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ENFORCEMENT OF HUMAN RIGHTS PROTECTION REGULATIONS IN POST-CONFLICT COUNTRIES OF SOUTHEAST EUROPE AND THEIR ACCESSION TO THE EUROPEAN UNION

Abstract

The paper analyzes the effects of the accession process to the European Union onto human rights protection regulations in the post-conflict countries of Southeast Europe. Firstly, the paper underlines human rights issues as causes and drivers of conflict, with a focus on the wars in former Yugoslavia. The paper then turns to analyzing the human rights protection legal base within the framework of the European Union. This conglomerate of legal provisions is considered a prime example of multi-level regulatory framework mechanism. In this sense, the paper argues that the prevalence of human rights protection and developing democratic institutions, is the primary focus of the EU accession frameworks after the fall of the Berlin Wall. In an attempt to transform the future members' societies, the European Union has employed an ever-changing plethora of mechanisms, both common and country-specific. In that sense, the already proven mechanisms coupled with the newly proposed methodology could expedite or slower the process of accession – but certainly add to the quality of it. The strongest increase in EU's role as an external actor is evident in the stronger commitment to a merit-based process, achieved through the principle of predictability. Notwithstanding the ambitiousness of the new methodology, effective reform of the human rights protection mechanisms and accession to the European Union will be decided by the political will on all sides. In this paper's view, a more coherent, systemic and determined approach on the side of the EU could have policy implications which would assist EU's strategic role in enforcing effective remedies for dealing with human rights issues. In perspective, the lessons derived could allow for practical analyses and prescriptions for similar situations of international superpowers' interplay with regional and local actors in affecting positive change in the human rights protection arena.

***Keywords**:* human rights, EU accession, post-conflict, South-East Europe

I. HUMAN RIGHTS ISSUES AS DRIVERS OF CONFLICT

Human rights are in the core of any given conflict, both as its drivers and effects. As such, human rights issues drive the bloodshed and violence, only to shape the dispute resolution and

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the aftermath of a conflict. High UN representatives have stated that '[h]uman rights violations and lack of accountability and prosecution for such violations are often drivers of conflict'.[1] Moreover, the (in)ability of countries to provide high qualities of essential "political goods", by the literature in peace studies, is considered a criterion for their categorization into strong, weak, failing or failed (collapsed) states. In a sense of human rights, authors stress the importance of delivering security, as the most important political good for the citizens – security being 'the projection of state power, the state monopoly of violence, and human security.'[2] In essence, weak and failed states lack the ability to provide their citizens security and basic human rights, thus motivating internal or external to revolt and destabilize the system.

While it is difficult to pinpoint the direct causes of a specific conflict, the broad understanding is that human rights issues determine the societal context where the conflict is to take place. Some authors stress that 'high levels of political discrimination are a key cause of violent ethnic conflict.'[3] In that sense, human rights abuse is seen as a warning for an incipient conflict. Moreover, human rights issues and concerns also affect the dynamics of the conflict. In some scholars' view, '…human rights abuses are both a trigger for escalation (as, for example, in Kosovo) and a concomitant of protracted fighting'.[4] The specific human rights abuses which can be understood as conflict drivers has understandably not been defined. That is the case because conflicts starkly differ from one another in type, scale, location, parties, time, and many other criteria. However, some authors number a variety of human rights violations, such as

> 'government torture, politically imprison, kill, or "disappear" people", as well as if the governments "do not allow women to participate fully in the political system, including allowing them to hold high level national political office, and do not allow women to participate fully in the economic life of the nation'.[5]

In an attempt to distinguish the more pressing human rights concerns, other authors analyze the concept of *collective disadvantages* as potential drivers of conflict. In that sense, Gurr explains collective disadvantages as 'socially derived inequalities in material well-being, political access, or cultural status by comparison with other social groups'.[6] These kinds of disadvantages, understood as economic, political and cultural discrimination, seek redress, which is fueled with passion, self-righteousness, and solidarity among the communities. As such, when combined with other contextual factors, as access to resources, ability to fight, human capital and political

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[1] Office of the UN High Commissioner for Human Rights (OHCHR), "Combating Impunity and Strengthening Accountability and the Rule of Law," <www.ohchr.org/EN/AboutUs/Pages/Combatingimpunityandstrengtheningaccountability.aspx> accessed 20 March 2020.

