and studying their implementation in practice is a core task of the European Commissions` Progress Reports, expert missions and legal reviews of the pre-accession countries in the region. Besides EC, reporting and monitoring mechanisms of

⁶² For instance, respect of the provisions envisaged under the Charter of Fundamental Rights of the European Union now (after the adoption of the Treaty of Lisbon) legally binding

⁶³ It is beyond the scope of this paper to examine all these legal acts

the UN human rights treaties and the Council of Europe also represent important sources for such information.

The scope of the approximation of legislation is defined by the regularly extent of the EU law and generally cannot be negotiated. Since the common aim for the regional states of the Western Balkans remains EU accession, the only factor related to the process of legal adaptation that may be subject to negotiation is the timeframe of the approximation works and possible transitional periods.

From the transposition perspective for the Western Balkans as associated countries and the prospective of the membership the vast body of the EU law needs to be implemented, mostly by means of transposition into the national legal systems before accession to the Union. There are three main legal sources compliance with which is mandatory during the pre-accession process- regulations, directives and decisions (to this we can also add the case law of the Court of Justice of the European Union- ECJ). Regulations are legal acts which are directly applicable and binding in its entirety. Regulations (with few exceptions), should not be transposed in the legal systems of EU member states, but they should be transposed in the legal system of the pre-accession SEE states (as EU candidate and potential candidate countries) in order to ensure that the requirements of the EU law are properly implemented. Then all legal acts that transpose the regulations would need to be abolished upon the accession of the country to the European Union.

Directives are binding, as to the result to be achieved, upon each member state to which it is addressed, but leaves to the national authorities of the member states the choice of form and methods of approximation (harmonisation). Therefore it represents a compromise between the need for uniform legislation within the EU and the need to retain the greater diversity of legal systems of EU member states. The aim of the directives is harmonization of the national laws of EU member states, not the unification of legal provisions, as is the case of the EU regulations. As abovementioned, in the area of migration, the directives are a dominating instrument of EU law.

Generally speaking, the decisions specify its addressees and are binding in its entirety only on them. Decisions may be addressed to the EU member states, EU institutions, natural or legal persons, who reside or are, registered in any of the EU member states. The case law of ECJ is very important for the correct law approximation process. The correct approach to the

transposition of the EU migration *acquis* shall ensure that the relevant judgments of the European Court of Justice are analyzed and observed during their transposition into the national legislation.⁶⁴ The ECJ also assists as to the interpretation of the provisions of the EU migration *acquis*.

When it comes to the approximation process, the EU law does not provide for any specific legal approximation techniques, which would be obligatory for the EU member states. Due to the divergence and specificity of the legal systems of the EU member states there was never an attempt to provide more detailed uniform rules for the law approximation procedures and the necessary techniques. The only criteria/principles of correct law approximation are defined by the case law of the European Court of Justice.

Since EU regulations (with few exceptions), cannot be transposed in the legal systems of the EU member states, but are to be transposed in the legal system of the associated WB states (as countries having contractual obligations under the SAAs), it is presumed, that the same criteria/principles could be used also for the transposition of the EU migration *acquis* into the legal systems of the SEE pre-accession states. Such principles need to be of course adjusted to the specific situation of the regional states as currently non-EU member states.

However, the experience of other non-EU member states (similar process occurred during the Eastward enlargement process) shows that the progress in law approximation area is measured by the European Commission using almost the same identical methods as for the EU member states. In addition to this, the EU accession would require that the legal systems of the WB states accept the very important doctrines of supremacy, direct applicability and direct affect.⁶⁵ This may require certain constitutional amendments prior to full EU membership.

Various concepts relating to the methodology of approximation have been undertaken by the candidate and potential candidate countries in the region. Taking into account the previous two

⁶⁴ Gap Analysis Report on the Legislation of the Republic of Serbia in comparison with the EU Acquis in the area of Migration (2011), document developed within the “Capacity Building Project of Institutions involved in Migration Management and Reintegration of Returnees in the Republic of Serbia (CBMM)”, implemented by IOM in close cooperation with CRS, p.6, document not publically available

⁶⁵ This may include, for example, the revision of powers of the Parliament, the government and the national courts

rounds of enlargement process, we could distinguish the following most common criteria/principles of correct law approximation:

- The state may choose whether to include the provisions of a directive into the existing legislation or to adopt a new legal act. It has been noted that in some of the pre-accession SEE states the legislative method frequently encourages the development of previously underdeveloped fields of law, and sometimes it may even lead to the creation of new, previously unknown fields of law⁶⁶;
- The choice of the national legal act, by which a directive shall be transposed, is dependent on the constitutional order and hierarchy of legal acts of the country. However, for example, irrespectively which type of legal act is chosen, the directive shall be transposed in way that it is legally binding for the public institutions, natural and legal persons, its application by the administration and courts is ensured on the whole territory of the state, the text of the national legal act is published and communicated to the public by means of at least the Official Gazette or similar source. Thus internal instructions or other similar documents, as well as the national courts' case law or administrative practice are not deemed as the proper instruments for law approximation;
- If a directive intends to grant the certain rights to the individuals (for example, the right of the asylum seekers for reception conditions), the provisions of the national legal act shall grant these rights in very clear manner;
- Definitions, which are provided in the directives, usually shall be transposed into the national legislation. The issue of the correct transposition of the definitions is very important since the meaning of the same legal or other term could be very different in every EU member state⁶⁷. Non-transposition of the definitions causes problems especially when a directive includes rather precise and detailed definitions of the main concepts

⁶⁶ “*European Perspectives of Western Balkans: Regional v/s National Approach*” (2004), Support to promotion of reciprocal understanding between the European Union and the Western Balkans, Regional Research Paper under the Specific Grant Agreement RELEX I-2 190202 REG 4-14

⁶⁷ Good example could be the definition of the term “an asylum seeker” in the provisions of EU law which does not include EU citizens in its scope and therefore is much narrower than in most of the non-EU countries

used in this directive⁶⁸. Thus the lack of definition may result in interpretation and application of relevant provisions of the national legislation in a manner and meaning, which is not totally coherent with or even contrary to the meaning of the provisions of the EU law (CBMM Gap Analysis Report, Serbia 2011).

Good example could be the number of migrant categories (EU citizens and members of their family, legally residing third country nationals, nationals who do not/who need entry visa, asylum seekers, holders of the “European Union Blue Card”, etc.) that have been precisely distinguished within the EU law which evokes certain rights and obligations. Insofar, the national migration related legal provisions of the majority of the pre-accession WB countries allow wide opportunities of interpretation regarding the status of foreigners. This affects also the corresponding rights and obligations and their applicability, or in some cases the lack of such rights. For instance, the notion of integration of foreigners which is yet not fully implemented in the legal practice of the WB states` migration management systems. This arises reasonable doubts whether such wide approach of the national legislation of the SEE pre-accession states will be in line in future with the requirements of the EU law that provides for separate approach to and specific and detailed legal regulation of entry and residence for a number of categories of foreigners.

The position of the European Union is that the provisions of the EU law shall be fully implemented not only in theory but in practice as well. In this respect, the confirmation of compliance of the national law with the EU law should follow from its correct interpretation by the competent state authorities, but also clearly stated in the national legislation. Therefore the laconic wording of some of the legal acts of the WB countries (as previously mentioned it is rather underdeveloped policy area) may lead in future to the unnecessary disputes over the facts of whether the provisions of the EU law have been correctly transposed in the legal systems of the pre-accession states in the region.

