

OUTSIDER TODAY, INSIDER TOMORROW:
THE IMPACT OF THE EUROPEAN UNION'S EASTERN ENLARGEMENT ON
BORDERS AND CITIZENSHIP

JV
7597
P94
2006

by

Cristina Puha
LLB, University of Bucharest, 1997
BA, York University, 2005

A Major Research Paper
Presented to Ryerson University

in partial fulfillment of the requirements for the degree of

Master of Arts
in the Program of
Immigration and Settlement Studies

Toronto, Ontario, Canada, 2006

© Cristina Puha 2006

PROPERTY OF
RYERSON UNIVERSITY LIBRARY

UMI Number: EC53531

INFORMATION TO USERS

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleed-through, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.



UMI Microform EC53531

Copyright 2009 by ProQuest LLC


All rights reserved. This microform edition is protected against unauthorized copying under Title 17, United States Code.

ProQuest LLC
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106-1346

Author's Declaration Page

I hereby declare that I am the sole author of this major research paper.

I authorize Ryerson University to lend this paper to other institutions or individuals for the purpose of scholarly research.

Signature  _____

I further authorize Ryerson University to reproduce this paper by photocopying or by other means, in total or in part, at the request of other institutions or individuals for the purpose of scholarly research.

Signature

OUTSIDER TODAY, INSIDER TOMORROW:
THE IMPACT OF THE EUROPEAN UNION'S EASTERN ENLARGEMENT ON
BORDERS AND CITIZENSHIP

© Cristina Puha, 2006

Master of Arts
Immigration and Settlement Studies
Ryerson University

ABSTRACT

This paper analyzes the interrelationship between European Union (EU) enlargement and the issue of citizenship and border management with respect to Poland and Romania. It examines the changes of the EU's external and internal borders through an analysis of immigration laws in Poland and Romania which have been recently changed in order to meet the requirements of the Schengen *aquis*. This paper argues that the transformation of European borders through eastern enlargement creates a system of differentiated memberships which is incompatible with the concept of the EU citizenship and with some of the terms of enlargement. Unfortunately, this situation is opening the door for the creation of 'second class' citizens and demonstrates that the EU enlargement process is to some extent exclusive.

Keywords: European Union; Eastern enlargement; immigration legislation and policy; European citizenship; EU borders.

List of Acronyms/ Abbreviations

CEEC – Central and Eastern European Country

CSCE – Conference on Security and Cooperation in Europe

EC – European Community

EC Treaty - European Community Treaty

EU – European Union

IOM – International Organization for Migration

JHA – Justice and Home Affairs

OJ – Official Journal of the European Communities

OSCE – Organization for Security and Co-operation in Europe

TEU – Treaty on European Union

UK – United Kingdom

The process of enlargement represents a challenge to the issue of membership in the European Union. This process of redrawing European boundaries not only increases the population of Europe but also confronts the definition and practice of European citizenship. During the last decade the debate about citizenship has been mostly dominated by the idea of an exclusive Westphalian model of membership, based on nationality, versus an inclusive post-Westphalian model in which the entitlement to rights is based on *personhood*.¹ This paper focuses on the case of eastern European enlargement and takes into consideration the changes that have occurred in a new member state, Poland, and in a perspective member country, Romania.

In order to illustrate the specific character of the European membership model, it is necessary to take a look at the norms that identify boundaries at each level of the European polity. The signing of the Schengen agreements² and the enlargement process led to structural changes in border control regimes. The general hypothesis that controls have been transferred from national borders to the external frontiers of the European Union is only partially true. In reality, the very concept of borders experienced profound transformation.

Moreover, with the process of European enlargement it is interesting to examine the transformation of national and supra-national borders and consider the system of differentiated European memberships. This paper will concentrate on changes that have

¹ Andrew Linklater, *The Transformation of Political Community* (Cambridge: Polity Press, 1998), 106 and Rainer Bauböck and John Rundell, *Blurred Boundaries: Migration, Ethnicity, Citizenship* (Aldershot: Ashgate, 1998), 7

² Here Schengen agreements refer to the Schengen agreement signed by Germany, France and Benelux on 14th July 1985, and the agreement of 19th June 1990 which applied Schengen I.

occurred in post-communist legal systems as a consequence of the attempt to incorporate candidate countries into a European “area of freedom, security and justice.” Particular attention will be given to the legislation dealing with aliens that was approved by the parliaments of Poland and Romania in order to meet the requirements of the Schengen *acquis*.

Poland approved a new Act on Aliens in 2003 in order to comply with the Schengen requirements. The first comprehensive law on aliens, the Polish Aliens' Law, was approved by the Polish Parliament in 1997 and amended through the Act of 11 April 2001. On the same date the Polish parliament also approved an *Act on Granting Protection to Aliens Within the Territory of the Republic of Poland*. This second law introduces new forms of legal status for aliens such as ‘tolerated stay’ and ‘temporary protection’. In December 2002 the Romanian government revoked the previous legislation on aliens and replaced it with new rules approved through an *Emergency Ordinance on the Regime of Aliens in Romania*. The major aim of the changes introduced by these two countries was to adapt the domestic legislation to the new visa regulation imposed in view of future entry into the Schengen Area.

This paper is founded on information from two disciplines that are interconnected: legal and policy analyses. Several research techniques were considered. First, the specific legal framework which regulates the Schengen *acquis* and the process of EU enlargement were identified. To this end, the current laws as well as the most recent reform proposals were examined. Second, the research was narrowed down to focus on the domestic legislation and policy of Poland and Romania

with respect to immigration and asylum in order to see and analyze the impact of the EU's enlargement on these countries. Poland was chosen as the country as it is already a new member state of EU. The modifications of Polish legislation and immigration practices have already occurred and the consequences of the EU's enlargement are already visible. Romania is a candidate country, and therefore the impact of the EU's enlargement vis-à-vis domestic immigration policy and relationship with its neighbours can be explored. Third, an analysis of the EU citizenship rights was formulated according to the equality rights recognized by the EU.

Furthermore, the analysis of borders and their transformations allowed this study to combine two different lines of investigation: the relationship between policy and territory, on the one side, and between policy and persons, on the other. The arguments that follow are based on a review of the relevant literature including articles, governmental and non-governmental reports, and analysis of EU and domestic legislation and policies.

Migration studies dealing with the EU have tended to focus on the economic implications of eastward expansion. However, the relationship between EU eastern enlargement and the process of redefining membership and citizenship has not been extensively studied. Most studies on EU borders come from the field of political geography, in which borders are often seen as strict geographical demarcations, static lines and territorially defined boundaries.³ Borders not only divide but also link.⁴

³ Helmut Dietrich, "The New Border Regime at the Bug River: The East of Poland and the PHARE Programmes," Working Paper, *Forschungsgesellschaft Fluch und Migration*, <http://www.ffm-berlin.de/bugriver.html> (7 July 2006), Introduction

Therefore, their main purpose is less concerned with separation than with differentiation.⁵ This was emphasized by Niklas Luhmann who analyzed territorial borders as system boundaries and considered them “means of production of relations” which allow for increasing differentiation and the complexity of modern societies.⁶ Secondly, territorial borders produce two kinds of relations: one between distinct political systems and the other between the political system and the world.⁷ In other words, borders do not only produce and regulate relations between states, but also have effect over the people who come from outside the political system.

The relocation of the EU's eastern borders has a restrictive effect on the rights of citizens of new member countries.⁸ Citizens of these states do not immediately benefit from the Schengen Agreements.⁹ Visa exemptions for citizens of candidate countries and new member states facilitate their access to the labour market and guarantees them a privileged position compared to migrant workers of different origins.¹⁰ Although the greater opportunity of mobility was regarded as one of the benefits of enlargement

⁴ Stephan Stetter, Thomas Diez and Mathias Albert, “The European Union and the Transformation of Border Conflicts: Theorising the Impact of Integration and Association,” *International Workshop on Europe's Borders*, 1-2 July 2004, <http://www.liv.ac.uk/ewc/docs/Borders.pdf> (7 July 2006), 11

⁵ Thomas Wilson and Hastings Donovan, *Border Identities: Nation and State at International Frontiers* (Cambridge: Cambridge University Press, 1998), 7

⁶ Niklas Luhmann, “Territorial Borders as System Boundaries,” in: Raimondo Strassoldo and Giovanni Delli Zotti, (eds.), *Cooperation and Conflict in Border Areas* (Milano: Franco Angeli, 1982), 237

⁷ Dan Brown, “Storming the Fortress: The External Border Regime in an Enlarged Europe,” in Hilary Ingham and Mike Ingham (eds.), *EU Expansion to the East* (Cheltenham: Edward Elgar, 2002), 106

⁸ Workers of new member states are not able to freely circulate during a transitional period which last from two to seven years

⁹ Schengen Agreements refer both to the first Schengen agreement (1985) signed by Germany, France and Benelux, and the agreement which applied Schengen I (1990).

¹⁰ Nicholas Bell, “The Exploitation of Migrants in Europe,” contribution to the conference *Borders and Migration*, 29-30 October 2002, Austrian League for Human Rights, Vienna, 15

in the eyes of the population of Central and Eastern European countries,¹¹ accession to European citizenship is restricted with regard to the freedom of movement and settlement in other member states.¹²

Offering a different interpretation of the relationship between border management and EU enlargement, Alina Mungiu-Pippide in her work *Europe's 'Desert of Tartars' Challenge: The Borders of the Enlarged European Union*, is concerned about the relocation of the EU's eastern borders, which not only re-draw the national boundaries, but also create problems with respect to ethnic nationals living in neighbouring countries. She demonstrates that sealing off of the borders of future member states damages the connection between "minorities with countries where the bulk of their culture lies, prompting illegal entrance and feeding resentment."¹³ The best known case is the Polish Repatriation Act of 2002, which gives ethnic nationals limited rights, or decreases the conditions and periods necessary to acquire citizenship. Enrica Rigo confirms the fact that new borders have impact on ethnic minorities and goes further, demonstrating that countries have passed laws which entitle some nationals who are citizens of other countries to a particular status of semi-citizenship.¹⁴ However, none of these studies take into account the situation of the Romanian ethnic minority living in Moldova and Bucovina and how the conditions imposed by the EU to candidate states

¹¹ Enrica Rigo, "Implications of EU Enlargement for Border Management and Citizenship in Europe," *EUI Working Paper*, RSCAS 21, May 2005, <http://www.iue.it/RSCAS/Publications/> (20 April 2006), Introduction

¹² Wilson and Donovan, *Border Identities*, 10

¹³ Alina Mungiu-Pippidi, "Europe's 'Desert of Tartars' Challenge: The Borders of the Enlarged European Union," *EUI Working Paper*, RSCAS 43, June 2001, <http://www.iue.it/RSCAS/Publications/> (20 April 2006), 15

¹⁴ Rigo, *Implications of EU Enlargement*, Introduction

will change the relationship between Romania and the countries where its ethnic nationals live.

