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GREECE'S NOT-SO-WARM WELCOME TO UNACCOMPANIED MINORS: REFORMING EU LAW TO PREVENT THE ILLEGAL TREATMENT OF MIGRANT CHILDREN IN GREECE

I have been here 26 days, after I came from Turkey. For three days in the beginning I was sleeping on the floor. Now I'm sharing a bed with another five people: a Somali, a Bangladeshi, an Afghani, an Egyptian, and one other Eritrean. We use the bed in shifts, which means that some use the bed during the day and others during the night. In general, we are 83 people in a room with 30 beds.¹

- Fourteen-year-old Eritrean unaccompanied minor detained at the Fylakio detention center in Greece

We don't have any clothes. The toilet is broken. The sewage comes out. There's a very bad smell. If a person comes here, 100 percent he will get sick . . . The youngest boy is 12 years old . . . we're children but we're treated badly.²

- Fourteen-year-old Afghan unaccompanied minor detained at the Fylakio detention center in Greece

INTRODUCTION

Anecdotes such as the ones above are not uncommon among minors currently detained in Greece.³ Compelled by poverty, armed conflict, and persecution, thousands of minors from the Middle East, Africa, and Asia migrate to the European Union each year in search of a better life.⁴ Largely due

1. HUMAN RIGHTS WATCH, *THE EU'S DIRTY HANDS* 30 (2011) [hereinafter HUMAN RIGHTS WATCH, *THE EU'S DIRTY HANDS*].

2. Human Rights Watch's Updated Submission to the Committee on the Rights of the Child on Greece (Apr. 25, 2012), <http://www.hrw.org/news/2012/04/25/human-rights-watches-updated-submission-committee-rights-child-greece>.

3. See generally HUMAN RIGHTS WATCH, *THE EU'S DIRTY HANDS*, *supra* note 1.

4. Jacqueline Bhabha, *Minors or Aliens? Inconsistent State Intervention and Separated Child Asylum-Seekers*, 3 EUR. J. MIGRATION & L. 283, 288 (2001); Iro Nikolakopoulou-Stephanou, *Greek and European Policy Priorities for Controlling Illegal Immigration*, 59 R.D.H.I. 641, 641, 653 (2006).

to its location at the EU's external borders,⁵ Greece has become a primary channel through which a majority of these migrants from the East enter the EU, oftentimes with the hope of continuing on to other European nations to settle.⁶ As a result, Greece has become overburdened by the number of migrants entering the state seeking either improved opportunities, or in some more dire cases, asylum.⁷ As a whole, migrants constitute approximately 10% of Greece's entire population.⁸

5. Sharita Gruberg, *De Facto Statelessness among Undocumented Migrants in Greece*, 18 GEO. J. POVERTY L. & POL'Y 533, 539 (2011).

6. Mark Lowen, *Journey across Crisis-Hit Greece*, BBC NEWS (Jun. 9, 2012, 1:54 AM), <http://www.bbc.co.uk/news/world-europe-18371800> ("Over 80% of those entering the European Union now pass through Greece."); Helena Smith, *Greek Crackdown on Illegal Immigrants Leads to Mass Arrests*, GUARDIAN (Aug. 7, 2012), <http://www.guardian.co.uk/world/2012/aug/07/greece-crackdown-illegal-immigrants-arrest>; Matina Stevis, *Illegal Immigration Emerges as New Crisis for Greece—And EU*, WALL ST. J. (Sept. 15, 2012), <http://online.wsj.com/article/SB10000872396390444506004577617383132000476.html> [hereinafter Stevis, *New Crisis for Greece*] (quoting Greece's minister of public order, Nikos Dendias, as calling Greece the "buffer zone of Europe" in that it carries "a disproportionate burden" of the migration movement).

7. In one news article, it was reported that

Greece launched an aggressive campaign [in August 2012] to try to seal its 130-mile northeastern border, as it faces a debilitating financial crisis that has caused a swell in joblessness and a surge in racist attacks against immigrants with dark skin. The police operation . . . brought nearly 2,000 additional border guards to the Turkish frontier previously manned by about 500 officers. . . . In the first week of the crackdown in early August, police said they apprehended nearly 7,000 people for identification checks; nearly 1,700 were slated for deportation. . . . Greece is a member of Europe's passport-free Schengen agreement but shares no borders with any of the other 25 member states. That has meant hundreds of thousands of irregular immigrants have been unable to cross the border into other European countries, trapping them in limbo in Athens and other Greek cities, typically in slum conditions.

Greece Cracks Down on Illegal Immigration amid Financial Crisis, FOX NEWS (Aug. 22, 2012), <http://www.foxnews.com/world/2012/08/22/greece-cracks-down-on-illegal-immigration-amid-financial-crisis/>; see also Gruberg, *supra* note 5, at 539 (describing the burden placed on Greece due to the entrance of de facto stateless migrants, exacerbated by the EU's Dublin II regulation); Nicholas Paphitis, *6,000 Suspected Illegal Immigrants Detained in Greece*, USA TODAY (Aug. 6, 2012), <http://usatoday30.usatoday.com/news/world/story/2012-08-06/greece-illegal->

This heavy migration creates a strain on Greece, which is exacerbated by several factors. First, the EU's Dublin II regulation ("Dublin II") governing which member state is responsible for the asylum applications of irregular migrants, non-EU nationals who enter the EU "clandestinely" by land or sea or with falsified documents,⁹ places burdensome obligations on EU border states.¹⁰ Dublin II typically requires the nation in which the migrant initially arrived to examine that individual's application.¹¹ Thus, until European courts limited or placed temporary bans on returns to Greece,¹² those migrants that had con-

immigrants/56819230/1 ("Some 100,000 illegal immigrants are estimated to slip into Greece every year, mostly from neighboring Turkey, and up to a million are believed to live in Greece, which has an official population of about 10 million.").

8. Nick Malkoutzis, *Why Immigration Is Troubling Greece More Than the Economy*, SOC. EUR. J. (Mar. 4, 2012), <http://www.social-europe.eu/2012/04/why-immigration-is-troubling-greece-more-than-the-economy/>.

9. *Irregular Immigration*, EUR. COMM'N, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/irregular-immigration/index_en.htm (last updated Apr. 26, 2013) (defining "irregular migrants" as non-EU nationals "entering the EU clandestinely via land and sea routes, or those who have acquired false travel documents").

10. Council Regulation 343/2003, of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National, 2003 O.J. (L 50) 1 [hereinafter *Dublin II Regulation*]; see also Steve Coll, *The Other Greek Crisis*, NEW YORKER DAILY COMMENT (Sept. 20, 2012), <http://www.newyorker.com/online/blogs/comment/2012/09/afghan-asylum-seekers-in-greece.html> (describing Greece as the "migrant bottleneck" of the EU and attributing this to the "flawed" Dublin II regulation); LAURA KOK, THE DUBLIN II REGULATION. A UNHCR DISCUSSION PAPER 12 (2006), available at <http://www.unhcr.org/refworld/pdfid/4445fe344.pdf>. Since the Regulation's initial drafting stages, the Office of the U.N. High Commissioner for Refugees has "expressed concern that the criterion of illegal border crossing could result in serious imbalances in the distribution of asylum applicants among Member States. Such imbalances would not only pose problems to States situated at the external borders of the European Union," but could also result in a lack of protection for these "asylum-seekers and refugees." *Id.*

11. Dublin II Regulation, *supra* note 10, art. 10(1), at 5.

12. See, e.g., *M.S.S. v. Belgium & Greece*, App. No. 30696/09, ¶¶ 149, 391 (Eur. Ct. H.R. Jan. 21, 2011), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>; *EU Court Warns UK and Irish over Asylum Transfers*, BBC NEWS (Dec. 21, 2011, 8:00 AM), <http://www.bbc.co.uk/news/world-europe-16285573>; J. Michael Kenne-

tinued on to other member states and attempted to lodge asylum applications in those nations were removed to the nation of their original entry (commonly Greece).¹³ Once removed, the migrants were required to remain in their nation of entry until asylum was either granted or refused.¹⁴ Second, other EU member states are reluctant to share in Greece's burden due to general hostilities toward migrants.¹⁵ Many states are apathetic toward Greece's crisis and do not wish to contribute to border control efforts, thereby leaving it to fend for itself with regard to the migrant influx.¹⁶ Finally, Greece's already distressed

dy, *For Illegal Immigrants, Greek Border Offers a Back Door to Europe*, N.Y. TIMES (July 14, 2012), <http://www.nytimes.com/2012/07/15/world/europe/illegal-immigrants-slip-into-europe-by-way-of-greek-border.html> (noting a January 2011 European Court of Human Rights case where the court "ruled that sending asylum seekers back to Greece could infringe on their fundamental rights" because of the poor conditions resulting from the Greek system); Stevis, *New Crisis for Greece*, *supra* note 6.

13. Dublin II Regulation, *supra* note 10, art. 16(1)(a), at 6; Nicholas De Blouw, *Drowning Policies: A Proposal to Modify the Dublin Agreement and Reduce Human Rights Abuses in the Mediterranean*, 40 CAL. W. INT'L L.J. 335, 364 (2010); KOK, *supra* note 10, at 12 (noting the possibility of "serious imbalances in the distribution of asylum applicants" in those EU member states along its external borders and noting the concern expressed by the UNHCR that these imbalances would be compounded by "the criterion of illegal border crossing").

14. Dublin II Regulation, *supra* note 10, art. 16(1)(a), at 6; De Blouw, *supra* note 13, at 364.

15. See Christopher Caldwell, *Europe's Arizona Problem*, N.Y. TIMES (June 11, 2011), <http://www.nytimes.com/2011/06/12/opinion/12Caldwell.html> (opining that "most . . . of Europe . . . does not like mass migration"); Kennedy, *supra* note 12 (stating that the "flow [of migration] has raised tensions throughout Europe, to the point where the top French official responsible for immigration seriously suggested that a wall be built along the entire border"); Malkoutzis, *supra* note 8 (describing an attitude of indifference toward Greece's migration crisis and a view that the migrant influx problem is Greece's alone); Valentina Pop, *Europeans Say They Are Tolerant but Oppose Immigration*, EUOBSERVER (Mar. 14, 2011, 9:23 AM), <http://euobserver.com/social/31980> (citing to polls that record high levels of opposition among EU citizens to migration from outside the EU); Rosie Scammell, *EU Commissioner Advances Idea of Common Migration Policy*, EUR. UNIV. INST. (June 25, 2012), <http://www.eui.eu/News/2012/25-06-Malmstrom-MPC.aspx> (noting a general unwillingness to welcome migrants due to high levels of youth unemployment throughout the EU).

16. Malkoutzis, *supra* note 8 (noting that although the EU's border monitoring agency, Frontex, had committed to helping patrol the Greek-Turkish

economy cannot handle the added burden of the migrant population.¹⁷ As a result, the migrant population, which includes unaccompanied minors,¹⁸ has become a scapegoat for the economic crisis Greece is facing.¹⁹

For these reasons, Greece has cracked down on illegal immigration, arresting and detaining many unaccompanied minors as they would adults.²⁰ While Dublin II typically requires ex-

border, there has been a demonstrated “lack of interest from EU states in committing more resources” to these types of efforts).

17. Chloe Hadjimatheou, *Greeks Confront Crime Wave amid Austerity*, BBC NEWS (Aug. 16, 2012, 4:42 AM), <http://www.bbc.co.uk/news/world-radio-and-tv-19269891>; Stevis, *New Crisis for Greece*, *supra* note 6 (noting “domestic unrest over the influx of foreign arrivals”); *The Unstoppable Flow*, ECONOMIST, Feb. 17, 2011, available at <http://www.economist.com/node/18178167>.

18. See generally *Annual Report 2013: Greece*, AMNESTY INT’L, <http://www.amnesty.org/en/region/greece/report-2013> (last visited Sept. 24, 2013); HUMAN RIGHTS WATCH, *LEFT TO SURVIVE: SYSTEMATIC FAILURE TO PROTECT UNACCOMPANIED MIGRANT CHILDREN IN GREECE* (2008) [hereinafter HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*].

19. Hadjimatheou, *supra* note 17; see also Stevis, *New Crisis for Greece*, *supra* note 6 (quoting EU Commissioner for Home Affairs Cecilia Malmstrom as saying “the current crisis is being exploited by populist parties who are trying to shift the blame from poorly managed national economies to immigrant populations”). In a news analysis, Panos Damelos, a Greek anti-racism campaigner, stated that migrants have made “easy targets” throughout Greece’s “economic crisis.” Hadjimatheou, *supra*. The article states that although most crimes are in fact attributable to Greeks, the government has targeted immigrants as it is quite easy “to channel the public’s anger towards the weakest in society.” *Id.* (internal quotation marks omitted). Furthermore, Damelos “believes that the bad press is responsible for [the] massive increase in attacks on migrants.” *Id.* As a result, police have been patrolling the streets in an effort to crack down jointly on crime and on illegal immigration. *Id.* In August 2012, a “controversial crackdown” resulted in the detention of approximately 6000 migrants in Athens alone. *Id.*

20. In a news article regarding Greek crackdowns on illegal migrants, Greece is described as follows:

Europe’s main entry point for illegal immigrants from Asia and Africa seeking a better life in the West. But Greece’s severe economic problems and high unemployment are making the problem worse than ever. Police said [on August 6, 2012] that 6,000 people were detained over [the preceding] weekend in Athens in a massive operation. . . . Officers across the city were seen stopping mostly African and Asian people in the street for identification checks. Most were only briefly detained, but about 1,600 were arrested for illegally entering Greece and sent to holding centers pending deportation.

ceptional circumstances to justify detention, authorities have detained many of these suspected irregular migrants for reasons beyond those deemed “exceptional.”²¹ As a result of growing hostility toward the migrant masses, the arrests and subsequent detentions by Greek police are often based merely on antipathy toward non-EU foreigners.²² Until recently, substantial numbers of migrants arrived each day in Greece through the Greece-Turkey border.²³ However, with the construction of a fence built to deter such migration, more and more undocumented migrants are regularly traveling by sea.²⁴ The country’s

Paphitis, *supra* note 7; see also *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7 (describing how police crackdowns on illegal immigrants have encountered “strong criticism from human rights groups, local officials, and even police officers’ associations—with criticism focusing on alleged racial profiling and police brutality. Allegations include arbitrary detention, beatings and degrading police treatment”); Smith, *supra* note 6 (“An estimated million immigrants are believed to live in Greece where the population is barely 11 million. . . . But the country’s economic crisis and growing political radicalisation has given rise to a xenophobic backlash, the uncontrolled influx blamed for a sharp spike in violent crime.”).