[2] Robert I. Rotberg, 'The Challenge of Weak, Failing, and Collapsed States' in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Leashing the Dogs of War: Conflict Management in a Divided World* (United States Institute of Peace Press 2013)

[3] Victor Asal and Amy Pate, 'The Decline of Ethnic Political Discrimination, 1950-2003' in Monty G. Marshall and Ted Robert Gurr (eds), *Peace and Conflict 2005: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy* (College Park: CIDCM 2005)

[4] Oliver Ramsbotham, Hugh Miall, Tom Woodhouse (eds) *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts* (Cambridge, UK: Polity Press 1999)

[5] David Cingranelli, Mark Brendan Skip, Mark Gibney Peter Haschke, Reed Wood, Daniel Arnon, 'Human Rights Violations and Violent Internal Conflict' [2019] Social Sciences 8.41.

[6] Ted Robert Gurr, 'Minorities, Nationalists, and Islamists: Managing Communal Conflict in the Twenty-first Century' in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Leashing the Dogs of War: Conflict Management in a Divided World* (United States Institute of Peace Press 2013)

context, they can lead to conflictual processes on a different scale. Nonetheless, these collective disadvantages represent fertile soil for development of conflicts.
The Standardized Framework for Success developed by the United States Institute for Peace, in that sense, highlights five objectives that societies emerging from conflicts should aspire to achieving. These include: safe and secure environment, rule of law, a stable democracy, sustainable economy and social well-being. In line with the Framework, the paradigm of rule of law includes the establishment of a coherent, legitimate and just legal frameworks, effective and independent courts, effective law enforcement forces, correction systems, protection of human rights, equal access to justice and equal application of the law and promotion of public awareness and legal empowerment. Finally, the process of conflict management and its resolution, in the long-run, would entail protection and development of human rights through the institutionalization of their protection. In a best case scenario, the process of conflict resolution, after the secession of violence, continues with democratization of institutions and building their effectiveness, improvement of the national legal framework as a protective guarantee and international integration of the state.
More specifically speaking, the conflicts we have witnessed in the Balkans, affected the issues of: minority rights (the principle of national self-determination, the right to self-government, the use of languages different from the majority language, religious and cultural rights), loss of property, discrimination on all grounds, women's rights, etc. Active practitioners, such as the Council of Europe Commissioner for Human Rights stressed some of the most prevalent issues, among which are the measures to overcome impunity, reparation to war victims, the need to establish and recognize the truth concerning human rights violations and violations of international humanitarian law that occurred in the region. Therefore, the post-conflict countries of Southeast Europe represent a prototype for analysis of countries in which human rights issues have been at the forefront of the fighting in the conflicts, as well as the conflict resolution and post-conflict reconstruction.

II. EU HUMAN RIGHTS PROTECTION MECHANISMS AND POST-CONFLICT CANDIDATE COUNTRIES

The European Union today has underlined human rights protection provisions as one of the pillars of its unity and cooperation. This complex conglomerate of legal provisions is considered a prime example of multi-level regulatory framework, which effectiveness is widely debated among scholars. However, this has been a fairly contemporary phenomenon. Namely, until the end of the 1960s, the European Economic Community (EEC) was generally focused on economic integration. As Douglas-Scott argues – 'human rights were not a pressing concern in the early EEC'.[7] Needless to say, the waves of enlargement until the 1990s were bound by the geographical principle of belonging to Europe and the willingness to be part of the Community. Articles 237 of the Agreement on the European Economic Community (EEC) and 205 of Agreement of the Euratom, among others, stated that 'any European State may apply to become a member of the Community'. However, at the Hague Summit in 1969, the initial member countries envisioned a path for Europe's political integration and, for the first time, portrayed the human rights dimension. In the enlargement that followed with Greece, Spain and Portugal, the European Economic Community informally devised additional criteria which would guarantee

[7] Sionaidh Douglas-Scott, 'The European Union and Human Rights after the Treaty of Lisbon', [2011] Human Rights Law Review 11:4

human rights protections in these fragile democracies. Those were countries emerging from dictatorial and pseudo-dictatorial regimes, where human rights issues were troubling to say the least.