Some studies have taken a different approach by looking not so much at the concept of borders, but rather at how they are administrated. Research on the management of the EU's external borders is mainly focused on securing borders and controlling irregular entry into its member states.¹⁵ Assuming that the visa policy is one of the elements of border management, Ana Beccero demonstrates that issuing visas is the first and most evident instrument that the EU member states can use to try to influence migration inflows. The rest of the measures related to border management have to do with the improvement of existing standards and procedures through which border controls are enforced. None of the studies mentioned above focus on the changes vis-à-vis visa policies of member and candidate states as a result of the EU's eastern enlargement. Therefore, there is room for further analysis in this area.

A number of studies argue that the enlargement poses new challenges for the external frontiers given the fact that new and future states will be largely responsible for the internal security of the EU. Accordingly, Ana Beccero suggests that these countries will assume the role of "new guardians" at the EU frontier.¹⁶ Therefore, they do not question the political approach based on external borders and policy of expulsion.¹⁷ As a result of these new responsibilities, the new member states will suffer changes in

¹⁵ See Ana Becerro, "The External Aspect of Migration Policy," *EUI Working Paper*, RSCAS 5, July 2004, <http://www.iue.it/RSCAS/Publications/> (20 April 2006) and Thomas Christiansen, Fabio Petito and Tonra Ben, "Fuzzy Politics Around Fuzzy Borders: The European Union's 'Near Abroad'," *Cooperation and Conflict*, no. 37 (2002), 385-415

¹⁶ *Ibid*, 8

¹⁷ Bhagwati, "Borders Beyond Control," *Foreign Affairs*, January-February (2003), 100 and David T. Graham and Nana K. Poku, *Migration, Globalisation and Human Security* (London and New York: Routledge, 2000), 45

relationships with neighbouring countries and their inhabitants. Whereas the European Union citizenship concept has been studied to some extent,¹⁸ research on the inclusiveness of European citizenship is still quite limited. In particular, too little attention has been devoted to the role of the eastern EU enlargement in the development of a differentiated citizenship for the nationals of the new member states.

In sum, although there is a considerable variation in terms of how the enlargement of the European Union will affect the candidate states from Central and Eastern Europe, available research reaches several conclusions. First, the role of political and territorial borders creates different relations over foreigners in the form of the diverse legal status attributed to individuals. Second, the enforcement of policies over a territory no longer applies to the state but to a network of different actors and bureaucracies. Moreover, the management of the borders reflects the priority given by the EU to the elimination of irregular immigration and the protection of community borders. The consideration of membership and the “practice of citizenship” demonstrate how the limits of inclusion coincide with those of exclusion and subsequently call into question any rigid distinction between citizens and foreigners.

From the beginning, it seemed obvious that this research project fell within the scope of an inclusive and exclusive citizenship analytical framework. One way of thinking about inclusive and exclusive citizenship is in terms of the values that define this notion. This standpoint is consistent with T. H. Marshall's theory of citizenship which takes into account the external citizenship, the “denizenship”, the access to citizenship,

¹⁸ See Bernhard Perchinig, “Union Citizenship and the Status of Third Country Nationals,” *Working Paper*, no. 12, 2001, <http://www.eif.oeaw.ac.at> (20 April 2006) and Dimitry Kochenov, “European Citizenship Concept and Enlargement of the Union,” *Romanian Journal of Political Science* 2 (2003)

and the human rights for non-citizens or non-residents.¹⁹ Marshall described a cumulative development of the substance of modern citizenship which started from civil liberties, added political participation rights and culminated in the concept of social citizenship based on universal entitlements to education and welfare. This theory also touches on the different mechanics of exclusion which condemns certain members within a society to the status of semi-citizens or of non-citizens.²⁰

Another way to ask what it is meant by inclusive and exclusive citizenship is to take into consideration the main components of citizenship and argue that they should apply to all citizens equally. Membership and belonging, the rights and obligations that flow from that membership and equality of status are the main components of citizenship. In the case of EU's eastern enlargement the analysis of citizenship has exposed the way in which the nationals of new member states have been excluded from several elements of European citizenship. This analysis applies to three aspects of European Union citizenship: its content of rights, its range of inclusion and the concepts of a European collective identity which are meant to strengthen it.

The prospect of enlargement to the east thus raises the questions of European collective identity and whether East European national and cultural identities are different from those found in Western Europe. Havel suggests that a common European identity exists and is derived from Graeco-Roman traditions and Christianity²¹. To be a European, according to this view, is to live in a society that has developed through a

¹⁹ Thomas Humphrey Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1995), 51

²⁰ Naila Kabeer, *Inclusive Citizenship: Meanings and Expressions* (New Delhi: Zubaan, 2005), 30

²¹ Speech made to the European Parliament on 8 March 1994

distinctive series of historical stages. This argument citing common cultural and historical roots, used by many EU politicians as a means to construct European identity, is of limited use in a political EU trying to cope with 25 or more member states that might be considered European. Cultural convergence with Europe is impossible, for example, in the case of Turkey, and is doubted by some in the case of the Balkan countries. Romania, for example, is seen as a centre of “some sort of imaginative whirlpool”, as a “wildest and least known portion of Europe”, the land of despots and vampires, of werewolves and all sorts of monsters.²² This image completely occupies the Western imagination to such an extent that attempts to show Romania as an enlightened place of religious tolerance, reform and learning are not even noticed.

Furthermore, Habermas lists certain common values that may characterize the European identity. According to him, Europe is “Christianity, [...] global spread of modern science and technology, of Roman law and the Napoleonic Code, of human rights, democracy and the nation state [...]”.²³ Therefore values such as democracy, rule of law, human rights, Enlightenment, secularism, and maybe to a certain extent, Christianity, should be considered mainly European. There are basic standards of democratic politics, human rights, and the Rule of Law are sufficiently shared by EU member states. However, the EU is not a state on the nation-state model. As A.D. Smith argues, without a significant fiction of relatedness through memory, myth and

²² Mungiu-Pippidi, *Europe's 'Desert of Tartars'*, 2

²³ Jürgen Habermas and Jacques Derrida, “February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe”, *Constellations*, vol. 10, no 3, (2003), 294

history or kinship, a real sense of identity and membership is hard to come by.²⁴ There is little evidence that the European institutional framework has so far succeeded in creating a coherent European cultural identity which could provide that feeling of political loyalty generated by the sense of nationality. Opinion polls do show that a majority of people in Europe, including even the British, admit to feeling European at times and in certain circumstances, but this is always in addition to their national or regional identity. Multiple identities have to be taken as the reality of contemporary Europe. There is, after all, much diversity amongst the peoples and governments of the EU member states, based on language, religion background, political ideas, and above all, national and cultural histories and interests.

One can wonder how the cluster of "European" culture and values would be different from the democracy practiced in most Central and Eastern European nation states. After all, all of them are signatories to the European Convention on Human Rights, and all of them, to varying degrees share those "European values". However, the practice of democracy in the post-communist states of Central and Eastern Europe has proved to be more problematic than at first recognized. While Western Europe since World War II has seen the establishment of stable democracies and has become increasingly open with the progress of economic and political integration, the sudden introduction of democracy in the Eastern half of the continent exposed much "unfinished business."²⁵ The transition from communism to democracy and market economies

²⁴ See for details Anthony D. Smith, "National Identity and the Idea of European Unity," *International Affairs*, vol. 68, no. 1, (1992), 75

²⁵ Markus Thiel, "European Identity and the Challenge of Enlargement," *Jean Monet/Robert Schuman Paper Series*, vol. 5, no. 31 (2005), 7

changed the East European countries somewhat substantially, but compared to the West they remain socially differentiated and more traumatized by poverty and the lack of political freedom.²⁶

It is important to remember that the communist regimes themselves differed from state to state. In Poland and Hungary, for example, many communists hoped that the communism took on a distinctive, national-reformist character after 1956. It was expected that contacts with Western Europe will be less impeded than elsewhere, and the regimes will be somewhat more open and responsive to the aspirations of their peoples. In the case of Romania, on the other hand, contact with Western Europe was almost non-existent. The oppressive dictatorship of Nicolae Ceausescu (1967-1989) manipulated national identity and played on xenophobic tendencies in ways which continue to be felt today, both in domestic political discourse and in the state's relations with its neighbours and the wider Europe. These historical patterns could well contribute to the explanation of why some post-communist states and societies are evidently "doing better" than others when it comes to preparing for EU membership.

The model of European identity built upon cultural commonalities is not sufficient anymore. Nevertheless, the missing cultural and ethnic homogeneity of the people of Europe can be replaced by common values. The importance of democratic and constitutional values, like individual rights and accountability of governance in the EU pre-accession time as requirements for the candidate countries from Central and Eastern Europe, has contributed to a creation of common values and common

²⁶ Jacqueline Bhabha, "Belonging in Europe: Citizenship and Post-National Rights," *International Social Science Journal*, 51, no. 1 (1999), 16

attitude.²⁷ Therefore, identity can be built on that. The EU identity, thus, is interdependent with the concept of EU citizenship because citizens are not identified with a common cultural identity, but with some constitutional principles that fully guarantee their rights and freedoms. The idea of European citizenship emerged in 1970s. However the formal recognition of this concept was introduced through Articles 8a-8e of the Maastricht Treaty in 1992.²⁸ According to Article 8 of the Maastricht Treaty “every person holding the nationality of a Member State shall be a citizen of the Union.” It goes on to state that “citizenship of the Union shall complement and not replace national citizenship”, thus making Union citizenship derivative of nationality attached to the Final Act to the Union Treaty at Maastrich, which asserts that “the question of whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned.”²⁹

European citizenship has been explained in academic debates as a “post-national” model of membership, where rights are held by individuals on the basis of personhood rather than nationality.³⁰ It is considered a potentially inclusive and expansive model, both in the way in which subjects are able to claim membership, and the range of rights attached to it.³¹ The most significant characteristic of the citizenship concept is membership in a community, which was initially the idea behind European

²⁷ Anne Peters, “A Plea for a European Semi-Parliamentary and Semi-Consociational Democracy,” *European Integration Online Papers*, vol. 7, no. 3, 2003, <http://ideas.repec.org/s/erp/eiopxx.html> (2 September 2006)