21. See *Greece: Halt Mass Migrant Round-Ups*, HUMAN RIGHTS WATCH (Aug. 8, 2012), <http://www.hrw.org/news/2012/08/08/greece-halt-mass-migrant-round-ups> [hereinafter *Greece: Halt Mass Migrant Round-Ups*]; see also De Blouw, *supra* note 14, at 340–41; *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7 (“Amnesty International called on Greek authorities to stop the roundups [of immigrants] immediately. . . . ‘While Greece has the right to control migration, it does not have the right to treat people like criminals purely because of the color of their skin.’”).

22. See *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7; Hadjimatheou, *supra* note 17; *Greece: Halt Mass Migrant Round-Ups*, *supra* note 21; Kennedy, *supra* note 12 (noting that Greek officials have “vowed” to eradicate and expel all illegal immigration).

23. See Amnesty Int’l, *Enter at Your Peril: Lives Put at Risk at the Gate of Europe* 3, AI Index EUR 25/007/2013 (July 9, 2013), available at <http://www.amnesty.org/en/library/asset/EUR25/007/2013/en/f70e0f38-4084-48ad-9f7a-606ad053d693/eur250072013en.pdf> [hereinafter Amnesty Int’l, *Enter at Your Peril*].

24. *Id.* at 3; *EU: Improve Migrant Rescue, Offer Refuge*, HUMAN RIGHTS WATCH (Oct. 23, 2013), <http://www.hrw.org/news/2013/10/23/eu-improve-migrant-rescue-offer-refuge> [hereinafter Human Rights Watch, *EU: Improve Migrant Rescue*] (“With the Greece-Turkey land border virtually sealed due to increased patrols, including by Frontex, and the construction of a . . . fence, more and more asylum seekers and migrants of all nationalities are setting off from the Turkish coast to reach Greek islands in the Aegean Sea.”); Matina Stevis, *Boat Tragedy Prompts New Look at Migration Policy in Europe*, WALL ST. J., Oct. 7, 2013, available at

immigration and asylum system has been unable to withstand the continuous burden of such heavy migration.²⁵ As a result, the conditions in detention centers holding irregular migrants, whether seeking asylum or not, are consistently worsening.²⁶ Conditions have been characterized as “unsanitary,” “degrading,” “overcrowded,” and generally abusive.²⁷

Notably, these groups of migrants often include large numbers of vulnerable, “stateless,” and frequently unaccompanied children²⁸ who are detained along with adults and thus also exposed to the objectionable conditions of Greek detention cen-

<http://online.wsj.com/news/articles/SB10001424052702304626104579121372822047060> (noting Frontex’s report that “more than half of the illegal migrants arriving in Europe go through Greece’s borders” and the shift to sea routes since the sealing off of Greece’s northern border with Turkey).

25. *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7 (describing the burden of the heavy flow of migration on Greece); Thomas Hammarberg, Council of Eur. Comm’r for Human Rights, *The ‘Dublin Regulation’ Undermines Refugee Rights*, COUNCIL OF EUR. COMM’R’S HUMAN RIGHTS COMMENT (Sept. 22, 2010), http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=80 (describing the asylum procedures in Greece as “gravely dysfunctional”); *see also* Irene Chapple, *Europe’s Lost Children*, CNN (July 18, 2013), <http://edition.cnn.com/EUROPE/afghan-immigrant-children/> (describing Greece’s asylum system as “dysfunctional . . . with limited numbers able to apply for protection and low success rates for applicants”).

26. Amnesty Int’l, *Enter at Your Peril*, *supra* note 23, at 7; Eur. Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Public Statement Concerning Greece*, CPT/Inf (2011) ¶¶ 3–4, 7 (Mar. 15, 2011), <http://www.cpt.coe.int/documents/grc/2011-10-inf-eng.pdf> [hereinafter *Public Statement Concerning Greece*].

27. HUMAN RIGHTS WATCH, *STUCK IN A REVOLVING DOOR* 39, 67–68, 83 (2008), http://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf [hereinafter *HUMAN RIGHTS WATCH, STUCK IN A REVOLVING DOOR*].

28. According to the Office of the U.N. High Commissioner for Refugees,

[a]n unaccompanied child is a person who is under the age of eighteen, unless, under the law applicable to the child, majority is attained earlier and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.”

Office of the U.N. High Comm’r for Refugees [UNHCR], *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* ¶ 3.1 (Feb. 1997), available at <http://www.unhcr.org/refworld/docid/3ae6b3360.html>.

ters.²⁹ The United Nations (“U.N.”) General Assembly has recognized unaccompanied minors as “among the most vulnerable refugees.”³⁰ International organizations attribute this vulnerability to a combination of their age, refugee status, and inability to adequately protect themselves.³¹ Nonetheless, due to a shortage of “care places”³² available to unaccompanied minors upon their arrival in Greece, many are detained for lengthy periods of time in squalid, overcrowded detention centers and allegedly, at times, at the hands of oppressive Greek law enforcement.³³ Because of these detention conditions, the European Court of Human Rights recently ruled that Greece is violat-

29. Leigh Phillips, *Greece's Locked Up Migrant Children Attempt Suicide*, EUOBSERVER (July 27, 2010, 3:37 PM), <http://euobserver.com/justice/30545>.

30. G.A. Res. 58/150, U.N. Doc. A/RES/58/150 (Dec. 22, 2003), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/58/150&Lang=E (The U.N. General Assembly noted that unaccompanied minors are “among the most vulnerable refugees and the most at risk of neglect, violence, forced military recruitment and sexual assault and therefore require special assistance and care.”).

31. *Id.*; see also *Z et al. v. U.K.*, App. No. 29392/95, (1999) 28 EUR. H.R. REP. CD 65, ¶ 93 (Eur. Comm’n on H.R.) (Children “by reason of their age and vulnerability are not capable of protecting themselves,” and thus need special protection, placing a “positive obligation” on authorities.).

32. HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 53, 65; see also Human Rights Watch, *Greece: Create Open Centers for Migrant Children*, HUMAN RIGHTS WATCH (Aug. 23, 2009), <http://www.hrw.org/news/2009/08/23/greece-create-open-centers-migrant-children> [hereinafter Human Rights Watch, *Greece: Create Open Centers for Migrant Children*]. So-called “accommodation centers” designed to help care for and provide services to unaccompanied migrant children are running “beyond their capacit[ies]” and are scarce. Human Rights Watch, *Greece: Create Open Centers for Migrant Children*, *supra*. Most are unsuitable for long-term accommodation. *Id.* In addition, the foster care system is unavailable to non-Greek children. *Id.*

33. Updated Human Rights Watch Submission to the U.N. Comm. Against Torture, on Greece (Apr. 25, 2012), available at <http://www.hrw.org/news/2012/04/25/updated-human-rights-watch-submission-united-nations-committee-against-torture-greece>. In many detention centers throughout Greece, “unaccompanied migrant children [are] commingled with unrelated adults in the same overcrowded detention space.” *Id.* Human Rights Watch has “gathered credible testimonies from migrants who told [the organization] they had been ill-treated at the hands of Greek law enforcement officers.” *Id.* These reports included testimony regarding the ill treatment of unaccompanied minors. *Id.*

ing Article 3 of the European Convention on Human Rights³⁴ by subjecting migrants to inhumane and degrading treatment.³⁵

The U.N. has called the detention of unaccompanied minors “illegal.”³⁶ Greece’s conduct toward unaccompanied migrant children violates a number of its international legal obligations, in particular, the U.N. Convention on the Rights of the Child (“CRC”) and the European Convention on Human Rights (“ECHR”).³⁷ Due to the legal requirements imposed on member states regarding irregular migration, the EU must step in and amend its laws so that Greece meets its international law obligations.

This Note proposes an amendment to the current law governing Greece’s treatment and care of unaccompanied migrant children. It argues that the EU must share in the responsibility for Greece’s noncompliance with its treaty obligations and amend its laws in ways that both compel and facilitate Greece’s compliance. Part I of this Note provides background on the problem of Greece’s detention of unaccompanied minors, explaining why they arrive unaccompanied and why they flee to Greece. Part I also discusses Greece’s international law obligations under two multilateral treaties to which Greece is a party—the CRC and the ECHR. Part II explains how Greece is currently violating its treaty obligations, highlighting the 2011 case of *M.S.S. v. Belgium & Greece* and explaining the role the EU’s Dublin II regulation plays in Greek detention conditions. Part III proposes a two-part solution to Greece’s violations of

34. “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” European Convention on Human Rights, art. 3, Nov. 4, 1950, 213 U.N.T.S. 222.

35. *M.S.S. v. Belgium & Greece*, App. No. 30696/09, ¶ 234 (Eur. Ct. H.R. Jan. 21, 2011), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>.

36. Emily A. Benfer, *In the Best Interests of the Child?*, 14 IND. INT’L & COMP. L. REV. 729, 734 (2004) (quoting Special Rapporteur of the Comm’n on Human Rights, *Human Rights of Migrants*, Comm’n on Human Rights, U.N. Doc. E/CN.4/2001/83/Add.1 (Jan. 9, 2001) (by Gabriela Rodriguez Pizarro)) (discussing the best interests of the child principle in relation to the treatment of unaccompanied minors in refugee and asylum law).

37. See *M.S.S.*, App. No. 30696/09, ¶¶ 234, 250, 263–64; see also Convention on the Rights of the Child, Nov. 20, 1989, adopted by resolution 44/25, 1577 U.N.T.S. 3; European Convention on Human Rights, *supra* note 34; Phillips, *supra* note 29.

the CRC and the ECHR. First, the Note proposes the elimination of all conflicts of interest in the care of unaccompanied minors entering Greece. Second, it calls for the EU's actual execution of the "best interests of the child" principle through the prohibition of child detention and a mandate for alternatives that are sensitive to children's vulnerability and foster a sense of trust. Finally, the Note concludes with final recommendations for both the EU and Greece.

I. BACKGROUND

Unaccompanied minors flee to the EU and enter through Greece for a variety of reasons, from persecution, to violence and child exploitation.³⁸ As a result of their migration into Greece, and in accordance with the CRC and the ECHR, Greece is bound by international law to certain minimal levels of treatment of unaccompanied minors.³⁹

A. *Why Unaccompanied Minors Flee to Greece*

The European Council defines an "unaccompanied minor" as follows:

a minor who arrives on the territory of the Members States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.⁴⁰

38. Bhabha, *supra* note 4, at 288; see HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 11.

39. See generally Convention on the Rights of the Child, *supra* note 37; European Convention on Human Rights, *supra* note 34. See also *Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUR., <http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (last visited Dec. 1, 2013); *Status of the Convention on the Rights of the Child*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Dec. 1, 2013).

40. Council Directive 2013/33 of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection (Recast), art. 2(e), 2013 O.J. (L 180) 96, 99 [hereinafter Reception Conditions Directive]. Greece has defined an unaccompanied minor as:

There are many reasons why minors migrate to Greece unaccompanied. Many minors travel alone because they are fleeing violence after their families have been murdered in their home countries or have disappeared.⁴¹ Other children have been separated from their families with whom they initially left jointly.⁴² On the other hand, many minors leave to escape various forms of exploitation specific to children, such as child labor⁴³ and “forced military recruitment.”⁴⁴ In some cases, such as is common among many Afghan children, minors purportedly flee their nation for countries like Iran, but eventually leave these states due to poor working conditions and crackdowns on illegal immigration.⁴⁵ In other circumstances, unaccompanied minors arrive in Greece alone having fled refugee camps because they were violently targeted due to factors such as their families’ political affiliations.⁴⁶

a third-country national or stateless person below the age of 18, who either enters on Greek territory unaccompanied by an adult responsible for him whether by law or custom, and for as long as he is not effectively taken into the care of such a person or a minor who is left unaccompanied after he has entered the country.

Nomos (2005:3386) Codification of Legislation on the Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory, EPHEMERIS TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [E.K.E.D.] 2005, A:212, art. 1(i) (Greece), available at http://www.mfa.gr/images/docs/ethnikes_theoriseis/codification_of_legislation_en.pdf (last visited Jan. 14, 2013) (codifying the first version of the EU’s Reception Conditions Directive, Council Directive 2003/9/EC, which was recently “recast”).

41. See HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 11–12, 29.

42. *Id.* at 11.

43. *Id.* at 11–12.

44. UNHCR, UNACCOMPANIED MINORS SEEKING ASYLUM IN GREECE 14 (2008), available at <http://www.unhcr.org/refworld/docid/48abd557d.html> (by Georgia Dimitropoulou & Ioannis Papageorgiou) [hereinafter UNHCR, UNACCOMPANIED MINORS].

45. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 11. Unaccompanied minors who have entered the EU irregularly, either clandestinely by land or sea or with false travel documents, do not obtain regular status if they do not seek asylum or, alternatively, if their asylum applications are rejected. *Id.* at 41.

46. *Id.* at 12.

