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Assessment of International Efforts to Protect the Rights of Unaccompanied Minors

Kyla Gaines
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Assessment of International Efforts to Protect the Rights

Unaccompanied Minors

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Fall 2011

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Preface

The purpose of this paper is to focus on a unique interactive research topic in one specific field of interest. The field of interest for this paper is children's rights, more specifically the rights and protection of Unaccompanied Minors migrating to EU member states.

Although there are a plethora of issues that face children globally the issue of children migrating alone has become a very pressing issue over the last decade or so. Aside from the apparent issue of children traveling alone across borders the more urgent issue is that these unaccompanied minors rights as children are not being acknowledged by various host countries, particular a number of EU host countries. The goal of this paper is to bring attention to the glaring issues pertaining to the protection of the rights of Unaccompanied Minors while also focusing on the ways in which the European member states can come to a consensus on how to protect these children.

Abstract

Children's rights have been violated for centuries. These violations of children's rights may include but are not limited to a child's access to education, adequate food or quality health care. Over the last few years there have been a rising number of prevalent issues that impact children, including trafficking, slave labor, and unaccompanied minors (UAM) migrating from their countries of origin to new host states in North America and Europe. The issue of unaccompanied minors migrating to Europe has been prevalent for years. "In most EU member states arrivals started during the 1990's. I'd say the issue became prevalent at the end of the nineties- beginning of the 2000's, even though some States (Germany) have received unaccompanied asylum seeking children since the 1970's."¹ But, due to the high numbers of children migrating alone attention has been drawn towards these children's rights. Throughout the various EU member states shortcomings in the protection of children's rights have warranted international attention. The difficulty with many of the member states is that they do not acknowledge unaccompanied minors as children and thus the member states laws and policies vary.

"Regardless of the child's situation it is the States responsibility to protect the child against sexual exploitation or any other forms of violence. States must not discriminate against children, and should listen to their rights and well-being and involve them in every decision relating to them. States are also obliged to protect children against poverty."² Though a number of NGOs such as, UN Convention on the Rights of the Child, and the European Court of Human Rights and the European Committee on Social Rights have begun to make a conscious effort to protect the rights of children efforts must still be made to protect the rights Unaccompanied Minors.² Due to the fact that a number of EU member have different ways that they handle unaccompanied minors rights children are subjected to deplorable living situations, children are being abandoned, refused, and excluded from care provisions and therefore become unprotected.¹ This lack of protection sometimes leads to children being sold into sex slavery, and most recently disappearing from detention centers all because their rights are not being protected and acknowledged. Therefore it seems ideal for the EU member states to develop a consensus on how to protect the rights of Unaccompanied Minors. Member states can begin to do so by agreeing to and following the regulations set in place by the European Commission Action Plan. Until this is done Unaccompanied Minors basic rights as children will continue to be abused.

¹ Daniel Senovilla-Poitiers University, Formal Interview, Geneva Switzerland, Nov. 10, 2011

² Council of Europe-Commissioner for Human Rights, *Children's Rights*, http://www.coe.int/t/commissioner/Activities/themes/default_en.asp (June 25,2011)

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I. Introduction

Data gathered by the European Migration Network states that in 2008 there were 11,292 applications for asylum lodged by UAM in twenty-two member states (excluding Czech Republic, Denmark, France, Poland and Romania).³ This number grew steeply from the previous year when there were only 8,030 asylum applications lodged.⁴ Since 2009 there has been a growing amount UAM migrating to Europe who are both asylum and non-asylum seeking. Despite the unprecedented amounts of UAM migrating into Europe there is not widespread or consistent statistical data on the movement of UAM.⁴ Senior Specialist on Anti- Child Trafficking Hans van de Glind from International Labor Organization believes that without solid data on the rights of UAM solutions cannot be developed to prevent the various dilemmas that face this rising group of minors.⁵

UAM have begun to receive special attention throughout the international community for various reasons. One of the most prevalent issues is that, “there are currently no comprehensive and common legal framework at the EU level that is specifically devoted to addressing the needs of separated, asylum-seeking children.”⁶ This lack of policy is affecting these children’s lives as well as EU member states in a negative way. Despite the number of concerns that face the host EU member states that are receiving the rapidly growing amount of UAM the number of issues that directly affect UAM are far more important. In many cases UAM enter the EU member states unprocessed and undocumented and are then sent into detention centers where the

³ *EUROPA*, “Press Release-European Commission calls for increased protection of unaccompanied minors entering the EU,” 1

⁴ European Commission, *Action Plan on Unaccompanied Minors (2010-2014)*, 1-2; 14

⁵ Hans van de Glind- Senior Specialist on Anti- Child Trafficking ILO, Formal Interview, Nov. 2, 2011

⁶ European Union Agency for Fundamental Rights, *Separated, asylum-seeking children in European Union Member States*, 3, 7,11

conditions are unsafe. Due to these unsafe circumstances UAM then become potential victims of trafficking or exploitation. UAM are not enjoying basic rights as human beings and as children, which include health care and education. UAM are first and foremost children but their rights as children are not being recognized instead, some are being acknowledged as migrants and thus being treated as such. Much of this confusion can be attributed to the lack of consensus among the European member states, the fact that some member states have no policies set in place and other member states do, the fact that member states do not have a clear definition and understanding of what UAM are, and a lack of comprehensions about the rights children deserve.⁷ Therefore, the EU, EU member states, and international organizations should develop common, consistent, and appropriate policies to increase the protection of unaccompanied minors rights within member state's borders so that children can benefit. These member states and organizations can only begin to resolve the issue by, following the regulations set in place by the European Commission Action Plan.

