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

International Organization for Migration (IOM)

Refugee Protection and International Migration in the Western Balkans

Suggestions for a Comprehensive Regional Approach

Migration dynamics in the Western Balkans[1] have undergone fundamental changes during the past years. Countries in the region still have to cope with the consequences of large-scale displacement of the 1991-95 conflicts. Social and economic challenges continue to trigger the movement of nationals from the Western Balkan countries within and from the region. However, the gradual political stabilization has transformed the Western Balkans into a region of transit and increasingly also destination of migrants and refugees from outside the region, including vulnerable groups such as victims of trafficking, unaccompanied and separated children or women at risk.

This paper provides a brief analysis of the changing migration and asylum dynamics in the region and outlines some of the main challenges arising in this context. It is intended to serve as a basis for discussions with the Governments and other stakeholders on how to best develop a comprehensive and cooperative approach to address these challenges, building on existing processes and initiatives. It takes into account in particular the steps undertaken by countries in the region in their efforts to align their legislation and practice in the area of asylum and migration with the European Union (EU) acquis, in preparation for their aspired accession to the EU. The paper also includes initial comments and suggestions made by the Governments, as well as the outcomes of the Informal Brainstorming Meeting of relevant stakeholders that took place in July 2013 in Geneva.

1. Migration Dynamics

Western Balkans as a region of origin of migrants

Predominant drivers of migration from the region are poverty, low living standards, unemployment and social exclusion.[2] Many of those on the move originate from impoverished regions of the Western Balkans countries and belong to some of the ethnic minorities, such as the Roma or ethnic Albanian communities residing outside Albania. The liberalization of visa policies in the context of the EU accession process has reportedly been an important contributing factor facilitating legal movements.[3] However, to prolong their stay beyond the period of three months for which no visa is necessary, many apply for asylum, irrespective of whether they need international protection or not. In 2012 the asylum

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[1] For the purpose of this paper, the Western Balkans includes Albania, Bosnia and Herzegovina, Croatia, Kosovo (UNSCR Resolution 1244/99), Montenegro, Serbia and The former Yugoslav Republic of Macedonia.

[2] Social exclusion involves the lack or denial of resources, rights, goods and services and the inability to participate in the normal relationships and activities, available to the majority of people in a society.

[3] The former Yugoslav Republic of Macedonia, Montenegro and Serbia joined the visa-free regime in December 2009, Albania and Bosnia and Herzegovina in November 2010. Since then, the citizens of these countries are allowed to travel to the EU without visas for up to three months.

applications from the Western Balkan region in the EU27+ (including Switzerland and Norway) amounted to more than 30,000 which constituted almost 9% of all asylum applications.[4] The recognition rates are low[5] and rejected asylum-seekers are returned to their countries of origin under readmission agreements the EU and its Member States concluded with the countries in the Western Balkans.

Western Balkans as a region of transit and destination of refugees and migrants from outside the region

Largely owing to its strategic geopolitical location, the Western Balkans has become an important hotspot on one of the main migration routes to the EU. An increasing number of refugees and migrants from outside the region, in particular Afghanistan, Pakistan, Palestine, Syria, Somalia and North Africa, are arriving from Turkey and/or Greece and transiting the region using what is known as "the Western Balkan route." Many lodge asylum claims in one or more of the Western Balkans countries, but often depart before having their asylum claims processed and their protection needs determined.[6] Of particular concern is the growing number of unaccompanied or separated children moving irregularly, mostly from Afghanistan.[7]

A proportion of the movements of migrants and refugees to, within and from the region takes place either via clandestine entry on border crossing points or via illegal border crossing at the green borders. These irregular movements and associated transnational crime, such as trafficking in persons and human smuggling, raise a number of shared concerns for all States along the migration route. They constitute security threats, negatively affect the access to protection for those in need of it and render persons on the move vulnerable to safety risks and severe human rights violations.

Trafficking in persons constitutes a particular challenge for the Western Balkan countries which have been to varying extent countries of origin, transit and destination, mostly for the purposes of sexual exploitation and forced labour. It appears that trafficking takes place

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[4] The former Yugoslav Republic of Macedonia and Serbia continue to be the main countries of origin. In October 2012 the number of Serbian and Macedonian citizens submitting asylum claims reached almost 6,000 in one month. With almost 15,000 asylum applications lodged in 2012 Serbian nationals remain one of the highest ranked nationalities of asylum applicants in the EU. Source: Eurostat, Asylum Applications in EU27+ from Southeast Europe, 2008-12. 7 February 2013.