With the fall of the Berlin Wall, EU's human rights protection regulatory framework was formalized and upgraded. Firstly defined as milestones for accession in the 'Copenhagen criteria' of the June 1993 Copenhagen European Council, the new rules became applicable to any country eligible to accede to the European Union under the "old phrase". Essentially, Article 49 of the Treaty of the European Union requires that the candidate country must achieve:

> 'stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; the ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union.'

The process was invigorated with the "opening" towards former communist and socialist countries. The existing human rights protection framework was then further advanced with the drafting of the Charter of Fundamental Rights of the European Union (CFR) in 2000 (and especially with the Lisbon Treaty of 2007). The realm of human rights protection was thereby elevated to a new level for all member countries, and was parallely incorporated in the criteria for accession.

The Charter for Fundamental Rights of the European Union represents a successful unification attempt of the plethora of human rights protection regulations. Resembling some national Bill of Rights, it ambitiously regulates the fundamental rights pertaining to the man and the citizen of EU. According to its Preamble, the CFR is 'founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law'. Coming in a time when rights enjoyed by the citizens of the European Union were scattered in different legal documents, the CFR united all the personal, civic, political, economic and social rights, covering the rights found in the case law of the Court of Justice of the EU, the ones in the European Convention on Human Rights and other rights and principles within the common constitutional traditions of member countries. The envisioned goal of the Charter has been to '…strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments'. In this view, the CFR unambiguously put forward the basic rights of the man and the citizen, notwithstanding the changing political circumstances of the European societies. Of importance to this paper, is the focus the Charter put to the right to life, human dignity and human integrity. The CFR determines that the rights it protects, are inviolable and must be respected and protected. In Article 4, the CFR prohibits the torture and inhuman or degrading treatment or punishment. It also regulates the right to liberty and security of person, additionally stressing that 'everyone has the right to freedom of thought, conscience and religion'. In a chapter titled "Equality", the Charter regulates the question of non-discrimination and the promotion of cultural, religious and linguistic diversity. By prohibiting all types of discrimination and promoting diversity, the EU, thereby, has deterministically put the focus on the human rights, with an ambition for them to be equally enjoyed in all countries that are part of the European family.

This plethora of documents has become a binding and integral part of EU legal conglomerate. Moreover, the Lisbon Treaty noted the increased importance of the Court of the European Union and the European Court of Human Rights. In many ways throughout the prolonged period of conglomeration of legal provisions in a plethora of binding documents, the European Union

finally framed human rights protection in a complex, but all-encompassing system. Some authors rightly argue that 'these moves formally marked the constitutional maturation of human rights within the EU legal and constitutional framework.'[8] From a theoretical standpoint, this multiplicity of regulatory documents creates a basis for research on the coherence of the framework, its ability to tackle all the contending issues of human rights protection and the implementability in the national legislative frameworks of the member and aspiring member countries. In practical terms, though, this complexity poses a dilemma with regards to devising concrete enforcement mechanisms in the context of the EU enlargement.