Unaccompanied minors flood Greece for many of the same reasons as adults:⁴⁷ in pursuit of asylum applications, a chance at new economic opportunities, and often as a means to continue on to other EU nations.⁴⁸ They are commonly compelled to leave their nations of origin because of persecution due to religious or political views,⁴⁹ violence,⁵⁰ oppression under dictatorial regimes,⁵¹ and general political turmoil.⁵²

Consequently, the EU attracts many migrants because of the “prosperity and political stability” of its nations.⁵³ Greece, in particular, has received a large influx of migrants, including unaccompanied minors, due to its porous borders.⁵⁴ Specifically, until 2012, approximately two-thirds⁵⁵ of all irregular migrants destined for the EU entered through Greece’s 130-mile northeastern border with Turkey,⁵⁶ in the Evros region.⁵⁷ More recently, after Greece tightened border controls and construct-

47. UNHCR, UNACCOMPANIED MINORS, *supra* note 44, at 14.

48. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 2, 4, 41–42; HUMAN RIGHTS WATCH, TURNED AWAY: SUMMARY RETURNS OF UNACCOMPANIED MIGRANT CHILDREN AND ASYLUM SEEKERS FROM ITALY TO GREECE 11–12 (2013), *available at* http://www.hrw.org/sites/default/files/reports/italy0113ForUpload_0.pdf [hereinafter HUMAN RIGHTS WATCH, TURNED AWAY]; Stevis, *New Crisis for Greece*, *supra* note 6; UNHCR, PROTECTING CHILDREN ON THE MOVE 10 (2012), *available at* <http://www.unhcr.it/cms/attach/editor/PDF/Protecting%20children%20on%20the%20move%202012.pdf> [hereinafter UNHCR, PROTECTING CHILDREN ON THE MOVE].

49. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 11–12.

50. *Id.*

51. *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7.

52. *See* Stevis, *New Crisis for Greece*, *supra* note 6.

53. DIRECTORATE-GEN. FOR COMM'N, EUR. COMM'N, AN OPPORTUNITY AND A CHALLENGE: MIGRATION IN THE EUROPEAN UNION 5 (2009), *available at* http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=NA7808857.

54. Stevis, *New Crisis for Greece*, *supra* note 6; *see also Annual Report 2013: Greece*, *supra* note 18; UNHCR, UNACCOMPANIED MINORS, *supra* note 44, at 4.

55. *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7.

56. *Id.*

57. *See* Amnesty Int'l, *Enter at Your Peril*, *supra* note 23, at 3.

ed a 10.5-kilometer fence⁵⁸ aimed at deterring irregular migration, migrants have been traveling instead by sea, in particular across the Aegean Sea, and arriving in the Greek islands.⁵⁹ Sources show that such irregular migrants originate from a wide range of countries in North Africa, Asia, and the Middle East, including Afghanistan, Pakistan, Bangladesh,⁶⁰ Somalia, Sudan,⁶¹ and in more recent years, Syria,⁶² due to the country's current civil war.⁶³ With the recent political developments in the Middle East, Greece expects a renewed surge in its illegal immigration problems.⁶⁴

B. Legally Binding International Law Governing Greece's Treatment of Unaccompanied Minors

In the treatment of unaccompanied minors within its jurisdiction, Greece is bound by both the CRC and the ECHR.⁶⁵ Both treaties codify certain minimum rights that shall be pre-

58. This fence was constructed in a 10.5 kilometer-long area of the Greece-Turkey border that “does not follow the course of the Evros River” and that up until the construction of this fence “used to be one of the busiest transit points for irregular migration to Europe.” *Id.* While significantly decreasing the numbers of irregular migrants that enter Greece through this particular border, the migration flow continues. *Id.*

59. *Id.*; Christina Flora, *Mass Arrival of Illegal Immigrants Through Sea*, GREEK REP. (Aug. 28, 2013), <http://greece.greekreporter.com/2013/08/28/mass-arrival-of-illegal-immigrants-through-sea/>; Press Release, Amnesty Int'l, Two Boat Tragedies Leave Migrants Dead and Missing off Europe's Shores, AI Index PRE01/367/2013 (July 25, 2013), available at <http://www.amnesty.org/en/for-media/press-releases/two-boat-tragedies-leave-migrants-dead-and-missing-europe-s-shores-2013-07->.

60. *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7.

61. Stevis, *New Crisis for Greece*, *supra* note 6.

62. “Greece recorded the entry of 15,072 Syrian nationals between January 2011 and the end of September 2013, but *only 833 asylum applications* through the end of July.” Human Rights Watch, *EU: Improve Migrant Rescue*, *supra* note 24 (emphasis added).

63. *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7; Stevis, *New Crisis for Greece*, *supra* note 6.

64. Flora, *supra* note 59.

65. See *Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra* note 39; *Status of the Convention on the Rights of the Child*, *supra* note 39.

served for both children and individuals in general, respectively.⁶⁶

1. United Nations Convention on the Rights of the Child

In 1989, the world's leaders recognized that children's rights needed acknowledgement and increased protection.⁶⁷ Concerns driven by "alarming accounts . . . of children in prison and in other difficult circumstances" necessitated the creation of an instrument to protect children's rights that would be binding under international law.⁶⁸ As a result, the CRC was drafted and became a legally binding treaty on its 140 signatory nations.⁶⁹ Greece is one of those nations and ratified the CRC in 1993.⁷⁰ The CRC's preamble is particularly significant in the context of the treatment of unaccompanied minors in Greece. Specifically, the preamble notes that children throughout the world are living in "exceptionally difficult conditions," and because of a child's "physical and mental immaturity," a child

66. Convention on the Rights of the Child, *supra* note 37; European Convention on Human Rights, *supra* note 34; *see also* *Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra* note 39; *European Court of Human Rights*, CHILD RIGHTS INT'L NETWORK, <http://www.crin.org/resources/infoDetail.asp?ID=18061&flag=report> (The ECHR "sets out the civil and political rights and freedoms that European States agree to ensure for people living within their jurisdiction."); *Status of the Convention on the Rights of the Child*, *supra* note 39. *See generally* Ann Laquer Estin, *Families and Children in International Law: An Introduction*, 12 TRANSNAT'L L. & CONTEMP. PROBS. 271, 292-94 (2002) (noting the CRC's "comprehensive" nature in setting out rights that address the protection of children in "economic, social, and cultural" aspects).

67. *Introduction: Convention on the Rights of the Child*, UNICEF, <http://www.unicef.org/crc/> (last updated Apr. 4, 2013); *see also* Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 1, 1 (1993).

68. Office of the U.N. High Comm'r for Human Rights [OHCHR], *Fact Sheet No.10 (Rev. 1), The Rights of the Child*, available at <http://www.ohchr.org/Documents/Publications/FactSheet10Rev.1.en.pdf> (last visited Oct. 23, 2013) [hereinafter OHCHR, *Fact Sheet No.10*].

69. *See* Convention on the Rights of the Child, *supra* note 37, pmbl. (listing as one of the rationales behind the adoption of the treaty that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth"); *see also* *Introduction: Convention on the Rights of the Child*, *supra* note 67; *Status of the Convention on the Rights of the Child*, *supra* note 39.

70. *Introduction: Convention on the Rights of the Child*, *supra* note 67; *Status of the Convention on the Rights of the Child*, *supra* note 39.

needs “special safeguards and care.”⁷¹ The CRC specifically intended these safeguards to include protection in a legal context.⁷² Consequently, the convention has established minimum standards that parties to the instrument are obliged to implement in order to achieve these objectives.⁷³ The Committee on the Rights of the Child was established to monitor the CRC’s implementation.⁷⁴

The most significant standard the convention advocates is the proposition that the child’s best interests serve as “a primary consideration” in any action undertaken regarding a child, whether by a public or private entity.⁷⁵ The CRC specifically addresses children who are seeking refugee status, whether unaccompanied or not, noting that state parties must ensure that these minors “receive appropriate protection and humanitarian assistance.”⁷⁶ The convention also states that children

71. Convention on the Rights of the Child, *supra* note 37, pmb1.

72. *Id.*

73. *Introduction: Convention on the Rights of the Child, supra* note 67.

74. Convention on the Rights of the Child, *supra* note 37, art. 43(1); *see also Committee on the Rights of the Child*, OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/crc/> (last visited Sept. 20, 2012). The Committee on the Rights of the Child is made up of independent experts who review reports submitted regularly by the Convention’s parties, outlining the process of the implementation of the rights protected by the CRC. *Committee on the Rights of the Child, supra*. One of the goals of the committee is ensuring that state parties are “undertak[ing] . . . appropriate legislative, administrative and other measures to implement the Convention,” pursuant to Article 4 of the Convention. OHCHR, *Fact Sheet No.10, supra* note 68. The committee strives to achieve compliance by making certain that states’ legislation is consistent with the Convention, by gathering information about children and their situations, and by promoting cooperation in the international arena. *Id.* Although the committee refers complaints about violations of a child’s rights to other international human rights treaty bodies, the committee intends to accept children’s individual complaints in the near future. *Committee on the Rights of the Child, supra*. *See generally* Cohen, *supra* note 67, at 5–6.

75. Convention on the Rights of the Child, *supra* note 37, art. 3(1); *see also* Cohen, *supra* note 67, at 19.

76. The CRC provides:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set

have a right to acceptable standards of living that promote their “physical, mental, spiritual, moral and social development.”⁷⁷ Finally, the CRC expressly addresses the detention of children: the convention prohibits the “torture or other cruel, inhuman, or degrading treatment or punishment” of children and their unlawful and arbitrary deprivation of liberty.⁷⁸ It proceeds by stating that detention of a child should only occur as a last resort and, even under those circumstances, only for the shortest possible duration.⁷⁹

2. European Convention on Human Rights

By detaining unaccompanied minors, Greece is also in violation of the ECHR. The ECHR was signed in Rome on November 4, 1950, by the member states of the Council of Europe,⁸⁰ including Greece.⁸¹ The convention lays out a number of basic human rights and freedoms⁸² and is binding on all member nations, both on a national and international level.⁸³ Thus, the ECHR is encompassed in the municipal legislation of state parties and must be applied by domestic courts.⁸⁴ Specifically, and

forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Convention on the Rights of the Child, *supra* note 37, art. 22(1).

77. *Id.* art. 27(1).

78. *Id.* art. 37(a)–(b); see also Cara L. Finan, *Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of Child Abduction*, 34 SANTA CLARA L. REV. 1007, 1023 (1994).

79. Convention on the Rights of the Child, *supra* note 37, art. 37(b).

80. The Council of Europe is an international organization, comprised of forty-seven member states, including the twenty-seven member states of the EU. *The Council of Europe in Brief: Do Not Get Confused*, COUNCIL OF EUR., <http://www.coe.int/aboutCoe/index.asp?page=nepasconfondre&l=en> (last visited Dec. 1, 2013). “No country has ever joined the EU without first belonging to the Council of Europe.” *Id.* The Council was established in order “to promote democracy and protect human rights.” *Id.*

81. *Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra* note 39. Greece ratified the ECHR in 1974.

82. *Convention for the Protection of Human Rights and Fundamental Freedoms: Summary of the Treaty*, COUNCIL OF EUR., <http://conventions.coe.int/Treaty/en/Summaries/Html/005.htm> (last visited Sept. 20, 2012).

83. *The ECHR in 50 Questions*, EUR. CT. OF HUMAN RIGHTS 3 (July 2012), http://www.echr.coe.int/Documents/50Questions_ENG.pdf.

84. *Id.*

of particular relevance to the detention of unaccompanied minors in Greece, the ECHR provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁸⁵ The European Court of Human Rights enforces the ECHR.⁸⁶

II. GREECE’S TREATMENT OF UNACCOMPANIED MINORS VIOLATES BINDING INTERNATIONAL LAW

In *M.S.S. v. Belgium & Greece*, the European Court of Human Rights held that Greece’s treatment of irregular migrants violated binding international law.⁸⁷ Greece continues to violate the rights of irregular migrants, including unaccompanied minors, post-*M.S.S.* by detaining and exposing them to inhumane and degrading treatment.⁸⁸ Nevertheless, many of Greece’s problems with overcrowding and poor detention conditions are a consequence of regulations imposed by the EU that Greece must abide by.⁸⁹ This suggests that perhaps the best way to bring Greece into compliance with international law is to address the problem of the detention of unaccompanied minors primarily at the EU level.

A. The Impact of *M.S.S. v. Belgium & Greece*

On January 21, 2011, in the case of *M.S.S. v. Belgium & Greece*, the European Court of Human Rights found that Greece was in violation of its international law obligations un-

85. European Convention on Human Rights, *supra* note 34, art. 3.

86. Individual claimants may bring a cause of action against a state that has violated their fundamental rights in the European Court of Human Rights. *The ECHR in 50 Questions*, *supra* note 83, at 6. If the court finds a violation, it will issue a judgment against the violating party and demand that it modify its conduct and/or legislation to comply with the Convention. *Id.* at 10. A judgment is binding on all parties and is enforced by the Committee of Ministers of the Council of Europe. *Id.* at 9. This committee oversees execution of the court’s judgments and consults with the relevant states to ensure execution and to prevent further violations. *Id.* at 10.

87. See generally *M.S.S. v. Belgium & Greece*, App. No. 30696/09 (Eur. Ct. H.R. Jan. 21, 2011), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>.

88. *Annual Report 2013: Greece*, *supra* note 18; HUMAN RIGHTS WATCH, TURNED AWAY, *supra* note 48, at 18–24; Stevis, *New Crisis for Greece*, *supra* note 6. See generally HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18.

89. See Dublin II Regulation, *supra* note 10; see also Coll, *supra* note 10; KOK, *supra* note 10, at 12.

der the ECHR.⁹⁰ In *M.S.S.*, the court adjudged the legality of Greece's detention practices regarding irregular migrants.⁹¹ The case was brought by an Afghan national who had left Kabul, primarily due to the high unemployment that pervaded the region, and entered the EU through Greece where he was briefly detained.⁹² However, *M.S.S.* did not apply for asylum in Greece.⁹³ Rather, he continued on to Belgium and applied for asylum there.⁹⁴ After an examination proved that *M.S.S.* had first entered the EU through Greece, Belgium requested that Greece take responsibility for *M.S.S.*'s asylum application in accordance with Dublin II.⁹⁵ Eventually, the applicant was returned to Greece where he was once again detained.⁹⁶ Subsequently, *M.S.S.* brought an action alleging that his removal to Greece by Belgian authorities had violated both Articles 2 and 3 of the ECHR.⁹⁷ He also alleged that Greece's treatment of him amounted to a violation of Article 3.⁹⁸

90. See *M.S.S.*, App. No. 30696/09; see also Gruberg, *supra* note 5, at 540.

91. *M.S.S.*, App. No. 30696/09, ¶¶ 3, 161–72.

