

Furthermore, an estimated 20,000 Croatian Serb refugees are believed to have found protection in the Republika Srpska (RS), although more accurate statistics should still become available from the re-registration exercise that took place in the autumn of 2000.⁹ It should be noted that their status is somewhat more complex, as it was determined under RS legislation that is no longer in force, and the constitutionality of which could be challenged. However, a large number of Croatian Serbs granted refugee status on a *prima facie* basis are believed to have obtained RS citizenship in some form at the same time, although neither the basis for granting citizenship and therefore legality of the acquisition of the citizenship nor the effect on BiH citizenship is clarified.¹⁰

Additionally, a number of different factors have contributed more recently to making BiH an attractive transit country for traffickers, smugglers and irregular migrants in general. For one, memories of the conflict which kept away would-be migrants appear to have faded sufficiently to encourage transit travel on a larger scale. BiH's relatively liberal visa policy, which permits visa-free travel for countries such as Iran, Turkey and Tunisia has allowed many persons to enter BiH legally and seek onward travel from BiH, although a visa requirement for citizens of Iran was introduced in December 2000.¹¹ A number of legal *lacunae* with respect to migration and asylum continue to stymie effective regulation of migration and asylum and prevent effective prosecution of smugglers. Added to this, borders in BiH are very porous in general, and have moreover been largely patrolled by regular Cantonal or Entity police (and others) who do not have any background or training in such tasks; the nascent State Border Service is represented at very few border crossings only. Migrants have

⁹ This re-registration exercise was undertaken by the Entity authorities with the support of UNHCR. It formally ended 25 October 2000, although final results and decisions have not yet been issued.

¹⁰ The *Law on RS Citizenship* (RS *Official Gazette*, no. 19/1992, 16/1996, and 8/1997) stipulated that all citizens of the former Socialist Federal Republic of Yugoslavia (SFRY), who were born in the territory of the SFRY, and who until 30 June 1998 registered their permanent residence in the RS, were citizens of the RS. The recognition occurred *ex lege*, i.e. without any formal procedures. Citizenship certificates were granted, but UNHCR was informed by the RS authorities that no special records were kept of such attributions of citizenship. Nor was it specified to UNHCR during what time period these provisions were applied or how many persons benefited. While, normally proof needed to be shown that any previous permanent residence had been cancelled, it is not clear whether this was the case in the RS. Moreover, a great number of persons appear not to be registered in the book of citizens. Persons who were granted citizenship were at the same time recognized as refugees under RS legislation. The RS *Law on Citizenship* should have ceased to be applicable with the entry into force of the BiH *Law on Citizenship*, (first imposed by the High Representative on 16 December 1997 to enter into force on 1 January 1998, published in *Official Gazette* of BiH, no. 4/1997, 23 December 1997; it was later confirmed by BiH Parliament, *Official Gazette* of BiH, no. 13/1999, 26 August 1999). A new RS *Law on Citizenship* was adopted and entered into force on 14 December 1999 (RS *Official Gazette*, no. 24/1999, 6 December 1999, amendments, no. 17/2000, 27 June 2000); it is in line with the BiH *Law on Citizenship*. However, recognition of the RS citizenship attributed *ex lege* based on the previous law is problematic, as the RS did not have a legal status prior to the GFAP, and the law was not considered to be in line with the *Constitution* of BiH (GFAP, Annex 4, Annex II.2). However, this non-constitutionality was never confirmed formally.

¹¹ The BiH Council of Ministers on 7 December 2000 agreed to introduce a visa requirement for Iranian nationals; the *Decision on Changing the Visa Regime for Bearers of Ordinary Passports of Bosnia and Herzegovina and of the Islamic Republic of Iran* was published in the *Official Gazette* of BiH, no. 32/2000, 26 December 2000.

therefore been able to enter BiH easily from FRY for onward migration to Croatia and beyond.¹²

In the period from 1 January to 31 December 2000, for 18 different nationalities monitored selectively, some 35,793 persons entered BiH via Sarajevo Airport, whereas only some 11,508 left through the Airport during the same period.¹³ While the discrepancy is not necessarily conclusive, as persons would not necessarily have entered and departed BiH again during this period or through the same entry point and these statistics include persons working in BiH or travelling in the region in a regular fashion, the difference of 24,285 persons is nonetheless considerable. A large number are likely to have travelled onward to Croatia. Increasing numbers of irregular migrants are reported to have been intercepted throughout BiH on a daily basis. The United Nations Mission in BiH (UNMIBH) is pressuring the local authorities to investigate the traffickers and smugglers themselves.¹⁴ The large majority of migrants are of Iranian nationality, followed by Turkish nationals. As they do not require visas to enter BiH, it is primarily when they seek entry or enter Croatia that they turn into illegal or undocumented migrants. Migrant smuggling has not been without consequences. Since June 2000, between 25 and 30 deaths have been reported due to drowning in the Sava River bordering Croatia and BiH, including one of a ten-year old child.