The two most common ways of legal approximation to the Union`s legislation are the literal transposition (i.e. the literal copying out of parts of the text of a directive in a new national legal act) and transposition with minor or major terminology changes, or other adjustments – so-called

⁶⁸ Steunenbergh, Bernard; Voermans, Wim (2006) *“The transposition of EC directives: A Comparative Study of Instruments, Techniques and Processes in Six Member States”*, University of Leiden

reformulation (elaboration) technique. In principle due to the growing complexity of some of the texts of the EU migration *acquis* it can be claimed that none of the countries uses only one of the techniques mentioned above. The pre-accession SEE states in reality may use both of the legal approximation techniques, as well as their modifications and combinations. The best law approximation results can be achieved by the legal drafters if they use the combination of the two basic techniques depending on the actual contents of the EU legal act that must be transposed.⁶⁹

A special case is the use of references to the transposed EU legal acts in the national legislation of the EU member states. For the EU member states, references to directives are obligatory. In most cases, such requirement is contained in the directives themselves which is a part of the EU migration *acquis* as a standard provision. For the pre-accession candidate and potential candidate countries the lack of reference is being considered as the deficiency in the transposition of the EU legal acts into their national legal systems. Such act may be only considered by the European Union as partially compliant with the EU legal requirements.

As signatories of the SAAs, the pre-accession WB countries have contractual obligations to approximate their national legislation to the requirements of the EU law. The countries of the region should approximate their legislation to the highest possible degree of compliance that is achievable before accession.

Another important aspect of the legal approximation process for the pre-accession SEE states is the capacity strengthening of relevant government institutions and bodies as well as cooperation and coordination among them in order to fulfill the obligations deriving from this process. Line-up ministries and agencies remain the main responsible institutions in the field of migration management, especially for revising conflict legislation and drafting new legislation in accordance with the EU migration law.

Taking into account the continuing development of the EU migration legislation one may conclude that the approximation process has a very dynamic character. In regards to the harmonization process to the EU migration *acquis* the associated countries of SEE have undergone moderate steps of approximation. Although, that a wide voluntary approximation of the domestic legal systems with the European standards has started in late 1990s in some of the WB states

⁶⁹ CBMM Gap Analysis Report, Serbia 2011, p.10

(mainly in areas such as free movement of capital, environment, industrial and intellectual property, competition and consumer protection, social policy, public procurement, etc.) the transposition of the EU *acquis* under Chapter 24 has been neglected till recently.

To support this process, over the last few years, the pre-accession countries in the region have developed a documentary package providing a vision for the approximation of legislation. The package includes: wide range of strategies and, in particular, for EU integration and the accompanied action plans, methodology of approximation, glossary with legal terms regarding the EU *acquis*, manual on the use of the community legislation, identified set of legal acts that needs to be gradually aligned with the *acquis communautaire*, government position and policy papers, etc.

Thus, alongside with the legal harmonization to the EU migration *acquis*, certain policy documents need to be adopted, such as the Migration Management Strategy with a corresponding action plan (MMS- for a detailed list of adopted documents see the attached Annex II)⁷⁰ and the Migration Profile (MP).⁷¹ The overall goal of these documents is the establishment and implementation of mechanisms for comprehensive and consistent monitoring of migration flows. Furthermore, these documents help the European Commission to get a precise picture regarding the migration structure and government will in facilitating migration. All regional states have developed Migration Management Strategies (the full name of the documents may differ from country to country) with a various degree of implementation. In regards to the MPs, they correspond to the same indicators and headings, thus allowing for regional comparability. In

⁷⁰ As recommended by the European Commission, the SEE states need to developed a Migration Management Strategy, which aim is to strengthen the institutional framework that will give incentive for the consistent implementation of the migration policy

⁷¹ Drafting of migration profiles in South East Europe countries commenced in 2008, when the International Organisation for Migration, acting on recommendations of the European Commission, began defining Migration Profiles for Albania, Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Turkey. By now in the majority of the countries the MPs have been developed by IOM, the only exceptions are B&H and Serbia where the documents were realised by government institutions in cooperation with IOM. Migration profiles were proposed by the European Commission in the Communication on Migration and Development in 2005. According to the text, migration profiles should “aim to gather information on issues such as the labor market situation, unemployment rates, labor demand and supply and present or potential skill shortages by sector and occupation, skills needs in the country, skills available in the diaspora, migration flows, incoming and outgoing financial flows linked with migration, including migrant remittances, as well as relevant gender aspects and those related to minors” (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Migration and Development: Some concrete orientations COM (2005) 390, p. 37, annex 8)

order to achieve the long-term goal of EU accession significant efforts have been made to improve the countries' migration management capacities by regularly updating the strategies and the profiles. Insofar, however, this has been done only by B&H, FYR Macedonia and Serbia in regards to the MPs. In relation to the MMSs only Macedonia and Serbia managed to implement the accompanied action plans on migration policy, although with some delays. Montenegro has adopted a new strategy for integrated management of migration for 2011-2016 and the corresponding action plan for 2011-2012 (see the attached Annex II).

Nevertheless the considerable efforts put forward, challenges associated with the successful implementation of the migration policies in the WB states remain. These challenges are namely the full implementation of the migration related legislation and monitoring of the realization of the strategies in this field, coordination among state stakeholders tasked with migration issues and the problem that one issue might be incorporated in a number of strategies which makes it very difficult to develop follow-up mechanisms.

According to the EC Progress Report for Albania (2011)⁷² in the area of migration and asylum the legislative framework still needs to be fully aligned with the EU *acquis* and the ongoing revision of relevant legal provisions has not been completed (no gap analysis report available). Insofar, no ID documents have been provided to refugees and persons granted complementary protection.⁷³ Recommendations made by the EC stress that "preparations in this area need to be stepped up". In addition, Albania continues to apply a visa free arrangement for citizens of certain non-EU countries included in the negative list. Although, Albania has achieved some positive outcomes regarding its institutional and legislative framework additional efforts would be required to reach the EU standards in the area of migration and asylum.

As incorporated in the Progress Report of Bosnia and Herzegovina (2011)⁷⁴, among many others unresolved IDPs and refugee issues, the country has achieved considerable progress in the fields of migration and asylum. In the area of asylum, B&H is fully implementing its revised

⁷² Full text of the document available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/al_rapport_2011_en.pdf+progress+report+albana

⁷³ Be aware of the fact that the percentage of a granted refugee status (including subsidiary protection) to foreign nationals in all five regional states is extremely low, not only in comparison to the more advanced countries of Western Europe but also when compared to the new member states of Central and Eastern Europe

⁷⁴ Full text of the document available at:

http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2011_en.htm

legislation (namely, the Law on movements and stays of aliens and asylum 2008). As recommended by the Commission and UNHCR, the country strengthened its institutional capacities in order to efficiently address the new migration challenges- increased numbers of asylum seekers and irregular/transit immigrants (development of new permanent asylum reception center and training of staff/border police). However, additional human and financial resources would need to be allocated to guarantee the full efficiency of the migration management system.

