Unaccompanied Minor Asylum Seekers and their Protection under the Convention on the Rights of the Child

A Study in the Netherlands and the United States
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<tr>
<td>ABRvS</td>
<td>Afdeling Bestuursrechtspraak Raad van State</td>
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<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
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<td>CBP</td>
<td>U.S. Custom and Border Protection</td>
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<td>CFREU</td>
<td>Charter of Fundamental Rights of the European Union</td>
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<td>CIS</td>
<td>U.S. Citizenship and Immigration Services</td>
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<td>CJEU</td>
<td>Court of Justice of the European Union</td>
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<td>CRC</td>
<td>United Nations Convention on the Rights of the Child</td>
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<td>DHS</td>
<td>U.S. Department of Homeland Security</td>
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<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EOIR</td>
<td>Executive Office for Immigration Review</td>
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<td>HHS</td>
<td>U.S. Department of Health and Human Services</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICE</td>
<td>U.S. Immigration and Customs Enforcement</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>INA</td>
<td>U.S. Immigration and Nationality Act</td>
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<td>INS</td>
<td>U.S. Immigration and Nationality Service</td>
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<td>IRO</td>
<td>International Refugee Organisation</td>
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<td>ORR</td>
<td>U.S. Office of Refugee Resettlement</td>
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<tr>
<td>SIJS</td>
<td>Special Immigrant Juvenile Status</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNHCR</td>
<td>Office of the United Nations High Commissioner for Refugees</td>
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<td>UNHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>VCLT</td>
<td>Vienna Convention on the Law of Treaties</td>
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1. Introduction

1.1 The Thesis of the Study

This study addresses the question of to what extent the United Nations Convention on the Rights of the Child (CRC)\(^1\) offers protection to the treatment of unaccompanied minors seeking asylum in the Netherlands and the United States.

In essence, this study aims to investigate whether there is a discrepancy between the rights of unaccompanied minor asylum seekers acknowledged in international law on one hand, and the position of these unaccompanied minor asylum seekers in practice on the other hand. It thereby focuses on two countries in two different continents, the Netherlands and the U.S. The former is party to the CRC; the latter is not (yet). The U.S. has signed the CRC, but has not ratified it. Thereto this study will examine whether the U.S. upholds its obligation to not legislate contradictory to the provisions of the CRC in practice.

1.2 The Genesis of the Study

According to the Office of the United Nations High Commissioner for Refugees (UNHCR), half of the refugee population worldwide consists of children below the

age of eighteen. This is the highest number in the last ten years. Among these are many ‘unaccompanied minors.’ Data collection on this particular group only started in the late 1990s and early 2000s. Yet, it is apparent that unaccompanied minors are part of a small but significant percentage of all asylum seekers in developed countries. The UNHCR started collecting annual statistics on this group in developed countries in 2001. In 2013, about 25,300 unaccompanied minors have applied for asylum in 77 countries. In the Netherlands, about 310 unaccompanied children applied for asylum in 2014, whereby 140 were granted refugee status; the rest of the asylum applications were denied. The top three nationalities of unaccompanied minors applying for asylum originate from Afghanistan, Eritrea and Guinea. The UNHCR does not collect data from the U.S., due to problems with comparability and the availability of statistics. The U.S. government also does not have a complete evaluation of the statistics, since it does not track the number of unaccompanied minors entering the U.S. every year. Still, the total number of apprehended unaccompanied children by the U.S. Border Patrol jumped from 18,622 unaccompanied alien children in fiscal year 2010 to 68,631 in fiscal year 2014.