On the outskirts of the European Union, the bloody dissolution of Socialist Yugoslavia in the 1990s provoked EU involvement in a dispute resolution processes on different levels. During the interstate and intrastate conflicts in the Balkans, EU member countries saw and dealt with the most cruel and direct human rights violations in the post-World War II era. The Croatian war was only the beginning of a bloody dissolution of once a socialist federation based on the principles of brotherhood and unity. The combination of intra- and interstate conflict in Croatia, posed the questions of the right to national independence, the question of ethnic cleansing, refugee rights, right to decent life and home, and the right to local self-government. Bosnia and Herzegovina showed the peak of savagery and gross violation of human rights. There, at an international level, apart from the US brokered agreement for the creation of the Federation of B/H between Bosniaks (Bosnian Muslims) and Bosnian Croats in 1994, the war was considered an EU problem. Europeans, having blurred the definition of the conflict's issues and participants, were unwilling to act militarily to stop the violence and failed in their attempts to reach a sustainable peace agreement, in the beginning of the conflict. The severity, intensity and brutality of the conflict warned the international community of what escalation would mean if the mild international approach continued. According to some, [t]he accompanying atrocities impacted the public's sense of morality and stimulated the urge to do something to end the outrage'[9] The Dayton Peace Accords (DPA), which put an end to a devastating war in Bosnia and Herzegovina, also ensured the existence of legal environment for respect of fundamental human rights. Respect for human rights and their protection was generally seen as a prerequisite for building a democratic state. Under DPA, the citizens had to be ensured 'the highest level of internationally recognized human rights and fundamental freedoms'.[10] Moreover, according to Annex 6, which dealt with human rights, the Bosnian constitution would incorporate sixteen international human rights agreements, including the Convention on the Prevention and Punishment of the Crime of Genocide, the four Geneva Conventions, and the European Convention for the Protection of Human Rights and Fundamental Freedoms with its Protocols, etc. Fast forward to 1999, having in mind the Kosovar war, one can note some similarities with Croatia and Bosnia, only to add the question of religious freedoms and cultural rights for minorities in the post-independence years, the questions of partition and exchange of territories between internationally recognized countries, as well as the questions of political and institutional participation.

Finally the Macedonian conflict, albeit being the smallest one in casualties and severity, was a chance for the European Union to act early, in order to prevent further escalation of the inter-

[8] Gráinne de Búrca, 'The Road not Taken: The European Union as a Global Human Rights Actor', [2011] American Journal of International Law, Volume 105 Issue 4

[9] Saadia Touval, 'Coercive Mediation on the Road to Dayton' [1996] International Negotiation, 554

[10] Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovinia, 21 November 1995 <https://www.refworld.org/docid/3de495c34.html> accessed 28 March 2020, Annex 4, Article II, par. 1

ethnic conflict and its turn to a full-fledged civil war. The Ohrid Framework Agreement, which concluded the conflict, stressed the importance of the mechanisms for power-sharing between the ethnic groups, as well as inclusion of minority groups as the only path towards a functioning democracy. Its approach was to regulate a higher degree of autonomy for the second largest ethnic minority, by determining rights for independent and efficient local self-governance and decentralization of the state power. Additionally, the Agreement stressed the significance of the principle of non-discrimination and equal treatment of all, and established a principle of bi-ethnic consensus on sensitive questions. The full implementation of the Ohrid Framework Agreement, though controversial, was done through amendments to the Macedonian Constitution, passed in the Assembly.

All in all, the complexity of the legislative framework of these countries is seen in the redesigned basic legal documents after the conflicts, the effect of the peace agreements, the role of the new regulations in light of the accession to the EU, and the impact of the European Convention of Human Rights (including the European Court of Human Rights case law). The said multiplicity of regulations, in the context of the accession of the Western Balkans, is further enriched by the enforcement of other legal documents with local or national human rights importance. Examples include the Ohrid Framework Agreement, the Dayton Peace Accords, the Ahtisaari Plan, the Belgrade-Pristina Agreement, only to name a few.

In an attempt to portray itself as the 'civilian force', the European Union was an active external actor in these countries. And while its role in stopping the violence was by many deemed a failure, the European Union had a substantial and successful role in shaping these countries' post-conflict future. In this region, the EU has projected itself as a normative power. It used various mechanisms for standards transposition, predominantly the mechanism of political conditionality. The end goal, in that sense, has been to support the consolidation of the fragile states and to enforce human rights protection. The implementation of the aforementioned regional and/or local, inter alia human rights protection, documents is also closely monitored by the European Union. Their implementation respectively represents key criterion of these countries' integration to the EU.