The Progress Report of the FYR Macedonia (2011)⁷⁵ stresses that some progress regarding the institutional setup and legislative framework in the field of migration has been made. The Law on foreigners was amended to provide a legal framework for the establishment of a national database for foreigners, covering data on asylum, migration and visas. “The database is operable and connected to all concerned institutions and training of users and administrators of the database has been completed, however, the secondary legislation necessary for its use and maintenance has yet to be adopted.” As for the regional cooperation, the exchange of information and coordination on irregular migration with countries from the region has been enhanced. Due to its geographical location Macedonia (together with Serbia)⁷⁶ is highly affected by irregular/transit immigrants. In 2011 the number of asylum seekers and irregular immigrants increased significantly.

The government authorities operate reception centers and partly integration facility for persons granted refugee status. Certain government rules and programs have been adopted establishing the role of each institution in the process of integration of refugees and providing for the appointment of legal guardians for unaccompanied minors and mentally disabled persons. Nevertheless the government efforts, the asylum-seekers still face difficulties accessing information about procedures and social rights. There has been no progress in speeding up the process for providing asylum seekers with ID documents (as it happens in Albania). Free legal aid provided by the state is still not available to asylum-seekers. As highlighted in the Report, the “legal framework for ensuring access to public health insurance for persons granted asylum is

⁷⁵ Full text of the document available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

⁷⁶ The two countries also have signed and ratified a Readmission Agreement that will be subject of discussion in the next chapter

missing. Although the administrative capacity of the section for asylum in the Ministry of the Interior increased slightly, its efficiency in issuing first instance asylum decisions cannot be considered as satisfactory and needs to be improved. Efforts should be made to consider how to prevent potential abuses of the asylum system. Problems providing interpretation persist. Appeal decisions by the Administrative Court continue to be issued largely on procedural rather than substantive grounds, nevertheless the fact, that a further appeal instance was introduced with the establishment of the High Administrative Court” (Progress Report Macedonia 2011).

The Progress Report for Montenegro (2011)⁷⁷ highlights some progress in the area of migration. However, further efforts would be required to ensure full alignment with the EU *acquis*, and more precisely on legal migration, notably on right to family reunification, long-term residence and conditions of admission of third-country nationals for the purposes of studies. As it is in all pre-accession regional countries, steps are to be taken to strengthen the administrative capacity and to improve inter-institutional cooperation. Similarly to Macedonia and Serbia, there have been increased numbers of irregular/transit migrants. The government authorities have started a legal approximation process to the EU *acquis*, but both legal acts, the Law on Foreigners and the Law on Asylum are yet to be fully implemented and harmonized with the EU legislation and international standards. The country operates an asylum reception center (construction recently completed) but additional efforts would be needed to ensure that the asylum seekers have access to healthcare, education and personal documents. Fully in line with the tendency in the rest of the pre-accession SEE states, the number of persons granted refugee status is very low. Another problematic area is the visa policy and its alignment to the EU Schengen *acquis*. This is largely due to the fact that the country’s diplomacy is very recent which results in limited diplomatic and consular networks. As recommended by the European Commission, Montenegro needs to strengthen the administrative and technical capacity of its Ministry of Foreign Affairs and European Integration, although this is a very slow and expensive process requiring substantial human resources and financial capital.

⁷⁷ Full text of the document available at:
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mn_rapport_2011_en.pdf

In 2011 the European Commission published the official opinion on Serbia's application for membership of the European Union.⁷⁸ One of the biggest obstacles in the area of migration is the increased number of unfounded asylum applications by Serbian citizens in several EU member states after being granted a visa-free travel regime.⁷⁹ In order to address the broad range of migrant categories the Serbian government has adopted number of strategies on migration management, combating illegal migration, resolving the problems of refugees and IDPs and reintegrating returnees. Thus, Serbia is one of the few European countries implementing such diverse number of strategies in the area of migration. As mentioned earlier Serbia conducted a gap analysis report identifying discrepancies between the Serbian legislation and Chapter 24, Justice, Freedom and Security. Generally speaking, the new Law on Asylum (2008) and the amended Law on Foreigners are broadly in line with the EU *acquis* and international standards, though further efforts to ensure full alignment on legal migration, notably on the right to family reunification, long-term residence and conditions of admission of third-country nationals for the purpose of studies would be needed. Yet the biggest problem faced by the country is resolving the protracted refugee situation after the Balkan wars and finding durable solutions for the Internally Displaced Persons (as a result of the Kosovo crisis).

Since 2010 there has been a steady increase of asylum seekers and irregular/transit immigrants (600% increase compared to statistics of previous years⁸⁰) present on Serbian territory. As a consequence, the country opened a second asylum reception center, followed by on-going discussions regarding opening of a third center.

Currently, Serbia is undertaking an institutional transformation. A Law on Migration Management (LMM) has been finalized and endorsed by all relevant institutions waiting its final adoption by the Parliament.⁸¹ The Law represents a unique legal act for the region, fully in line with the EU standards, that will try to develop a functioning migration management system, overcoming problematic issues, such as the lack of efficient coordination among line-up

⁷⁸ Full text of the document available at: http://ec.europa.eu/enlargement/.../2011/.../sr_analytical_rapport_2011_en

⁷⁹ This issue will be further elaborated in the next chapter

⁸⁰ Official statistics provided by the Commissariat for Refugees of the Republic of Serbia for the years 2010-2012

⁸¹ This is no longer applicable. After the elections held in May 2012, all draft laws were withdrawn from the National Assembly, and LMM is currently in a process of collecting new endorsement from the relevant ministries, after which it will be submitted to the Government and following the adoption by the Government to the National Assembly

ministries and bodies tasked with migration issues and set-up data sharing mechanisms between law enforcement authorities and other competent bodies. The Law on MM also envisages the transition of the Commissariat for Refugees into a Commissariat for Refugees and Migration-enhanced with extended competencies in the area of migration.

In short of what has been said so far, clearly in most of the pre-accession WB states the institutional and legal framework is largely in place, but implementation of the existing legislation and strategies remains insufficient and further efforts to fully align the existing legal acts to the EU migration *acquis* would be needed. Implementation of the migration related strategies needs to be made more effective and coherent. In the migration and asylum fields most of the regional countries are faced with limited resources (both human and financial), overall lack of capacity and insufficient coordination of the relevant institutions are yet the main challenges for the regional countries to reach EU standards in this area.