Unaccompanied minor asylum-seekers are especially at risk because they are lacking a support system that is normally provided by their parents and family. They fleeing their home countries for various reasons. Ressler, Boothby and Steinbock point out that wars, famines, refugee situations, and natural disasters almost always have led to

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4 Partial information can however be found in statistics available by the U.S. Coast Guard, the Customs and Boarder Protection and Border Control, the U.S. Office of Refugee Resettlement, and the Immigration Court. See J. Bhabha & M. Crock, Seeking Asylum Alone. Unaccompanied and Separated Children and Refugee Protection in Australia, the U.K. and the U.S., at 34-36 (2007).
5 Within Customs and Border Protection (that is part of the Department of Homeland Security), the U.S. Border Patrol is the agency responsible for screening and processing individuals who have entered or attempted to enter the U.S. unlawfully by evading a lawful port of entry. Of course not all children that get apprehended by the U.S. Border Patrol actually apply for asylum. The U.S. fiscal year 2014 runs from 1 October 2013 until 30 September 2014.
children being separated from their families. Their parents may have sent them, in their belief that its their best option, as example, for a better life. Some children have become orphaned or abandoned. In some cases children have decided to leave on their own.

Unaccompanied minors seeking asylum often are subjected to, *inter alia*, abuse and sexual exploitation, child labour and detention. The increasing numbers of asylum applications by unaccompanied minors have become real challenges imposed on States to guarantee their protection and rights. They are often denied access to food, shelter, housing, health services and education. Reason for this is primarily because of the lack of sufficient protection since the legal instruments are not always sufficiently implemented on a national level.

1.3 The Sources and Methodology of the Study

First of all, the definition of ‘unaccompanied minor asylum seeker’ will be examined. Second, the relevant international legal requirements applicable to these children will be analysed. Two important instruments involve rights relevant to unaccompanied minor asylum seekers: the United Nations Convention relating to the Status of Refugees (Refugee Convention), and the United Nations Convention on the Rights of the Child. Third, an assessment will be made to observe how the Netherlands has implemented it obligations under international law in domestic legislation. Then it will also be considered whether it is compliant to their duties to protect unaccompanied minors in practice, concerning the following issues: the ‘best interests of the child’ principle, identification, family reunification and tracing, appointment of a guardian, social benefits, and detention. The same assessment will be made with

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regard to the U.S. To this extent, the main obstacles occurring during the asylum procedures will be reviewed: the ‘best interests of the child’ principle, reception, court hearings, appointment of a guardian, social benefits, and detention. Reference is made to various sources to interpret whether the conditions set out in the CRC are upheld. In this respect, documents published by the Committee on the Rights of the Child will be used, such as the Concluding Observations, the Periodic Reports of the Netherlands,\textsuperscript{12} and the General Comments relating to the relevant rights. Reference will also be made to the national regulations and to whether unaccompanied minor asylum seekers have access to a judge. Additionally, relevant case law will be discussed.

It must be noted that this study is not based on a comparative approach between the two countries. Also, the Kingdom of the Netherlands consists of four countries with equal status: the Netherlands, Aruba, Curaçao and St. Maarten. Please note that the scope of this study will be limited to the Netherlands. In addition, the terms ‘minor’ and ‘child’ are used interchangeably.

1.4 The Structure of the Study

The study consists of five substantive chapters. Chapter 2 addresses the definition of ‘unaccompanied minor asylum seekers’ in the CRC and in the Refugee Convention. Chapter 3 provides a general outline of the international legal instruments that are applicable to unaccompanied minor asylum seekers. Chapter 4 deals with the implementation and application of the international legal framework in the Netherlands. Chapter 5 makes the same assessment as the previous Chapter, but then with regard to the U.S. Chapter 6 concludes the study by reviewing the findings relating to the protection of the CRC that unaccompanied minors enjoy during their asylum application in the Netherlands and the U.S.

\textsuperscript{12} There are no periodic reports of the U.S. are available because it is not a party to the CRC.
2. The Definition of ‘Unaccompanied Minor Asylum Seeker’

2.1 Introduction

The phenomenon of ‘unaccompanied minor asylum seekers’ may be self-explanatory to a large extent; however, it is not always clear in comparison with similar concepts, such as ‘orphans’ and ‘children separated from their family.’

The UNHCR has observed that not all children without parent(s) or legal guardian are found to be unaccompanied. They may have been separated from their parents or legal guardians but may be in company of a smuggler, a trafficker, a sibling or a family acquaintance. It defines separated children as “children under 18 years of age who are separated from both parents or from their previous legal or customary primary caregiver.” The UNHCR therefore encourages the use of the term ‘unaccompanied and separated children.’ For the purpose of this study, reference to ‘unaccompanied minors’ will include ‘separated minors.’