The goal of this paper is to seek a clear definition and solution on how to improve the rights of UAM. The paper will begin by defining what an UAM is, breaking down the history of UAM and what the specific needs of this particular group of children are, explaining the various policies that have been set in place by the EU as a whole and its member states, and the gaps that lie within these legislations. The research will then go onto explain some of the EU member states, Governmental and International organizations that have had some success in creating safe environments for UAM, and finally focusing on the main ways in which Europe can come to a consensus on how to protect the Rights Unaccompanied Minors.

II. What is an Unaccompanied Minor?

Much of the confusion on the protection of the rights of UAM comes from the uncertainty about how to define what an UAM is, and how UAM rights fit into this context. The International Labour Organization categorizes UAMs under the umbrella phrase of, Children on the Move, which includes children who have been trafficked across borders, UAM, and refugee children.⁵ Due to high numbers of UAM over the last decade the issue of minor children migrating alone has now become one of the top Human and Children's Rights of today. By EU member states defining and focusing solely on the rights and needs of UAM many of the children's rights violations can be avoided.

The European Union defines UAM as; "third- country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person."⁷ The Convention on the Rights of the Child written in 1989 understood that there was a need to define what an UAM is prior to resolving any issues that face unaccompanied minors. The Convention defined UAM as, "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."⁷ Many assume that because a concrete definition of UAM has been developed all nation states and organizations agree upon these definitions, but that is not the case.

In Germany and Great Britain the governments refer to UAM as unaccompanied

⁷ Bilger & Van Liempt, *The Ethics of Migration Research Methodology: Dealing with Vulnerable Migrants*, 156-157

asylum seekers, which is too narrow of a definition because not all UAM are asylum seekers.⁷ France does not have any specific policies or laws for UAM thus they are, “integrated in the resources from the common law of children protection” and referred to as “mineurs isoles” which has no reference to their migrant past or status.⁸

In an interview with Jyothi Kanics an advocacy and child specialist at UNICEF she mentioned that it is difficult to know exactly how to categorize a separated child because throughout the child’s journey from their country of origin to the country they are migrating to they may fit into different overlapping categories. For example, a child may be an irregular migrant who is trafficked and who may in the end qualify for refugee status.⁹ This constant confusion makes it difficult for member states to understand how to deal with the rising number of UAM and give them the rights as children that they deserve.

III. Recent History on Unaccompanied Minors

Since 2008 several member states which in the case of this research paper include, Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom have seen a rise in the arrival of UAM, many of these minors entered the member states undocumented and unidentified.¹⁰ In Finland alone there was nearly a 330% year –to- year increase of UAM. Italy has also seen a rise in UAM but has found it difficult to keep track of all the minors that enter the countries borders. In Italy it was recorded that 7,797 minors were reported to the

⁸ Conred 2005, Senovilla 2007, **from book** Bilger & Van Liempt -*The Ethics of Migration Research Methodology: Dealing with Vulnerable Migrants*, 156

⁹ Jyothi Kanics an Advocacy and Child Specialist at UNICEF, Formal Interview, Oct. 26,2011

¹⁰ European Migration Network, *Policies on reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors-an EU comparative study*, 6,15,29,69,70

authorities and only 1,797 were physically identified.¹⁰ UAM have also begun to use the transit route of entering the EU via boat through the small Italian island of Lampedusa.¹⁰ The island's increasing number of unaccompanied minors (1,948 in 2008)¹⁰ is not the only issue that the small island has to face. There has also been a rising number of adult refugees and migrants that pass through this island to get to other destination points throughout Europe. This is due to the islands location in the Mediterranean Sea and its' proximity to Northern Africa. The influx of UAM entering Italy caused the Convention on the Rights of the Child to issue a recommendation report after Italy filed a statement on that large numbers of UAM crossing their borders.¹¹ In response to the statement released by Italy the Convention on the Rights of the Child stated, "The Committee recommends that the State party introduce comprehensive legislation ensuring the assistance and protection of unaccompanied children. In particular, the Committee recommends that the State party establish a specific and permanent national authority to oversee the condition of unaccompanied children"¹² Regardless of the entity protecting UAM it has become an International consensus that comprehensive legislation needs to be developed globally to protect the rights of children. A focus also needs to put placed on the transit routes taken by UAM.

A number of popular routes have been created over the last few years depending on the UAM's country of origin. This makes it difficult for these transit countries because they are not able to get a correct count on the number of unaccompanied minors entering and departing in and out of their borders. In 2010 it was documented that Greece was the main point of entry into the European territory, "75% of Afghan

¹¹ Allegra Franchetti Convention on the Rights of the Child, Formal Interview, Nov. 4, 2011

¹² Convention on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention- Italy*, 17

unaccompanied minors arriving in Norway first registered in Greece.”¹³ Groups of UAM are usually split up into two groups, those who travel by boat or those that travel by air from their countries of origin. Nigerians tend to travel by air from Nigeria to Amsterdam, which is now the most targeted airport for UAM, and, Greece continues to be the main point of entry for UAM entering the EU via boat especially from Afghanistan, Sudan, and Tripoli.¹³

One of the most recent sets of data on unaccompanied minors entitled *Unaccompanied Minors in the Migration Process* conducted by FRONTEX focused on the top five nationalities of UAM. As of December 2009 they were Afghans, Iraqis, Somalis, Nigerians, and Eritreans. Although many of the issues that face these countries vary based on the political standing and stability of that country UAM’s motives for migrating tend fall under the same categories.¹⁴