²⁸ Treaty on European Union (Treaty of Maastricht), OJ C 191 of 29.07.1992

²⁹ Declaration No. 2, *Final Act of the Treaty on European Union*, O.J. (C340, 1997), 145-172

³⁰ Yasemin Nuhoglu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University Press, 1994), 53

³¹ David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (London: John Hopkins University Press, 1996), 9

citizenship. Citizenship of Europe thus refers to membership of and participation in a European-wide polity. Even though the legal definition of full European membership depends on national law³², a number of civil and social rights can be imposed without any regard to individual's nationality. Moreover, the social and political connotation of European citizenship is characterized by different levels of membership according to the legal status of individuals asserting full or partial inclusion.³³

The notion of European citizenship has substantial potential as the basis for the guarantee of important rights. Accordingly, Part II of the European Community Treaty sets out the rights associated with EU citizenship. These rights can be broken down into two distinct categories: the right to move and reside freely anywhere in the EU³⁴ and the individual democratic rights. Individual democratic rights enclose the right to vote and to stand for election in municipal and European elections in the member state of residence, regardless of nationality,³⁵ the right to petition the European Parliament,³⁶ the right to access European Parliament, Council and Commission documents,³⁷ the right to apply to the European Ombudsman,³⁸ and the rights to consular protection by the consulate of another member state while outside the EU.³⁹

According to Article 17(1) of the European Community Treaty, "every person holding the nationality of a Member State shall be a citizen of the Union." In other words, a citizen of a member state becomes a citizen of EU and as a result has the

³² To be a European citizen means to be a citizen of a member state

³³ Kochenov, *European Citizenship Concept and Enlargement of the Union*, 79

³⁴ Art. 18.1 EC.

³⁵ Arts. 19.1 and 19.2 EC.

³⁶ Arts. 21 and 194 EC.

³⁷ Art. 255 EC.

³⁸ Art.21 and 195 EC.

³⁹ Art. 20 EC.

same rights as any other citizen of the Union. Therefore, the main characteristic of the traditional notion of citizenship is equality among citizens. In addition, The European Charter of Fundamental Rights protects the equality of EU citizens, leaving no room for the creation of a "second-class" citizenship. Since citizenship is understood as conferring a set of rights, these cannot be granted selectively without altering the concept of citizenship itself.⁴⁰ However, taking into consideration the process of Eastern enlargement it seems that the concept of EU citizenship does not correspond to the one initially created.

The free movement of persons represents one of the fundamental expressions of European Union citizenship, and as such, this right will apply to all the new EU member state nationals, at least in theory. In reality, the right to move and reside freely within the EU can be limited for workers originating from the new acceding countries if the old (EU-15) member states decide to apply the so-called "transitional periods". These transitional arrangements, which were first agreed in the Treaty of Accession, (Act of Accession, Part IV: Temporary Provisions), signed in Athens in 2003, restrict the access to EU-15 labour markets, often in the form of maintaining quotas for work permits.⁴¹ Any national from the acceding countries who may consequently wish to enter an old EU member state or to move from one EU country to another for labour purposes, will not have the right to take up any available paid employment in the territory of another old member state "with the same priority as nationals of the State", as established by Art. 1 of Council Regulation 1612/68, *on the freedom of movement of workers within the*

⁴⁰ Kochenov, *European Citizenship Concept and Enlargement of the Union*, 80

⁴¹ Annexes V, VI, VIII, IX, X, XII, XIII, XIV of the Accession Treaty

Community. Consequently, after accession, citizens of the new member states do not immediately benefit from the prerogatives of EU citizenship because workers are not able to freely circulate during a transitional period which lasts from two to seven years.

Upon accession, the majority of EU member states (12) have imposed extensive transition periods on the free movement of persons from the Central and Eastern European countries. Under the Accession Treaty, a two-year transitional arrangement has been set for these countries, which means that for the first two years following the accession, the old member states will apply national measures or bilateral agreements to regulate the access of workers from the Central and Eastern European countries to their labour markets.⁴² At the end of these two years there will be a review by the Commission, after which the member states will decide if they want to apply the Community rules on the free movement of workers from the new member states or they want to continue with their national rules for a further three years.

In addition, the free movement of citizens of each of the new member states is regulated by a separate set of provisions. As a result, during the transition periods, the scope of free movement rights, as applied to the nationals of different new member states, will differ considerable. It is expected that small and prosperous states like Estonia or Slovenia will only be subjected to the initial two years transition period, while countries like Poland or Latvia risk waiting for the full seven years for free movement rights. This kind of inequality is contrary to the notion of a "return to Europe together", widespread among scholars and politicians, and treasured by nationals of the new

⁴² Marat Kengerlinsky, "The EU's New External Borders and Restrictions in Immigration and Asylum Policies," *UACES European Studies*, Work Paper, March 2005, www.uaces.org (20 July 2006), 12

member states.⁴³ This fact may have severe consequences for the promotion of the European citizenship concept, since the status of European citizenship is no longer uniform after May 2004.

These temporary yet fundamental restrictions will represent an important barrier to the free movement rights to be effectively and freely exercised by all the new EU citizens.⁴⁴ It is incorrect to formulate a workable hierarchy of citizenship rights, since, once citizenship is understood as conferring a set of rights, these cannot be granted selectively without degrading the very concept of citizenship itself. Throughout an extended period of time some of the provisions that represent the core of the EU integration process and provide a fundamental level of protection for workers will not apply to the citizens of these states.⁴⁵

By limiting the free movement stipulations the Treaty of Accession in fact suspends the two characteristics of the right to freedom of movement: the non-discrimination principle and the right to move to another member state of the Union in order to look for an occupation there.⁴⁶ Obviously the purpose of the Treaty of Accession is to prevent citizens of new member states who are members of the labour force from benefiting from the right after the enlargement of May 2004. This is clear, taking into consideration the fact that the free movement rights covering students, retired persons, and persons with independent means – which connect residence rights

⁴³ Kochenov, *European Citizenship Concept and Enlargement of the Union*, 93

⁴⁴ Anna Turmann and Sergio Carrera, "Towards a Free Movement of Workers in an Enlarged EU?", *CEPS Commentary*, Brussels, April 2004, www.ceps.be (July 22, 2006), 4

⁴⁵ Such as Articles 39 and 49.1 of the EC Treaty

⁴⁶ Georg Ziegler, "The Accession Negotiation on Free Movement of Workers" in Andrea Ott and Kirstyn Inglis (eds), *Handbook on European Enlargement* (The Hague: T.M.C. Asser Press, 2002), 138

to the possession of health insurance and means of personal support, in order not to become a burden on the social security system of the host state – are not mentioned in the Treaty. Therefore, to a certain degree it is still a rule in the EU that the old member states are prepared to accept nationals of new member states only if they are 'economically independent'.⁴⁷

One can wonder if these restrictions are justified in terms of expected migratory flows and labour market effects. As evaluations of migratory flows and economic effects demonstrate, the case for transitional arrangements seems to be rather weak. Research on the consequences of EU enlargement on workforce migration concludes that East-West flows are likely to be small and that they may in the long run even decrease or possibly reverse.⁴⁸ Nor do they imply a major impact on the present EU labour markets or social welfare systems. A study by European Citizen Action Service (ECAS) on free movement of workers in an enlarged EU confirms, for example, that even member states that fully (i.e. Sweden) or partially (i.e. UK) lifted barriers for workers from new member states did not suffer from massive influx of immigrants from Central and Eastern Europe.⁴⁹ The total number of new member states' workers registered in the UK was 175 000 during the period May 2004 to April 2005. Surprisingly, the British government, when estimating potential post-enlargement labour flows, predicted only 5

⁴⁷ Theodora Kostakopoulou, "European Union Citizenship: Exclusion, Inclusion and Social Dimension" in Floya Anthias and Gabriella Lazaridis (eds.) *Into the Margins: Migration and Exclusion in Southern Europe* (Ashgate: Aldershot, 1999), 190

⁴⁸ The study of Hubert Krieger the European Foundation for the Improvement of Living and Working Conditions that use cross-national survey data has confirmed the view that post-enlargement flows are unlikely to have a major impact into the EU-15

⁴⁹ EACS, *Report on the Free Movement of Workers in EU-25: Who's Afraid of EU Enlargement?* (Brussels, September 2005)

000 to 13 000 new arrivals which means at least a 5 to 10 times lower migration forecast.⁵⁰ Nevertheless, the fairly high number of migrants constitutes only 0.4% of the total working population. One also has to bear in mind that the British economy gained from the presence of the extra workforce on its labour market: a net gain of around 500 million pounds over 12 months, while only 0.6% of migrants sought social assistance.⁵¹

Two recent papers⁵² prepared for the British Department for Work and Pensions that use national survey data have confirmed the view that post-enlargement inflow has not contributed to a rise in claimant unemployment in the UK, and that the economic impact of migrants from the new EU member states has been generally positive. Furthermore, a European Commission report published in 2006 shows that workers' mobility from the EU member states in Central and Eastern Europe to EU-15 has been in most countries quantitatively less important than predicted, and has had mostly positive effects.⁵³ Workers from new member states helped to reduce labour market shortages and contributed to better economic performance in EU. Moreover, countries that have not applied restrictions after May 2004 (UK, Ireland and Sweden) have experienced high economic growth, a drop of unemployment, and a rise of

⁵⁰ Ibid, 11

⁵¹ "More than 175,000 East Europeans Come to Britain Following EU Expansion", 26 May, 2005, http://www.eubusiness.com/archive/East_Europe/050526130219.hbbt5ma2 (1 September 2006)

⁵² Jonathan Portes and Simon French, "The Impact of Free Movement of Workers from Central and Eastern Europe on the UK Labour Market: Early Evidence," *Working Paper*, no. 18 (2005) and Nicola Gilpin, Matthew Henty, Sara Lemos, Jonathan Portes and Chris Bullen, "The Impact of Free Movement of Workers from Central and Eastern Europe on the UK Labour Market," *Working Paper*, no. 29 (2006)

⁵³ COM 48 Final, *Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty: period 1 May 2004-30 April 2006*, Brussels, 8.2.2006

employment.⁵⁴ Meanwhile, countries that introduced restrictions for the free movement of people have not been able to take full advantage of immigration.