[5] The refugee recognition rates in Member States and Schengen Associated Countries for the applicants of the five visa exempt nationalities were generally below 1% in 2012. See Western Balkans Annual Risk Analysis 2013, Frontex. Available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/WB_ARA_2013.pdf

[6] In 2011 asylum applications sharply increased in the region as compared to previous years. In The former Yugoslav Republic of Macedonia, the number of asylum applications lodged increased from 180 in 2010 to 740 in 2011 (increase by 311%); in Serbia and Kosovo (UNSCR 1244/99) from 790 to 3320 (320%) and in Montenegro from 10 to 240 (2300%). See UNHCR, Asylum Levels and Trends in Industrialized Countries, 2011, available at http://www.unhcr.org/4e9beaa19.html

[7] For example in 2011, 552 unaccompanied children in an irregular situation were identified in Croatia, a number almost twice as high as in 2010. See European Commission, Comprehensive Monitoring Report on Croatia's State of Preparedness for EU Membership, October 2012.
http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_analytical_2012_en.pdf

internally, within the region and across the borders, in particular towards Greece, Italy, Spain and Western Europe.

The recent accession of Croatia to the EU has made it an EU Member State with the longest external land border.[8] This may impact the nature and scale of the migration flows passing through the region, including by leading to an increase in the number of irregular migrants trying to enter the EU through Croatia and of those readmitted from Croatia under the existing readmission agreements. The future accession of Romania and Bulgaria to the Schengen zone as well as changes in the socio-political development in Northern Africa, Central Asia and the Middle East are likely to also affect migratory flows in the region.

2. Challenges and Opportunities

The above described movements of various categories of persons to, through and from the Western Balkans raise a variety of new challenges for Governments of the region and have important implications and potential spill-over effects also for destination countries in the EU.

Managing borders and ensuring access to differentiated procedures

The border management agencies of the countries in the region have developed their capacities and expertise on a wide range of migration related issues. However they have been set up according to a migration scenario that is quite different from the current situation. The drastic increases in size and complexity of the largely irregular movements, as well as the lack of adequate financial resources, have affected the ability of competent authorities to manage these flows effectively. As a result, the border management agencies do not always have the necessary experience, capacity and tools to adequately perform their duties. Expertise needs to be strengthened particularly as regards the determination of the identity of persons arriving in the territories, identification of their specific needs and timely differentiation between various groups on the move (such as refugees, unaccompanied and separated children, women and girls at risk, trafficked persons, etc.).

Mechanisms for referral of different groups to competent authorities for appropriate and timely follow-up often do not exist and/or are not fully operational. Further measures, such as human rights training of law enforcement officials, could enhance the effective protection of the human rights of all migrants, regardless of their status. The existing systems constitute a solid basis on which responses can be built also at the regional level. However, the increases in numbers of extra-regional migrants and refugees transiting the region irregularly, combined with the increased numbers of rejected asylum seekers readmitted from the EU, further intensify the pressure on the already strained resources of the governments. Lack of political will, security concerns and growing pressure to stem irregular movements and

associated trans-national crime can lead to restrictive and control-oriented border policies and practices overshadowing the human rights and refugee protection considerations.

Legal framework in the field of migration

All countries in the region have adopted relevant legislation for regulating entry and stay of aliens (laws on foreigners, legislation on border control etc.) and established migration management systems. In some of the countries, this legislation has been amended and aligned with the EU acquis. However, gaps in alignment still exist and a further review might be required in order to guarantee full harmonization with the EU acquis and relevant international standards. Further efforts are needed to promote mainstreaming of gender considerations into migration policies. The EU concluded readmission agreements with Albania, Serbia, Montenegro, Bosnia and Herzegovina and The former Yugoslav Republic of Macedonia. In addition, the Western Balkans States have concluded bilateral readmission agreements between each other.

Asylum systems and solutions for refugees and other persons with specific needs

All countries in the region (except for Kosovo, UNSCR 1244/99) are parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and have established national asylum systems. However, shortcomings in the implementation of the legislation and gaps in institutional capacity do not always guarantee that asylum-seekers can access fair and efficient asylum procedures and enjoy the basic standards of treatment. The newly established asylum systems are also easily overwhelmed by the sharply increasing number of newly arriving asylum-seekers and often unable to adequately respond to most urgent needs. Deficiencies in the asylum procedures affect the quality of the decisions. Recognition rates are extremely low despite the fact that many extra-regional asylum-seekers come from refugee-producing countries.[9]

Reception centers for asylum-seekers do not fully comply with international standards and their capacities are in some cases insufficient and over-strained. While these facilities have basic infrastructure in place and provide basic services (such as accommodation and food), they often lack protection-sensitive operating procedures[10] and screening mechanisms to determine potential vulnerabilities of residents. With their current set-up, reception centers often do not have measures in place to differentiate between various groups of persons on the move. In some countries, registration and/or submission of an asylum claim is not a pre-condition for stay in the reception centers. Migrants and refugees transiting the region can

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[9] In 2012 the recognition rate; in Montenegro 0.12%; in Serbia less than 1% and 0% in The former Yugoslav Republic of Macedonia. In Croatia the total refugee recognition rate was 16.75% Source: UNHCR data.