In a study conducted by the European Migration Network, some of the main incentives and circumstances that cause unaccompanied minors to migrate are, persecution in their country of origin, hope for family reunification in an EU member state. Other UAM migrate to seek better economic standing in EU member state, UAM were smuggled into an EU member state, they have medical needs that cannot be fulfilled in their country of origin, they are victims of abandonment for example their parents died and they have no remaining family in their country of origin, or they are unable to find work in the rural areas they originated from.¹⁰ Many of the UAM reasons for migrating are under the category of forced migration which T. Alexander Aleinikoff, the current

¹³ FRONTEX, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *Unaccompanied Minors in the Migration Process*, 4,18,20

¹⁴ Kristina Touzenis International Organization on Migration, Formal Interview, Oct. 5, 2011

Deputy High Commissioner of the UNHCR defined as, “a general term that refers to the movements of refugees, internally displaced people (those displaced by conflicts within their country of origin) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.”¹⁵ Although there may be other ways to define Forced Migration these are some of main incentives.

One large-scale example of forced migration was the 2009 earthquake in Haiti, which caused an increase in Haitian UAM traveling by air from Port-au-Prince to Paris-Orly airport due to the astronomical earthquake that shocked Haiti and the rest of the world.¹³ Despite their reasons for leaving their countries of origin many of UAM are attempting to enter Europe for improved living standards then they had in their countries of origin. Unfortunately this is not the case in a number of member states.

With the varying laws and policies on migrants, and children’s rights these UAM are often getting lost in the “system” and end up in worse situations then they were in prior to their departure from their countries of origin. According to Heikki Mattila,

Making migration policy is most often a negotiation between economic, national security, and the rights-based approaches, and the outcome is one possible combination of them. With children, the rights-based approach should be given priority. Children are vulnerable and have some specific protection needs, listed as rights in the CRC and other instruments and for the best interest of the child and her/his development, many such rights are non-negotiable. But surprisingly, in spite of the quite large numbers,

¹⁵ T. Alexander Aleinikoff appointed Deputy High Commissioner of the UNHCR-, Formal Interview at Graduate Institute Lecture, Sept. 19, 2011

many European countries still do not have the proper system in place to make sure these rights and needs are covered.¹⁶

To understand why unaccompanied minors are faced with a number of adversities upon their arrival into various EU member states it is important to understand the EU and its' member states stances on UAM, as well as focus on the faults within their laws and policies.

IV. Concrete Needs of Unaccompanied Minors

Before any governmental organization, international organization, or EU member state can develop a functioning policy on UAM, they should understand the existing concerns of UAM, the concrete needs of this group and then they can develop the proper response to those needs. One of the largest areas of concern is the fact that a number of UAM are falling through the cracks due to the lack of personal documentation upon entering the EU member states. But, the member states cannot be solely blamed for this lack of tangible data. UAM enter the member states in a variety of ways, which makes it difficult to protect them.

Many UAM arrive in Europe hidden by traffickers or have paid smugglers to help them enter these countries.²⁶ By developing safer methods of entry into Europe the member states would be able to collect the data to protect the rights of UAM and UAM would not run the risk of falling through the cracks of the system. Another concern is the challenges pertaining to the age assessment system.¹⁷ In many cases if children are unable to prove that they are under the age of 18 then they do not have access to

¹⁶ Heikki Mattila International Organization on Migration, Formal Interview, Sept. 21, 2011

¹⁷ United Nations High Commissioner for Refugees , *UNHCR Inputs to the OHCHR Report on the Protection of the Rights of the Child in Migration Contexts*, 1-22

international protection and care that a number of member states have developed.¹⁷

Therefore a system needs to be developed to improve the documentation and age assessment for these children.¹⁷ The process of petitioning for asylum requires the child to “prove fear of persecution based on race, religion, political opinion, or membership in a social group or nationality.”²⁶ In many cases if the UAM is unable to prove the examples mentioned above then they are not eligible for the asylum process. After being denied from the asylum process children are either sent back to their country of origin where they run the risk of being exposed to even worse situations than they were faced with before they left such as, being exposed to war, gangs, or persecution, being sold into the sex trafficking or slavery ring, or they are unable to support themselves or their families.²⁶ In other cases UAM are sent to live with guardians in the host countries and often these situations benefit the child but in some unfortunate cases the guardians take in children under false pretences and the children are used as domestic servants or are subjected to other types of forced labour.²⁶ Due to these somewhat alarming situations UAM are subjected to it is in the best interest of UAM that a simpler and more cohesive process is developed for UAM seeking asylum.

The examples mentioned above are just a few of the concrete needs of UAM. But until laws can be developed, and the EU member states can come to a compromise on how to protect these children’s rights they will still be subjected to deplorable living situations. That is not to say the EU and its member states have not acknowledged the apparent gaps in the system. Some member states have continued to develop legislation that is supposed to protect and acknowledge the rights of UAM but these legislations have yet to improve the rights of minors.

V. EU & EU Member States Laws and Policies on Unaccompanied Minors

UN Convention on the Rights of the Child

Since the 2008 influx of unaccompanied minors into various EU member states there has been a need for a specific framework devoted to addressing the needs of unaccompanied minors.⁶ The United Nations Convention on the Rights of the Child Article 20 developed three major rights that impacted UAM rights.