It is true that the situation in many national labour markets in Europe remains difficult (e.g.: France, Germany), however, while some workers cannot find jobs, there are still vacancies in essential public services that cannot be filled.⁵⁵ Here, the possibility of employing skilled workers from the new member states seems valuable for both the economy and society. As to the 12 EU countries using transitional arrangements, where workers managed to obtain access legally, this has contributed to a smooth integration into the labour market. However, evidence suggests that some of these countries may also have faced unwanted side-effects, such as higher levels of undeclared work and bogus self-employed work.⁵⁶

As shown in the above mentioned studies, there are few economic arguments that would justify transitional periods in access to employment for the new member states. Countries that decided to open their borders after May 2004 benefited from immigration. Most of the workers from the new member states took up employment in “hard-to-fill” jobs and helped to provide essential services in *inter alia* health care, agriculture and tourism.⁵⁷ The Swedish, British, and Irish economies benefited from migration of workers.

In the light of this, it seems essential that regions and especially border regions are given greater independence in deciding whether to lift or maintain the restrictions,

⁵⁴ COM 48 Final, *Report on the Functioning of the Transitional Arrangements*, 14

⁵⁵ ANPE-13/07/2005, *Mission d'Appui à la Pérennisation et au Reclassement des Emplois Jeunes*. Actions 2005

⁵⁶ COM 48 Final, *Report on the Functioning of the Transitional Arrangements*, 15

⁵⁷ EACS, *Report on the Free Movement*, 33

as they are in the best position to determine what is best for their inhabitants and economies.⁵⁸ Policies which aim to match the skill of migrants to the needs of destination regions clearly have some merit in eastern enlargement context. This is similar to the point system currently in use in Canada: a kind of selective immigration policy aimed at fulfilling the needs of particular industries or labour markets. Nevertheless, the imposed restrictions on freedom of employment bring into question the coherence of European citizenship and threaten to create a division between “first” and “second” class EU citizens. These restrictions also have a broader political impact. Countries of Central and Eastern Europe for more than 15 years have been adjusting their economies and legal systems to the requirements of EU membership. By imposing restrictions on the freedom of movement, the old member states risk creating further divisions within the EU, and provide a new ground for the already rising “Eurosceptic” feelings in both old and new member states.⁵⁹ Instead of fostering European integration and strengthening European identity by facilitating people to travel and work freely within the EU, new barriers have been put up, that diminish chances of creating a united Europe. However, the candidates did obtain several concessions during the accession negotiations. On the political side, the European Council decided that the future members will be fully represented in the next Inter-governmental Conference, which will decide the Union’s future decision-making rules.⁶⁰ Moreover, Poland gained several smaller concessions. For example, the EU member states agreed to recognize the

⁵⁸ COM 48 Final, *Report on the Functioning of the Transitional Arrangements*, 15

⁵⁹ EACS, *Report on the Free Movement*, 32

⁶⁰ COM, *Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbors*, 14

qualifications of Polish nurses from the first day of accession. The EU also offered extra money to help Poland upgrade its eastern border controls. Most important, Poland gained two non-financial concessions in the final stage of negotiations, which were larger milk quota and safeguard clause for Polish agriculture markets.

After the accession of candidate states in the EU, their citizens will confront the same limitation of citizenship rights as new member states' citizens are confronted with today. They will not immediately benefit from the Schengen lifting of national borders because limitations on free movement for employment purposes will be imposed by the EU through the Treaty of Accession. Although the greater possibility of mobility is regarded as one of the benefits of enlargement, accession to European citizenship will continue to be restricted precisely with regard to those rights which represent its most significant component: the freedom of movement and settlement in other member state. On the other hand, visa exemption for citizens of candidate countries make possible their accession to the EU informal labour market and guarantee them a privileged position in comparison to migrant workers of other origins. This is the case of migrant workers employed in agriculture and construction in Spain, where Romanian workers are a step ahead of their competitors coming from African countries.⁶¹

An agenda for the elimination of border controls on persons and goods between participating states was created through the Schengen Agreement of 1985. The EU has imposed a fixed set of rules on new members, laid out in some 3,000 pages of the Schengen *acquis*. Schengen was expected to facilitate the free movement of persons in the Schengen zone. Before one can gain access to the Schengen area, however,

⁶¹ Nicholas Bell, *The Exploitation of Migrants in Europe*, 18

various conditions need to be fulfilled by the nationals of countries that are subject to the visa regime. In the early 1990s, an area of free movement of persons was sought in Central Europe. It was not a full free movement of persons. The individuals still required a special voucher in addition to their passport and, if possible, a letter of invitation to present at the border or a simplified pass in the case of the residents of border regions.⁶² Nevertheless, this facilitated a considerable movement of persons in the region.

The Schengen Implementing Agreement of 1990 introduced detailed provisions for participating states, including the abolition of border controls, the application of controls at the common external border, and the provisions on division of responsibility with respect to asylum and provisions on police cooperation. The creation of the Schengen system occurred as a result of economic pressure, especially from the transport industry, to remove obstacles to cross-border trade within the European Union.⁶³

The most important themes of Schengen *acquis* are: uniform visa and common visa policy, the policy of transfer and readmission agreements, uniform model of residence permit, the removal of obstacles at internal borders, clandestine immigration, extradition, and trans-border police cooperation. With respect to the movement of persons the Schengen system is based on three main principles. First of all, no third-country national should gain the right of entry to the territory of the Schengen states if

⁶² Monica Den Boer and Gilles de Kerchove, "Schengen Acquis and Enlargement" in Vincent Kronenberg (ed.), *The European Union and the International Order: Discord or Harmony* (The Hague: T.M.C. Asser Press, 2002), 320

⁶³ Didier Bigo, *Polices en Réseaux: L'expérience Européenne* (Paris: Presses de Sciences-Po, 1996), 29

he or she might represent a “security risk” for any one of the member states. Secondly, there is an assumption that entry across one Schengen external border constitutes admission to the whole territory. Moreover, a temporary visa issued by any member state will be accepted for entry to the common territory for the purpose of admission. Finally, once within the Schengen territory, the person is free to move within the whole common territory for three months out of every six without further control at the internal borders of the participating states.⁶⁴

The main focus of the Schengen *acquis* is to ensure that persons who are or might be considered unwanted by any member state are not allowed into the territory. Therefore the regulations concentrate on who must be excluded and offer modest guidance on who should be admitted. Since the essential principle of the system is mutual recognition of national decisions rather than harmonisation, the search for legal mechanisms to achieve this has unpredicted connotations. The lifting of border controls between the states means that positive decisions on the admission of persons are likely to be respected by default – the parties have fewer identity checks when crossing the borders.⁶⁵

While some EU member states have been allowed certain exceptions in Schengen, the candidate countries were required to implement the Schengen *acquis* entirely upon accession.⁶⁶ Moreover, any state acceding to the European Union must

⁶⁴ Demetrios Papademetriou, *Coming Together or Pulling Apart? The European Union's Struggle with Immigration and Asylum*, (Washington D.C.: Carnegie Endowment for Peace, 1996), 129

⁶⁵ For more information on the maintenance of internal checks on person after the entry into force of the Schengen *acquis* see Schengen Implementing Agreement 1990 and Article 62 of EC

⁶⁶ Joanna Apap and Angelica Tchorbadjiyska, “What about the Neighbours? The Impact of Schengen along the EU's External Borders,” *Centre for European Policy Study*, no.210 (2004), 7

accept in full provisions of Chapter IV on accession. No exceptions are permitted for the new member states following Article- 8 of the Protocol integrating the Schengen *acquis* into the Framework of the European Union, which establishes that “for the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all State candidates for admission.”⁶⁷ Hence, accession process will take place in two stages. First, there is a pre-accession stage by which time the candidate states have to put in place the measures of Schengen that are embodied by the Schengen *acquis*. Border controls, visas and other imposed measures are thus what the candidate states had to introduce in order to comply with the *acquis*. Second, there is the full membership stage by which time the new member state could participate actively and fully as a Schengen country.

On March 11, 2003 the Commission Communication to the Council and the European Parliament reported that:

‘The EU has a duty, not only towards its citizens and those of new Member States, but also towards its present and future neighbours to ensure continuing social cohesion and economic dynamism. The EU must act to promote regional and sub-regional co-operation and integration that are preconditions for political stability, economic development and the reduction of poverty and social division in our shared environment.’⁶⁸

This Communication makes a very optimistic statement of intent on behalf of the EU with regard to not only with those new member states that acceded on 2004 but also new candidate states. This declaration, however, is contradicted by the dynamics of the

⁶⁷ Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community.1992.

⁶⁸ COM (2003) 152 Final. *Communication from the Commission to the Council and the European Parliament on the Common Asylum Policy and the Agenda for Protection.*

enlargement process, through which the strict application of the Schengen *acquis* concerning border controls and visa regimes is required from candidate countries. Their eagerness to put into practice all restrictive border provisions is considered to be one of most important indicators of their readiness for membership.⁶⁹ Furthermore, and in contrast to the attitude taken *vis-à-vis* current EU member states, this appears to be a non-negotiable issue.

The principal reason for the position taken by the EU lies in the area of its home affairs policy, which is strongly influenced by a common fear of uncontrolled immigration from outside the EU and criminal activity by foreigners within. Immigration controls, noticeable in particular in the form of visa regimes at external borders, are seen as a necessary answer to those fears and establish the nature of external borders.⁷⁰ These fears result in a contradiction. New member states are expected to strengthen Schengen borders, which could harm their relations with non-EU neighbours. At the same time the expected benefit of lifting border controls between old and new member states, along with the freedom of taking up employment, will be postponed for several years after accession. This fact will not only have a negative impact on future EU neighbouring countries, but it will also create “second-class” citizens among new members. The EU’s position is caused by a dual fear on the part of current members: the fear of immigration from non-candidate countries, and the fear of immigration originating from candidate countries.

⁶⁹ Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester: Manchester University Press, 2000), 83

⁷⁰ Apap et al., *What about the Neighbours?*, 5

For years, the main problem for the EU has been to ensure that the external borders are well protected against unwanted migration and mass refugee flows and to preserve an efficient system on internal borders that do not undermine the notion of the free movement of persons within. EU governments welcomed the idea of a free area for the movement of goods, capital, services, and persons between the member states.⁷¹ Consequently, they have been gradually eliminating internal restrictions on freedom of movement of persons. However, the EU has opted for restrictive laws and policies toward third country nationals. The territorial expansion of the EU has, without question, been linked with measures to control the external borders of the Union from unwanted threats of migration.