Going back to the protection of human rights in the European Union framework, it is clear that the EU has identified its external activities through 'human rights protection as a prominent and cross-cutting dimension.'[11] As it has been evident from the more recent accession processes especially since the fall of the Berlin Wall, human rights protection has been at the forefront of the enlargement process. Authors stress that

> '…by making the discourse about the promotion of human rights and democracy a distinct and central element of its eastern enlargement policy practice, EU policy-makers affirmed a self-image of the EU as an actor whose identity prescribes the promotion and protection of these principles.'[12]

Therefore, many authors have equalized the term "Europeanization" with transposition of standards in different realms, but predominantly in the realm of human rights. In Katzenstein's definition Europeanization is understood as 'constructing, diffusing, and institutionalizing both formal and informal rules, procedures, policy paradigms and styles, shared beliefs, and ways of

[11] Gráinne de Búrca, 'The Road not Taken:…

[12] Ulrich Sedelmeier, 'The EU's Role in the International Promotion of Human Rights and Democracy: Enlargement Policy Practice, Identity Formation and European Foreign Policy' [2004] Paper presented at the ECPR Joint Sessions

conducting political business.'[13] Having in mind the structure of the Chapters in the European acquis, which are the pillars of the accession process, as well as the importance the European Commission (EC) puts on the human rights protection, one can note the central role of the issue of human rights protection in the broader Europeanization paradigm.

When analyzing the concept of human rights protection within the realm of EU enlargement, one should also take into account Chapter 23 and 24 from the European framework for accession. Chapter 23 regulates the questions of the judiciary and fundamental rights. Its idea is to promote human rights and develop efficient and effective judiciary within the EU, understood as an area of freedom, security and justice. Therefore, an independent and functioning judiciary is of paramount importance, especially for guaranteeing fair trials and effective promotion of the concept of rule of law. The European Union, as such, strives to eliminate any type of influence over the judiciary, while investing into its human and infrastructural capacity. In this sense, the Union pledges to effectively fight corruption, a phenomenon threatening democratic institutions and the rule of law. Finally, the European Union focuses on ensuring respect for fundamental rights and citizens' rights (citizens of the European Union), based on the European acquis and the CFR. This connection to the network of human rights protection mechanisms answers the question of finding a horizontal match between the regulatory mechanisms within the complex conglomerate. Chapter 23 outlines the aspirations and the vision with regards to the milestones in the protection of fundamental human rights, and the significant role of the judiciary in this regard. Turning to Chapter 24, titled Justice, freedom and security, one can note the continuation, as well as the vision to establish the European Union as a free, secure and just organization of states. With regards to the question of human rights protection, especially after conflicts, this chapter regulates issues such as external migration, asylum, police cooperation, the fight against organized crime and terrorism, judicial cooperation in criminal and civil matters, and many others. The aspiration, thereby, is to properly equip future members to adhere and implement common rules within the acquis, and to strengthen the administrative capacity to attain the necessary standards. The provisions of this Chapter, add to the protection of fundamental rights from Chapter 23, but also create the basis for the full functioning of the Schengen system.

Consequently, the aforementioned conglomeration of various provisions in the multi-level regulatory system of human rights protection on the side of the external actor, as well as the locally signed conflict related documents, complicate the approach towards creating efficient human rights protection mechanisms for aspiring member countries. One of the most prominent enforcement mechanisms in the process of enlargement of the European Union is the concept of conditionality. The European Commission has used reporting and "carrots and sticks" as a way of signaling progress or stagnancy in the fulfilment of the accession criteria. This approach is sometimes labelled as "reactive reinforcement" meaning that 'the international organization merely reacts to the fulfillment or non-fulfillment of its conditions by granting or withholding rewards but does not (proactively) punish or support non-compliant states.'[14] Yearly Progress reports issued by the European Commission on candidates and potential candidates evaluate countries' record on human rights and identify areas for improvement. Authors stress this concept as important for the delivery of tangible results on the side of the aspiring member.