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2.2 Definition in International Law

The Refugee Convention does not, nor its Protocol, address the situation of children as refugees, therefore lacking a statutory legal basis providing protection for this particular group. Under Article 1 Refugee Convention, it does not distinguish whether the refugee is an adult, a minor, or even an unaccompanied minor. This is still the case today. The CRC defines a child as a “human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”17 Although the CRC does not provide a definition of unaccompanied minors either, it nonetheless distinguishes them from accompanied minors. The CRC stipulates that:

“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 forth in the present Convention and in other international human rights or humanitarian instrument to which the said States are Parties.”18

Moreover, Article 22(2) CRC provides that States Parties shall ensure to unaccompanied minors the same protection as any other child that is left without his or her family, whether permanently or temporarily.

Further on, it is not always clear whether a child should be identified as unaccompanied or not. In certain situations a child can be accompanied by an adult that is not their biological or natural parent or in any other way related to the child. However, in some cases a child may be unaccompanied by an adult, but the child is actually a victim of child trafficking. The UNHCR has defined a child as being

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16 1967 Protocol relating to the Status of Refugees, 606 UNTS 266.
17 Article 1 CRC.
18 Article 22(1) CRC.
Chapter 2: The Definition of ‘Unaccompanied Minor Asylum Seekers’

unaccompanied when it is lacking its principle caregiver. An adult other than the natural parent can be nevertheless be assumed as the principle caregiver since the child may be at that time be adopted, living with foster parents or is in the actual care of another relative or other person. It must be ensured that it reflects a true relationship that is not open to abuse; such abuse is the case when the child is, for example, victim of child trafficking. The ‘unaccompanied status’ must be set aside if the relationship is not open to abuse.¹⁹

This distinction between accompanied and unaccompanied children is important since the entitlement to additional rights differs. Unaccompanied children enjoy additional rights to avoid them from becoming even more vulnerable. Unlike accompanied children, they are entitled to a guardian or advisor, legal representation, reunification with parents (if this is deemed beneficial for the child), and other similar measures.²⁰

²⁰ Bantekas, supra note 13, at 353.
3. Unaccompanied Minor Asylum Seekers: the International Legal Framework

3.1 Introduction


3.2 United Nations Convention and Protocol relating to the Status of Refugees

The 1951 Convention relating to the Status of Refugees is “today’s international regime of refugee protection.”21 The Refugee Convention came into force on 22 April 1954, and with 145 State Parties,22 it has become by far the most widely ratified treaty on refugees. It encompasses the basic minimum standards for the treatment of refugees.23

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22 Available at: http://www.unhcr.org/3b73b0d63.html (25 June 2015).
Chapter 3: Unaccompanied Minor Asylum Seekers: the International Legal Framework

The Refugee Convention is supplemented by the 1967 Protocol relating to the Status of Refugees. The Convention is an instrument that was adopted to respond to the Second World War and is therefore limited in scope; it only provides protection for persons who were fleeing events occurring within Europe before 1 January 1951. The Protocol removes the restricting time and geological barriers imposed on the Refugee Convention, thereby granting it universal coverage.

The Netherlands ratified the Refugee Convention in 1956 and the Protocol in 1968. Meanwhile, the U.S. is only party to the Protocol. Upon ratification of the Protocol, the U.S. is bound to respect Articles 2 through 34 of the Refugee Convention.