The increased migration as well as trafficking and smuggling of migrants through BiH has gained the attention of the international community in BiH and European States. BiH is therefore under increasing pressure to find solutions for the irregular migration through BiH, although its capacity to do so is still non-existent. The impact of a Readmission Agreement signed with Croatia in July 2000 has also made more obvious to BiH authorities the number of irregular migrants who transit BiH. While the large majority of migrants are likely not to have been detected, the total of persons returned from Croatia pursuant to the Readmission Agreement at only one official

¹² FRY does not have visa requirements for nationals of Iraq and has a facilitated regime for nationals of the People's Republic of China.

¹³ Summary of Arrival and Departure of Immigrants through Sarajevo Airport, provided by UNMIBH.

¹⁴ For the purposes of this report, the definitions for traffickers and smugglers will be the same as defined under the Protocol to the Convention on Transnational Organized Crime, which was opened for signature in Palermo from 12-15 December 2000. "Trafficking in persons" is thus defined as "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." (*Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Art 3, Annex to the Report on *Crime Prevention and Criminal Justice*, UN General Assembly, Fifty-fifth session, A/55/383, 2 November 2000). It therefore refers primarily to persons where migration has involved an element of coercion and exploitation, and often involves female migrants who are forced into prostitution or into a form of slavery. The term "smuggling of migrants" refers to "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident" (*Optional Protocol Against the Smuggling of Migrants by Land, Sea and Air*, Art 3). Smuggled persons therefore pay a certain sum for travel, but do so of their free will. The same Protocol provides that smuggled migrants are not liable to prosecution under the Protocol (Art 6). It is these definitions which have been used by the international community in BiH.

border crossing point from 1 August to 28 December 2000 was 5,361.¹⁵ Calls for the construction of detention centres for such irregular migrants have become louder on the part of both national and international actors in the course of the year.

The large majority of migrants in BiH are not likely to be of direct concern to UNHCR. However, as *bona fide* refugees have seen themselves forced to resort to irregular means of migration to flee persecution, any stream of such migrants is likely to include a proportion of asylum seekers and refugees. Moreover, while the large majority would appear to be “economic migrants”, it must be remembered that genuine refugees may flee for composite reasons that include persecution as well as economic grounds, which themselves are often the result of poor governance and economic marginalization. Although BiH generally is not a country of asylum of choice, it has experienced an increasing number of asylum seekers amongst irregular and legal migrants, and smuggled and trafficked persons transiting through BiH.

UNHCR is concerned that appropriate care is taken to ensure that *bona fide* asylum seekers and refugees, in line with the 1951 Convention on the Status of Refugees and its 1967 Protocol, are not *refouled* and that they are assured access to safety and protection. Any efforts to control migration must keep in mind international refugee law and human rights principles. To the extent that a national capacity to regulate migration and establish proper asylum procedures does not exist, there is a need for interim measures, which ensure that fundamental protection principles are met. To ensure that a competent national capacity is built over the longer term, additional assistance, capacity-building activities and training are required, although the development of an effective and well-functioning asylum system in BiH will take some time.

National actors

One challenge to the regulation of migration and asylum in BiH lies in the complexity of the political institutions in BiH itself. The Constitution of BiH, (which forms Annex 4 of the General Framework Agreement for Peace - GFAP), provides for a State consisting of two Entities, the RS and the Federation of Bosnia and Herzegovina (hereafter Federation), to whom competence in most areas is delegated. The Federation is further sub-divided into 10 Cantons, each of which is competent to regulate policy in all areas not specifically assigned to the Federation. Brcko District has a distinct status outside either Entity.¹⁶

The Constitutional Court of BiH has issued a partial decision with regard to the Constitution of the RS and the Federation respectively, noting that the constitutional principle of collective equality of the constituent peoples prohibits any special privilege for one or two of the constituent peoples only.¹⁷ It is expected that this

¹⁵ Summary of Readmission of Illegal Immigrants [sic], Izacic Border Crossing, provided by UNMIBH.

¹⁶ It was established by a Decision issued by the High Representative on 8 March 2000, *Official Gazette* of BiH, no. 9/2000, 6 April 2000.

¹⁷ Decision of the Constitutional Court, Case No. 5/98, Third Partial Decision of 30 June and 1 July 2000, *Official Gazette* of BiH, no 23/2000, 14 September 2000. The Court decreed that provisions