Article 20 Stated:

- 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.¹⁸*
- 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.¹⁸*
- 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.¹⁸*

The laws mentioned in the article clearly have the best interest of UAM in mind but some EU member states have chosen not to follow this International Law, and such inaction, which jeopardize the rights of UAM.⁵ Thus various IOS, GOs and EU member states have developed their own guidelines and policies for UAM. This makes it difficult for UAM advocacy groups to monitor the specific movements and rights of the children

¹⁸ United Nations Convention on the Rights of the Child, *Article 20*

when a number of different laws and restrictions are in place. To some Article 20 may not address all the challenges that UAM face upon their arrival into various European host countries and therefore found a need to develop new plans and initiatives to protect the rights of UAM. Two plans were developed by the EU to highlight the needs and rights of the child and the regulations that need to be put in place to protect these children they were the EU Stockholm Programme and the EU Action Plan.

The Stockholm Programme

The Stockholm Programme was set in place by the European Parliament on November 25, 2009. The overarching goal of the Stockholm Programme was to set out the European Union's (EU) priorities in the areas of justice, freedom and security for the period 2010-14.¹⁹ The Stockholm Programme built off of the achievements of its predecessors the Tampere and Hague programmes.¹⁹ The Stockholm Programme aims to “meet future challenges and further strengthen the area of justice, freedom and security with actions focusing on the interests and needs of citizens.”¹⁹ Aside from the main goal of the Programme it also focused on a wide array of Children's Rights specifically the rights of UAM rights. The Programme recognized “that there was an urgent need to address the question of protection of unaccompanied and separated children, given the risks to which they were exposed.”⁶ One of the most important initiatives set in place by the Programme was that the EU member states developed EU asylum, migration and trafficking policies that treated migrant children as children first and also made sure that UAM children are not faced with adversities or any type of discrimination.⁶ Overall the

¹⁹ Europa. The Stockholm Programme. Page 1- Summary

main goal of the Programme was to help children avoid precarious situations that make them vulnerable such as human rights abuses like sexual or labor exploitation.⁶

Within the area of UAM The Stockholm Programme focused on issues such as border control, insufficient data, lack of attention given to UAM as a group, age assessment, family tracing and or reunification, and recognizing that an attempt needs to be made to help UAM so that they could avoid becoming victims of trafficking.⁶ The Programme also drafted a number of suggestions to improve the urgent need to address the protection of UAM and separated children. The suggestions ranged from, developing a preventative action at local levels within the schools, communities, and families, training specialized personnel who are able to detect risk situations, develop studies to better understand what causes UAM to migrate in the first place, and developing improved living situations in the UAM country of origin.²⁰ The Stockholm Programme was just the preliminary stages of the EU's attempt to specifically focus attention on UAM rights. After releasing the Stockholm Programme a statement was released that would focus more intensively and specifically on the rights and protection of UAM. It was entitled the European Union Action Plan.

European Union Action Plan

One of the top UAM advocacy programs was developed in May 2010 by the European Union. The program was called the Action Plan which was developed to, “increase the protection of unaccompanied minors entering the EU the plan encompassed common standards for guardianship and legal representation.”³ The Action Plan was seen as a first real attempt on how to specifically deal with dynamic issues facing UAM

²⁰ United Nations High Commissioner for Refugees, *Recommendations on the Council of the European Union Stockholm Program*. 7

migrating to Europe. EU Commissioner for Human Affairs Cecilia Maimstrom agrees and stated during the May 2010 Press release that, “Europe must take immediate action to look after UAM, who are the most exposed and vulnerable victims of migration.”²¹ The Action Plan included ten dynamic principles to improve the rights of UAM. These principles ranged from, “**All children should be treated first and foremost as children.** The best interests of the child should be the primary consideration in all actions concerning unaccompanied minors,” to “**Child-specific reception measures and procedural guarantees should apply from the moment the child is found at the external border or within a Member State until a durable solution is found. Guardianship and legal representation of the child are of crucial importance,**” and finally “**All interested parties – EU institutions, Member States, countries of origin and transit, international organizations and civil society organizations – should join forces and strengthen their efforts in addressing the issue of unaccompanied minors and ensuring that the best interest of the child is protected.**”³ The ten principles of the Action Plan were thought to be the saving grace of UAM entering the EU and if EU member states agreed upon the guidelines mentioned in the Action Plan not only would the rights of children be documented in a correct manner but the migration process for UAM would be able to be conducted in more of an orderly fashion than in the past. As Colum Murphy, the President of The Geneva School for Diplomacy stated, it is a tangible goal for “the EU Member States to come to an agreement on how to deal with UAM coming into their borders due the fact that the EU is a Bureaucracy and all it would take would be member states sitting down and having a somewhat peaceful conversation how

²¹ Cecilia Maimstrom, EU Commissioner for Home Affairs, *EUROPA- Press Release-European Commission calls for increased protection of unaccompanied minors entering the EU*, 1

to come up with a strategic but unified plan when it comes to the rights and placement of UAM.”²² The Plan was drafted in 2010 and was projected to take until 2014 to be fully put into affect. It is the hope of the European Union that this is the initiative the will push member states to improve their polices on UAM as well as come to a consensus on the rights of these minors.³

VI. Two European Union Country Profiles

Many assume that if the EU member states accepted and followed the Rights of the Children Laws and the EU Action Plan then they would have a simple plan for how to manage UAM crossing their borders. This is not the case because some member states acknowledge UAM as children and others do not. Due to the vast number of EU member states that UAM migrate to this research will focus on the two major member states that UAM have migrated to over the last four to five years. These member states are separated into two categories the state that has acknowledged the rights of children and a state that has not. The United Kingdom is one member state that has struggled to acknowledge the rights of the children due to the fact that it has the highest number of detention centers for UAM.²³ On the other hand Sweden has one of the most proactive rights programs for UAM and is one of the leading examples for the international community.¹³ Sweden also appeals to UAM because there are already a number of ethnic groups that live in Sweden and a number of Nordic European countries and these, -pre-existing communities, cultural links within the member states, and simpler asylum laws appeal to a large amount of UAM. But despite Sweden’s work to gain rights for UAM

²² Colum Murphy President of the Geneva School for Diplomacy, Formal Interview, Nov. 1, 2011

countries like the UK still struggle to manage the surplus of children entering their country on a daily basis.