3.3 The Process of EU Visa Facilitation and Readmission Agreements for the Pre-accession Countries of South East Europe

For a long time now the readmission agreements have been used as means for combating illegal immigration, whether bilaterally concluded or at EU level. Over the time the readmission policy has become part of the immigration control systems consolidated by countries of origin, transit, and destination. It was with the adoption of the Treaty of Amsterdam (ToA), which empowered the European Commission to negotiate and conclude EU readmission agreements with third countries.⁸² As provisionally specified within the text of the agreements, a country that “has signed a readmission agreement (“partner country”) shall readmit, at the request of a member state, its nationals who do not comply with, or no longer comply with, the entry or residence conditions of that state. It agrees to readmit the person concerned if it is proven, or can

⁸² Since the entry into force of the Treaty of Lisbon, the European Parliament has acquired the power to give its own consent to the EU readmission agreement (Art 218 TFEU)

be validly assumed, that he/she is a national of that country.”⁸³ Thus, technically speaking, “readmission as an administrative procedure requires cooperation at the bilateral level with the country to which the readmitted or removed persons are to be relocated.”⁸⁴

Insofar, the European Commission has adopted “a standard approach in negotiating readmission with third countries, by seeking to achieve final texts that have as many common features as possible.”⁸⁵ This means that a kind of model has been used and readapted to each bargaining process specifying the reciprocal obligations that each contracting party commits to respect.⁸⁶

Moreover, all the EU readmission agreements that have been concluded with the WBs so far apply not only to nationals of the signatory country but to third-country nationals (subject to evidence proof⁸⁷) as well. Thus, the EU member states have the legal justification to return third country nationals to the last transit country. On the other hand, however, almost none of the transit countries bordering the EU (in this specific case the five associated WB states) has any experience in readmitting third country nationals to their home countries, and in most cases, readmission agreements with countries of origin are non-existing. This is mainly due to the fact that none of the regional states have the sufficient capacity, resources and experience in carrying out the various steps of the return procedure to the countries of origin.

All associated Western Balkan states have signed and ratified an EC readmission agreement that entered into force in 2008. In addition to this, a number of bilateral agreements with some of the member states have been concluded. Supplementary agreements among the five pre-accession countries have been finalized as well. Montenegro signed a bilateral readmission agreement with Kosovo and ratified the existing readmission agreement with Albania. A readmission agreement was also signed between Macedonia and Serbia (the two most affected

⁸³ Council Decisions 2007/817/EC, 2007/818/EC, 2007/819/EC and 2007/820/EC of 8 November 2007 on the conclusion of Agreements between the European Community and the Former Yugoslav Republic of Macedonia, the Republic of Montenegro, the Republic of Serbia and Bosnia and Herzegovina on the readmission of persons residing without authorization.

⁸⁴ “*Readmission Policy in the European Union*” (2010), Study paper Directorate-General for Internal Policies, European Parliament, p.12

⁸⁵ Trauner, Florian; Kruse, Imke (2008) “*EC Visa Facilitation and Readmission Agreements: A new Standard EU Foreign Policy Tool?*”, Center for European Policy Studies (CEPS), p.24

⁸⁶ “*Readmission Policy in the European Union*”, p. 14

⁸⁷ This is applicable to persons who have entered illegally and directly from the territory of the partner country, after staying in or transiting through, into the territory of the member state concerned

regional states by irregular/transit migrants). Practically, this is aimed at the swift removal of aliens who are viewed as being unauthorized. As it is in the case with the EU readmission and bilateral agreements of the member states, the regional agreements apply not only to nationals of the contracting parties to the agreement, but also to third-country nationals who transited through the territory of the contracting parties (which represented the highest percentage of facilitated return in the last two years). Generally, the very implementation of the agreements has continued without any significant (procedural) implications.

From the very beginning, as incorporated in the Thessaloniki Agenda, a link in the negotiations between readmission and visa facilitation for the WB states become acceptable for the EU political agenda in the region. Thus, the signing of a readmission agreement for the regional states was combined with visa facilitation (and later liberalization) that differs from the remaining agreements concluded with third countries. This clause has a reasonable justification. The pre-accession countries of South East Europe have the status of candidates and potential candidates for EU membership.

As highlighted by the former Commissioner for Justice, Freedom and Security Franco Frattini, the conclusion of visa facilitation and readmission agreements is a “concrete step forward along the path set out by the Thessaloniki agenda. Visa facilitation should encourage the Western Balkan countries to implement relevant reforms and reinforce their cooperation at regional level and with the EU in areas such as strengthening the rule of law, fighting organized crime and corruption, and increasing their administrative capacity in border control and security of documents by introducing biometric data. The conclusion of visa facilitation agreements is linked to the conclusion of readmission agreements which will contribute to combating illegal migration (Council of the European Union 2003)”⁸⁸

Against this background, the EC visa facilitation and readmission agreements now constitute a major means of pushing for further institutional and legislative reforms. The European Commission has submitted a “roadmap” to each of the Western Balkan countries defining the exact conditions to be met. The roadmaps are tailor-made and correspond to the situation of the

⁸⁸ Press release from the European Commission, May 2007, article available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/680>

country concerned.⁸⁹ The implementation of the process was closely monitored by the EC, which eventually lead to abolition of the visa requirements. The process was based on the perception that if the Western Balkans states meet their relevant conditions and benchmarks and facilitate all necessary domestic reforms, they will gradually advance towards visa liberalization. Once all relevant conditions are in place, the Commission will propose to the Council that the respective visa obligations are to be lifted. In general terms, “the substance of the EC visa facilitation agreements with the Western Balkans are the most comprehensive. In comparison to other similar agreements concluded by the EU with third countries, they contain the clearest provisions regarding visa-free travel and more categories of citizens that benefit from facilitated travel are included.”⁹⁰ After meeting all necessary requirements, citizens of these countries, holders of biometric passports, have been allowed to travel to the EU for up to three months. This decision was based on substantial progress made in the areas of justice, freedom and security, particularly fulfillment of the specific conditions set out in the roadmap for visa liberalization. To fulfill the conditions, the countries on the Schengen ‘former blacklist’ (to which they could be relegated at any given moment) had to revise parts of their legislation, including the laws on foreigners and asylum as well as to implement significant police and administrative reforms.

As a result of the readmission agreements and the following visa liberalization in December 2009 for Macedonia, Montenegro and Serbia and December 2010 for Albania and Bosnia and Herzegovina there have been a steady increase of unfounded asylum applications and immigration from these countries to the EU.⁹¹ Then the term “false” asylum seekers appeared (since most of the asylum seekers are potential economic/labor immigrants). Consequently, several of the most affected EU member states- namely Belgium, Germany and Sweden officially addressed the European Commission requesting concrete measures. Under the EC pressure and the possibility of a visa ban the authorities in the Western Balkan countries have introduced decisive measures. This included awareness raising campaigns, investigations into illegal residence changes and enhanced border checks. At the same time, institutional capacity strengthening and alignment to the EU legislation have accelerated. However, very often literate

⁸⁹ Trauner, Florian; Kruse, Imke (2008), p.6

⁹⁰ Ibid., p.15

⁹¹ Notably from Albania, Macedonia and Serbia - the reasons behind this immigration flows might vary from historical links (the affected member states have substantial ex-Yugoslavian diasporas) to particular false information dissemination, since it happened on peak periods. To this we should add the economic circumstances and poverty levels in some of the regions of these countries

and an immediate compliance with the EU legislation do not guarantee the desired results. Efforts to address this issue are ongoing, as numbers of bilateral and multi-lateral meetings between government officials of the regional countries and EU representatives have been scheduled. In order to ensure ongoing implementation of the commitments taken, a post visa liberalization monitoring mechanism has been established. The Commission presented its first monitoring report to the European Parliament and the Council in June 2011.

Indeed, willing to join the EU, the Western Balkan states are undergoing an institutional and legislative transformation and, at the same time, they are trying to reduce the number of its own citizens immigrating to the Union. On the other hand, the European Union has developed follow-up mechanisms, monitoring the reforms which these countries need to continue to carry out. It also introduces emergency consultation arrangements so that the EU and its member states can, in cooperation with the authorities of the countries concerned, react in the best possible conditions to any specific difficulties which might arise with flows of persons from the countries of the Western Balkans and allows the Commission, if necessary, to propose the suspension of the visa free travel.