The eastern enlargement of the European Union has also brought new challenges to the nature of the borders, as recent and future member states become responsible for the internal security of the Union and assume the guardianship over the EU eastern external borders. This process transfers the burden of external border control and the responsibility of dealing with illegal immigration and asylum applications to countries that have been primarily transit countries rather than host countries.⁷² These countries have to accept and apply the border policy restrictions placed on them by the EU, and also take on international responsibilities for people in transit across their territory, mainly with the aim of stopping westward migrants from reaching the old EU member states. For countries like Poland or Romania, this means a change in status from being countries of transit for international migrants to being countries of

⁷¹ Marat Kengerlinsky, "The EU's New External Borders and Restrictions in Immigration and Asylum Policies," *UACES European Studies*, Work Paper, March 2005, www.uaces.org (20 July 2006), 12

⁷² Neill Nugent, *European Union Enlargement* (Palgrave MacMillan, 2004), 43

destination. Thus, the Central and Eastern European countries become a new form of “buffer zone” for the EU for asylum and migration.⁷³ The building of such a zone has been characterized by two main elements: the “safe country principle” and “readmission agreements”.

The “safe country principle” was introduced for the first time in 1993 by Germany in order to regulate the arrival of asylum seekers from Poland and the Czech Republic.⁷⁴ In conformity with this principle, asylum seekers entering Germany from a “safe country” would be denied entry or, if stopped on German territory, subject to removal. Shortly thereafter, the “safe country principle” was adopted by the other European member states and all countries bordering the Union. The aim of this policy was to transform countries bordering the EU into “buffer zones” for asylum seekers and migrants in transit. This approach developed in the EU has been adopted by Central and Eastern European countries which modified their domestic legislation, declared neighbouring countries to be “safe”, and have signed readmission agreements with countries of origin and transit states. Over the last decade some Central and Eastern European countries have changed their legislative framework more than once, and every time in an increasingly restrictive manner. For example, the *Act on Granting Protection to Aliens within the Territory of the Republic of Poland* of 13th June 2003 dictates that an alien arriving from “a safe country of origin or a safe third country” is refused refugee status as this is now considered “[a] reason of manifestly unfounded nature of the application”. The previous *Polish Aliens Law* of 1997 stated that the arrival from a safe country and

⁷³ Heather Grabbe, “The Sharp Edges of Europe: Extending Schengen Eastward”, *International Affairs*, vol. 79, no. 3 (2000), 520

⁷⁴ Rigo, *Implications of EU Enlargement*, 5

the lodging of a “manifestly unfounded” application had to be both taken into consideration in order to decline the refugee status. The same pattern can be observed in the Romanian legislation where the *Emergency Ordinance No. 102* of 2000 modifies the *Law No. 151 Regarding the Status of Refugees* of 1993 and introduces for the first time the principle of “safe country” as a reason for declining the refugee status. These examples illustrate that European borders do not coincide with the perimeter of the EU territory nor with the territory of those states that will become EU members in the enlargement following.

At the same time, the Central and Eastern European countries have become the EU's “buffer zone” through the network of readmission agreements signed with the EU member states.⁷⁵ Readmission agreements are the instruments that allow the actual expulsion of aliens from a state's territory, and are therefore essentially used as a legal instrument for the implementation of the “safe country” policy and for the actual removal of illegal migrants. Germany was again the pioneer in this area, signing with Poland in 1993 the *Governmental Agreement on Co-Operation in Matters Referring to Migration Movements*.⁷⁶ Since then most of the European member states have concluded analogous agreements with countries of origin and transit. All candidate countries and new member states had to sign similar agreements in order to return illegal migrants or refused asylum seekers as a condition of complying with the Schengen *aquis*. For

⁷⁵ COM(2002) 700 Final, “Toward the Enlarged Union: Report of the European Commission on the Progress Towards Accession by Each of the Candidate Countries,” Brussels, 2002, <http://europa.eu.int/eur-lex/en/com/cnc/2002> (2 September 2006)

⁷⁶ Rosemary Byrne, Gregor Noll, and Jens Vested-Hansen, *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union* (The Hague: Kluwer Law International, 2002), 220

example, Poland has signed bilateral agreements not only with the Schengen states, but also with Bulgaria, Romania, Ukraine, Croatia, Moldova, and Switzerland, while the transfer of people to Russia and Belarus is regulated under a Polish-CIS agreement (Council of Europe 2006). In the case of Romania, a candidate country for the second stage of EU enlargement, readmission agreements have been concluded outside the Schengen area with India, Albania, Bulgaria, Lebanon, Macedonia, Moldova, Turkey, and Switzerland, while negotiations are underway with Ukraine, Belarus, China, Serbia and Montenegro, Lebanon, and Iran.⁷⁷ Therefore, candidate countries and new member states act as barriers outside the heart of the other member states, and these agreements represent a necessary chain in the extension of the system of sharing responsibilities for asylum applications beyond the Schengen area. The “safe country” principle and readmission agreements are tools of control over population movements that de-territorialize states’ sovereignty and draw borders that cannot be represented as permanent dividing lines. Instead, they represent administrative borders whose function is not simply to keep out the unwanted migrants but to govern populations both inside and outside a state’s territory.

Another challenge for the candidate states in the process of accession is how to align their asylum policies with EU practice and expectations. During the Cold War, the Central and Eastern European countries were largely refugee-producing countries. Since the mid-1990s, most of these countries have become transit countries for people wanting to seek asylum further west. However most asylum-seekers have not actually stayed in these countries and have frequently tried to move to Western Europe. In order

⁷⁷ Commission Report. COM(2005) 534 Final. SEC(2005) 1354.

to achieve EU membership, the candidate states are under considerable pressure to implement major changes to their asylum and immigration laws and policies.⁷⁸ Because border controls are still fairly strict between current EU member states and candidate countries, the asylum-seekers who intend on reaching western countries are often trapped in candidate states that form a “buffer zone” between European Union and poorer, more unstable regions in Asia.

Before the end of the Cold War, there were no procedures in communist countries of Central and Eastern Europe for determining refugee status, and no provisions regulating the situation of asylum seekers and refugees, because there was no need for asylum systems in the former communist states. As the asylum seekers started to come to these countries in the early 1990s, the first asylum legislation was quickly adopted. When the EU noticed this “lack of humanitarian tradition, norms and institutions,”⁷⁹ more interest was paid to asylum matters in the accession strategy. Initially, candidate countries adopted relatively generous policies towards asylum seekers because they had not yet realized the impact of future EU accession and also thought that the influx of asylum seekers to their territory was going to be temporary.⁸⁰ This approach towards asylum seekers rapidly changed as all candidate countries found themselves under the obligation to adopt the EU asylum *acquis* and align their legislation and practices to the current EU policies.

⁷⁸ Catherine Phuong, “Controlling Asylum Migration to the Enlarged Europe,” *WDER*, Discussion Paper no. 59, September 2003, <http://www.wider.unu.edu/publications/dps/dps2003/dp2003-059.pdf> (2 September 2006), 6

⁷⁹ Sandra Lavanex, “Asylum, Immigration, and Central-Eastern Europe: Challenges to EU Enlargement”, *European Foreign Affairs Review*, no. 3 (1998), 277

⁸⁰ Daphné Bouteillet-Paquet, *L'Europe et le droit d'asile* (Paris: L'Harmattan, 2001), 334

EU support to candidate countries in the field of asylum has two essential objectives. Firstly, it is in the interest of present member states to improve asylum systems in candidate countries. In fact, if these countries put into practice refugee protection standards that are equivalent to those of Western European states, the states will have less difficulty justifying the return of asylum seekers to source countries. In other words, by improving protection policies in candidate countries, member states are preparing them to accept returned asylum seekers and hoping that they will be able to transfer the “asylum burden” eastwards.⁸¹ Although the motivation of member states can be seen as problematic, EU pressure to implement changes in the asylum systems of candidate countries has brought some positive consequences. Asylum procedures have been adopted or improved, specialized administrative structures have been set up to deal with asylum seekers and refugees, support groups have been created, and so on. It must be noted, though, that significant differences remain between candidate countries, with the Czech Republic, Poland, and Slovenia much ahead of the others. The second objective of EU efforts to change asylum systems in candidate countries is to guarantee that these countries do not become too attractive to asylum seekers. Thus they must also implement prevention measures similar to those already in place in Western Europe.

Overall the process of enlargement has offered a chance for candidate countries to create comprehensive asylum systems and standards with EU assistance and funding. On the other hand, one can wonder whether restrictive EU standards currently

⁸¹ Rosemary Byrne, Gregor Noll, and Jens Vested-Hansen, *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union* (The Hague: Kluwer Law International, 2002), 17

being imposed on candidate countries are adapted to those countries' situation. A UNHCR officer has noted that some candidate states "have adopted notions they might not otherwise have contemplated introducing."⁸² For example, accelerated procedures have been introduced in all candidate countries' asylum systems to deal with obviously unfounded applications. One may argue that in some cases, these procedures have been introduced without the necessary procedural safeguards, and what candidate countries need are efficient, rather than accelerated, procedures. As candidate countries are going through the transition from countries of transit to countries of destination they must focus on establishing asylum procedures and reception conditions that are in full conformity with international human rights and refugee law. They should not simply import EU policies which may not be adapted to their current asylum situation or administrative structures and practices.

It appears that some EU member states have put pressure on candidate countries to initiate some changes in their asylum systems, but given the weakness of liberal traditions and institutions in the Central and Eastern European countries, importing tough immigration and asylum policies to these countries represents a particular concern. With EU accession, the responsibility for border controls, dealing with illegal immigration and asylum seekers will fall excessively on candidate countries that do not have the same financial and human resources. So far, these countries have

⁸² Michael Petersen, "Recent Developments in Central Europe and the Baltic States in Asylum Field: A View from UNHCR and the Strategies of the High Commission for Enhancing the Asylum Systems of the Region", in Rosemary Byrne, Gregor Noll, and Jens Vested-Hansen (eds), *New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union* (The Hague: Kluwer Law International, 2002), 367

been so eager to gain EU membership that they have agreed to adopt most measures. Moreover, after EU policies have been in place, it could be difficult to maintain high standards of liberal principles and human rights in these countries.⁸³ Accordingly, corrupted border regime and migration control would damage the liberal image of the whole EU, undermining its attachment to the rule of law and human rights.