[10] Protection-sensitive operating procedures are such that differentiate between and address the needs of various groups of persons, including refugees and other persons with specific needs (such as victims of trauma, trafficking, unaccompanied and separated children, women and girls at risk, etc.)

thus use these centers as "transit stations" before moving onward towards Western Europe. In addition, persons accommodated in these centers may face protection risks, such as exposure to smugglers and traffickers.

Readmission agreements concluded between the EU and Western Balkans countries do not cover only nationals, but also allow for the return of third country nationals who had transited through the Western Balkans to an EU Member State. With regard to the latter, there is no system in place to ensure that returned asylum-seekers whose claims have not been examined on substance in the returning country are protected against refoulement and can access the asylum procedures in the country of return. In the absence of sufficient protection safeguards, the implementation of these agreements may thus result in indirect (chain) refoulement. The limited availability of legal migration channels compels migrants without international protection needs transiting the region to resort to irregular migration or to asylum channels to avoid detention and secure temporary admission and stay. This places an additional burden on the fragile and under-developed asylum systems. It also complicates the task of clearly identifying those in need of special assistance and protection. Some persons in such complex flows do not fit within any particular established category, but may nevertheless have humanitarian and other needs. Further efforts are needed to ensure the protection of the human rights of all migrants, including identification and provision of adequate assistance and protection to persons with specific needs.

The agenda of the Western Balkans States has been dominated by efforts to find solutions for refugees and IDPs displaced by the Balkans conflicts, while in most countries no solutions frameworks are in place for newly arriving refugees and other vulnerable groups with specific needs from outside the region. More efforts are needed to raise public awareness about the plight experienced by refugees and other vulnerable groups on the move, and to counter discrimination and negative stereotyping of migrants and refugees in the media.

Good practices

Countries of the region have developed a number of good practices at national and regional level which can serve as a basis for further initiatives. These include for instance the creation of the Balkans Asylum Network (BAN) to facilitate regional cooperation and build the capacity of non-governmental organizations active in the field of asylum and migration, the implementation of the border monitoring project in Croatia (2008- present), the establishment of migrant service centers in the Western Balkan countries (62 are currently operational in the region), the elaboration of standard operating procedures for identification and referral of victims of trafficking in Albania, or the monitoring of arrivals of returned migrants at the Pristina airport in Kosovo (UNSCR 1244/99).

Initiatives aimed at regional cooperation and exchange of information on migration issues among law enforcement actors are also undertaken by the Southeast European Law

Enforcement Centre (SELEC),[11] the International Law Enforcement Cooperation Unit (ILECU)[12] or under the framework of Police Cooperation Convention for Southeast Europe (PCC).[13]

The existing regional fora in the Western Balkans provide important opportunities for dialogue and information sharing and can be further utilized as a basis for new initiatives among States and other stakeholders. Of particular note is the Migration, Asylum, Refugees Regional Initiative (MARRI) which was created under the former Stability Pact for South Eastern Europe to promote dialogue and closer regional cooperation on migration and asylum related issues among the Western Balkan countries. The establishment of MARRI reflects the recognition by concerned States of the importance of a cooperative and coordinated regional approach aimed at resolving shared challenges. In addition, the Western Balkan States participate in several regional consultative processes with migration related agendas, most notably the Budapest and Prague Processes.

The EU's relations with the Western Balkan countries take place within a special framework known as the stabilization and association process. By helping the concerned countries to build their capacity to adopt and implement EU law, this process constitutes a major transformative force in the region. The removal of visa barriers has been one of the most important recent developments towards enhanced mobility between the EU and countries of the Western Balkans.

Need for strengthened cooperation

The countries of the Western Balkans are at different stages of developing their asylum and migration systems and often face country-specific concerns. However, as described above, the cross-border nature and complexity of mixed movements raise a number of challenges that are common to all. While some of these challenges can be addressed through increased awareness-raising and capacity-building, such efforts should be part of a comprehensive and coordinated strategy. Strengthening one component of the asylum and migration system without developing others (i.e. enhancing reception capacities without commensurate efforts to strengthen asylum processing) could invite abuse and contribute to push and pull factors underlying irregular (onward) movements.