92. *Id.* ¶¶ 9–10. See generally Patricia Mallia, *Introductory Note to the European Court of Human Rights: M.S.S. v. Belgium & Greece*, 50 I.L.M. 364, 364 (2011).

93. *M.S.S.*, App. No. 30696/09, ¶ 10 (Arriving in Greece, the applicant “was detained for a week and, when released, was issued with an order to leave the country. He did not apply for asylum in Greece.”); see also Ton Zuijdwijk, *M.S.S. v. Belgium & Greece (European Court of Human Rights): The Interplay Between European Union Law and the European Convention on Human Rights in the Post-Lisbon Era*, 39 GA. J. INT'L & COMP. L. 807, 808 (2011) (discussing the new implications of *M.S.S. v. Belgium & Greece* regarding the effects of the ECHR on EU member states' actions).

94. *M.S.S.*, App. No. 30696/09, ¶ 11.

95. *Id.* ¶¶ 12, 14.

96. *Id.* ¶¶ 33, 44.

97. *Id.* ¶¶ 323, 362; see also Zuijdwijk, *supra* note 93, at 815.

98. *M.S.S.*, App. No. 30696/09, ¶ 205. The court emphasized:

Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, their health and well-being are adequately secured.

Id. ¶ 221; see also Zuijdwijk, *supra* note 93, at 815.

M.S.S. complained of detention conditions that are typical of the crisis in Greece.⁹⁹ For example, he complained of being detained “in a small room with twenty other people,” with limited access to toilet facilities and “very little to eat,” and of ill treatment by Greek police.¹⁰⁰ The court noted that the applicant’s descriptions of the conditions he endured while in detention matched findings by several organizations on the conditions in detention centers holding irregular migrants throughout Greece.¹⁰¹

99. *M.S.S.*, App. No. 30696/09, ¶¶ 44, 160, 206. The applicant “described his conditions of detention, alleging that he had been beaten by the police officers in charge of the centre, and said that he wanted to get out of Greece at any cost so as not to have to live in such difficult conditions.” *Id.* For examples of how M.S.S.’s detention conditions mirror those throughout Greece, see, e.g., Amnesty Int’l, *Enter at Your Peril*, *supra* note 23, at 7; Amnesty Int’l, *Greece: Irregular Migrants and Asylum-Seekers Routinely Detained in Substandard Conditions*, AI Index EUR 25/002/2010 (July 2010), available at http://s3.amazonaws.com/rcpp/assets/attachments/1062_amnesty_greece_2010_original.pdf [hereinafter Amnesty Int’l, *Routinely Detained in Substandard Conditions*]; Amnesty Int’l, *No Place for an Asylum-Seeker in Greece*, AMNESTY INT’L (Feb. 28, 2008, 2:23 PM), <http://www.amnesty.org.au/news/comments/9711/>; Human Rights Watch, *Greece: Unsafe and Unwelcoming Shores*, HUMAN RIGHTS WATCH (Oct. 12, 2009), <http://www.hrw.org/news/2009/10/09/greece-unsafe-and-unwelcoming-shores>; HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 53–62; HUMAN RIGHTS WATCH, *STUCK IN A REVOLVING DOOR*, *supra* note 27, at 83–85; SPYROS KOULOCHERIS, GREEK COUNCIL FOR REFUGEES, NATIONAL COUNTRY REPORT: GREECE 49–51, available at http://www.asylumineurope.org/files/report-download/aida_greekreport_june2013_0.pdf (last updated Jun. 1, 2013); *Observations on Greece as a Country of Asylum*, OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES (Dec. 2009), <http://www.unhcr.org/refworld/docid/4b4b3fc82.html>.

100. *M.S.S.*, App. No. 30696/09, ¶ 206; see also Zuijdwijk, *supra* note 93, at 811.

101. Describing one center in particular that held detained irregular migrants, the court noted:

According to the findings made by organisations that visited the holding centre next to the airport, the sector for asylum seekers was rarely unlocked and the detainees had no access to the water fountain outside and were obliged to drink water from the toilets. In the sector for arrested persons, there were 145 detainees in a 100 sq. m space. In a number of cells there was only one bed for fourteen to seventeen people. There were not enough mattresses and a number of detainees were sleeping on the bare floor. There was insufficient room for all the detainees to lie down and sleep at the same time.

The decision by the European Court of Human Rights is significant for several reasons. First, the court noted that the EU's Reception Conditions Directive,¹⁰² which supplements Dublin II, requires certain minimum standards of member states for the reception of asylum seekers, including food, clothing, adequate medical care, and even education for minors.¹⁰³ Second, the court recognized the particularly "profound effect" such degrading and inhumane treatment in detention can have on individuals in such a vulnerable state (for example, asylum seekers).¹⁰⁴ The court stressed the significance of M.S.S.'s asylum seeker status.¹⁰⁵ Third, the court acknowledged the especially

Because of the overcrowding, there was a lack of sufficient ventilation and the cells were unbearably hot. Detainees' access to the toilets was severely restricted and they complained that the police would not let them out into the corridors. The police admitted that the detainees had to urinate in plastic bottles which they emptied when they were allowed to use the toilets. It was observed in all sectors that there was no soap or toilet paper, that sanitary and other facilities were dirty, that the sanitary facilities had no doors and the detainees were deprived of outdoor exercise.

M.S.S., App. No. 30696/09, ¶ 230; see also Gruberg, *supra* note 5, at 540. See generally Human Rights Watch, *Greece: End Inhumane Detention Conditions for Migrants*, HUMAN RIGHTS WATCH (Dec. 6, 2010), <http://www.hrw.org/news/2010/12/06/greece-end-inhumane-detention-conditions-migrants>; HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18; Human Rights Watch, *No Refuge: Migrants in Greece*, HUMAN RIGHTS WATCH (Nov. 2, 2009), <http://www.hrw.org/print/reports/2009/11/02/no-refuge>.

102. Reception Conditions Directive, *supra* note 40.

103. *M.S.S.*, App. No. 30696/09, ¶ 84; Reception Conditions Directive, *supra* note 40, art. 2, 14, 18–19, at 99, 104–06.

104. *M.S.S.*, App. No. 30696/09, ¶ 233. Further emphasizing the impact of the deplorable conditions on M.S.S., the court stated:

[T]he Court considers that the conditions of detention experienced by the applicant were unacceptable. It considers that, taken together, the feeling of arbitrariness and the feeling of inferiority and anxiety often associated with it, as well as the profound effect such conditions of detention indubitably have on a person's dignity, constitute degrading treatment contrary to Article 3 of the Convention. In addition, the applicant's distress was accentuated by the *vulnerability inherent in his situation as an asylum seeker*.

Id. (emphasis added).

105. *Id.* ¶ 251 ("The Court attaches considerable importance to the applicant's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection.").

burdensome influx of migrants that member states along the EU's external borders are facing due to their geographic locations.¹⁰⁶ Finally, despite this recognition, the court ultimately found that these burdens did not excuse said states from their obligations.¹⁰⁷ The court found Greece in violation of Article 3 of the ECHR and Belgium also in violation of Article 3 for returning the applicant back to Greece where he was exposed to conditions amounting to inhumane and degrading treatment.¹⁰⁸ Importantly, the court noted that asylum seekers should not be transferred to other states where their fundamental rights as laid out in the ECHR could be violated (i.e., to Greece).¹⁰⁹ The court awarded the applicant reparation to be paid by both states and ordered Greece to stay M.S.S.'s deportation until a proper examination of the merits of his asylum application was completed.¹¹⁰

Despite this binding decision handed down by the court, Greece continues to violate its international obligations in its treatment of detained unaccompanied minors, subjecting them

106. The court admitted that EU border states undergo

considerable difficulties in coping with the increasing influx of migrants and asylum seekers. The situation is exacerbated by the transfers of asylum seekers by other Member States in application of the Dublin Regulation. . . . The Court does not underestimate the burden and pressure this situation places on the States concerned, which are all the greater in the present context of economic crisis. It is particularly aware of the difficulties involved in the reception of migrants and asylum seekers . . . and of the disproportionate number of asylum seekers when compared to the capacities of some of these States.

Id. ¶ 223; see also Mallia, *supra* note 92, at 365.

107. *M.S.S.*, App. No. 30696/09, ¶¶ 223–27; Mallia, *supra* note 92, at 365.

108. *M.S.S.*, App. No. 30696/09, ¶¶ 233–34, 367–68; see also Gruberg, *supra* note 5, at 540; Mallia, *supra* note 92, at 365; Zuijdwijk, *supra* note 93, at 815.

109. *M.S.S.*, App. No. 30696/09, ¶¶ 77–79, 332, 350. The EU's judicial system has come to similar conclusions in other decisions. For example, in a December 2011 case, the European Court of Justice (“ECJ”) ruled that the United Kingdom and Ireland could not return asylum seekers to Greece, stating “an asylum seeker may not be transferred to a member state where he risks being subjected to inhuman treatment.” *EU Court Warns UK and Irish over Asylum Transfers*, *supra* note 12 (internal quotation marks omitted).

110. *M.S.S.*, App. No. 30696/09, ¶¶ 402, 406, 411, 414, 420, 423. Of the damages that Greece and Belgium were ordered to pay the applicant, the largest amount awarded by the court did not exceed €25,000, while the lowest totaled €1,000. *Id.*

to conditions similar to those described in the case of *M.S.S. v. Belgium & Greece*.¹¹¹ Such treatment not only violates obliga-

111. *Annual Report 2012: Greece*, AMNESTY INT'L, <http://www.amnesty.org/en/region/greece/report-2012> (last visited Jan. 6, 2013); *Annual Report 2013: Greece*, *supra* note 18; *Greece Condemned for Detention of Unaccompanied Children*, ASYLUM INFO. DATABASE (Oct. 25, 2013), <http://www.asylumineurope.org/news/25-10-2013/greece-condemned-detention-unaccompanied-children> (discussing the October 24, 2013 decision by the European Court of Human Rights in *Housein v. Greece*, ruling that Greece had violated an Afghan child's rights under Articles 3 and 5(1) of the ECHR for arresting and detaining him in an adult detention center for two months after he had illegally crossed the border into Greece); KOULOCHERIS, *supra* note 99, at 49–51. For more examples of the continued practice of detention of unaccompanied minors (and migrants in general) in Greece, see also Amnesty Int'l, *Enter at Your Peril*, *supra* note 23, at 7; Amnesty Int'l, *Greece Must Halt Mass Police Crackdown on Irregular Migrants*, AMNESTY INT'L (Aug. 8, 2012), <http://www.amnestyusa.org/news/news-item/greece-must-halt-mass-police-crackdown-on-irregular-migrants>; Eva Cossé, *Dispatches: Greece—One Year On, Abuses Continue under Operation Xenios Zeus*, HUMAN RIGHTS WATCH (Aug. 2, 2013), <http://www.hrw.org/news/2013/08/02/dispatches-greece-one-year-abuses-continue-under-operation-xenios-zeus> (Operation Xenios Zeus has been an effort “aim[ed] at cracking down on irregular migration and crime in Athens,” lasting over a year. The Operation has led to “abusive stops” and “hours-long detention” of “tens of thousands of people presumed to be undocumented migrants.”); *Court: Greece's Treatment of Asylum Seeker Breached Human Rights Law*, HUMAN RIGHTS EUROPE, <http://www.humanrightseurope.org/2013/08/court-greece%E2%80%99s-treatment-of-asylum-seeker-breached-human-rights-law/> (Aug. 1, 2013) (discussing an August 2013 decision by the European Court of Human Rights finding that Greece once again violated Article 3 of the ECHR due to the detention conditions an asylum seeker was exposed to in Greek police stations); Andy Dabilis, *Amnesty Says Greece's Migrant Treatment Inhumane*, GREEK REP. (Dec. 20, 2012), <http://greece.greekreporter.com/2012/12/20/amnesty-says-greeces-migrant-treatment-inhumane/>; *ECJ Rules Against Greece over Detention Standards*, EKATHIMERINI (Dec. 4, 2012, 9:35 PM), http://www.ekathimerini.com/4dcgi/_w_articles_ws1_1_04/12/2012_472957 (The ECJ has ruled that Greece is not meeting minimum standards for detention.); *Greece—An Unsafe Environment for Migrants*, IRIN (Aug. 17, 2012), <http://www.irinnews.org/report/96123/MIGRATION-Greece-an-unsafe-environment-for-migrants>; *Greece: Halt Mass Migrant Round-Ups*, *supra* note 21; *Migrants Protest Detention Conditions in Komotini*, EKATHIMERINI (Nov. 23, 2012, 8:26 PM), http://www.ekathimerini.com/4dcgi/_w_articles_ws1_1_23/11/2012_471405; Paphitis, *supra* note 7; Smith, *supra* note 6; Stevis, *New Crisis for Greece*, *supra* note 6 (describing detention centers conditions “as extremely poor, with immigrants reporting unbearable overcrowding, limited access to toilets and

tions under the ECHR, but also constitutes a violation of the CRC, which calls for detention of minors only in exceptional circumstances and as a last resort.¹¹² Furthermore, the inhumane and degrading treatment and punishment of unaccompanied minors and the failure to provide them with appropriate protection also violates basic principles of the CRC.¹¹³

B. Dublin II's Contribution to Greece's Violations

Greece's obligations under the EU's Dublin II exacerbate the conditions of detention within the state. Dublin II¹¹⁴ was established in order to outline the criteria by which it could be easily determined which member state is responsible for the examination of a migrant's asylum application.¹¹⁵ Typically, the asylum application of an unaccompanied minor must be examined by the member state in which the application was lodged.¹¹⁶ However, it is not uncommon for unaccompanied minors to be incorrectly identified as adults due to cursory age assessments by police and immigration officials.¹¹⁷ As a result, the examina-

little food"). See generally *M.S.S.*, App. No. 30696/09, ¶¶ 34, 44, 159–66, 206, 222.

112. Convention on the Rights of the Child, *supra* note 37, art. 37(b).

113. *Id.* art. 20(1), 22(1).