The EU enlargement provides also a unique opportunity to address the critical situation of Roma minorities in Eastern Europe. Roma are active in migration and thus constitute a serious soft security issue for the Central and Eastern European countries and the EU itself. They have historically been marginalized in every European country where they have settled. Since the fall of communism, many Roma in Central and Eastern European countries have become more impoverished and have faced levels of discrimination unknown to Roma in Western Europe. As a group, they have been among the obvious losers of the transition from communism to liberal democracy. They have suffered more than most groups economically, since their low skill levels and larger family size, combined with geographic segregation, discrimination, and relative separation from dominant communities have conspired to create a major crisis of Roma poverty. Roma, for example, are between 4-10 times more likely to be poor than non-Roma populations in Romania, Hungary, and Bulgaria.⁸⁴

Traditionally, Roma have been viewed as quite different from the majority population in Central and Eastern Europe. Skin color, names, language, way of life, customs and traditions are characteristics separating them from the rest of the

⁸³ Kengerlinsky, *The EU's New External Borders and Restrictions in Immigration and Asylum Policies*, 24

⁸⁴ Dena Ringold, Mitchell A. Orenstein, and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (Washington: The World Bank, 2005), 29

population. The use of traditional costumes and names is relatively rare today but the Roma's nomadic way of life is still exercised. Although they are seen as one group from the outside, Roma are heterogeneous in their identity. They are separated along various religious, professional, linguistic and family lines.⁸⁵ Roma try to incorporate many of their traditions while adapting to the societies they live in in order to maintain their specific identity. Due to the importance of community relations, they have preserved a very strong sense of identity at the group level, which has allowed them to develop their culture in the context of the new society they live in. As a result, they have accepted assimilative policies from the government with relative ease throughout history, and very often they view that as a step towards their eventual incorporation into the mainstream society. Moreover, cooperation among them is not always present and often it is regulated by ancient and strict rules. This lack of unity that one can often observe among the Roma has affected negatively their ability to find a stable and respectable place in the mainstream society.

With the entry of the first round of post-communist nations into European Union in May 2004, Roma minority rights issues have come to the forefront of debates about human rights and belonging in Europe. The growing crisis of the new member states' Roma populations demanded an answer. In formulating a response, the EU was hindered by its own history of poor ethnic minority relations and the lack of substantial minority rights regulation in the *acquis communautaire*. Despite this lack of formal *acquis*, the EU sought to impose minority rights protections as conditions of the

⁸⁵ Jean Pierre Liégeois and Nicholae Gheorghe, *Roma/Gypsies: A European Minority* (London: Minority Rights Group, 1995), 15

accession negotiations.⁸⁶ The demands by the EU have changed over time in response to political sensitive issues. This is demonstrated very well by the way the EU has dealt with the treatment of the Roma minority as a precondition for entry.

In the beginning of the 1990s the EU's attention to the Roma issue in Central and Eastern Europe was fairly limited. The Roma were obviously not a subject of main concern for the EU because they were, at that time, not perceived as a possible threat to European stability. In the mid 1990s, however, the situation of the Roma slowly became a more distinctive element in the EU's conditionality policy.⁸⁷ This was related to the growing coverage of the Roma issue by the international media and by international advocacy organizations such as Human Rights Watch, Amnesty International, the Project on Ethnic Relations, and the European Roma Rights Center.⁸⁸ It had also to do with the increase number of Roma asylum seekers from Central and Eastern European countries arriving in the EU. Between 1997 and 2005, for example, approximately 12,000 to 15,000 Roma left Eastern Europe.⁸⁹ The first to file asylum claims were Slovakian and Czech Roma, followed by Polish, Bulgarian, and Romanian Roma. Political controversy within individual EU states (most importantly, Belgium, the UK, Finland, the Netherlands, and Sweden) about this migration and fears of a massive

⁸⁶ James Hughes, Gwendolyn Sasse, and Claire Gordon. *Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality* (Palgrave, 2004), 3

⁸⁷ Peter Vermeersch, *EU Conditionality and the Case of the Roma in Central Europe*, Paper presented at the conference "Assessing the Accession Criteria", Workshop: Political Dimensions of the Accession Criteria, European Research Institute (Birmingham, 2002), 85-88

⁸⁸ Peter Vermeersch, "EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland," *Journal on Ethnopolitics and Minority Issues in Europe* (Issue 1, 2003), 10

⁸⁹ Arno Tanner, "The Roma of Eastern Europe: Still Searching for Inclusion", May 2005, <http://www.migrationinformation.org/Feature/display.cfm?id=308>

influx after enlargement motivated the EU to promote better treatment of the Roma as a precondition for accession.

After 1997, it became clear that the European Commission found that the situation of the Roma was to play a certain role in deciding whether a candidate member would be ready to join the EU. In the following years, the European Commission gave the impression that it was gradually taking a stricter approach on the issue of the Roma. Moreover, new member and candidate states, including Poland and Romania, have emphasized that the issue of the Roma should be considered as a "Europe-wide" problem, thereby pointing to the fact that domestic governments are not solely responsible for dealing with this matter.⁹⁰ Until today, neither the EU nor its individual member states have dealt with anti-Roma feelings as an old pattern of European culture and identity, nor have they developed means to work against discrimination and exclusion.⁹¹ Instead, a policy of containment is maintained, isolating Roma and their problems, which is mainly the result of discrimination by the majority.⁹²

The conclusion here should be that there is not a strong relationship between European pressure and policy change on minorities in Central and Eastern Europe *except* when it concerns issues that are important for the individual candidate state or when these are security priorities for individual EU member countries. The case of the Roma is an example of the latter. The EU's conditionality policy has been pushed in particular directions by concerns of individual member states. The domestic policies

⁹⁰ Vermeersch, *EU Enlargement and Minority Rights*, 24

⁹¹ Le comité pour L'élimination de la Discrimination Raciale Achève les Travaux de sa Soixante-quatrième Session, *Press document*, 12 March 2004

⁹² Jean Pierre Liégeois and Nicolae Gheorghe, *Roma/Gypsies: A European Minority* (London: Minority Rights Group, 1995), 12

about the Roma are direct indications that the candidate countries have realized very well that the demands of the EU are primarily connected to fear of further migration of Roma. The situation of Roma in new members and candidate states is a matter of interest to European institutions and the European Union countries, particularly those which are the destination for Roma seeking to acquire the status of refugees (e.g. the United Kingdom and Finland).⁹³

Another area which is likely to raise a number of problems is the EU's visa policy, which has become a central instrument of migration control. Candidate countries have to adopt the EU's strict visa policy which requires nationals of a long list of countries to apply for a visa in order to gain entry to the EU. Candidate states were asked to put into practice the visa policy without adequate consideration being given to relations in the region. In the past, residents of countries such as Russia, Ukraine, or Belarus have been able to travel to Central and Eastern Europe without major difficulty. The "open-borders policy" (which was in actual fact a controlled open-borders policy) was a part of the strategy of preserving good relationships with neighbouring countries as practiced by the governments of the Central European states.⁹⁴ Open borders have also advanced the contacts of national minorities with their native countries, such as the Byelorussians in Poland, Poles in Ukraine, Romanians in Moldova and Bucovina (Ukraine), or the Hungarians in Ukraine, former Yugoslavia and Romania. Adopting the Schengen *acquis*, the candidate countries have had to impose visas on citizens of neighbouring countries that are not applicants for EU membership. Therefore, the strict

⁹³ Peter Vermeersch, *EU Enlargement and Minority Rights*, 25

⁹⁴ Sasse et al., *Securitization or Securing Rights?*, 680

application of Schengen will mainly affect the persons living in the border regions, as in the case of those residing along the borders Ukraine shares with Poland, Slovakia, Hungary, and Romania, and between Romania and Moldova.⁹⁵ These individuals will be the first to be affected by the extension of the Schengen regime to new member and candidate states.

The historical past of Central and Eastern Europe has been characterized by the re-drawing of national boundaries, modification which occurred also after the collapse of the communism. The establishment of strict borders between traditional neighbours in Eastern Europe has the potential to perturb well-established ties in the area. As a consequence, many new member states and candidate countries face the problem of ethnic nationals living in neighbouring countries. The situation of the Polish minority living in Belarus and Ukraine, and ethnic Romanian nationals living in Moldova and Ukraine, are good illustrations.⁹⁶ As Alina Mungiu-Pippidi argues, the shutting off of the borders of prospective member states "would sever minorities' connection with countries where the bulk of their culture lies, prompting illegal entrance and feeding resentment."⁹⁷

In the case of Poland, the introduction of visas for Belarus, Russia and Ukraine countries posed a dilemma for domestic policy-makers who want to protect close historical, cultural, and economic links with them. This may explain why Poland has delayed the introduction of visas for as long as possible. Furthermore, there are

⁹⁵ Lora Borissova, "The Adoption of the Schengen and the Justice and Home Affairs Aquis: The Case of Bulgaria and Romania," *European Foreign Affairs Review*, no. 8 (2003), 120

⁹⁶ It is estimated that 570 000 Polish minority lives in Ukraine and Belarus and 2 960 000 ethnic Romanians in Moldova and Ukraine

⁹⁷ Mungiu-Pippidi, *Europe's 'Desert of Tartars'*, 7

significant Polish minorities living in Belarus (418,000) and Ukraine (220,000) who want to retain easy access to Polish territory.⁹⁸ The abolition of the visa-free regime for Ukraine in 2003 resulted in an inevitable break of socio-economic and political ties across borders. This fact negatively changed the situation in the region and significantly affected family and cultural links between Polish and Ukrainian ethnic nationals living on either side of the border.⁹⁹ Moreover, as a result of enlargement Ukrainians in Ukraine are disadvantaged compared with Ukrainians who are citizens of Poland, as the latter enjoy the provision for free movement across the territory of an enlarged EU.

The relationship between Romania and Moldova is special. Romanians and Moldavians belong to the same nation, although they live within the borders of two separate states. Language, religion, culture, and views are not just alike, but identical. The majority of Moldavians consider themselves as Romanians living in another Romanian state, which, also, differentiates them from Romanians in the Ukraine (Bukovina), who consider themselves as an ethnic group. This is a singular situation among all the other cases of cross-border relations. As part of the conditions for accession to the EU, Romania has imposed on non-candidate states the same restrictions against which it protested. In order to enjoy visa-free travel, Romania was obliged to abandon its legal regime with neighbouring Moldova in 2000 and to introduce passport requirement for Moldavians entering Romanian territory.¹⁰⁰ On account of

⁹⁸ Grabbe, *The Sharp Edges of Europe*, 530

⁹⁹ Krystyna Iglicka, Piotr Kazmierkiewicz and Agnieszka Weinart, "Poland" in Jan Niessen, Yongmi Schibel and Cressida Thompson (eds.), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Migration Policy Group (2005), 22

¹⁰⁰ Elena Jileva, "Visa and Free Movement of Labour: The Uneven Imposition of the EU Acquis on the Accession States," *Journal of Ethnic and Migration Studies*, no. 28 (2002), 698

history, there has been an arrangement between Romania and Moldova that their citizens may pass the mutual border on presentation of an identity card. A compulsory visa regime for citizens of the Republic of Moldova will be introduced by the accession date of Romania to the EU. The restructuring of Romanian ties is evident here. The link of common identity with the Moldavians expressed in law through relaxed frontier requirements must be abandoned if the Romanians wish to claim an EU identity.¹⁰¹ According to it, the new border regime can be applied either as one way to secure the border and everybody's life and comfort, and to reduce illegal immigration and illegal activities, or as one policy aimed to restrict contacts and relations between Romanian and Moldavians.