The first two parts of this chapter broke down the process of signing and the consecutive implementation of the readmission agreements in the associated WB countries. However, there is an additional side of the process that relates to the facilitation of the readmitted persons.⁹² This is mainly concentrated on the return and the associated urgent needs for reintegration into the home society of people who fled the conflicts years ago, or individuals who later emigrated (due to the worsen economic circumstances) from the region to Western Europe, often in an irregular situation.

The increased return number of irregular migrants to the region, is a more recent phenomenon, which dynamics are partly due to the more restrictive immigration policies predominant in the majority of the old EU member states, but it is also a part of the cyclical process of migratory flows due to the visa liberalization for the South East Europe states and the traditional difficulties faced by the migrants themselves in finding work in their home countries. The vast majority of return originates from areas that lie within former conflict zones which are

⁹² This part is not relevant for the return of third-country nationals which was discussed previously

still characterized by weakened industries, low economic performance and very high unemployment, poor infrastructure and peculiar demographics- depopulation and aging populations in these regions.

Currently, the government authorities in the pre-accession SEE states are trying to develop policies which aim at responding to the need of enhanced reception and reintegration capacities to support the expected increase in the numbers of returnees from some of the most affected European countries (i.e. plans for large returns of Roma communities from Germany, Sweden and Switzerland). Predominantly, high percentage of the returnees represents ethnic minority groups, refugees and IDPs that were seriously affected by the dramatic changes connected to the collapse of Yugoslavia and the followed armed conflicts in the Balkans. Lack of personal documents, access to housing and employment, language barriers (some of the returnees do not speak sufficiently the language of their home country⁹³) and difficulties with recognition of professional skills and qualifications have been identified as the greatest obstacles to reintegration and thus the most important priorities for national integration policies. Thus, employment and economic opportunities and acceptable levels of security are among the main conditions that will persuade migrants to return home permanently.

On this basis it may be inferred that, concerning the issue of return and reintegration, it must be noted that it will take a long time to ensure the long-term sustainability of the process foreseen in the framework of the readmission agreements to all countries in the region. Given the conditions of high unemployment in the countries to which they are returning and the social, economic and cultural distance created in the course of long stays abroad, returnees find themselves in very difficult situations. Their reintegration is, however, of crucial importance: on the one hand, to avoid secondary irregular movements and, on the other, to reduce the danger of marginalizing the returnees or falling victims to organized crime.

⁹³ The reason for this might be that they emigrated many years ago (when they were too young) or that they represent an ethnic minority group using different language

4. Regional Cooperation on Migration in South East Europe

As previously discussed, the EU regional strategy places special emphasis on promoting regional, sub-regional and cross-border cooperation between the countries of South East Europe. Furthermore, the EU objectives in the region and its regional policy agenda focus on the current, democratization process and the rule of law, post-conflict resolution, economic difficulties and social issues. As we have seen in the abovementioned chapters, regional cooperation on migration is also the basis of the EU enlargement policy towards the WBs. Historically and politically, the regional migration challenges have a clear cross-border dimension and burden sharing and should best be addressed from a regional perspective. Thus, harmonized regional approaches and enhanced cooperation between the countries of SEE have been promoted.

The associated countries in the WBs are faced with diverse migration challenges, for which the development of inter-regional cooperation is in the interest of all countries in the region, prerequisite for reconciliation and good-neighboring, improved political relations and stability and economic prosperity. Thus, “added” to the list of membership criteria was regional cooperation through good neighborly relations, resolved bilateral disputes and enhanced cooperation in areas of common interest.⁹⁴ This means that although formally not part of the Copenhagen criteria applicable to the Eastward accession rounds, regional cooperation (including resolved bilateral disputes) grew into an essential part of the EU enlargement policy towards the countries of SEE. Therefore, the credibility of the EU membership promise, viewed as a reward driving crucial institutional and legislative reforms, has made the countries of the Western Balkans to cooperate.

In the last few years, considerable government efforts have been put forward to continue evaluation of past experiences, finding durable solutions for the war affected refugees, and working towards strengthening regional cooperation and harmonized standards in all key migration-related areas, while reviewing new trends and challenges in this area. Simultaneously, the regional authorities have worked in close cooperation with all relevant UN and EU bodies,

⁹⁴ Delević, Milica (2007), “*Regional cooperation in the Western Balkans*”, *Chaillot Paper* no. 104, p.24

international organizations and relevant actors in the field of migration, such as civil society, the private sector, NGOs, and local governments, and have continuously maintained synergies and coordination with existing regional initiatives, forums and processes, such as the Migration, Asylum, Refugees Regional Initiative (MARRI)⁹⁵, the Center for Security Cooperation (RACVIAC)⁹⁶, the Regional Cooperation Council (RCC)⁹⁷, the Southeast European Cooperative Initiative (SECI)⁹⁸, the South-East European Cooperation Process (SEECp)⁹⁹, the Central European Initiative (CEI)¹⁰⁰ and the Southeast Europe Police Chiefs Association (SEPCA)¹⁰¹. It should also be added that the EU often acts in this region in cooperation with or in parallel to other international organizations such as the UN or the Organization for Security and Cooperation in Europe (OSCE).

Numbers of regional conferences, workshops, seminars and expert missions, organized with the support of the EU¹⁰², have ensured regional overview, while promoting synergies and joint efforts with a view of taking a balanced national and regional approach to key migration issues in the region. Through these initiatives the EU has managed to promote best practices, exchange of knowledge and information and enhance regional cooperation in the area of migration.

The dissolution of Yugoslavia and the followed arm conflicts brought about many common problems among the now independent WB countries, which problems have required joint efforts in finding commonly accepted solutions. In the immediate post conflict years, the WB states saw more obstacles to regional cooperation than incentives for it. Resolving bilateral political disputes and contested borders have become top priority for the EU political agenda towards a prospective membership for the regional countries. Besides the distinct EU and government interests in regional cooperation, it should be highlighted the clear geographical proximity, historical and economic ties, social similarities and common development features in the region. However, for some years “the post-conflict context, levels of development of democratic

⁹⁵ <http://www.marri-rc.org/>

⁹⁶ <http://www.racviac.org/>

⁹⁷ <http://www.rcc.int/>

⁹⁸ <http://www.photius.com/seci/>

⁹⁹ <http://rspcsee.org/en/pages/read/>

¹⁰⁰ <http://www.cei.int/>

¹⁰¹ <http://www.sepca-see.eu/>

¹⁰² Often financed through- the Technical Assistance and Information Exchange (TAIEX) instrument- managed by the Directorate-General Enlargement of the European Commission. TAIEX supports partner countries with regard to the approximation, application and enforcement of EU legislation

institutions and fragile economies, has had their impact on the willingness, openness and readiness of the WB countries to cooperate on a regional level.”¹⁰³