114. The objective of Dublin II is to avoid a situation in which asylum seekers are "being sent from one country to another" and to "prevent abuse of the system by the submission of several applications for asylum by one person." *Dublin II Regulation*, EUROPA, http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm (last updated Nov. 18, 2011) [hereinafter *Dublin II Regulation*, EUROPA].

115. *Id.*

116. Dublin II Regulation, *supra* note 10, art. 6, at 4.

117. EUR. MIGRATION NETWORK, UNACCOMPANIED MINORS—AN EU COMPARATIVE STUDY 6, 49–50, 52, available at http://www.ab.gov.tr/files/ardb/evt/1_avrupa_birligi/1_9_politikalar/1_9_8_dis_politika/Policies_on_reception_return_and_integration_for_and_numbers_of_unaccompanied_minors.pdf (last visited Oct. 23, 2013) (discussing the possibility that "a minor is incorrectly age-assessed to be an adult"); see also Laura Brownlees & Terry Smith, *Age Assessment Practices: A Literature Review & Annotated Bibliography*, UNICEF 1 (Apr. 2011), http://origin-www.unicef.org/protection/files/Age_Assessment_Practices_2010.pdf (noting that children without documents to prove their age and subjected to arbitrary age determinations are "vulnerable to being treated as an adult . . . when seeking international protection as asylum seekers," and that such inaccurate identification can have "life-changing consequences"); SANDY RUXTON, SEPARATED CHILDREN IN EUR. PROGRAMME, SEPARATED CHILDREN SEEKING

tion of such unaccompanied minors' applications is governed by Dublin II rules regulating the asylum applications of adults. Under these circumstances, if an individual is found to have entered irregularly, the member state where that individual first entered the EU is responsible for examining his or her asylum application.¹¹⁸ Therefore, even if an application is lodged in another country, the unaccompanied minor may be forced to return to Greece where his or her application will by default be examined by Greek officials.

Dublin II's requirements result in a great imbalance in the number of applicants found within the various EU member states.¹¹⁹ This is not merely because Dublin II provides that states may return irregular migrants to the state through which they initially entered the EU, but also because of the particularly heavy burden it places on states located on the EU's external borders.¹²⁰ Thus, Greece's geographic location also plays an important role in aggravating conditions.¹²¹ The imbalance places a strain on Greece that compounds the conditions of detention because of the sheer volumes of migrants flooding the country.¹²² As a result, any unaccompanied minor

ASYLUM IN EUROPE: A PROGRAMME FOR ACTION 10, *available at* <http://scep.sitespirit.nl/images/17/189.pdf> ("Separated children frequently arrive in Europe with false documents or no documents at all. . . . As a result it can prove difficult to ascertain their age, and if they are incorrectly identified as adults, they will not be entitled to the full protection of international law."); UNHCR, PROTECTING CHILDREN ON THE MOVE, *supra* note 48, at 17.

118. Dublin II Regulation, *supra* note 10, art. 10(1), at 5.

119. *See generally* KOK, *supra* note 10; PAUL McDONOUGH ET AL., EUR. COUNCIL ON REFUGEES & EXILES, SHARING RESPONSIBILITY FOR REFUGEE PROTECTION IN EUROPE: DUBLIN RECONSIDERED 16 (2008), *available at* www.ecre.org/component/downloads/downloads/105.html.

120. For a discussion of the pressures placed on the EU's external border states with regard to migration, see generally Coll, *supra* note 10; KOK, *supra* note 10; McDONOUGH ET AL., *supra* note 119.

121. Smith, *supra* note 6.

122. *See* HUMAN RIGHTS WATCH, STUCK IN A REVOLVING DOOR, *supra* note 27, at 27 ("[T]he EU [has] exacerbated the lack of international solidarity and burden sharing by using the Dublin system to shift its own internal burden to Greece as the entry-point to the EU for [many migrants]."); Public Statement Concerning Greece, *supra* note 26, ¶ 12; Updated Human Rights Watch Submission to the U.N. Comm. Against Torture, on Greece, *supra* note 33; *see also* Smith, *supra* note 6 (discussing conditions prior to the construction of the anti-irregular migration fence in the Evros region of Greece where the country was then observing a "surge of new arrivals, with government figures

who is returned to Greece by another state, has applied for asylum first in Greece, or is merely apprehended by Greek police and subsequently detained, will likely be subjected to deplorable detention conditions. In addition, although the migration issue is a common problem that the EU as a whole faces, other member states are unwilling to share Greece's migration burden and are themselves opposed to welcoming mass influxes of migrants, thereby increasing the likelihood that irregulars will be sent back to the country of their original entry, often Greece.¹²³ Consequently, conditions that the EU places on its member states demand a change to EU law.

III. THE EU MUST TAKE RESPONSIBILITY FOR THE DETRIMENTAL CONSEQUENCES OF ITS REQUIREMENTS IMPOSED ON GREECE AND HELP GREECE TO ACHIEVE COMPLIANCE

The finding by the European Court of Human Rights that Greece is violating international law and Greece's continued violations¹²⁴ signal that changes must be made. EU legislation is a significant factor in understanding why Greece has failed to comply with international law obligations regarding its response to the influx of unaccompanied minor migrants. Greece is overburdened by the influx of migrants for a number of reasons. As stated above in Part II.B, Dublin II requires that the member state in which the unaccompanied minor's asylum application was first lodged process that individual's application, and that the applications of all other irregular migrants be processed by the state in which the individual first entered the EU.¹²⁵ This requirement, coupled with the EU's "freedom of

showing more than 100 migrants daily crossing the country's porous border with Turkey.").

123. Malkoutzis, *supra* note 8 (noting the "lack of interest" by other EU member states in contributing to the border control efforts in Greece); *see also* Caldwell, *supra* note 15; Pop, *supra* note 15; Scammell, *supra* note 15; Stevis, *New Crisis for Greece*, *supra* note 6 ("[Greece's] failure to protect its border has only heightened political tensions at countries already resentful about the country's impact on the euro, and worried that their own tight job markets can't [sic] handle too many immigrants.").

124. *See generally* M.S.S. v. Belgium & Greece, App. No. 30696/09, ¶ 401 (Eur. Ct. H.R. Jan. 21, 2011), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>; *Annual Report 2013: Greece*, *supra* note 18; *Court: Greece's Treatment of Asylum Seeker Breached Human Rights Law*, *supra* note 111; Dabilis, *supra* note 111.

125. Dublin II Regulation, *supra* note 10, art. 6, 10(1), at 4–5.

movement policy”¹²⁶ and Greece’s geographic location,¹²⁷ has rendered Greece an attractive entry point for unaccompanied minors and has placed a significant strain on the nation’s immigration and asylum system.¹²⁸ Due to the convenience of Greece as a route to the West and the country’s currently crippled economy,¹²⁹ Greece is abandoning binding principles of international law and detaining unaccompanied minors, along with adults, in a “rounding-up” effort that often culminates in orders of deportation.¹³⁰ As a result of its requirements of Greece due to its irregular migration laws, the EU must take responsibility for helping Greece to comply with its international obligations and amend its laws governing irregular migration.¹³¹ Furthermore, the EU should look to other nations that have sought to resolve the problem of detaining unaccompanied minors for alternative mechanisms that have proven successful in achieving compliance with international law as guidance.

In exploring and establishing alternatives to detention, the EU must keep in mind two basic principles that are essential to creating a workable system of non-detention of unaccompanied minors and which take into account children’s vulnerability and needs. First, the EU must ensure that states receiving un-

126. “The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.” Council Directive 2004/38/EC, 2004 O.J. (L 158) 77, 78.

127. Smith, *supra* note 6.

128. *Id.*

129. Paphitis, *supra* note 7 (“Greece’s severe economic problems and high unemployment are making the problem [of irregular migrants] worse than ever. . . . The uncontrolled influx, which coincided with a recent spike in crime, contributed to the sharp rise of an extreme-right political party which uses aggressive rhetoric against immigrants.”).

130. See Alice Farmer, *The Impact of Immigration Detention on Children*, FORCED MIGRATION REV., Sept. 2013, at 14, 14 [hereinafter Farmer, *Impact of Immigration Detention*]; HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 53; Paphitis, *supra* note 7; U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: GREECE, 1, 4–5, 13, available at <http://www.state.gov/documents/organization/204503.pdf> (last visited Sept. 28, 2013).

131. Although a major cause of Greece’s problems, Dublin II serves an important role in “identify[ing] as quickly as possible the Member State responsible for examining an asylum application” and “prevent[ing] abuse of asylum procedures.” *Dublin II Regulation*, EUROPA, *supra* note 114.

accompanied minors eradicate any conflict of interest with regard to their care. This principle is essential to implementing the second criterion proposed which is that, in amending its laws, the EU must ensure that states are sensitive to the vulnerability of unaccompanied minors.¹³² These individuals, subjected to detention, are not only minors who find themselves alone in a strange country, but are also often victims of war and other violence.¹³³ In fostering awareness for their particular status, the EU must ensure that the widely accepted (and oft codified) “best interests of the child” principle¹³⁴ is not simply a *de jure* doctrine, but is actually put into practice. This can only be accomplished by codifying a rule that completely proscribes any detention of unaccompanied minors entering member states and by proposing considerable and tangible consequences if this prohibition is violated. It cannot reasonably be argued that detention in squalid and overcrowded centers among unrelated adults is in the “best interests” of a child when such a practice has been shown to aggravate preexisting mental and physical traumas resulting from circumstances that unaccompanied minors have sought to flee in the first place.¹³⁵ In order to put the “best interests” principle into practice, the EU must mandate the establishment of alternatives to detention that foster trust between the minors and those responsible for their care. These alternatives have proven largely effective in precluding outcomes such as noncompliance and

132. HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 28–31, 73.

133. *Id.* at 11, 28–29.

134. “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Convention on the Rights of the Child, *supra* note 37, art. 3(1). *See generally* UNHCR, *DETERMINING THE BEST INTERESTS OF THE CHILD* 5 (2008), available at <http://www.unhcr.org/4566b16b2.pdf> (“The principle of the best interests of the child has been the subject of extensive consideration in academic, operational and other circles. Legal documents relating to the protection of children . . . systematically refer to it.”).

135. PHILIP AMARAL, *JESUIT REFUGEE SERV. EUR., FROM DEPRIVATION TO LIBERTY: ALTERNATIVES TO DETENTION IN BELGIUM, GERMANY AND THE UNITED KINGDOM* 5 (2011), available at <http://www.detention-in-eu-rope.org/images/stories/A2D/jrseuropefromdeprivationtoliberty20dec2011.pdf>; *see also* HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 28–29, 57; Updated Human Rights Watch Submission to the U.N. Comm. Against Torture, on Greece, *supra* note 33; Phillips, *supra* note 29.

absconding for which some nations have resorted to detention to prevent, while at the same time placing children in a more suitable, less restrictive environment.¹³⁶

A. The Conflict of Interest Must Be Eradicated

1. The Problem and the Solution

The conflict of interest problem posed by Greek guardianship of unaccompanied minors and the country's immigration and asylum system is one of the obstacles precluding Greece from complying with its international law obligations under the CRC and the ECHR.

In Greece, once an unaccompanied minor has been apprehended and identified as a minor, Greek law requires the minor be assigned a temporary guardian.¹³⁷ "Public prosecutors" commonly fill these positions, and their performance of their responsibilities can be described as deficient at best.¹³⁸ Many prosecutors are uninformed about what their responsibilities entail.¹³⁹ They believe they do not have any real authority to represent minors in administrative immigration proceedings since the minors do not hold "regular" status and thus do not "legally exist."¹⁴⁰ In reality, it is only through representation by

136. AMARAL, *supra* note 135, at 6–9.

137. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 25; *see also* Diatagma (220/2007) On the Transposition into the Greek Legislation of Council Directive 2003/9/EC from January 27, 2003 Laying down Minimum Standards for the Reception of Asylum Seekers (Greece), *available at* <http://www.unhcr.org/refworld/docid/49676abb2.html>.

138. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 26; UNHCR, PROTECTING CHILDREN ON THE MOVE, *supra* note 48, at 19–20. Although all unaccompanied minors are entitled to temporary guardians—the public prosecutors—this is rarely implemented. UNHCR, PROTECTING CHILDREN ON THE MOVE, *supra*, at 19–20. Prosecutors face many difficulties in appointing permanent guardians, including “the sheer volume of work that the prosecutors’ offices face, the limited human resources within the court’s existing services who can follow up the cases and the limited number of [p]ublic [p]rosecutors exclusively competent for minors.” *Id.* No “standardized practice followed by prosecutors” exists for the implementation of adequate guardians for unaccompanied minors. *Id.* *See generally* Simone Troller, *In the Migration Trap: Unaccompanied Migrant Children in Europe*, HUMAN RIGHTS WATCH, <http://www.hrw.org/world-report-2010/migration-trap> (last visited Dec. 1, 2013).

139. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 26.

140. *Id.* at 27.

these prosecutors that unaccompanied minors may commence their applications for asylum.¹⁴¹ Furthermore, at times, prosecutors have ordered minors detained when other options for their care were not available.¹⁴² In other circumstances, where police have initiated a child's detention, the police fail to inform prosecutors that such minors have been detained and, accordingly, prosecutors are not given the opportunity to protect the children's interests.¹⁴³

Thus, since police officials are essentially "responsible for . . . all aspects of immigration and asylum—including the adjudication of asylum claims at first instance and the deportation of migrants," and since they are responsible for detention and its accompanying conditions,¹⁴⁴ police officials become the de facto guardians or caretakers of these unaccompanied minors whilst in detention. This dual role creates a serious conflict of interest because the children's interests are ignored and do not receive the proper protection that both international and Greek law require.¹⁴⁵ By eliminating this conflict of interest, the EU, and Greece in particular, can start down the right path for ensuring that the best interests of the child are always a primary consideration when faced with an unaccompanied minor who has entered the EU irregularly.

While a recent amendment to Greek law seeks to place the responsibility of reviewing asylum claims in an autonomous body,¹⁴⁶ this amendment has yet to be fully implemented.¹⁴⁷

141. *Id.*; Troller, *supra* note 138.

142. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 27, 69–70.

143. *Id.* at 20.