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[11] SELEC aims at enhancing coordination in preventing and combating cross-border crime. In this regard, it focuses inter alia on data collection, risk analysis and exchange of information and cross-border criminal intelligence. Member States include Albania, BiH, Montenegro, Serbia and The former Yugoslav Republic of Macedonia.

12 ILECU is an EC funded project implemented in Albania, Bosnia and Herzegovina, Croatia, Kosovo (UNSCR 1244/99), Montenegro, Serbia and the former Yugoslav Republic of Macedonia. Its objective is to enhance and consolidate strategic and operational law enforcement cooperation and networking amongst these states.

[13] PCC promotes enhanced cooperation in various areas of migration management. Joint contact centres for police cooperation, established under PCC, provide law enforcement agencies with enhanced means for exchange of information, to facilitate timely and adequate actions to be taken at borders, particularly in the fight against irregular migration.

Furthermore, responses at national level in absence of a regional approach may exacerbate disparities in capacities of States. In absence of harmonized standards and coordinated responses at regional level, facilitators and migrants traverse those borders that are perceived to be easier to cross, and irregular migratory pressures are likely to shift to other neighbouring countries, impeding efforts to manage migration flows systematically. Therefore, irregular migration is inherently a multilateral concern, and desired outcomes are most likely to be achieved if countries in the region cooperate and coordinate to pursue them.

A regional approach that would ensure coordination of ongoing regional initiatives and complement and reinforce national strategies is particularly important also in light of the common desire of the Western Balkan countries to join the EU[14] which implies the need for coherent and harmonized policies and implementation of common standards, including in the field of asylum and migration. The EU accession process offers strong incentives and opportunities for the development of comprehensive border management, asylum and migration systems in line with international and European standards. The new approach to Chapter 23 (judiciary and fundamental rights) and 24 (justice, freedom and security) provides for opening of these two chapters, covering inter alia asylum and migration, early on in the accession negotiation process so as to ensure sufficient time for necessary changes in legislation, but also to allow for development of a track record of its implementation. This approach has put the rule of law at the center of the EU enlargement policy and testifies to the importance of asylum and migration in the context of EU accession.

3. Objectives of the UNHCR/IOM Initiative

The challenges described above will require new and cooperative approaches building on the region's humanitarian tradition and existing good practices.

Against this background, this UNHCR/IOM initiative will assist States in the Western Balkans in establishing and operationalizing a protection-sensitive migration and asylum management system that meets the legitimate concerns of States to protect their borders and territories, reach their migration management objectives and fulfil their obligations under international human rights and refugee law. This initiative will contribute to the development of a comprehensive migration management approach in the region with particular focus on addressing the protection and assistance needs of migrants and refugees from outside the region. Countries in the region however face also a number of challenges related to the movements of their own nationals. The initiative will thus need to be complemented by measures to ensure the protection of the human rights of all migrants, to reduce recourse to irregular migration by addressing its push factors and expanding regular migration channels, as well as to strengthen the link between migration and development.

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[14] With the exception of Croatia which joined the EU on 1 July 2013.

To achieve these objectives, the joint initiative will seek to:

- strengthen capacities of States and other stakeholders to address mixed movements in a more predictable, efficient and protection-sensitive manner (including through assistance in aligning their migration and asylum legislation with the EU and international standards and ensuring its effective implementation through capacity-building activities).

- foster and further develop national and regional dialogue and practical cooperation on issues of common concern in the area of international migration and refugee protection.

- create synergies between activities of relevant international and regional organizations and, building on ongoing initiatives and existing fora, identify areas where common approaches can be developed to provide more targeted support to States, so as to promote cost-effectiveness and avoid duplication of efforts.

In line with the above, the initiative will focus on those areas where more coordinated and joint action at both national and regional levels can contribute to resolving the region's particular challenges. These areas include:

- **Protection-sensitive entry systems**: Enabling States to more effectively and accurately distinguish between different categories of persons on the move, to identify their particular needs and to refer them to appropriate procedures for further action through establishment and/or strengthening of identification, profiling and referral mechanisms.

- **Enhancing mechanisms for information sharing:** Developing and strengthening mechanisms for sharing of relevant information on cross-border movements to allow for a more effective management of irregular migratory flows through the Western Balkans and consequently into the EU.

- **Improvement of reception arrangements:** Setting in place measures to address the immediate material and psychosocial needs of all arrivals, regardless of their status; developing standard operating procedures (for registration, identification, referral, functioning of reception facilities etc) that are in line with international standards and ensure adequate conditions of stay during status determination (including by establishment of additional reception facilities as and if required). Development of cost-effective mechanisms for interpretation and language analysis will ensure establishment and maintaining of adequate communication with migrants and refugees during the entire period of their stay and determination of their status.