Finding durable solutions to the remaining persons involuntarily displaced during the disintegration of Yugoslavia still remains a predominant issue on the migration agenda and a key factor for cooperation in the associated countries of South East Europe. To put aside differences and thinking about each others as of rivals, adversaries or guilty parties, and instead, invest efforts to achieve understanding, peace and security in the region and eventually to close the protracted refugee chapter the governments of Bosnia and Herzegovina, Croatia, Montenegro and Serbia have shaped up a Joint Regional Program on Durable Solutions for Refugees and Displaced Persons. The overall joint goal of the regional program is to “comprehensively contribute towards completion of the protracted displacement situation in B&H, Croatia, Montenegro and Serbia by providing durable and sustainable housing solutions with full respect for the rights of refugees and internally displaced persons and the mutual obligation to closely cooperate and synchronize activities in order to ensure durable solutions for them (persons in a need- refugees and IDPs), either through voluntary return and reintegration or local integration.”¹⁰⁴ The program itself represents one of the biggest European projects in the area of migration with a total estimated budgeted 583,661,127 euro. Progressive data exchange and analysis and needs assessment surveys undertaken by the government authorities of the regional states, with the support of UNHCR, revealed 26,898 households (approximately 74,000 individuals) of refugees, internally displaced persons and returnees to benefit from the program outcomes and achieve durable housing solutions. The duration of this joint program is five years and it would require substantial donor support from the international community to complement the on-going government efforts and implement the agreements reached through the regional collaborations (Joint Regional Program, project proposal document).

As indicated by the Commissioner of the Commissariat for Refugees, Republic of Serbia, Mr. Vladimir Cucic achieving durable solutions for refugees and internally displaced persons requires “joint efforts of all parties involved (refers to the regional states) and, more precisely,

¹⁰³ Kotevska, Biljana (1010), “*How to Stop Pretending and Start Cooperating: the Impact of the European Union on Regional Cooperation in the Western Balkans: the Focus on Migration*”, p.40, Skopje, Macedonia

¹⁰⁴ Joint Regional Program, project proposal provided by the Commissariat for Refugees- document not publically available

combination of assistance for return and reintegration in the place of origin or integration in their place of current residence, targeted solutions for the most vulnerable and comprehensive solutions for outstanding issues.”¹⁰⁵

The numbers of regional initiatives and the intensive and frequent regional governmental interactions have been envisaged to address the broad spectrum of migration related issues relevant for the region. Considerable political efforts in overcoming past divisions towards finding comprehensive solutions for outstanding issues have been increasingly put forward. The associated countries in SEE have now realized that they have responsibilities towards each other and that they have many challenges in common, some of them with a clear cross-border nature. The regional states have seen the considerable benefits of increasingly close regional cooperation (as it is the case of the Join Regional Program) - political understanding, economic cooperation and social prosperity. The indications are therefore that, besides, the pure joint government will to find durable solutions for the large number of post-conflict displaced persons- the incentive of the EU membership motivates the regional states to participate in enhanced regional cooperation. It could be perceptively pointed out that the EU still plays an important role for the regional cooperation among the Western Balkan states and it is a driving force for reforms, dispute settlement and strengthening of regional ties.

5. Conclusion

Migration challenges have been a fundamental element of the past and more recent history of the Western Balkan countries, accompanying its stormy events and obviously continuing to do so, even at the start of the pre-accession talks with the European Union. In a short period of time, the migratory situation in the WBs has undergone extraordinary changes. For years, wars and ethnic conflicts have been a predominant cause of population movements, in a continuous political and legal transformation and overlapping of religions, languages, ethnic groups and cultures. The migration picture of the region represents one of the most complex issues reflected

¹⁰⁵ Commissioner, Mr. Vladimir Cucic addressed the protracted refugee situation in the region in his opening speech at the “*Annual Trustee Conference in Stara Planina*” , June 2012, Serbia

in the broad European context. Focusing on the most recent period, together with the mass forced migrations caused by the ethnic conflicts in the former Yugoslavia and Kosovo, one could literally indicate all forms of migration: emigration and immigration, legal and illegal, labor, transit, asylum seekers (both from the region and to the region), human trafficking and smuggling, returnees under the readmission agreements with the EU and internal, causing depopulation of some economically weak regions within the associated countries of South East Europe.

Altogether, the Western Balkan countries characterize an interesting case study on migration, which will obviously maintain a significant role in the European migration dynamics of the coming years. Various factors have contributed and will further contribute to the development of the mobility of the population in the region. The most obvious factors regard the serious economic imbalance between the majority of the now associated regional countries and the geographically approximated member states of the European Union, which represent an important essence of attraction. Furthermore, it should be pointed out that the worst negative effects of the transition process towards market economies have been recorded in the pre-accession countries of SEE, in addition to the high unemployment rates, weak democratic institutions and rule of law.

Nonetheless, the overall orientation of the regional states towards political, legal and economic integration into the EU, gives an incentive for the public authorities in these countries for active legal and institutional transformation, including in the fields of asylum and immigration. In this regard, it would be justifiably said that the readmission agreements and the consecutive visa liberalization process has been the most visible and tangible example of the EU's influence for citizens of the Western Balkan countries, unlike the distant membership prospect offered in return for undertaking to implement often slow and complex reforms. On the other hand, one is entitled to question the extent to which the prioritization of readmission in EU external relations is compatible with the promotion of good governance, democracy and public accountability in the countries of the region. The evidences seem to be strong that the signing and implementation of the readmission agreements in the SEE states is above all a pure interest of the EU member states, which is proved by the little support (in comparison to other sectors) directed to the reintegration of the readmitted persons.

This research paper tried to shed some light on how the drives for flexibility and operability have gradually led to the emergence of diverse cooperative patterns on migration among the pre-accession countries of South East Europe. It is precisely a combination of factors, such as the gradual closing of post-conflict divisions, durable solutions for outstanding issues with a clear cross border dimension and eventually an EU membership that have been conducive to the dramatic expansion of the cobweb of bilateral and multilateral regional government initiatives linked to migration.

Returning to the central hypothesis of this study, it is now possible to conclude that it is difficult to forecast the outcomes of the regional migration management development within the current political and economic context, which closely depends on the EU approximation and stabilization processes under way. Finally, the future migration dynamics in one of the most unstable areas of Europe depend on the effects of the more general political, economic and social development of the countries of the region.

Annex I

Selected EU acquis on Asylum, Visa Policy, Border Control, Legal and Irregular migration and Prevention and Combating of Trafficking in Human Beings

Legal migration

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research
- Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
- Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network

Illegal migration

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence
- Framework Decision 2002/946/JHA of 28 November on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Prevention and Combating of Trafficking in Human Beings

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

Asylum

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Visa policy

- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)
- Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

Annex II

National migration management strategies:

- Albania: National Strategy on Migration and the related Action Plan (2004/2005-2010)
- B&H: Strategy in the Field of Migration and Asylum and the Action Plan 2008-2011
- Montenegro: Strategy for Integrated Migration Management in Montenegro 2011-2016 and the Action Plan for 2011-2012
- Macedonia: Resolution on the Migration Policy of the Republic of Macedonia 2009-2014
- Serbia: Migration Management Strategy 2009, Action Plan 2011-2012

Assessment of Sources

Accuracy of information is closely related to source reliability and balancing of information given by different sources. Knowledge of up-to-date sources was a key element of this research paper. It is particularly important in the regional migration context where reliable and accurate information needs to be double checked. The accuracy of the research was also linked to the currency of the information. This does not mean that reports/documents older than a certain date were not included. Whether a particular piece of information has remained up-to-date depends on the specific country situation.