144. *Id.*; see also Gruberg, *supra* note 5, at 541. See generally Amnesty Int'l, *The Dublin II Trap: Transfers of Asylum-Seekers to Greece*, AI Index EUR 25/001/2010 (Mar. 10, 2010), available at <http://www.unhcr.org/refworld/docid/4c7f69362.html> [hereinafter Amnesty Int'l, *The Dublin II Trap*].

145. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 69–70.

146. *Greece Failing Asylum Seekers*, IRIN (Oct. 15, 2012), <http://www.irinnews.org/report/96547/migration-greece-failing-asylum-seekers>; *The Asylum Service*, HELLENIC REPUBLIC MINISTRY OF CITIZEN PROTECTION, http://www.minocp.gov.gr/asylo.php?option=ozo_content&perform=view&id=3779&Itemid=465&lang=&lang=EN (last visited Oct. 30, 2013). Established by Greek law 3907/2011, Greece's new Asylum Service seeks to transfer responsibility of asylum claims to an autonomous civilian body, which will "receive, examine and decide on all applications for international protection lodged in Greece." *The Asylum Service*, *supra*; see also Paul Mason, *Greece*

The adjudication of asylum claims in the first instance largely remains in the hands of Greek police officials.¹⁴⁸ The law faces serious hurdles in the form of lack of funding¹⁴⁹ and inadequately qualified staff.¹⁵⁰ In addition, Amnesty International has expressed its concern that police will continue to maintain responsibility over asylum claims of migrants in the first instance, even after the amendment goes into full effect and, in particular, authority over the huge backlog of asylum applications that exists in Greece.¹⁵¹ Thus, even if finally implemented

Asylum: Journey Through a Broken System, BBC NEWS (Feb. 19, 2013), <http://www.bbc.co.uk/news/world-21509198> (discussing how Greece's new "Asylum Service" is intended to primarily address the "difficult access to the asylum system in Greece") (internal quotations omitted).

147. See Eur. Council on Refugees & Exiles, *Greece Continues to Systematically Detain Asylum Seekers and Remains Unable to Address the Needs of Asylum Seekers and Refugees*, EUR. COUNCIL ON REFUGEES & EXILES (Sept. 20, 2013), <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/430-greece-continues-to-systematically-detain-asylum-seekers-and-remains-unable-to-address-the-needs-of-asylum-seekers-and-refugees.html>.

148. *Greece Failing Asylum Seekers*, *supra* note 146; KOULOCHERIS, *supra* note 99, at 12, 16 (describing the new Asylum Service as "not fully operational" and how, during this "transitional" phase, police officials "remain[] responsible for examining asylum applications at first instance"). In addition, one online source on asylum information and news states that, of the units that the Asylum Service has begun to establish, one unit consists of staff that "has been appointed by the Greek police." *Golden Dawn Member in the Greek Dublin Unit*, ASYLUM INFO. DATABASE (Sept. 27, 2013), <http://www.asylumineurope.org/news/27-09-2013/golden-dawn-member-greek-dublin-unit>. In particular, one staff member was found to be a Greek police official who is a strong supporter of the Golden Dawn, Greece's "neo-Nazi" political party responsible for some of the xenophobic crackdowns on illegal migration. *Id.*; see Smith, *supra* note 6. This begs the question whether Greece's new Asylum Service will actually accomplish its objectives of creating a civilian body to process asylum claims. Police officers who continue to adjudicate first instance asylum claims "often act in a discriminatory manner against migrants." KOULOCHERIS, *supra*, at 16. "Arbitrariness is very common and there have also been cases of [p]olice brutality against asylum seekers." *Id.*

149. *Greece Failing Asylum Seekers*, *supra* note 146.

150. Question for Written Answer P-003496/12 to the Commission, *Inefficiencies in the New Greek Asylum Service Due to a Lack of Staff*, 2013 O.J. (C 130 E) 240 (expressing concern over the lack of adequate staffing for the new Asylum Service and the "inability to recruit personnel").

151. Amnesty Int'l, *The Greek Authorities Must Urgently Accelerate the Asylum System Reforms and End Detention of Asylum Seekers*, AI Index EUR 25/003/2013 (Mar. 21, 2013), available at <http://www.refworld.org/pdfid/514c22362.pdf>.

throughout all of Greece, the conflict of interest with regard to unaccompanied minors' care would likely persist.

The United States faced a similar conflict of interest with regard to the detention of unaccompanied minors, which it has sought to remedy.¹⁵² Much like Greece, thousands of unaccompanied minors¹⁵³ enter the United States each year¹⁵⁴ attempting to escape human rights violations,¹⁵⁵ abuse, armed conflict, natural disasters, and political turmoil.¹⁵⁶ In many circumstances, like unaccompanied minors in Greece, they too are sent by their parents or have left on their own in search of a better life.¹⁵⁷ Prior to 2003, apprehended unaccompanied minors were placed in the custody of the Immigration and Naturalization Service ("INS").¹⁵⁸ This governmental department was essentially both the children's "caretaker and their prosecutor," thereby resulting in a significant "conflict of interest."¹⁵⁹ In other words, the INS was not only responsible for the children's care, but also for initiating their deportation proceedings.¹⁶⁰ As a result, there was an "institutional bias" in favor of

152. Carolyn J. Seugling, *Toward a Comprehensive Response to the Transnational Migration of Unaccompanied Minors in the United States*, 37 VAND. J. TRANSNAT'L L. 861, 869 (2004).

153. An unaccompanied minor, as defined in the United States, is "any person under the age of 18 who is separated from both parents and is not being cared for by an adult who, by law or custom, has a responsibility to do so, and who is an asylum seeker, recognized refugee or other externally displaced person." Linda A. Piwowarczyk, *Symposium on Children and Immigration: Our Responsibility to Unaccompanied and Separated Children in the United States: A Helping Hand*, 15 B.U. PUB. INT. L.J. 263, 264 (2006) (citation omitted).

154. Ann Farmer, *Under Age and Alone, Immigrants See a Softer Side of Detention*, N.Y. TIMES (Jul. 14, 2009), <http://www.nytimes.com/2009/07/15/nyregion/15minors.html> [hereinafter Farmer, *Under Age and Alone*]. As of 2009, "roughly 7,200 unaccompanied minors [were] apprehended in the United States each year." *Id.*

155. Benfer, *supra* note 36, at 730.

156. Piwowarczyk, *supra* note 153, at 265–66. See generally OLGA BYRNE & ELISE MILLER, VERA INST. OF JUST., THE FLOW OF UNACCOMPANIED MINORS THROUGH THE IMMIGRATION SYSTEM (2012), available at <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

157. Piwowarczyk, *supra* note 153, at 266.

158. Seugling, *supra* note 152, at 869.

159. *Id.*

160. *Id.*

detaining unaccompanied minors.¹⁶¹ Unaccompanied minors in U.S. detention faced many of the same harsh conditions that those in Greece today face—including lengthy stays, physical and emotional abuse, ill treatment as if they were criminals (shackling and restraining them), and oftentimes detention in the same centers as dangerous juvenile offenders.¹⁶² The U.S. government argued that detention protected the children and kept them out of harm's way,¹⁶³ but, in reality, the practice of detaining them had the opposite effect.¹⁶⁴

However, in 2003, U.S. policy regarding unaccompanied minors underwent a crucial change, transferring responsibility for their care from the INS, which functioned within the Department of Justice ("DOJ"), to the Office of Refugee Resettlement ("ORR") under the Department of Health and Human Services ("DHHS").¹⁶⁵ This transition was important, since the ORR already had extensive refugee experience and could contribute significantly due to the benefit of an incomparable network of resources.¹⁶⁶ The revision effectively eliminated the conflict of interest.¹⁶⁷ According to reports, although deficiencies in the system still persist,¹⁶⁸ the ORR has made significant progress

161. *Id.* at 872.

162. Benfer, *supra* note 36, at 744–45; Seugling, *supra* note 152, at 869–70.

163. Benfer, *supra* note 36, at 750.

164. Piwowarczyk, *supra* note 153, at 271. Not only have children had to face abuse and other deplorable detention conditions, but such an environment has proven to have a deleterious effect on unaccompanied minors' mental health, including significant psychological and behavioral effects. *Id.*; see also Benfer, *supra* note 36, at 747.

165. Piwowarczyk, *supra* note 153, at 266.

166. Rebeca M. Lopez, *Codifying the Flores Agreement: Seeking to Protect Immigrant Children in U.S. Custody*, 95 MARQ. L. REV. 1635, 1653 (2012).

167. Seugling, *supra* note 152, at 875.

168. For example, as of 2003, one-third of all unaccompanied minors were still detained in "jail-like facilit[ies]" in the United States, violating "both national and international detention standards." Lara Yoder Nafziger, *Protection or Persecution?: The Detention of Unaccompanied Immigrant Children in the United States*, 28 HAMLINE J. PUB. L. & POL'Y 357, 381–82 (2006). Officials have blamed this continued detention on exceptions to the new policies regarding child detention, which permit the detention of unaccompanied minors in secure facilities under certain limited circumstances such as "influx, emergency," or where the minors have had a criminal or dangerous past. *Id.* at 382. Although, some statistics show that many of these unaccompanied minors are still detained for reasons beyond those provided for under the exception. *Id.*; see also Lopez, *supra* note 166, at 1651, 1666; Odette Yousef, *Study: Undocumented Immigrant Youth Languish in Adult Jails*, WBEZ

in ameliorating the treatment of unaccompanied minors in U.S. custody through this transition.¹⁶⁹ By establishing the Unaccompanied Refugee Minors (“URM”) Program,¹⁷⁰ operating on the principle that children should be placed in “the least restrictive setting appropriate to their age and special needs,”¹⁷¹ the ORR has worked toward a more humane treatment of unaccompanied minors by placing them in detention alternatives such as foster care, group homes, “residential treatment centers,” and “independent living programs.”¹⁷²

A similar approach may be taken to remedy the situation in Greece. The EU’s Reception Conditions Directive provides that member states “take measures to ensure that a representative represents and assists . . . unaccompanied minor[s] to enable [them] to benefit from the rights and comply with the obligations provided for” in the directive.¹⁷³ These include schooling, the protection of “physical and mental health,” and generally “an adequate standard of living,” *inter alia*.¹⁷⁴ However, Greece has failed to provide this type of representation to unaccompanied minors and consequently provides inadequate care, resorting instead to detention in the same facilities that confine adult migrants, despite the fact that this violates provisions of the

(June 5, 2013), <http://www.wbez.org/news/study-undocumented-immigrant-youth-languish-adult-jails-107539> (discussing the detention by U.S. Immigration and Customs Enforcement of unaccompanied minors for longer than the federally prescribed seventy-two hours prior to the transfer of their custody to the DHHS).

169. Joyce Koo Dalrymple, *Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors*, 26 B.C. THIRD WORLD L.J. 131, 159 (2006); *see also* Nafziger, *supra* note 168, at 379; Piowarczyk, *supra* note 153, at 274.

170. Children eligible for the URM Program include those that are under eighteen, unaccompanied, and that are: refugees, entrants, asylees, or victims of trafficking. *Unaccompanied Refugee Minors*, OFFICE OF REFUGEE RESETTLEMENT (Aug. 16, 2012), <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-refugee-minors>.

171. Piowarczyk, *supra* note 153, at 288 (internal quotation marks omitted); *see also* BYRNE & MILLER, *supra* note 156, at 9, 14–17.

172. *About Unaccompanied Refugee Minors*, OFFICE OF REFUGEE RESETTLEMENT, <http://www.acf.hhs.gov/programs/orr/programs/urm/about> (last visited Oct. 8, 2012); *see also* BYRNE & MILLER, *supra* note 156, at 14–17.

173. Reception Conditions Directive, *supra* note 40, art. 24(1), at 107.

174. *Id.* art. 14, 17(2), at 104.

directive.¹⁷⁵ As a result, a conflict of interest arises, much like the former circumstances in the United States, where Greek police officials are both responsible for aspects of immigration proceedings and for the unaccompanied minors' care in detention, without any party truly protecting the minors' interests.¹⁷⁶ The elimination of the conflict of interest will aid in the process of ensuring that Greece is in compliance with its international obligations under the CRC and the ECHR.¹⁷⁷

Like the United States, the EU should amend the Reception Conditions Directive and require that each member state create a separate organization or agency with the requisite specialized skills and resources that can adequately provide for refugee assistance and, more specifically, for the care of unaccompanied minors. By developing a program that is separate from the government departments which handle asylum claims and other immigration matters, much like the U.S. URM Program, the EU can ensure that unaccompanied minors' best interests are taken into consideration first and foremost rather than secondary to immigration policy objectives.¹⁷⁸ Additional-

175. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18; Human Rights Watch's Updated Submission to the Committee on the Rights of the Child on Greece, *supra* note 2; *see also* Reception Conditions Directive, *supra* note 40, art. 11(2), at 103.

176. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 2, 25–28, 32–37, 53–54, 59–62; *see also* Amnesty Int'l, *The Dublin II Trap*, *supra* note 144. For a description of the conflict of interest in the United States, *see generally* Seugling, *supra* note 152.

177. For examples of how the elimination of the conflict of interest has begun to bring the United States more in line with international law, *see* Seugling, *supra* note 152, at 875; *see also* Dalrymple, *supra* note 169, at 159; Nafziger, *supra* note 168, at 379–81; Piwowarczyk, *supra* note 153, at 274.