[13] Peter J. Katzenstein, 'Multiple Modernities as limits to secular Europeanization?' in Timothy A. Byrnes and Peter J. Katzenstein (eds) *Religion in an Expanding Europe* (Cambridge University Press 2006)

[14] Frank Schimmelfennig, Stefan Engert, Heiko Knobel, 'The Conditions of Conditionality: The Impact of the EU on Democracy and Human Rights in European Non-Member States' [2002] Paper prepared for Workshop 4, "Enlargement and European Governance", ECPR

According to Vachudova, 'enormous benefits and demanding requirements of EU membership inform the necessary conditions for the substantial influence of an international institution on the domestic policy choices of aspiring member states.'[15]
However, there are no EU human rights templates which candidate countries could easily follow. Authors rightly stress that 'there exists no clear, conceptual underpinning to the rights protected under EU law.'[16] This is true, largely because of the multilevel and complex structures of fundamental rights protection in the EU. Thus, the complex plethora of regulations to be adopted, the democratic backsliding of some newly admitted member countries and some of the candidates, as well as the incoming Euroscepticism in the capitals of Western Europe, have called for a more credible and vigorous approach within the enlargement process. During these debates, it has been loudly discussed that the European Union needs a more coherent, systemic and determined approach which would assist its strategic role in promoting credible reforms. Therefore, the recently proposed enlargement methodology from February 2020, commits to respond to the dilemma of the credibility and effectiveness of the accession process. In many ways, the methodology aspires to reconcile the French proposal for a more credible and substantial enlargement put forward in the 'Non paper' from 2019, and the strategy of the newly elected European Commission College. This fresh approach still highlights EC's aspiration that the enlargement towards the Western Balkans remains a top priority for the Commission. Therefore, in order to guarantee the transposition of the multiplicity of regulatory provisions, *inter alia*, the EU has reshaped the basic structure of the negotiations as well as the tools for its implementation. In that manner, in the words of the European Commission, more salient enforcement mechanisms are envisioned and four basic principles are to be followed: increased credibility, a stronger political steer, a dynamized process, and an accent to predictability.
The issue of human rights protection is addressed in the first principle of the methodology – creating a basis for a more credible process. According to the Methodology:

> 'Credibility should be reinforced through an even stronger focus on fundamental reforms, starting with the rule of law, the functioning of democratic institutions and public administration as well as the economy of the candidate countries.'[17]

The prevalence of human rights protection and developing democratic institutions, is therefore, the primary fundament of the new approach. The focus, in this sense, is to fully institutionalize the protection of human rights and guarantee their efficient protection. In many ways, this is understood as an answer to some undemocratic tendencies, both in member countries and aspiring members. Through this process, it is believed, that there would be credible and lasting full protection of human rights for the future citizens of the EU.
Moreover, the EC has accepted the French proposal for clustering the negotiating chapters in thematic areas. The new approach categorizes the chapters '…in six thematic clusters: fundamentals; internal market; competitiveness and inclusive growth; green agenda and sustainable connectivity; resources, agriculture and cohesion; external relations.'[18] Within the scope of this paper, it is important to highlight that the '[n]egotiations on the fundamentals will be open first and closed last and the progress on these will determine the overall pace of

[15] Milada Anna Vachudova, 'The Leverage of the European Union on Reform in Postcommunist Europe' [2002] Enlargement and European Governance, ECPR Joint Session Workshops
[16] Sionaidh Douglas-Scott, 'The European Union and Human Rights after the Treaty of Lisbon'…
[17] Remarks by Commissioner Olivér Várhelyi at the press conference on the revised enlargement methodology, < https://ec.europa.eu/commission/presscorner/detail/en/statement_20_208> accessed 27 March 2020
[18] Ibid.

negotiations.'[19] That means, that the methodology takes the approach to open first and close last the areas of human rights protection and democracy promotion. It, therefore, leaves no doubt that the EC has put its focus on preserving human rights protection, rule of law and democracy. The importance of these issues is strongly underlined, putting the promotion and protection of human rights at the forefront of the EU accession of Western Balkan countries.