According to Article 1 of the Refugee Convention, the term ‘refugee’ applies to any person that is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

The three most fundamental principles enshrined in the Refugee Convention are the principles of non-discrimination, non-penalisation and non-refoulement. Thereto, the Refugee Convention must be applied without discrimination to race, religion or country of origin. Also, it prohibits penalisation of refugees for their illegal entry or presence. Moreover, the principle of non-refoulement is so fundamental, that no reservations are permitted. It entails that no refugee shall be expelled or returned (‘refouler’) against his or her will, in any matter whatsoever, to the frontiers of a territory where he or she fears threats to life or freedom. Non-refoulement under the European Convention for the Protection of Human Rights and Fundamental Freedoms

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24 The Protocol relating to the Status of Refugees entered into force on 4 October 1967.
25 UNHCR (2010), at 2.
26 The U.S. ratified the Protocol on 1 November 1968.
27 Article 3 Refugee Convention.
28 Article 31 Refugee Convention.
29 Article 33 Refugee Convention.
(ECHR)\textsuperscript{30} is absolute; in contrast, the Refugee Convention, gives the opportunity for certain exceptions.\textsuperscript{31}

There is a special role for the United Nations High Commissioner for Refugees concerning the Refugee Convention and Protocol, which will be considered below.

3.3 United Nations Convention on the Rights of the Child

In 1924 the fifth Assembly of the League of Nations adopted the Declaration on the Rights of the Child, becoming the first document recognising special care and protection for all children.\textsuperscript{32} This Declaration arose from the alarming problems refugee children encountered during and following the First World War.

Today, the 1989 UN Convention on the Rights of the Child\textsuperscript{33} is the most widely ratified treaty, including 194 Member States.\textsuperscript{34} The Netherlands became party to the CRC upon ratification in 1995. While the U.S. has signed the CRC in 1995, it has however, never ratified it. It is therefore not legally bound to incorporate the provisions in full in its national (federal) law. Nevertheless, it is obliged not to enact contradictory to the provisions of the CRC.

This near-universal ratification emphasizes its authority as a set of international norms describing the minimum rights that States Parties owe to minors.\textsuperscript{35} The CRC incorporates principles from various international treaties, such as the International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{36} the International Covenant on

\textsuperscript{31}Article 3 ECHR (with respect to the prohibition of torture); Article 33(2) Refugee Convention.
\textsuperscript{32}See Ressler et al., supra note 7.
\textsuperscript{33}The CRC entered into force on 2 September 1990.
\textsuperscript{34}The CRC has been ratified by every State except for Somalia, South Sudan and the U.S. Both Somalia and the U.S. have signed the CRC, and are therefore obliged to refrain from acts that would undermine or defeat its objectives.
\textsuperscript{35}J. McAdam, Complementary Protection in International Refugee Law, at 173 (2007).
\textsuperscript{36}1966 International Covenant on Civil and Political Rights, 999 UNTS 171.
Economic, Social and Cultural Rights (ICESCR)\textsuperscript{37} and the 1949 Geneva Conventions and its Additional Protocols.\textsuperscript{38}

The CRC embodies four main principles:

- The \textit{best interests of the child shall be a primary consideration} for State Parties in all actions affecting children;\textsuperscript{39}
- There shall be \textit{no discrimination} on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status;\textsuperscript{40}
- States Parties recognise that every child has the \textit{inherent right to life} and shall ensure to the maximum extent possible the survival and development of the child;\textsuperscript{41}
- Children shall be assured the \textit{right to express their views freely} in all matters affecting them, their views being given due weight in accordance with the child’s age and level of maturity.\textsuperscript{42}

The best interests for the child principle, stipulated in Article 3 CRC, is the most important provision for the determination of a child’s qualification for international protection.

\textsuperscript{37} 1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.
\textsuperscript{39} Article 3 CRC.
\textsuperscript{40} Article 2 CRC.
\textsuperscript{41} Article 6 CRC.
\textsuperscript{42} Article 12 CRC.
Moreover, the CRC does not only protect children’s rights, States are also obligated to ensure implementation of these rights. International law has recognised children as legal persons and holders of rights. Thus, as now being subjects of international law, children are allowed to bring claims on their own behalf before international bodies.  

3.4 Other International Human Rights Instruments

There are various other relevant international human rights instruments that are important concerning the protection of unaccompanied children:

- Universal Declaration of Human Rights;  
- International Covenant on Civil and Political Rights;  
- International Covenant on Economic, Social and Cultural Rights;  
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In particular the principle of non-refoulement has become of increasing importance of States. Through this, Article 3 CAT and Article 3 ECHR contain extensive protections against refoulement.