178. The importance of the best interests of the child principle has been emphasized in new policies found in other EU member states. For example,

[u]ntil recently unaccompanied minors in the Netherlands were placed in detention if they entered the territory without documentation. Three hundred minors were detained in 2009. The Dutch Minister for Immigration and Asylum, G.B.M. Leers, announced on the 10th of March 2011 that unaccompanied migrant children will no longer be placed in immigration detention. *The interest of the child will be valued higher than a possible flight risk*. Unaccompanied minors will instead receive temporary housing through the central asylum authority.

ly, such an organization would be responsible for the care of *all* unaccompanied minors, not just those who apply for international protection. The application of this new provision mandating the establishment of a specialized organization requires an amendment to the scope of the Reception Conditions Directive. Currently, the directive applies strictly to “third-country nationals and stateless persons *who make an application for international protection on the territory*” of the EU, “including at the border.”¹⁷⁹ This caveat to the directive’s scope would apply only to the reception and subsequent care of unaccompanied minors and would not otherwise extend the scope of the directive to other migrants who do not apply for international protection. This extension in scope will ensure that all unaccompanied minors, not simply those that apply for asylum, are protected by the proposed amendment, since all minors are vulnerable to this “institutional bias.” Additionally, this revision is important since, in many cases, minors abstain from applying for international protection for a variety of reasons.¹⁸⁰

2. Enforcement Mechanism

The EU can ensure compliance with this amendment by making assistance from Frontex,¹⁸¹ its border control agency, and

Children Pave the Way for Alternatives to Detention in Holland, INT’L DETENTION COALITION (June 20, 2011), <http://idcoalition.org/children-pave-the-way-for-alternatives-to-detention-in-holland/> (emphasis added).

179. Reception Conditions Directive, *supra* note 40, art. 3(1), at 100 (emphasis added).

180. An amendment to the Reception Conditions Directive’s scope is important as many minors in Greece abstain from submitting asylum applications under the false belief that seeking such international protection will expose them to continued ill treatment by officials or that, by complying with immigration authorities, their time in detention will be prolonged whilst awaiting the adjudication of their asylum claims. AMARAL, *supra* note 135, at 38–39; HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18, at 41. In addition, many feel that their chances of actually obtaining refugee status are very slim. HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra*, at 41.

181. Established by EU Council Regulation 2007/2004 on October 26, 2004, the European Agency for the Management of Operational Coordination at the External Borders of the Member States of the European Union (“Frontex”) “promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management.” *Mission and Tasks*, FRONTEx, <http://www.frontex.europa.eu/about-frontex/mission-and-tasks> (last visited Oct. 23, 2013); *Origin*, FRONTEx, <http://www.frontex.europa.eu/about->

EU funding provided to member states for related issues such as border protection, immigration, and asylum policy,¹⁸² contingent on creating these separate organizations. Because its borders have been especially porous,¹⁸³ Greece has become particularly reliant on EU aid earmarked specifically for assistance in border controls, such as assistance from Frontex.¹⁸⁴ Additional financial support, such as relief from the European Refugee Fund¹⁸⁵ and the External Borders Fund,¹⁸⁶ would also

frontex/origin (last visited Oct. 23, 2013). Frontex is responsible for planning and implementing joint operations at member states' external borders, "providing a rapid response capability . . . in case of a crisis situation at the external border," "assisting [m]ember [s]tates in joint return operations," and providing important information "regarding emerging risks and the current state of affairs at the external borders." *Mission and Tasks, supra*.

182. Approximately 0.8% of the EU's budget is allocated to the category of "[f]reedom, security and justice," which funds projects in "justice and home affairs, border protection, [and] immigration and asylum policy." *Where Does the Money Go?*, EUR. COMM'N, http://ec.europa.eu/budget/explained/budg_system/fin_fwk0713/fin_fwk0713_en.cfm (last updated Mar. 29, 2012).

183. Stevis, *New Crisis for Greece, supra* note 6.

184. PARL. EUR. DOC. (COM 250) 8, 10–12 (2012), available at [http://ec.europa.eu/home-](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/COM%202012%20250%20final%201_EN_ACT_part1_v5.pdf)

[affairs/doc_centre/immigration/docs/COM%202012%20250%20final%201_EN_ACT_part1_v5.pdf](http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/COM%202012%20250%20final%201_EN_ACT_part1_v5.pdf); *RABIT Operation 2010 Ends, Replaced by JO Poseidon 2011*, FRONTEx (Mar. 2, 2011), <http://www.frontex.europa.eu/news/rabit-operation-2010-ends-replaced-by-jo-poseidon-2011-ia6Kaq>; *Update to Joint Operation Poseidon 2011*, FRONTEx (Mar. 26, 2011), <http://www.frontex.europa.eu/news/update-to-joint-operation-poseidon-2011-jzZfWV>.

185. Describing the need for a refugee fund, the European Commission states:

Some countries face larger strains on their reception capacities and asylum systems due to the disproportionately large influxes of asylum seekers into their territories. European solidarity with these EU countries is ensured through practical cooperation, harmonisation of legislation and the European Refugee Fund (ERF). . . . The ERF . . . supports EU countries' efforts in receiving refugees and displaced persons and in guaranteeing access to consistent, fair and effective asylum procedures.

Refugee Fund, EUR. COMM'N, http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/refugee-fund/index_en.htm (last updated Jan. 4, 2013).

186. Describing the External Borders Fund, the European Commission's website states:

become contingent on implementing this amendment to the directive. While completely withholding all aid would be both impracticable and inappropriate, the EU could create a sliding scale linking the level of implementation to the receipt of funding. The greater the state complied with the new amendment, the greater the percentage of allotted funds it would receive.¹⁸⁷ As a result, the consequences of noncompliance would be tangibly and financially felt by member states. Making assistance contingent on the implementation of this new provision to the Reception Conditions Directive is an effective means of compelling Greece to implement the relevant amendments and start down the path of compliance with its international law obligations.¹⁸⁸

3. Implementation

Further, the EU must aid in the establishment of these specialized organizations, whose sole responsibility will be the care of unaccompanied minors who cross member states' borders. The EU would help to establish these agencies by setting forth detailed requirements and guidelines that the agencies must follow in their operations. Furthermore, the EU should undertake to help with member states' implementation by providing

For some countries, notably those situated at the external frontiers of the Union [such as Greece], . . . investments [in the protection of external borders] can be very large due to significant migratory pressure at their borders. The External Borders Fund (EBF) provides financial support to assist EU States in responding to such situations.

External Borders Fund, EUR. COMM'N, http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/external-borders-fund/index_en.htm (last updated June 28, 2013).

187. For example, the scale could operate as follows: if the member state only complied with the amendment to the directive at a level of 25%, that nation would only receive 25% of their EU allotted funding. Of course, the EU would also have to develop an appropriate method of measuring the level of member states' compliance.

188. Greece receives "substantial financial support" (approximately €119 million between 2007 and 2011) from the EU's External Borders Fund, which, inter alia, has helped Greece to "improv[e] border management" and has ensured proper compliance with various EU directives governing irregular migration, such as the Returns Directive. PARL. EUR. DOC. (COM 250), *supra* note 184.

“specific investment in training and infrastructure.”¹⁸⁹ Without such assistance, it is not enough to simply amend legislation, “additional endeavours relating to how they are to be implemented” are needed.¹⁹⁰ Such specialized knowledge is important for organization officials to assess what is truly in these unaccompanied minors’ best interests and what level of care or type of facility, other than a detention center, is best suited for each individual unaccompanied minor.¹⁹¹

Thus, the first step in solving the problem of Greek detention of unaccompanied minors is an administrative reorganization through the amendment of the EU’s Reception Conditions Directive that would eliminate any conflict of interest in unaccompanied minors’ care.

B. The “Best Interests of the Child” Principle Must Be Effectively Implemented

After eliminating any conflict of interest in unaccompanied minors’ care, the EU must ensure the actions of the specialized agencies responsible for unaccompanied minors embody the “best interests of the child” principle. As the CRC emphasizes, because of their “physical and mental immaturity,” children are deserving of special safeguards and their vulnerability must be taken into account by states when issues concerning children arise.¹⁹² Such consideration can only be accomplished by putting the “best interests of the child” principle into practice in more than just a *de jure* fashion. This requires placing unaccompanied minors’ status as “children” first and foremost,

189. OPHELIA FIELD, OFFICE OF THE U.N. HIGH COMM’R FOR REFUGEES, ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS AND REFUGEES 47, ¶ 162, U.N. Doc. POLAS/2006/03 (2006), available at <http://www.refworld.org/pdfid/4472e8b84.pdf>.

190. *See id.*

191. Among the factors that have been proven to lead to successful alternatives to detention is the availability of “holistic support,” which operates on a case-by-case basis of case management, assessing the needs of each individual including whether it is appropriate to provide “social support[] [and] legal assistance,” *inter alia*. AMARAL, *supra* note 135, at 8, 11, 19, 22, 27, 46, 49. For an explanation of how the United States’ ORR receives, makes assessments on, and thereafter places unaccompanied minors, see BYRNE & MILLER, *supra* note 156, at 14–17.

192. Convention on the Rights of the Child, *supra* note 37, pmb1.

above their status as “migrants,”¹⁹³ by completely prohibiting the detention of unaccompanied minors¹⁹⁴ within the EU and by replacing such practices with alternatives that seek to gain minors’ trust.

1. Proscribing Any and All Detention of Children

Detention has been proven to worsen preexisting traumas in unaccompanied minors, both physically and mentally, that result from their reasons for migrating in the first place—inter alia, to escape from abuse, armed conflict, and persecution.¹⁹⁵ The consequences of detention only have the effect of generating greater costs for a state both in the short and long term.¹⁹⁶ Thus, the first step in accomplishing the implementation of the “best interests” principle is to amend the Reception Conditions Directive so as to prohibit the detention of children under *all* circumstances.

The CRC recognizes that children need special care and assistance and prohibits the unlawful and arbitrary detention of children, permitting it only as a last resort and for the shortest appropriate duration.¹⁹⁷ However, Greece continues to arbitrarily detain migrants,¹⁹⁸ treating unaccompanied minors as

193. Eur. Parl. Ass., *Motion for a Resolution Immigration Detention of Children*, Doc. No. 13050 (2012), available at <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19168&lang=en> (“Children should be treated as children first and foremost and their status as migrants should be a secondary and not a primary concern. . . . The Council of Europe should work towards ending the practice of detaining these children.”).

194. See, e.g., *Asylum-Seekers and Migrants in Greece Hounded by Police Operations and Right-Wing Extremists*, AMNESTY INT’L (Dec. 20, 2012), <http://www.amnesty.org/en/news/asylum-seekers-and-migrants-greece-hounded-police-operations-and-right-wing-extremists-2012-12->; HUMAN RIGHTS WATCH, LEFT TO SURVIVE, *supra* note 18; *Motion for a Resolution on Immigration Detention of Children*, *supra* note 193. Currently, the Reception Conditions Directive provides for the detention of unaccompanied minors as a last resort, “after it having been established that other less coercive alternative measures cannot be applied effectively.” Reception Conditions Directive, *supra* note 40, art. 11(2), at 103.

195. FIELD, *supra* note 189, at 50, ¶ 172.

196. *Id.*

197. Convention on the Rights of the Child, *supra* note 37, pmbl., art. 37(b).

198. *Annual Report 2013: Greece*, *supra* note 18; *Court: Greece’s Treatment of Asylum Seeker Breached Human Rights Law*, *supra* note 111; Dabilis, *supra* note 111; *ECJ Rules against Greece over Detention Standards*, *supra* note

adults and confining them for seemingly indefinite durations that are longer than appropriate.¹⁹⁹ When detention conditions have been shown to aggravate preexisting injuries and have led to depression, suicide, and have even resulted in hunger strikes in protest of such treatment,²⁰⁰ detention cannot be said to further the “best interests” of the child. The only means by which the EU can effectively ensure that such a mechanism is not employed arbitrarily is to amend its laws so that detention of a child is always prohibited.

2. Looking to Alternatives That Foster Trust

By prohibiting detention, alternatives must be established in order to provide for the care of unaccompanied minors who would otherwise be detained and instead may end up living on the streets of Greece’s metropolises²⁰¹ upon the prohibition of detention. Although imperfect, alternatives to the detention of

111; *Greece: Halt Mass Migrant Round-Ups*, *supra* note 21; KOULOCHERIS, *supra* note 99, at 49–51.

199. See *Annual Report 2013: Greece*, *supra* note 18 (“Asylum seekers and irregular migrants, including unaccompanied children, were routinely detained and for long periods.”); *Greece: Lives on Hold*, DOCTORS WITHOUT BORDERS (June 15, 2010), <http://www.doctorswithoutborders.org/publications/article.cfm?id=4515&cat=special-report> (“Living conditions in detention facilities for migrants do not meet national and international standards. . . . No provisions are in place to meet the needs of vulnerable groups, including unaccompanied minors.”); HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 2.

200. See Costas Douzinas, *These Hunger Strikers Are the Martyrs of Greece*, GUARDIAN (Feb. 28, 2011, 12:25 PM), <http://www.guardian.co.uk/commentisfree/2011/feb/28/hunger-strikers-greece-asylum-seekers>; *Greece: Lives on Hold*, *supra* note 199.

201. See Human Rights Watch, *Greece: Government Failing Migrant Children*, HUMAN RIGHTS WATCH (Dec. 22, 2008), <http://www.hrw.org/news/2008/12/21/greece-government-failing-migrant-children>; HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 13 (“A UNICEF sponsored study in 2000 estimated that there were about 5,800 street children in the country.”); Maria Korologou, *No Account of Immigrant Kids in Greece*, GREEK REP. (Mar. 23, 2013), <http://greece.greekreporter.com/2013/03/23/no-account-of-immigrant-kids-in-greece/>; *Teenage Migrants “Trapped” in Greece*, IRIN (Oct. 17, 2012), <http://www.irinnews.org/printreport.aspx?reportid=96568>; U.S. DEPT OF STATE, *supra* note 130, at 13 (“[U]naccompanied or separated asylum-seeking minors often [are] not properly registered and [are] systematically detained in squalid conditions, often with adults. Many end[] up homeless in the streets, where they face[] heightened risks of exploitation and violence.”).

migrants have proven effective in other nations throughout the world.²⁰² With the EU's assistance, Greece can follow their example in order to comply with the CRC and the ECHR.