EU's role as an external actor is instrumentally invigorated by the introduction of the renewed commitment to a merit-based process, achieved through the principle of predictability. In this sense, the EC reserves the right to incentivize or penalize countries for (un)fulfilling their obligations, following the findings of the well-known reports. In that regard and in order 'to encourage demanding reforms, the Commission will better define the conditions set for candidates to progress and will provide clear and tangible incentives of direct interest to citizens.'[20] That means the EC will provide prospective members with measurable criteria and assessment in the yearly reports, allowing for visible and credible incentives for their fulfillment. In this sense, the Commission will allow for "phasing-in" to individual EU policies, markets and programs if the aspiring member demonstrates the ability to fulfill the necessary criteria from the respective cluster. The EC states that 'the more candidates advance in their reforms, the more they will advance in the process.'[21] However, the Commission proposes to use proportional measures for sanctioning any serious or prolonged stagnation or backsliding in reform implementation and meeting the requirements of accession process. If aspiring members backslide in the fulfillment of criteria, the European Commission reserves the right to potentially put on hold certain areas, or wholly suspended and downgrade the scope and intensity of the aforementioned incentives. It is believed that such an approach would bring about more visible and long-lasting reforms on the side of the prospective members. Also, it would increase the rewards for fulfilling the standards, and costs to non-complacency. In a way, the process would not only be a formal one of "ticking boxes", but a structural and fundamental one.

In practice, if adopted, the implementation and the efficiency of this new approach remains to be an enigma. Therefore, a coherent results and analysis of its successes (or failures) would be the work for future analyses. From this point of view, however, some procedural aspects should be also taken into consideration. Firstly, we should analyze the question of complexity, both political and technical. Recent debates demonstrate that the key to success, would be the political will on both sides, the EU and the aspiring members, to follow the new trajectory and implement the necessary reforms. From previous case-studies of accession, it has been noted that this phenomenon of political will fluctuates ambivalently depending on the domestic contexts. On the technical side, in the incoming months the Commission and the EU secretariats in the candidate countries should engage in preparing the negotiation teams in order to efficiently implement the new methodology. This process is time-consuming and costly. Prospective members would have to reshuffle their existing teams, train new members and prepare for some structural changes. Secondly, the issue of measuring the success and failures will open new questions. The aforementioned roadmaps, create a dilemma for their objectivity, especially with regards to the development of democratic institutions, as well as the question of human rights protection. It remains to be seen, if the criteria and incitements are as credible, visible and tangible as expected. Thirdly, the methodology will now differ between countries that have begun negotiations (Montenegro and Serbia), with future aspiring countries that have not yet initiated

[19] Ibid.
[20] Ibid.
[21] Ibid.

accession negotiations. This situation could potentially create a rift both between the countries in the region, and the EC structures responsible for negotiations. Such a rift could potentially create ambiguities both on the technical side within the negotiations' framework of the EC and politically within countries of the region. It is worth noting that this issue could be mitigated, since it has been allowed for Montenegro and Serbia to accommodate within the existing frameworks in order to expedite the process.