Within the study, identifying the best sources was often the fastest way to find the information needed. In general, when it comes to the vulnerable migratory flows and statistics in the countries under examination, no source provides complete and fully objective information as often their scope and focus of reporting would be influenced by their mandate or mission. Therefore, throughout my research I have tried not to rely on one single source, but consult many different sources, and different types of sources (relevant recent literature, UN, EU, government, human rights NGOs, and media reports and documents) in order to achieve the most complete and balanced picture possible of the past and current migration dynamics in these countries. I kept in mind the political and ideological context in which a source operates, their mandate and reporting methodology and the intention behind their publications, and assessed the information provided accordingly.

References

- Betts, Alexander; Loescher, Gil, (2010) *“Refugees in International Relations”*, Oxford University Press
- Black, Richard and Gent, Saskia, (2006) *“Sustainable Return in Post-conflict Contexts”*, Sussex Centre for Migration Research, University of Sussex, Brighton, UK
- Boccardi, Ingrid, (2002) *“Europe and Refugees: Towards and EU Asylum Policy”*, in: Aspen Publishers, New York, NY
- Bolesta, Andrzej, (2004) *“New European Immigration and Asylum Policies: Building ‘Fortress Europe’?”*, in Transformation Integration and Globalization Economic Research - TIGER, Warsaw, Poland
- Bonifazi, Corrado; Mamolo, Marija, (2004) *“Past and Current Trends of Balkan Migrations”*, p. 526, Espace populations societies, Rome, Italy
- Boswell, Christina, (2002) *“EU Immigration and Asylum Policy: From Tampere to Laeken and Beyond”*, in: The Royal Institute of International Affairs, Briefing Paper, New Serie No. 30
- Boswell, Christina, (2003) *“The ‘External Dimension’ of EU Immigration and Asylum Policy”*, in International Affairs, Vol. 79, Issue 3, 619 - 138
- Czaika, Mathias, (2009) *“Asylum Cooperation among Asymmetric Countries: The Case of the European Union”*, in: European Union Politics, Vol. 10 (1), 89 - 113
- Delević, Milica (2007), *“Regional cooperation in the Western Balkans”*, Chaillot Paper no. 104
- Düvell, Franck; Jordan, Baill, (2002) *“Immigration, Asylum and Welfare: the European Context”*, in Critical Social Policy, Vol. 22 (3), 498 - 517
- *European Perspectives of Western Balkans: Regional v/s National Approach”* (2004), Support to promotion of reciprocal understanding between the European Union and the Western Balkans, Regional Research Paper under the Specific Grant Agreement RELEX I-2 190202 REG 4-14
- Evans, Andrew, (1997) *“Voluntary Harmonization in Integration between the European Community and Easter Europe”*, 22ELRev
- Favell, Adrian; Hansen, Randall, (2002) *“Markets against Politics: Migration, EU Enlargement and the Idea of Europe”*, in: Journal of Ethnic and Migration Studies, Vol. 28, No. 4, 581 - 601

- Florian Trauner, Institute for European Integration, Research of the Austrian Academy of Sciences, Vienna and Imke Kruse, Max Planck Institute for Human Development, Berlin, (2008) *EC Visa Facilitation and Readmission Agreements: A new Standard EU Foreign Policy Tool?*
- Geddes, Andrew, (2005) *"Europeanisation Goes South: the External Dimension of EU Migration and Asylum Policy"*, in: Zeitschrift für Staats- und Europawissenschaften, 3 (2), 275 - 293
- Givens, Terri; Luedtke, Adam, (2004) *"The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization"*, in: Policy Studies Journal, Vol. 31, Issue 1, 145 - 165
- Gromovs, Juris, (2011) *"EC Visa Facilitation Agreements and Readmission Agreements- State of Play and Future Prospective"*, published by LAWPOL book
- Guild, Elspeth; Harlow, Carol (eds.), (2001) *"Implementing Amsterdam: Immigration and Asylum Rights in EC Law"*
- Guiraudon, Virginie, (2003) *"The Constitution of a European Immigration Policy Domain: A Political Sociology Approach"*, in: Journal of European Public Policy, Vol. 10:2, 264 - 282
- Hadjimichalis, Costis, (2004) *"The Changing Geography of Europe: A Balkan and Southern European View"*, in European Urban and Regional Studies, Vol. 11 (4), 363 – 366
- Hailbronner, Kay, (2000) *"Immigration and Asylum Law and Policy of the European Union"*, Martinus Nijhoff Publishers (Brill), Leiden, NL
- Hatton, Timothy J., (2005) *"European Asylum Policy"*, in: IZA Discussion Paper No. 1721, 8/2005 (published in: National Institute Economic Review No. 194, October 2005, 106 - 119)
- Helton, Arthur C. (2000) *"Forced Migration, Humanitarian Intervention, and Sovereignty"*, SAIS Review - Volume 20, Number 1
- Khosravini, Majid, (2009) *"The representation of refugees, asylum seekers and immigrants in British newspapers during the Balkan conflict (1999) and the British general election (2005)"*, in: Discourse & Society, 20 (4), 477 - 498
- King, R., (2005) *"Albania as a laboratory for the study of migration and development"*, in Journal of Southern Europe and the Balkans, 7 (2), Special Issue: New Perspectives on Albanian Migration and Development, 133 - 155
- Koff, Harlan, (2008) *"Fortress Europe or a Europe of Fortresses? The Integration of Migrants in Western Europe"*, Verlag Peter Lang, Frankfurt et al

- Kotevska, Biljana, (2010) *"The Impact of the European Union on Regional Cooperation in the Western Balkans: the Focus on Migration"*, Political Thought Journal, Migration Policy Institute
- Lahav, Gallya; Messina, Anthony M., (2005) *"The Limits of a European Immigration Policy: Elite Opinion and Agendas within the European Parliament"*, in: Journal of Common Market Studies, Vol. 43 (4), 851 - 875
- Lavenex, Sandra, (2000) *"Security Threat of Human Right? Conflicting Frames in the Eastern Enlargement of the EU Asylum and Immigration Policies"*, in: European University Institute, EUI Working Papers, RSC
- Lewis, Richard; Naqvi, Amir, (2008) *"Evaluation of EU Policies in the Field of Migration and Asylum"*, in: Solon Ardittis and Frank Laczko: Assessing the Costs and Impacts of Migration Policy: An International Comparison, 107 - 135
- Lindstrom, Channe, (2005) *"European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?"* in: Social Policy and Administration, Vol. 39, No. 6, 587 - 605
- Malcolm, Noel, (1998) *"Kosovo: A Short Story"*, in Macmillan
- Mayews, Alan, (1998) *"Recreating Europe. The European Union's Policy towards Central and Eastern Europe"*, Cambridge University Press
- Moravska, Eva, (2007) *"Transnational Migration in the Enlarged EU"*, Berkeley, University of California Press
- Noll, Gregor, Vedsted-Hansen, Jens; Byrne, Rosemary (eds.), (2003) *"New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union (Immigration and Asylum Law and Policy in Europe, 4)"*, Martinus Nijhoff Publishers (Brill), Leiden, NL
- Rahimi, Ashkaan, (2005) *"The Evolution of EU Asylum Policy"*, in: Zentrum für Europäische Integrationsforschung (ZEI), Discussion Paper C142, Bonn, Germany
- Rupnik, Jacques (2011) *"The Western Balkans and the EU: 'the hour of Europe'"*, Institute for Security Studies of the European Union, Paris
- Sell, Louis, (2002) *"Slobodan Milosevic and the Destruction of Yugoslavia"*, Duke University Press
- Smith, Karen E. (2003), *"European Union Foreign Policy in a Changing World"*, p.173, Cambridge Polity Press
- Steunenberg, Bernard; Voermans, Wim (2006) *"The transposition of EC directives: A Comparative Study of Instruments, Techniques and Processes in Six Member States"*, University of Leiden