The United Kingdom

Due to the significant amounts of unaccompanied minors crossing borders into the UK the country has heightened their rules laws on how to cope with the high numbers of UAM. Some of their strict guidelines and regulations on UAM have made international news and people have begun to protest the UK's somewhat stringent system and policies on their treatment of UAM. The UK appears to be one of the few EU countries where the detention of UAM has become a national and international dilemma.²⁶ For months the UK has been criticized for their practice of keeping more than 1,000 asylum-seeking children a year in detention centers and due to this alarmingly high number the UK has made international headlines.²³ In February, the former children's commissioner Sir Aynsley-Green's reported that into Yarl's Wood immigration and detention centre found that children faced "extreme distress" when arrested and transported, and he went onto state that there were some major concerns with the children's rights and psychological well-being in this detention center and the centers were an unfit environment for these children.²⁴ Although there is not a set date for the policy to stop the detention of immigrant children to go through the issue has been acknowledged and the new government pledged there would be an end to the practice sometime in 2011.²⁶ With a number of well-regarded members of the Government speaking out against this atrocity including, Caroline Slocock, Chief Executive of

²³ Karen McVeigh, *Asylum children will be kept out of 'distressing' detention centres*, 1

²⁴ Former Children's Commissioner Sir Aynsley. Quoted in , *Asylum children will be kept out of 'distressing' detention centres*, 1

Refugee and Migrant Justice the issue should soon been resolved. Slocock stated, "We are delighted that the Government has recognized the inhumanity of this practice and has announced plans to abolish child detention for immigration purposes."²⁵ The management policies of UAM in the UK did not start out with negative intentions.

The UK adapted the two main provisions from the Children's Act and then added a number of laws. The care assessment plan set in place by the UK included, placing the child into foster care, placing the child in a residential home, placing the child in support of local authority accommodations (e.g. with an on-site warden), or for older unaccompanied minors in an independent accommodation that would still be monitored by a visiting social worker.¹⁰ The UK also focused family reunification, health care, a right to an education for children between the ages of 5 to 16, as well as a commitment that "no unaccompanied minor would be removed unless it was satisfied that adequate reception and care arrangements were in place in the country to which the minor was to be returned."¹⁰ But, the countries unfortunate laws on placing asylum seeking UAM into detention centers continues to plague the country and its' attempt to advance the rights of UAMs.

Sweden- A Hopeful Solution for the Rights of UAM

According to the most recent report from FRONTEX on Unaccompanied Minors in the Migration Process Sweden has become one of the most important final destinations for UAM.¹³ Overall Sweden experienced a 49% increase in UAM between 2008 and 2009 and the most nationalities seen crossing the boarder into Sweden were Somalis, Afghans and Iraquis.¹³ Sweden's appeal to UAM can be attributed to the fact that they

²⁵ Caroline Slocock Chief Executive of Refugee and Migrant Justice, Quoted in *Asylum children will be kept out of 'distressing' detention centres,*, 1

have a large immigrant population of nationality groups currently living there. These immigrant groups then pass information to their family members and friends still living in their countries of origin about Sweden's liberal asylum policy and the social and legal advantages offered in Sweden.¹³ This resource of passing information between family members in various countries is extremely popular depending on the current economical and political state of the European country.

Ireland saw a rise in immigrants during the 1970's due to their economical standing at the time. Because of their place in the economical market Ireland was able to welcome asylum-seeking migrants including unaccompanied minors and provide them with suitable places to live and work.²² As Ireland's standing began to decline they were no longer able to welcome these migrants into their country because they were unable to provide for their own countrymen.²² Many believe that the preferred destination countries for UAM minors go in cycles and will continue to change depending on the year and situations.

UAM migration movement also depends on what is taking place in the country of origin to make the minor remain or stay in their country. In early 2010 Sweden reported an increase of 125% of Afghan UAM crossing into its' borders and a decrease in the number of Iraqi's coming into the country.¹³ This increase in movement could be attributed to the political unrest in Afghanistan in early 2010. Migration trends of minors are also affected by the working opportunities and conditions in their country of origin. There has been a rapid increase of UAM departing from rural areas in the Horn of Africa and migrating to countries like Sweden (in 2009 there was a 165% increase in UAM from Somalia)¹³ due to the lack of job opportunities for minors in these rural areas.⁵

Overall, UAM seem to prefer Northern European countries like Sweden, Finland, and Norway due to these countries acknowledgement of Human Rights. Regardless of an individuals religion, nationality, or economical background these countries acknowledge individuals basic rights that they deserve.⁵ Historically Sweden and Finland have granted higher percentages of protection status to asylum seeking children versus any EU country.²⁶ Countries like Sweden focus on making a life for UAM in the various municipalities and cities around the country. “Of the 1,165 UAM registered in the Migration Board’s reception system in December 2008, 11 were in the municipalities of which they arrived, 647 were in the municipalities with reception agreements and 407 were in foster homes with relatives or other close family members.”¹⁰ This ability to place UAM in safe and secure environments is something that a number of States have not been able to manage, despite their best efforts. But with the developing efforts international organizations rights of UAM may improve.