- **Recognizing refugees**: Identifying and assisting persons in need of international protection through national asylum systems in line with international standards (appropriate reception conditions for the duration of the asylum procedure, quality of national refugee status determination procedures).

- **Solutions for refugees**: Ensuring access for refugees from outside the region to solutions, with particular emphasis on local integration.

- **Identifying and providing assistance to persons with specific needs and vulnerable migrants:** Development and/or strengthening of procedures for identification of the specific needs or vulnerable migrants and providing them with assistance and protection in accordance with applicable international human rights standards

- **Providing assisted voluntary return and reintegration (AVRR):** Ensuring access of migrants from outside the region to solutions, including regularization as appropriate, and providing assistance in humane and voluntary return and reintegration for rejected asylum-seekers and those migrants who are unable or unwilling to remain in countries and wish to return voluntarily to their countries of origin.

UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Migration (10-Point Plan)[15] can serve as a flexible framework to reconcile the above objectives and to assist States of the region in developing a comprehensive and cooperative protection-sensitive strategy, which incorporates refugee considerations. UNHCR stands ready to provide the necessary guidance in implementing the 10-Point Plan in the particular regional context of the Western Balkans. In doing so, UNHCR and IOM can capitalize on their joint experience and lessons learned from spearheading similar initiatives in other regions of the world.[16]

IOM's Constitution and Strategy[17] provide the mandate for IOM to support Members States in addressing irregular migration and mixed flows, while the IOM Migration Crisis

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[15] The 10-Point Plan was issued in 2006 to assist States in developing comprehensive and protection-sensitive asylum and migration strategies. The 10-Point Plan framework and methodology have since formed the basis for the development of integrated regional strategies which address irregular mixed movements in all of their complexity. Available at http://www.unhcr.org/4742a30b4.html.

[16] Further information is available at http://www.unhcr.org/pages/4a16aac66.html

[17] The IOM Constitution, preambular paragraph 3, available at
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_booklet.pdf.
The IOM Strategy underlines the need to support "States, migrants and communities in addressing the challenges of irregular migration" and "to provide migration services in other emergency or post-crisis situations as appropriate and as relates to the needs of individuals, thereby contributing to their protection". IOM Strategy (2007) available at
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_booklet.pdf,
activities 5 and 9 respectively.

Operational Framework[18] places these issues in the context of large-scale movements which typically ensue in a crisis. In May 2012, IOM initiated a consultation among governmental stakeholders in the Western Balkans region aimed at identifying and addressing principal concerns in regard to irregular migration. At the request of the EC, IOM undertook a sector feasibility study focused on these concerns. Building upon the outcomes therein, IOM conceptualised a regional approach, encompassing Governments and key institutions, which constitutes a strong basis to facilitate a coordinated approach.

4. Geographical Scope, Partnership and Cooperation

The UNHCR/IOM initiative will focus predominantly on the common needs and challenges of the countries in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo (UNSCR 1244/99), Montenegro, Serbia and The former Yugoslav Republic of Macedonia) including Croatia which became the first country in the region to join the EU. Practical cooperation with other countries along the migratory route (such as Austria, Italy, Slovenia, Hungary, Romania, Greece and Turkey, etc.) will be sought as well.

In order to ensure complementarity of approaches, the UNHCR and IOM initiative will build on strong partnerships and cooperation with international and regional organizations active in the region (such as the EU, Regional Cooperation Council, MARRI, ICMPD, OSCE, OHCHR, UNICEF, ILO, DCAF, UNODC, EC, EASO, FRA, Frontex, etc.) that can support State efforts with their own expertise and approaches. In this regard, the initiative will seek to explore and benefit from the already existing processes and mechanisms and to strengthen synergies between processes and activities implemented by various stakeholders. Particular emphasis will be placed on active involvement and capacity building of national civil society actors and academia.

5. The Way Forward

In order to assist States in the region in achieving the objectives outlined above, the joint initiative will seek to develop a sustainable, comprehensive and cooperative framework for concrete action in the area of refugee protection and migration management, at national and regional levels.

On the basis of priority areas identified above, UNHCR and IOM, with input from other relevant stakeholders, will work with the Governments in the region towards development of a comprehensive roadmap/framework for action, outlining short and long-term objectives for the region, including concrete proposals for activities at both national and regional levels.

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[18] IOM Migration Crisis Operational Framework MC/2355 is available at http://www.iom.int/files/live/sites/iom/files/About-IOM/governing-bodies/en/council/101/MC_2355.pdf