All things considered, it is evident that, in transforming the Western Balkan countries, the European Union has employed an ever-changing plethora of mechanisms. They have ranged from common flat policies for all countries (conditionality), and ad hoc, such as direct involvement and assistance, as well as other country-specific approaches. Regarding the effectiveness of these enforcement mechanisms, authors argue that:

> 'Conditionality has been particularly effective when the EU offered a credible membership incentive and when incumbent governments did not consider the domestic costs of compliance threatening to their hold on power.'[22]

In that sense, the already proven mechanisms coupled with the newly proposed methodology could expedite or slower the process of accession – but certainly add to the quality of the transposition of regulations, standards, and an overall Europeanization of the societies. The practitioners on all sides should have in mind that joint and resolute steps should be taken in order for this process to bring about credible results for the citizens of the Western Balkan countries. In essence, notwithstanding the ambitiousness of the new methodology, effective reform of the human rights protection mechanisms and accession to the European Union will be decided by the political will of aspiring members to credibly take measures to reform their domestic institutions and guarantee the rule of law and human rights protection. This also goes in line with some authors' view that:

> The 'rule transfer is best explained by an external incentives model of governance; [while] its effectiveness varies with the credibility of EU conditionality and the domestic costs of rule adoption.'[23]

Moreover, the current members should demonstrate credible political will to allow new countries to join the club. This will should be understood as a calculated, strategic and long-term approach on the side of EU members. If short-sided and populistic tendencies of the day prevail, then it is to expect turbulences in the relationship between EU and the countries in the "waiting room". This is especially true with regards to the effective protection of human rights, in view of these countries' troubling past.

In a nutshell, human rights are the bases that stabilize country's democracy and its political existence. Authors rightly stress that '[h]uman rights cement the bond between individuals and promote peaceful coexistence, thereby making societies more resilient.'[24] Therefore, it is evident that there is an intrinsic relationship between human rights issues and causes and effects of all kinds of instabilities, conflicts and wars. Regionally speaking, the involvement of the European Union in the Western Balkans, in the aftermath of the Yugoslav wars, presents a unique case of regional organization's involvement in human rights protection. EU has demonstrated that

[22] Rachel A. Epstein and Ulrich Sedelmeier, 'Beyond conditionality: international institutions in postcommunist Europe after enlargement' [2008] Journal of European Public Policy

[23] Frank Schimmelfennig and Ulrich Sedelmeier, 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe' [2004] Journal of European Public Policy

[24] Youssef Mahmoud and Aïssata Athie, 'Human Rights and Sustaining Peace' (2017) <https://www.ipinst.org/2017/12/human-rights-and-sustaining-peace> accessed on 27 March 2020

human rights are at the forefront of its international engagement. Thus, the European Commission has underlined the importance of minority rights, effective dealing with the impunity of war crimes, the rights of refugees and internally displaced persons, right to autonomous self-government on local and regional level, anti-discrimination, protection of the rights of the child, language, education and cultural rights, etc. From its involvement, it is evident that the European Union is one of the key factors of internal and external stabilization and democratic transformation of these societies. As some authors argue 'the long-term stabilising and transformative effects of the EU perspective are a self-fulfilling prophecy in the political process of what used to be Europe's last hotspot.'[25]

The transposition of regulations and standards have served the EU accession as tools for establishing and developing core human rights protection mechanisms. In that way, the EU has managed to portray itself as an external actor with a plethora of internal successes. Therefore, it can be argued that this example could have policy implications on building EU's future strategic role in enforcing effective remedies for dealing with human rights issues in post-conflict societies. Because, although the EU operates in a complex regulatory environment, it successfully transposes the protection of fundamental values in post-conflict societies', through their accession. The EU, in this regard, has acted as a promotor of human rights protection in these countries. No matter the exact level of success in each country, the overall effect is a civilizational benefit for a region troubled by bloody wars and conflicts only 25 years ago. In attempts to act as an external force of democratization, it has been demonstrated that the EU is able to devise and implement mechanisms for transposing human rights protection standards. Finally, the lessons derived from EU's activities in the Western Balkans could allow for practical analyses and prescriptions for similar situations of international superpowers' interplay with regional and local actors in affecting positive change in the human rights protection arena.

[25] Wim van Meurs, 'The Europeanisation of the Balkans: A Concrete Strategy or just a Placebo?' in Predrag Jurekovic and Frederic Labarre (eds) *International Peace Plans for the Balkans – A Success?* (Study Group Information 2006)

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