States often resort to detention for fear that migrants will abscond or that they will fail to comply with immigration procedures, thereby leading states to use detention as a deterrent.²⁰³ However, alternatives and trial substitutes utilized in other nations have proven just as successful in preventing these circumstances and even less costly than detention.²⁰⁴ In particular, alternatives that foster a sense of trust have proven the most effective.²⁰⁵ For example, these alternatives include those that seek to provide legal advice and inform migrants of their rights and of the consequences of failing to appear for immigration procedures, those that provide for unaccompanied minors' daily needs, and those that provide them with "holistic support"²⁰⁶ through individual case management.²⁰⁷

In some countries, migrants are offered assistance in exchange for their residence in designated accommodation centers, an approach that has been relatively successful in reducing the risk of absconding.²⁰⁸ For example, although detention is not prohibited in Germany, detention is infrequently ordered, and the law permits the placement of unaccompanied minors in various accommodation centers where their move-

202. See *Children Pave the Way for Alternatives to Detention in Holland*, *supra* note 178; see also AMARAL, *supra* note 135; FIELD, *supra* note 189 (noting that although alternatives have become more commonplace, there is still some degree of migrant detention in countries throughout the EU). Note that where alternatives exist and have proven effective, there are often still a limited number of cases of detention. See generally Eur. Council on Refugees & Exiles, *Comparative Study on Practices in the Field of Return of Minors*, Doc. No. HOME/2009/RFX/PR1002 (Dec. 2011), available at http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Return_of_children-final.pdf [hereinafter ECRE, *Comparative Study*].

203. FIELD, *supra* note 189, at 24, ¶ 87; see also Amnesty Int'l, *Asylum-Seekers and Migrants in Greece Hounded by Police Operations and Right-Wing Extremists*, *supra* note 194.

204. FIELD, *supra* note 189, at 48–49, ¶¶ 166–69. See generally AMARAL, *supra* note 135.

205. AMARAL, *supra* note 135, at 38–40, 44, 47.

206. *Id.* at 9. Holistic support entails extensive aid—legally, socially, and medically, inter alia.

207. *Id.* at 6–9, 42, 49; FIELD, *supra* note 189, at 45, ¶ 155.

208. See generally AMARAL, *supra* note 135; FIELD, *supra* note 189.

ment is restricted to within that accommodation center's federal district.²⁰⁹ Such accommodation is accompanied by comprehensive support and, as a result, reported compliance with immigration procedures is quite high.²¹⁰ Likewise, both Austria²¹¹ and Denmark²¹² have provided for state assistance contingent on residence in one of its accommodation centers, which has

209. FIELD, *supra* note 189, at 30, ¶¶ 109, 111; *see also* AMARAL, *supra* note 135, at 25–29.

210. FIELD, *supra* note 189, at 30, ¶ 109. This report from the Office of the U.N. High Commissioner for Refugees hypothesizes that the high rate of compliance is a consequence of Germany's conditions of reception and legal assistance provided to migrants. *Id.*

211. Austria has seen a decrease in the number of unaccompanied minors crossing its borders; nonetheless they are accommodated in specialized facilities geared toward “persons to whom more ‘lenient measures’ apply.” ECRE, *Comparative Study*, *supra* note 202, at 221; *see also* NAT'L CONTACT POINT AUSTRIA, POLICIES ON RECEPTION, RETURN, INTEGRATION ARRANGEMENTS FOR, AND NUMBERS OF, UNACCOMPANIED MINORS IN AUSTRIA 2, 31 (2009), available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-mi-)

[mi-nors/01_austria_national_report_on_unaccompanied_minors_final_version_2_feb10_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-mi-nors/01_austria_national_report_on_unaccompanied_minors_final_version_2_feb10_en.pdf). Detention generally is not applied, but is not always a last resort either. ECRE, *Comparative Study*, *supra*, at 222. Unless detained, children will attend school and are provided with basic welfare services. *Id.* Children are housed in special “clearing houses” where they receive access to a comprehensive support network. FIELD, *supra* note 189, at 68. However, due to the limited capacities of these centers, many children receive only basic material support in the form of shelter and food, and it is up to them to acquire any other necessities. *Id.*

212. Unaccompanied minors in Denmark can potentially be detained provided they are within the ages of fourteen and eighteen; however, very few are detained in practice, and only if there is a risk of absconding with no other adequate alternatives. ECRE, *Comparative Study*, *supra* note 202, at 238. Unaccompanied minors who are detained are immediately provided with public counsel and are only detained for a short period. *Id.* Those minors not detained may either be placed in special centers or are required to report to police in the alternative. *Id.* Other alternatives provided for under Danish law include “confiscation of passports, payment of a bail . . . [or] residence at ‘an address determined by the police.’” *Id.* Unaccompanied minors placed in housing are accommodated in one of two accommodation centers—one for older children seventeen to eighteen years old and one for younger children. FIELD, *supra* note 189, at 98. These centers “operate like a rural boarding school.” *Id.* Children are also “always provided with a Red Cross guardian *ad litem*.” *Id.*

largely been believed to reduce the flight risk.²¹³ For example, in Austria, the state assistance offered to unaccompanied minors includes “access to a comprehensive psychosocial support network” and the “development of an integration plan.”²¹⁴ Detention of unaccompanied minors is generally not practiced in Belgium where they are housed in reception facilities and provided with access to education, healthcare, and legal guardians.²¹⁵ In the United States, alternatives such as “shelter care,” foster care, and group homes, as discussed above, have proven to be rather successful alternatives to the detention of unaccompanied minors.²¹⁶ Such alternatives have proven well suited for children’s vulnerability, providing them with the stability they need, and are also more sensitive to their developmen-

213. See ECRE, *Comparative Study*, *supra* note 202, at 220–23, 236–39; FIELD, *supra* note 189, at 68, 98. For a discussion on the suggested relationship between immigration law compliance and trust in the system, see, e.g., AMARAL, *supra* note 135, at 38–39. (suggesting that a certain level of trust in the system increases compliance with asylum and immigration laws thereby decreasing the numbers of migrants who abscond, and further hypothesizing that noncompliance is due to an inherent fear of detention as often migrants believe that “adhering to immigrant authority obligations . . . will [actually] bring more harm than good” in the form of being detained).

214. FIELD, *supra* note 189, at 68; NAT’L CONTACT POINT AUSTRIA, *supra* note 211, at 2–3. In Austria, unaccompanied minors living in “clearing houses” receive “access to a comprehensive psychosocial support network.” FIELD, *supra*, at 68. Furthermore, support offered to unaccompanied minors under Austria’s “Basic Welfare Agreement” includes healthcare, education, “language courses,” and the “development of an integration plan.” NAT’L CONTACT POINT AUSTRIA, *supra* note 211, at 2–3.

215. See ECRE, *Comparative Study*, *supra* note 202, at 224–26. Belgium routinely refrains from detaining unaccompanied minors, unless there is doubt as to the migrant’s age. *Id.* at 225. If a child is detained because of doubt as to his or her age, the law provides that the child may not remain in detention for more than six days (in reality, this can be extended to nine days “if there are weekends and/or holidays within that period”). *Id.* Every child must be assigned a guardian who will provide him or her with assistance. *Id.* at 224. Belgium provides for accommodation centers, as stated in the text. However, due to shortages in the number of available spots, many children stay at initial reception centers much longer than the purported limited four-week period or “disappear.” Eric Broekaert & Ilse Derluyn, *Unaccompanied Refugee Children and Adolescents: The Glaring Contrast Between a Legal and a Psychological Perspective*, 31 INT’L J.L. & PSYCHIATRY 319, 325–26 (2008).

216. BYRNE & MILLER, *supra* note 156, at 14–17; Piwowarczyk, *supra* note 153, at 265–67; see also *About Unaccompanied Refugee Minors*, *supra* note 172; Farmer, *Under Age and Alone*, *supra* note 154.

tal, emotional, and psychological needs as minors.²¹⁷ By providing vulnerable unaccompanied minors with the resources they need, these centers foster a sense of trust which ultimately results in a higher level of compliance with immigration procedures, while also adhering to international law.

The Reception Conditions Directive provides that once admitted into the EU, and until ordered to return to their countries, unaccompanied minors seeking international protection should be accommodated in facilities other than detention centers, with the latter applied as a last resort.²¹⁸ However, Greece has not applied this in practice.²¹⁹ Although Greece currently offers a few hundred spots in "reception centers" to unaccompanied minors,²²⁰ there is a severe shortage of these centers and a routine preference for detention.²²¹ Furthermore, much like the detention centers in which children are often placed instead, these reception centers lack minimum standards, are not designed to provide for long-term care, and are often too large scale to provide individualized support to unaccompanied minors.²²² Studies have shown that children who are referred to these care centers often abscond.²²³ The failure of such centers can be attributed to the lack of adequate resources and proper support provided to unaccompanied minors, which is essential to a child's integration into society and, ultimately, his or her willingness to remain in such a center. Looking to the examples set by both the United States and other EU member states, Greece can strive to remedy existing centers and create new ones similar to the ones described above that will provide children with their daily needs, medical care, and legal assistance.

217. Farmer, *Under Age and Alone*, *supra* note 154 (describing group home facilities for unaccompanied minors in the United States that provide them with social services, leisure activities, a limited education, and information about their rights). *See generally* Piwowarczyk, *supra* note 153.

218. Reception Conditions Directive, *supra* note 40, art. 11(2), 24(2), at 103, 107-08.

219. *See, e.g.*, Farmer, *Impact of Immigration Detention*, *supra* note 130; Greece *Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7; Greece: *Halt Mass Migrant Round-Ups*, *supra* note 21; Smith, *supra* note 6.

220. Troller, *supra* note 138.

221. HUMAN RIGHTS WATCH, *LEFT TO SURVIVE*, *supra* note 18, at 53, 65.

222. *Id.* at 65-66.

223. *Id.* at 68.

3. Enforcement Mechanism and Implementation

Creation of these alternatives that foster trust in unaccompanied minors will be largely supported by the newly established organizations pursuant to the amended Reception Conditions Directive, as proposed above. With the help of these specialized agencies, as well as with the aid of various NGOs, institutions, and the appropriate local officials (such as the Greek Ombudsman),²²⁴ Greece can effectively rectify conditions in its various care centers. In addition, it will construct new accommodation centers, where staff will be provided with appropriate training and guidelines by the EU's mandated independent unaccompanied minor organizations, in order to furnish minors with the legal assistance and material aid that they need. As a result, unaccompanied minors will be deterred from absconding, while Greece will simultaneously come into compliance with its international law obligations.

Compliance with these added requirements can place a burdensome economic strain on EU member states, especially on states like Greece that are located along the EU's external borders.²²⁵ Similar to the enforcement measures mentioned above, the EU can ensure that a certain percentage of the funding it provides in the form of the European Refugee Fund and the External Borders Fund are allotted toward the establishment of these detention alternatives that will adequately provide unaccompanied minors with the assistance they require.²²⁶ Again, the EU could ensure such funds are being used appropriately by implementing a sliding scale linking the level of implementation to the receipt of funding.²²⁷ In affecting these changes, and placing children in settings that are suitable to

224. The Greek Ombudsman can play an important part in acting as a "watch-dog" for protecting the rights of unaccompanied minors in Greece. This official is "entrusted to protect the rights of citizens and non-citizens, with a separate department on children's rights." *Id.* at 17. In 2005, the Ombudsman issued a special report urging the government to stop detaining unaccompanied minors, a practice which was deemed inappropriate by the Ombudsman. *Id.* at 5, 15.

225. See HUMAN RIGHTS WATCH, *STUCK IN A REVOLVING DOOR*, *supra* note 27, at 19; HUMAN RIGHTS WATCH, *TURNED AWAY*, *supra* note 48, at 11; Paphitis, *supra* note 7; Stevis, *New Crisis for Greece*, *supra* note 6.

226. See *External Borders Fund*, *supra* note 186; *Refugee Fund*, *supra* note 185.

227. See *supra* note 187.

their juvenility and vulnerability, the “best interests of the child” principle will be effectively implemented as children’s individual needs will be assessed and addressed by the newly established aforementioned organizations.

In following these steps, the EU can help Greece come into compliance with both the CRC and the ECHR, ending the detention of unaccompanied minors and providing them with appropriate assistance that will respect their needs and promote their dignity.

CONCLUSION

As the CRC notes, by reason of their vulnerability and immaturity, children are in need of special legal safeguards.²²⁸ The detention of migrants in substandard conditions in Greece has been found to violate the ECHR.²²⁹ It is not uncommon for unaccompanied minors to face the same conditions that have been found illegal by the European Court of Human Rights.²³⁰ There are also implications of violations of the CRC in Greece’s practices. As a result, the EU must aid Greece in coming into compliance by amending the Reception Conditions Directive. By executing the proposed amendments, Greece will be compelled into compliance or will otherwise face irreparable harm in the form of loss of EU financial aid, which it so desperately needs during these trying times of economic hardship and mass migration.²³¹ Nonetheless, the EU can amend its regulations, but

228. Convention on the Rights of the Child, *supra* note 37, pmb.; see also *Introduction: Convention on the Rights of the Child*, *supra* note 67.

229. *M.S.S. v. Belgium & Greece*, App. No. 30696/09, ¶¶ 233–34 (Eur. Ct. H.R. Jan. 21, 2011), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>.

230. See generally Amnesty Int’l, *Routinely Detained in Substandard Conditions*, *supra* note 99, at 29–41; Updated Human Rights Watch Submission to the U.N. Comm. Against Torture, on Greece, *supra* note 33.

231. Regarding Greece’s economic crisis and its relation to the migrant problem, see generally *Greece Cracks Down on Illegal Immigration amid Financial Crisis*, *supra* note 7 (considering Greece’s struggles with “recession, illegal immigration and . . . rise in violent crime,” as well as the EU’s efforts to aid in border protection efforts); Hadjimatheou, *supra* note 17 (discussing Greece’s economic crisis and the increased migrant racism that has resulted); Paphitis, *supra* note 7 (highlighting the influx of migrants into Greece which has exacerbated “Greece’s severe economic problems and high unemployment”); Smith, *supra* note 6 (discussing Greece’s status as a “magnet for mi-

it is up to Greece to implement these new rules. Through the assistance of specialized agencies, guided by the EU, and through access to a new vast array of resources specifically designed to protect the interests of unaccompanied minors, Greece will find compliance both easier and more beneficial to its own long-term interests, whilst bringing itself in line with both the CRC and the ECHR.

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grants” and the resulting racism toward these migrants in the wake of the country’s economic crisis, frequently leading to migrants’ detention).

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