- Thorburn, Joanne, (1996) "*Root Cause Approaches to Forced Migration*", *Journal of Refugee Studies* 9 (2):119-135
- Van Krieken, Peter (ed.), (2000) "*The Asylum Acquis Handbook* (The Foundation for a Common European Asylum Policy)", Cambridge University Press, Cambridge, UK
- Van Selm, Joanne, (2002) "*Immigration and Asylum or Foreign Policy: The EU's Approach to Migrants and their Countries of Origin*", in *Migration and the Externalities of European Integration*, Chapter 8
- Vink, Maarten; Meijerink, Frits, (2003) "*Asylum Applications and Recognition Rates in EU Member States 1982 - 2001: A Quantitative Analysis*", in: *Journal of Refugee Studies*, Vol. 16, Iss.3, 297 - 315

Websites/Electronic Journals

- Access to the European Union Law <http://eur-lex.europa.eu/en/index.htm>
- Commissariat for Refugees of the Republic of Serbia <http://www.kirs.gov.rs>
- Directory of Open Access Journals <http://www.doaj.org/>
- International Organization for Migration <http://www.iom.int/jahia/jsp/index.jsp>
- IZA- Database for Migration Literature
<http://www.iza.org/en/webcontent/links/migration>
- Looksmart Findarticles <http://www.findarticles.com>
- Online Migration Legislation <http://legislationline.org/topics/topic/10>
- University of Huston Libraries: Scholarly Journals Distributed via the World Wide Web
<http://info.lib.uh.edu/wj/webjour.html>

International, Governmental and Non-governmental Reports and Documents

Council of Europe (COE): Secretary General Reports, Parliamentary Assembly of the Council Of Europe (PACE), European Committee for the Prevention of Torture (CPT), European Commission against Racism and Intolerance (ECRI):

- Werner, Haug; Compton, Paul; Courbage, Joussef (2002) *“The Demographic Characteristics of Immigrant Populations”*, Strasbourg, published by the Council of Europe

European Union Institutions:

- *“Thessaloniki agenda for the Western Balkans”* (2003), General Affairs & External Relations Council (GAERC), Council Conclusions, available at: http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/thessaloniki_agenda_en.htm
- European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, available at: http://www.europarl.europa.eu/summits/copenhagen/default_en.htm
- The Treaty of Amsterdam: <https://www.europarl.europa.eu/topics/treaty/pdf/amsten>
- The Hague Program: http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/116002_en.htm
- The Stockholm Program: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XG0504\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XG0504(01):EN:NOT)
- The Treaty of Lisbon: http://europa.eu/lisbon_treaty/full_text/index_en.htm
- The European Pact on Immigration and Asylum: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0038_en.htm
- Council Decisions 2007/817/EC, 2007/818/EC, 2007/819/EC and 2007/820/EC of 8 November 2007 on the conclusion of Agreements between the European Community and Albania, the Former Yugoslav Republic of Macedonia, the Republic of Montenegro, the Republic of Serbia and Bosnia and Herzegovina on the readmission of persons residing without authorization

International Organization for Migration (IOM):

- International Organization for Migration (2001), *"Victims of Trafficking in the Balkans"*
- Marek Kupiszewski, Anna Kicingier, Dorota Kupiszewska, Frederik Hendrik Flinterman, (2009) *"Labor Migration Patterns, Policies and Migration Propensity in the Western Balkans"*, The Central European Forum for Migration and Population Research (CEFMR), published by IOM Regional Mission for Central and South-Eastern Europe
- *Migration Management in Central and South-Eastern Europe* (2006), International Organization for Migration (IOM), Mission with Regional Functions for Central and South-Eastern Europe, Budapest, Hungary, available at: <http://www.iom.hu>
- Gap Analysis Report on the Legislation of the Republic of Serbia in comparison with the EU Acquis in the area of Migration (2011), document developed within the "Capacity Building Project of Institutions involved in Migration Management and Reintegration of Returnees in the Republic of Serbia (CBMM)", implemented by IOM in a close cooperation with CRS, document not publically available

United Nations (UN); United Nations High Commissioner for Refugees (UNHCR), UN High Commissioner for Human Rights (UNHCHR), UN Secretary General, Office for the Coordination of Humanitarian Affairs (UN OCHA):

- UNHCR – The Balkans (2003), available at: www.unhcr.ch
- *Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights*, UN Doc. E/CN.4/1992/S-1/10 (27 October 1992)
- *"The State of the World's Refugees: A Humanitarian Agenda"* (1997) New York: Oxford University Press, Office of the United Nations High Commissioner for Refugees
- The UNHCR reported 241,700 refugees by 1 September 1998. See UN Inter-Agency Report no. 59, Document no: YUGBE/MSD/HCR/1341. The UN Secretary General's Report of 3 October 1998 gives the number of refugees and displaced persons at 280,000 people. Cf. UN Secretary General, "Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998) and 1199 (1998) of the Security Council", UN Document no: S/1998/12. For more information regarding statistical data visit: <http://reliefweb.int/report/albania/un-inter-agency-update-kosovo-situation-report-59>

Norwegian Refugee Council: Internal Displacement Monitoring Center (formerly Global IDP Project):

- “*Internal displacement in Europe, the Caucasus and Central Asia*” (2011), Internal Displacement Monitoring Center (IDMC), Norwegian Refugee Council (NRC), chapter Kosovo

North Atlantic Treaty Organization (NATO):

- Kumbaro, Danjena, (2001) “*The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention*”, North Atlantic Treaty Organization

Additional Documents:

- 1974 SFRY Constitution, *The Fundamental Principles and Elements of Autonomous Provinces under the SFRY Constitution*, available at: http://hague.bard.edu/reports/hr_kristan-pt2.pdf
- Ohrid Framework Agreement (2001), available at: http://faq.macedonia.org/politics/framework_agreement.pdf
- Joint Regional Program, project proposal provided by the Commissariat for Refugees- document not publically available
- The Migration Profile of the Republic of Serbia (2010), available at: http://www.kirs.gov.rs/docs/mp_rs_2010e.pdf
- Migration Management Strategy of the Republic of Serbia, available at: <http://www.kirs.gov.rs/docs/Migration%20Management%20Strategy%20English%20translation%20July%202009.pdf>

Additional sources having an impact on the study paper but not directly included:

- Amnesty International (AI)
- Danish Immigration Service
- Federal Foreign Office, Germany
- Federal Office for Refugees, Switzerland (BFF)
- Human Rights Watch (HRW)

- International Federation for Human Rights (FIDH)
- International Helsinki Federation (IHF)
- Swiss Refugee Council (SFH)
- UK Home Office
- US Committee for Refugees (USCR)
- US State Department