On the other hand, the process of the EU's enlargement has persuaded applicant countries to pass laws which entitle ethnic nationals who are citizens of other countries to a particular status of semi-citizenship. The well-known example is the *Status Law* which entitles Hungarian nationals who are living in other countries to limited work permits and other benefits.¹⁰² Following the example of Hungary, Poland passed the *Repatriation Act* of 2000 which gives ethnic nationals comparable rights, and decreases conditions and periods necessary to acquire Polish citizenship. Such legislative acts have been criticized for supporting the entitlement to rights on ethnic grounds and have consequently been considered as nationalistic measures violating the universalistic

¹⁰¹ Elspeth Guild and Kees Groenendijk, *In Search of Europe's Borders* (The Hague: Kluwer Law International, 2003), 101

¹⁰² *The Status Law or The Law Concerning the Hungarians Who Live in Neighbouring States* passed by Hungarian Parliament on 19 June 2001

principle that should characterize European membership.¹⁰³ Moreover, they can be perceived as a partial solution to the problem of mobility of ethnic nationals since these nationals are kept on the other side of the enlarged EU.

The temporal aspect of borders demonstrates how membership in an enlarged Europe is developing as a plurality of differentiated legal positions. Following accession, citizens of the new member states benefit from a status of semi-membership in contrast to the one granted to the citizens of the old EU states, as their right of movement and settlement for employment purposes is limited. At the same time, new visa requirements applied by candidate countries in order to meet Schengen standards extend the restricted area for migrants arriving from third countries. This disparity is, to a certain degree, alleviated for ethnic nationals of new member states and candidate countries living in third countries, as they enjoy limited membership rights in kin states.

The process of EU enlargement is a useful model in which to examine the system of differentiated membership and semi-citizenship that results from the transformation and repositioning of European borders. The role that borders serve in creating different relations over foreigners begins “outside” and continues “inside” the territory in the form of diverse legal status attributed to individuals. Obvious lines can be traced between the externalization of border control through visa or readmission agreements and the internalization of borders resulting from the institutions of expulsion or the administrative detention of aliens.

A system of differentiated memberships, framed by the norms that identify boundaries at each level of the European polity, corresponds to the multi-level system in

¹⁰³ Rigo, *Implications of EU Enlargement*, 13

the governance of peoples' mobility. The accession of candidate countries into a European "area of freedom, security and justice" will not imply the right of free circulation and settlement for the workers of the new member states. The free movement of workers will be delayed from two to seven years, creating a category of European citizens with limited rights of movement. The same transitional periods will apply to the future waves of enlargement. Moreover, the tightening of migration policies has induced candidate countries to pass laws that entitle ethnic nationals who are citizens of other countries to a particular status of semi-citizenship. Finally, other types of differentiated membership are established by the norms that formally regulate the legal status of aliens in domestic legislation of member states and candidate countries.

Traditional symbols of citizenship, even when based on challenging grounds for membership, have been characterized by equality among citizens. Ironically, the fact that the exclusive and discriminatory character of the "European fortress" not only lies at its perimeter but extends within and beyond the territorial delimitation of the EU, also allows for a wider definition of its potential inclusiveness. This derives from the fact that the fortified borders of Europe are breached and contested on daily basis by people in movement. Constructing a nation of Europeans loyal to the EU requires a careful balance between rights and obligations. If new member state citizens experience difficulty in arranging to work in the enlarged EU, and if the EU continues to ask the candidate states to abandon the peoples on their eastern borders, these concerns could unnecessarily delay the formation of a sense of Europeaness.

A consideration of these aspects of membership and the practice of citizenship reveals how the limits of inclusion coincide with those of exclusion. Therefore, the process of EU enlargement eastwards challenges the theory and practice of defining European membership exactly because it brings into light how the deterritorialisation and relocation of the EU's borders leads to breakup of the notion of citizenship. In other words any eastern border of Europe is a border drawn within Europe itself.

Bibliography:

- Act on Aliens*. 13 June 2003. Poland. Available at http://www.uric.gov.pl/auths/113/files/4043372d9359_udzoziemcy.pdf?PHPSESSID=52f869fe31c5fb4b8fc014580d3a220f (accessed July 20, 2006)
- Act on Granting Protection to Aliens Within the Territory of the Republic of Poland. Journal of Laws of 2003. No. 128. it. 1176
- Amato, Giuliano and Batt Judy. The Long Implications of EU Enlargement: Culture and National Identity. European University Institute. Florence. 1999.
- Amsterdam Treaty available at <http://www.eurotreaties.com/amsterdamtreaty.pdf>
- Anagnost, Stephan. "Challenges Facing Asylum Systems and Asylum Policy Development in Europe: Preliminary Lessons Learned from the Central European and Baltic States (CEBS)." International Journal of Refugee Law. 12 (2000): 380.
- Anderson, Malcolm and Apap, Joanna. Police and Justice Co-operation and the New European Borders. The Hague: Kluwer Law International. 2002.
- Aniol, Wlodek. Poland's Migration and Ethnic Policies: European and German Influences. Warsaw: Friedrich Ebert Foundation. 1996.
- Smith, Anthony D. "National identity and the idea of European Unity." International Affairs. Vol. 68. No 1(1992): 55-76.
- Apap, Joanna and Tchorbadjiyska, Angelina. What About the Neighbours? The Impact of Schengen along the EU's External Borders. Centre for European Policy Study. 2004.
- Bauböck, Rainer and Rundell, John. Blurred Boundaries: Migration, Ethnicity, Citizenship. Aldershot: Ashgate. 1998.
- Becerro, Ana. The External Aspect of Migration Policy. EUI Working Paper. European University Institute. Italy. 2004.
- Bem, Katarzyna. "Changes in Polish Refugee Law." European Journal of Migration and Law 5 (2004): 463-478
- Bell, Nicholas. The Exploitation of Migrants in Europe, contribution to the conference *Borders and Migration*. Austrian League for Human Rights. Vienna. 2002.

- Bhabha, Jacqueline. "Belonging in Europe: Citizenship and Post-National Rights," International Social Science Journal. Vol. 51. No. 1(1999):11-23
- Bhagwati, Jagdish N. "Borders Beyond Control." Foreign Affairs, January-February (2003): 98-104.
- Bigo, Didier. Polices en Réseaux: L'Expérience Européenne. Paris: Presses de Sciences-Po. 1996.
- Borissova, Lora. "The Adoption of the Schengen and the Justice and Home Affairs Aquis: The Case of Bulgaria and Romania." European Foreign Affairs Review. No. 8 (2003):105-124
- Bouteillet-Paquet, Daphné. L'Europe et Le Droit D'asile. Paris: L'Harmattan. 2001.
- Brown, Dan. "Storming the Fortress: The external border Regime in an enlarged Europe," in Ingham, Hilary, and Mike Ingham (eds.), EU Expansion to the East. Cheltenham: Edward Elgar. 2002.
- Brownlie, Ian. Basic Documents on Human Rights. Oxford, Oxford University Press. 2002.
- Byrne, Rosemary, Noll, Gregor and Jens Vested-Hansen. New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union. The Hague: Kluwer Law International. 2002.
- Christiansen, Thomas, Petito, Fabio and Tonra Ben. "Fuzzy Politics Around Fuzzy Borders: The European Union's 'Near Abroad'." Cooperation and Conflict. No. 37 (2002): 385-415
- Commission of the European Communities. Commission Opinion on Romania's Application for Membership of the European Union. DOC/97/18, 15 July 1997.
- Guidelines for Phare Programme Implementation in the Candidate Countries: 1998–1999. 27 March 1998.
- Communication Concerning the Development of the External Service. COM 456 final, 18 July 2000.
- Paving the Way for a New Neighbourhood Instrument Brussels. Commission of the European Communities: 14. 2003.
- Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbors. Brussels. 2003.

- Report on the Functioning of the Transitional Arrangements set out in the 2003 Accession Treaty: period 1 May 2004-30 April 2006. Brussels. February 8, 2006
- Proposal for a Regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument (2). 2004.
- Council of Europe. Strengthening Local Democracy and Developing Cross-Border Co-operation in South-Eastern Europe Strasbourg. Council of Europe: 8. 2004.
- "Decision of 20 May 1999 concerning the definition of the Schengen acquis, 1999/435/EC." http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999D0435&model=guichett (accessed July 20, 2006)
- EU Schengen Catalog: External Border Control, Removal and Readmission Brussels, European Union: 1-55. 2002.
- Process Leading to the Implementation and Application of the Schengen Acquis in full by the new Member States Brussels, European Union: 10. 2002.
- Demetropoulou, Leeda. "The Europeanization of the Balkans: EU Membership Aspiration and Domestic Transformation in South Eastern Europe." Paper presented at the South Eastern Europe and EU Enlargement Conference (2001) <http://www.qub.ac.uk/ies/events/confenlarg/dem.pdf> (accessed March 12, 2006)
- Den Boer, Monica and Giles de Kerchove. "Schengen Acquis and Enlargement" in Vincent Kronenberg (ed.), The European Union and the International Order: Discord or Harmony. The Hague: T.M.C. Asser Press. 2002.
- Dietrich, Helmut. 2003. "The New Border Regime at the Bug River. The East of Poland and the PHARE Programmes." Working Paper, Forschungsgesellschaft Fluch und Migration, <http://www ffm-berlin.de/bugriver.html> (accessed July 8, 2006)
- Dublin II. Council Regulations No. 343/2003. Official Journal of the European Union. February 13, 2003.
- Emergency Ordinance on the Regime of Aliens in Romania. The Romanian Official Journal. No. 955. 27 December 2002.
- European Commission. Agenda 2000: For a Stronger and Wider Union. Luxembourg. European Communities. 1997.