VII. Governmental and International Organizations Roles in the Protection of the Rights of Unaccompanied Minors

Since the rise of UAM migrating into Europe, EU member states have not been the only actors developing policies and legislations to improve the rights of UAM. Instead a number of international organizations have become involved not only in the legislation aspect of protecting the rights of UAM but also in the field. These international organizations include (but are not limited to), The United Nations High Commissioner for Refugees (UNHCR), The United Nations Children’s Fund (UNICEF), and Save the Children. Similar to the various EU member states these international

²⁶ Amanda Levinson, *Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions*, 1,3,6,8

organizations have developed policies and interactive ideas to instill and protect the rights of UAM.

The United Nations Children's Fund

“UNICEF was mandated by the United Nations General Assembly to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential.”²⁷ Due to UNICEF’s mission and their concern for the rising number of UAM the international organizations has developed a number of reports and suggestions pertaining to the rights of UAM. UNICEF focus also pertain to retrieving statistics on UAM and the changes that should be made in terms of the reception process. One of the most successful reports is entitled, *Children on the Move*, which is a report that focuses on Children of Afghan Origin Moving to Western Countries.²⁸ The report not only focuses on the high numbers of Afghan children migrating to Western Countries alone but also focuses on case studies done on UAM, definitions on what an UAM, and various countries roles relating to the rights of UAM. UNICEF has also begun conducting a number of interviews with UAM that have migrated to European member states.⁹ Organizations such as UNICEF and the International Labour Organization understand that in order to resolve the rights of UAM they must go to the root of the problem, which is the children.

Hans van de Glind of the ILO stated that a program has been developed amongst international organizations called Global Working Group for Children on the Move.⁵ This program which is comprised of fourteen international organizations and NGOs

²⁷ Separated Children in Europe Programme , *Separated Children In Europe Programme- Statement of Good Practice*, 3-4; 25

²⁸ Kerry Boland, *Children on the Move- A Report on Children of Afghan Origin Moving to Western Countries*, Introduction& Summary

(UNICEF being one of the leading contributors) has implemented a training session for its field workers so that when workers come in contact with UAM they are able to help them, understand their current situation, and the ways that they can help improve these issues in the future.⁵ Jyothi Kanics from UNICEF also mentioned the importance of human contact within the field context she also believes that one of the most important priorities is listening to the children's needs.⁹ International organizations such as UNICEF can do so by reaching out to UAM and talking to them so that these organizations can improve the living conditions in the detention centers, or improve the interaction between children and their social worker or guardian.⁹ Many of the initiatives put in place by UNICEF were made possible by their partnership with UNHCR.

United Nations High Commissioner for Refugees

Despite the UNHCRs overall purpose which is to “lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide”²⁹ they have had a very strong role in improving the rights of UAM. Although the UNHCR has maintained a very strong role in improving the rights of UAM, it is important to separate the rights of refugee children between UAM, due to the fact that they are two different categories of displaced children. The UNHCR has focused on finding one unified way to define an UAM, improving the data collection of UAM entering Europe, as well as harmonizing the national definition and format on how to protect the rights of UAM. The UNHCR also focuses on the importance of education considering that it is basic human right, and finally and most importantly producing training programs for UNHCR workers in the field. One initiative that UNICEF and UNHCR were able to accomplish is creating

²⁹ United Nations High Commissioner for Refugees, *UNHCR's Mission*, <http://www.unhcr.org/pages/49ed83046.html>

a unified mission for UAM.

Separated Children in Europe Programme

The Separated Children in Europe Programme (SCEP) is a joint initiative created by some members of the International Save the Children Alliance, (UNHCR), and UNICEF.²⁷ Since its development in 1997 the program has grown and now involves a number of international partners. Despite the importance of these international organizations coming together to create a program to improve the rights and well being of separated children it is what these international organizations have been able to accomplish since the programs creation that has been so noteworthy.

In order to correctly give these children the rights they need and deserve SCEP created a Statement of Good Practice which defines what a separated child is, focuses on the issues that separated children face, and then created “phases” which clearly outline durable solutions on how to protect separated children. One note about SCEP is their reasoning for calling this the Separated Children in Europe Programme rather than the Unaccompanied Minors in Europe Programme. “SCEP uses the word ‘separated’ rather than ‘unaccompanied’ because they believe it more accurately defines the essential problem that such children face. Most importantly these children lack the care and protection of their parents or primary caregiver as a consequence and thus they suffer socially and psychologically from this sepeartion.”²⁷ SCEP focuses on differentiating between separated children’s specific needs with its Statement of Good Practice. The phasing program for UAM is a step-by-step guideline on how to help separated children from their time of arrival in the host state and until they have been placed in the correct hands.

Phase 1: Arrival, Reception and Interim Care

Phase 2: Durable, Concrete and Secure Solutions-Determination of Best Interests

Phase 3: Protection Needs and Durable Solutions

What separates SCEP from other international organizations that have set up programs to assist separated children or UAM is that within each phase SCEP has broken down a step by step procedure that should be followed and what SCEP volunteers or workers need to acknowledge when working with separated children. These focuses range from, improving the access to the territory, identification, appointment of a safe guardian, registration and documentation, education and language training which are two focuses that are often forgotten when it comes to protecting children, legal representation and assistance, family reunification, and remaining and integration children into the host country.²⁷ These are just a few of the many well thought out practices that SCEP has set in place to improve the lives of separated children and more specifically UAM. Although the EU member states understand what these children needs they continue to disagree on how to obtain these rights for UAM. By taking part of SCEP's initiatives, sitting down, and creating a legislation that not only suits the children but also appeals to the member states then they may eventually come up with a durable solution.

VIII. Main ways in which Europe can come to a consensus on how to protect the Rights Unaccompanied Minors

To some the idea of the EU member states coming to an agreement on how to protect the rights of UAM seems impossible. Others such as Dr. Colum Murphy believes it can be done but will take all the member states sitting down and developing a diplomatic solution to create a plan that will actually work.²² Others such as Daniel Senovilla believes it can be executed but the decision process will take more of a

Legislative approach rather than a field based approach. Senovilla believes EU member states will focus on migration control issues rather than focusing on the actual rights of the child.¹

Many EU member states have stopped considering the rights of UAM as a prevalent issue due to the implementation of the EU Commission Action Plan in 2010. The Action Plan's most important factor is its' goal for a common based approach for all member states. Some member states assume that since the Action Plan was developed to protect UAM ended. But, unless these member states agree to truly follow the guidelines of the action plan no further steps can be taken to improve the lives of these children. Therefore non negotiable laws ought to be set in place by the European Commission that require all member states to adhere to children's rights so that UAM are the first and most important concern. Although it would be difficult to focus on all the areas where there is an apparent gap in the protection UAM's rights there are a few important themes that the EU should come to an agreement on to protect UAM. These areas are, improving the reception and identification process, access to care and care provisions, and a durable solution after UAM has been processed.¹

Reception and Identification

First and foremost a consensus on the arrival, reception, and identification of UAM should be made by all member states, this includes developing a safe environment for UAM after they have crossed into the host countries borders. There is a strong safety concern within the welcome centers or detention centers that the children are placed into after crossing the boarder into EU member states. The first EU member state consensus should be that staff members at various centers focus on documenting the

child's age and country of origin regardless of whether the child arrives into the host country with or without documentation and regardless of whether they are seeking asylum. By taking this immediate action the international concern about the unknown amount of UAM entering various EU member states will improve. By putting this law into place member states like Germany, France, and Portugal cannot continue to refuse entry to UAM because they have not submitted an asylum claim prior to their arrival.²⁶ Instead children in these situations should be given the benefit of the doubt and received by the host states mentioned above. If this is not the case an agreement between Germany, France, or Portugal needs to be made with another host country who would be willing to take UAM in special cases such as the one mentioned above.²⁶

Another suggestion would be that all care centers cater to the specific age group of the child rather than the child being placed into care centers with adult migrants.³⁰ Children between the ages of 6-8 years should be placed together, 9-12 years together, 13-15 years together and then 16-18 years together. This method could prevent younger children from being taken advantage of by adults or other unaccompanied minors.³⁰ Along with the strict age regulations within the detention centers across the EU there is also a need for a common age-determination process.

Too many children have been deprived of their rights due to the uncertainty surrounding their age. One way to illuminate confusion is to perform an age assessment test only when there is serious doubt about the child's age.²⁷ A professional who has background in the child's ethnic and cultural background should conduct performing an age assessment analysis the test and familiarity and the test should never be forced onto

³⁰ United Nations High Commissioner for Refugees, *Summary Report: Separated, Asylum Seeking Children in European Union Member States*, 4

the child.²⁷ The UAM developmental state, psychological state, environmental and cultural states of the child are all things that should also be considered while performing the test.²⁷ Without these considerations UAM are not being given a fair opportunity to be protected by the host state. If after the (which could include interviews, doctors assessments, dental analysis, and skeletal assessment) has been performed and the child's age can still not be deduced the child should be given the benefit of the doubt then the minor should be allowed to remain in the host country and receive protect from the country.²⁶ This guideline should be made nonnegotiable throughout all member states.

Many of the tests mentioned above range from the skeletal assessment to the dental assessment are very costly and many host states choose not to allot money to train the correct individuals and thus tests are often performed incorrectly.²⁸ That is why host countries should be required to follow the recently released UNHCR Handbook on Programme Management for UNHCR Implementing Partners, which highlights the importance of assessing children's needs from the earliest stages.⁹ By following these guidelines there will be one set of protocol for field workers to follow so as not to neglect or put at risk the rights of UAM and not use the excuse of a lack of funds to preform the various tests.

Access to Care and Care Provisions

One of the biggest issues that places UAM at risk is that they are not appointed a guardian or legal representative.¹ Instead they are being placed into detention centers where the conditions are unsafe. These unsafe environments often lead to children disappearing, which can be contributed to a lack of oversight within the facilities.²⁶ Some minors are placed with unknown guardians or family members who subject them to

unsafe conditions. Exposing children to these unsafe conditions must stop. One of the ways in which member states could prevent this issue early in UAM's entrance into the host state would be to exchange information between the country of asylum and the country of origin.³¹ This is to ensure proper foster care placement after the children reach the host countries and will make it easier for them to go through the processing system.³¹ By following these protocols member states can ensure certain continuity in the life of the child and reduce the risk that the child is subjected to harmful situations.³¹

In the Summary Report: Separated Asylum Seeking Children in European Union Member States produced by the European Agency for Fundamental Rights a number of durable solutions were set in place pertaining to the guardianship of UAM. They included, younger children being placed in the care of an adult relative or foster family of their own culture and having a thorough assessment of the families safety be performed, or older children being placed in a group living home that has single or double rooms.³⁰ This group living situation will give older UAM some type of independence while also being monitored by the state through an occasional social worker that comes in.³⁰

The Report also mentioned that children should be placed in a small family living situation over a large environment and finally and most importantly “children should be provided with sufficient, good quality food in a culturally sensitive manner, which takes into account religious dietary needs.”³⁰ Although these guidelines may seem fairly straight forward many member states have found them hard to follow. Overall the most important thing is that UAM minors are placed into specialized facilities or placed into

³¹ United Nations High Commissioner for Refugees -Administrative and Financial Matters (SCAF), *Implementation of UNHCR's policy and guidelines on refugee children (Section 41)*, Section 41

the care of a guardian who knows how to handle children in these situations. After being placed in these various living situations children should have access to social rights which include education, health care, social assistance, and work opportunities for some of the older UAM.³⁰ One of the most important aspects of protecting the rights of UAM is that there is an implementation of a durable solution after the child has been assessed by the member state and is permitted to remain there.