- European Commission. Regular Report on the Czech Republic's Progress Towards Accession. European Communities. 2001.
- European Commission. Living in an Area of Freedom, Security and Justice: Justice and Home Affairs in the European Union, European Union. 2001.
- European Parliament . Report on the Commission Proposal for Adoption of a Council Regulation on the Establishment of a Regime of Local Border Traffic at the Temporary Land Borders between Member States Brussels. Committee on Citizen's Freedoms and Rights, Justice and Home Affairs. 2004.
- "Migration and Asylum in Central and Eastern Europe."
www.europarl.eu.int/workingpapers/libe/104/summary_en.htm (accessed August 23, 2006)
- European Union Information. <http://europa.eu.int>
- Fletcher, Maria. "EU Governance Techniques in the Creation of a Common European Policy on Immigration and Asylum." European Public Law, No. 4 (2003): 533-562.
- Geddes, Andrew. Immigration and European Integration: Towards Fortress Europe? Manchester: Manchester University Press. 2000.
- Geddes, Andrew. The Politics of Migration and Immigration in Europ. London: Sage. 2003.
- Grabbe, Heather. "The Sharp Edges of Europe: Extending Schengen Eastward", International Affairs. Vol. 79, No. 3 (2000): 519-530
- Graham, David T. and Nana K. Poku. Eds. Migration, Globalisation and Human Security. London and New York: Routledge. 2000.
- Guild, Elspeth. "The Emerging Constitution of the European Union: Citizenship, Justice and Security." Brussels: 2004. europa.eu.int/comm/education/programmes/ajm/people_culture/contributions/Elspeth_guild_en.pdf (accessed June 25, 2006)
- Guild Elspeth and Kees Groenendijk. In Search of Europe's Borders. The Hague: Kluwer Law International. 2003.
- Habermas, Jürgen, and Jacques Derrida. "February 15, or What Binds Europeans Together: A Plea for a Common Foreign Policy, Beginning in the Core of Europe." Constellations. Vol. 10, No 3 (2003): 291-297
- Hansen, Randal, and Patrick Weill. Towards a European Nationality. Citizenship, Immigration and Nationality Law in the EU. Basingstoke. Palgrave. 2001.

- Havel, Václav. "A Charter of European Identity." Speech Made to the European Parliament. Strasbourg. March 8, 1994
<http://www.eurplace.org/diba/citta/havel.html> (accessed July 12, 2006)
- Hughes, James, Sasse Gwendolyn, and Claire Gordon. Europeanization and Regionalization in the EU's Enlargement to Central and Eastern Europe: The Myth of Conditionality. Palgrave. 2004.
- Iglicka, Krystyna, Kazmierkiewicz, Piotr and Agnieszka Weiner. "Poland" in Niessen, Jan, Schibel, Yongmi and Cressida Thompson (eds.), Current Immigration Debates in Europe: A publication of the European Migration Dialogue. Migration Policy Group. 2005.
- Jacobson, David. Rights Across Borders: Immigration and the Decline of Citizenship. London: John Hopkins University Press. 1996.
- Jileva, Elena. "Visa and Free Movement of Labour: the Uneven Imposition of the EU Acquis on the Accession States." Journal of Ethnic and Migration Studies. Vol. 28, No. 4 (2002): 683-700
- Jürgen Habermas. The Postnational Constellation: Political Essays. Cambridge. Polity. 2001.
- Kabeer, Naila. Inclusive Citizenship: Meanings and Expressions. New Delhi, Zubaan. 2005.
- Kengerlinsky, Marat. "The EU's New External Borders and Restrictions in Immigration and Asylum Policies." UACES European Studies, Work Paper, March 2005, www.uaces.org (accessed July 20, 2006)
- Kochenov, Dimitry. "Pre-Accession, Naturalisation, and Due Regard to Community Law." Romanian Journal of Political Science. Vol. 4, No. 2 (2004): 71 - 88.
- Kochenov, Dimitry. "European Citizenship Concept and Enlargement of the Union," Romanian Journal of Political Science. Vol. 3, No. 2 (2003): 71 - 97.
- Kostakopoulou, Dora. "European Union Citizenship: Exclusion, Inclusion and Social Dimension", Anthias, Floya, and Gabriella Lazaridis (eds.) Into the Margins: Migration and Exclusion in Southern Europe. Ashgate, Aldershot. 1999.
- Kostakopoulou, Dora. "The 'Protective Union': Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe." Journal of Common Market Studies. Vol. 38, No. 3 (2000): 497 – 518.

- Krieger, Hubert. "Migration Trends in an Enlarged Europe." European Foundation for the Improvement of Living and Working Conditions. 2004.
- Kveinen, Else. "Citizenship in a Post-Westphalian Community: Beyond External Exclusion?" Citizenship Studies. Vol. 1 (2002): 21-35
- Lavenex, Sandra. "Asylum, Immigration, and Central-Eastern Europe: Challenges to EU Enlargement." European Foreign Affairs Review. Vol. 3 (1998): 275.
- Legislation Poland. www.lexadin.nl/wlg/legis/nofr/eur/lxwepol.htm
- Le Comité pour L'élimination de la Discrimination Raciale Achève les Travaux de sa Soixante-Quatrième Session. Press Document. 12 March 2004
- Liégeois, Jean Pierre and Nicholae Gheorghe. Roma/Gypsies: A European Minority. London: Minority Rights Group. 1995.
- Linklater, Andrew. The Transformation of Political Community. Cambridge, Polity Press. 1998.
- Luhmann, Niklas. "Territorial Borders as System Boundaries" in Strassoldo, Raimondo and Giovanni Delli Zotti, (eds.), Cooperation and Conflict in Border Areas. Milano: Franco Angeli. 1982.
- Markus Thiel. "European Identity and the Challenge of Enlargement." Jean Monet/Robert Schuman Paper Series. Vol. 5, No. 31 (2005)
- Marshall, Thomas H. Citizenship and Social Class. Cambridge: Cambridge University. 1965.
- Monar, Jorg. "The Dynamics of EU Justice and Home Affairs: Laboratories, Driving Factors and Costs." Journal of Common Market Studies, Vol. 39 (2003): 747-764.
- Mungiu-Pippide, Alina. Europe's 'Desert of Tartars' Challenge: The Borders of the Enlarged European Union. EUI Working Papers RSCAS No. 2001/43.
- Nugent, Neill. European Union Enlargement. Palgrave MacMillan. 2004.
- Papadimitriou, Dimitris. Coming Together or Pulling Apart? The European Union's Struggle with Immigration and Asylum. Carnegie Endowment for Peace. Washington D.C. 1996.

- Papadimitriou, Dimitris, and Davis Phinnemore. "Europeanization, Conditionality and Domestic Change: The Twinning Exercise and Administrative Reform in Romania." Journal of Common Market Studies. No. 42 (2004): 619-639
- Peers, Steve. "Readmission Agreements and EC External Migration Law." Statewatch Analysis. Buletin No. 17. 2003. <http://www.statewatch.org/news/2003/may/12readmission.htm> (accessed July 16, 2006)
- Perchinig, Bernhard. "Union Citizenship and the Status of Third Country Nationals." Working Paper No. 12. 2001. <http://www.eif.oeaw.ac.at> (accessed August 13, 2006)
- Peters, Anne. "A Plea for a European Semi-Parliamentary and Semi-Consociational Democracy." European Integration online Papers.2003. <http://papers.ssrn.com> (accessed August 23, 2006)
- Petersen, Michael. "Recent Developments in Central Europe and the Baltic States in Asylum Field: A View from UNHCR and the Strategies of the High Commission for Enhancing the Asylum Systems of the Region", in Byrne, Rosemary, Noll, Gregor, and Jens Vested-Hansen (eds), New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union. The Hague: Kluwer Law International. 2002.
- Phuong, Catherine. "Controlling Asylum Migration to the Enlarged EU". World Institute for Development Economics Research. Discussion Paper No. 2003/59
- Reich, Norbert, and Solvita Harbacevica. The Stony Road to Brussels – The Many Ways of EA Nationals and Residents into Union Citizenship – And the many Attempts to Keep Them Out. Europarattsling Tidskrift. 2002.
- Rigo, Enrica. "Implications of EU Enlargement for Border Management and Citizenship in Europe." EUI Working Paper. RSCAS 21. May 2005. <http://www.iue.it/RSCAS/Publications/> (accessed April 20 2006)
- Ringold, Dena, A. Orenstein Mitchell, and Erika Wilkens. Roma in an Expanding Europe: Breaking the Poverty Cycle. Washington: The World Bank. 2005.
- Sasse, Gwendolyn. "Securitization or Securing Rights? Exploring Conceptual Foundations of Policies towards Minorities and Migrants in Europe." Journal of Common Market Studies. Vol.43. No. 4 (2005): 673-693
- Stetter, Stephan, Diez, Thomas, and Mathias Albert. "The European Union and the Transformation of Border Conflicts: Theorising the Impact of Integration and

- Association." Paper at the International Workshop on Europe's Borders. 1-2 July 2004. <http://www.liv.ac.uk/ewc/docs/Borders.pdf> (accessed July 7, 2006)
- Soysal, Yasemin. N. Limits of Citizenship: Migrants and Postnational Membership in Europe. Chicago: University Press. 1994.
- Tanner, Arno. "The Roma of Eastern Europe: Still Searching for Inclusion." May 2005. <http://www.migrationinformation.org/Feature/display.cfm?id=308> (accessed August 30, 2006)
- Turmann, Anna and Sergio Carrera. "Towards a Free Movement of Workers in an Enlarged EU?" CEPS Commentary. Brussels. April 2004. www.ceps.be (accessed July 22, 2006)
- Vermeersch, Peter. EU Conditionality and the Case of the Roma in Central Europe. Paper presented at the conference 'Assessing the Accession Criteria', Workshop: Political Dimensions of the Accession Criteria. European Research Institute. Birmingham. 2002.
- Peter Vermeersch. "EU Enlargement and Minority Rights Policies in Central Europe: Explaining Policy Shifts in the Czech Republic, Hungary and Poland." Journal on Ethnopolitics and Minority Issues in Europe. Issue 1/2003.
- Ziegler, Jean. "The Accession Negotiation on Free Movement of Workers" in Ott, Andrea, and Kirstyn Inglis (eds). Handbook on European Enlargement. The Hague: T.M.C. Asser Press. 2002.
- Wilson, Thomas, and Donovan Hastings. Border Identities: Nation and State at International Frontiers. Cambridge: Cambridge University Press. 1998.