Durable Solutions after Unaccompanied Minors have been processed in Host Country

By member states identifying and implementing a limited amount of durable solutions the rights and lives of UAM will improve.¹ After UAM have been processed and documented member states should take two approaches. Either member states offer the UAM the opportunity to return to their countries for family reunification purposes or they integrate the minor into their society. Although there is not a right or wrong answer to which approach the member state should make an agreement needs to be made on how they approach each issue.

If the child chooses family reunification, which according to the United Nations Convention on the Rights of the Child the member state must do, then the member state must assist the UAM return to their country of origin. It is vital that countries assist and monitor the return of these children so that they do not fall victim to human trafficking while in transit back to their country. If the minor returns to their country of origin efforts must be made by the host state to find out whether or not the UAM is being returned to a better or worse situation. If the host country has knowledge that the minor is being sent back to an unsettled country for instance the nation is at war, a nation with deplorable work situations, or they were at risk then the child should not be sent back

then efforts should be made by the host state for the UAM to remain in the EU member state or be moved to another safe member state. If the host state has no other option then to send the child back to their country of origin then a field team should be implemented in that country of origin so that the child has some sort of security when they return home. Whether this means they return to their family, which is then monitored by an EU member state field worker, or the child is placed in a home, which is run by the EU member states, must be involved in the process.⁵ By EU member states implementing EU field workers in these countries to monitor UAM within their countries of origin then these field workers may be able to understand why the minor left in the first place. By doing so EU member states may be able to resolve or improve the issue so that children do not flee in the future. If UAM choose not return to their country of origin then it is the member states job to provide a safe living situation for the minor.

It is vital that member states provide UAM with a new life but also keep in mind that they must be provided with an environment that is not overly restrictive which is a very difficult thing to balance especially for the older UAM.²⁶ The European Commission Action Plan on Unaccompanied Minors set the best protocol for this situation in place. It stated, “in the cases where return is not possible or integration in the country of residence is considered in the best interests of the child, a legal status should be granted to unaccompanied minors entitling them to at least the same rights and protection beforehand, and suitable accommodation should be found.”⁴

Along with the guidelines mentioned in the Action Plan report member states must understand the vast amount of needs UAM require due to the fact that they are in a new and completely unknown environment. EU member states must provide UAM with

specialized support if they are want to have the same opportunities as other children within the host states.³² Consideration must also be given to the fact that these children all come from extremely diverse backgrounds thus their religions and their beliefs should be acknowledged. Aside from the general education that they must have UAM should also have classes that help them linguistically adapt to their new environment.³² Health Care is also anther issue that should be acknowledged and UAM should be exposed to the same Doctors and treatments that children of that member state are exposed to.³¹ Finally and most importantly UAM should be exposed to what every children regardless of their race, religion, or creed wants; which is a chance to play with friends, play sports, get involved in leisure activities, be introduced to various media outlets so that they might be able to contact their family, culturally immerse and overall just be a child.³¹

IX. Conclusion

The various issues pertaining to the protection and the rights of UAM mentioned throughout this paper are just a few of the issues that face UAM. Some may argue that these concerns are not prevalent and others may argue that there are more pressing issues that face UAM. What cannot be argued is that the current efforts being made separately by member states and international organizations are not working and are not contributing to the overall rights UAM are entitled to as children. Although some member states and organizations have made great strides to improve the rights of UAM such as the EU member state Sweden, the Stockholm Programme and other reports developed by international organizations these efforts are not enough. These minors still face the uncertainty of their safety, well being, and future.

³² Kristina Touzenis, *Unaccompanied Minors : Rights and Protection*,197

That is why it is important that the EU, and the EU member states seek a clear definition for UAM so that they can improve the rights of these children. It is important that member states and international organizations understand the history and origin of various UAM groups. This is because without comprehending the origins of UAM it is difficult to resolve their rights. It is also important to understand the current policies currently in place for the rights of UAM so that member states and international organizations can understand why or why not these policies are not working. The same goes for researching member states themselves. By focusing on member states such as Sweden that have a functioning system it will help other member states understand what areas they need to focus on and resolve. And finally, reiterating the importance of member states, the EU, and international organizations focusing on the reception, identification process, access to care and care provisions, and durable solutions after UAM have been processed. By acknowledging these concerns then changes will immediately go into affect. Along with the development and collaboration of the EU member states programs and the suggestion of utilizing various points throughout the research mentioned above can help UAM avoid living in deplorable situations, being forced into slave labour, or being forced to move back to their country of origin against their will.

Along with these pressing themes another resource that could save the future of UAM is the European Commission Action Plan. A great deal of time, effort, and collaboration went into developing the Action Plan. The sooner member states and the international community understand that the Action Plan will involve the commitment and action of all the member states then there will be a significant difference in the

development of the rights of UAM. With the incorporation of focused themes, the European Union Action Plan, and UAM planning teams such as The Global Working Group there will finally be a real promise of change, and most importantly improved and more coordinated protection for the Rights of Unaccompanied Minors in Europe.

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