3.5 Treaty Implementing Bodies

Most human rights treaties have created an independent committee to supervise their implementation. Both the CRC and the Refugee Convention have such committees, the Committee on the Rights of the Child (CRC Committee) and the UNHCR respectively.

44 1948 Universal Declaration of Human Rights, UN Doc. A/RES/217A (III). This declaration is a non-binding instrument. It protects, *inter alia*, the principle of equality (Article 1), prohibition of discrimination (Article 2), right to seek asylum (Article 14), right to an adequate living standard (Article 25), and right to education (Article 24).
45 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 112.
Chapter 3: Unaccompanied Minor Asylum Seekers: the International Legal Framework

Recommendations and guidelines issued by both the CRC Committee and the UNHCR are not legally binding, and are often regarded as ‘soft law.’ However, these guidelines offer great clarity concerning provisions of the relevant treaties. It also addresses the plight of unaccompanied minors, acknowledging their substantive protection needs as well as the necessity of accommodating administrative procedures to enable children to tell their stories. Moreover, it represents policy recommendations from a principal United Nations body entrusted with the task of protecting and assisting refugees.

3.5.1 The Committee on the Rights of the Child

In 1991, the CRC Committee was established by election of 18 international experts in accordance with Article 43 CRC. It oversees also the two Optional Protocols. The primary function of the CRC Committee is the examination of the detailed reports of the national situation of children’s rights, provided by the State Parties’ governments. The latest State Report submitted by the Netherlands is the fourth Periodic Report of 22 November 2013. The CRC Committee has not issued its Concluding Observations responding to the latest submitted State Report by the Netherlands yet; the most recent Concluding Observations therefore reacts to the third Periodic Report. The CRC Committee also engages in activities to promote international co-operation multilateral agencies, donor countries and developing countries.

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46 See also Administrative Jurisdiction Division of the Council of State (ABRvS) Judgment of 13 December 2011, LJN: BV3584, with note of prof. P.R. Rodrigues. In the note he argues that the UNHCR Handbook, although not binding, should be taken in serious consideration by a judge, by virtue of the UNHCR’s highly respected status in international law.


48 Besides monitoring the CRC, the CRC Committee also monitors implementation of the Optional Protocol on the Involvement of Children in Armed Conflict (ratified by the Netherlands in 2009, and by the U.S. in 2002), and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified by the Netherlands in 2005, and by the U.S. in 2002).


The CRC Committee publishes General Comments to provide guidance for State Parties concerning the interpretation and implementation of the CRC. The most important General Comment relating to unaccompanied minor asylum seekers is General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin, which will be discussed below. Other relevant General Comments are: General Comment No. 12 on the Right of the Child to be Heard, General Comment No. 14 on the Best Interests of the Child, and General Comment No. 5 on General Measures of Implementation.

By ratification of Costa Rica to the Optional Protocol to the CRC on a Communications Procedure, the CRC Committee is now also able to hear individual complaints. These complaints can be submitted by the children themselves or by their representatives. The CRC Committee can decide on whether it chooses to review the complaint, and when a violation is found, it will give recommendations to the State(s) concerned to take action to remedy the situation. However, the CRC Committee can only hear complaints if their governments have ratified the Optional Protocol. Neither the Netherlands nor the U.S. has ratified it, and as a result, unaccompanied minor asylum seekers are not able to address their complaints to the CRC Committee.

3.5.1.1 General Comment No. 6

In 2005, the CRC Committee issued General Comment No. 6 for the purpose of "provid[ing] clear guidance to States on the obligations deriving from the Convention

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52 CRC Committee, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, 1 September 2005.
53 CRC Committee, General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, 20 July 2009.
54 CRC Committee, General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013.
55 CRC Committee, General Comment No. 5: General Measures of Implementation, CRC/GC/2003/5, 27 November 2003.
56 The tenth country to ratify the Optional Protocol to the CRC, after Albania, Bolivia, Gabon, Germany, Montenegro, Portugal, Spain, Thailand, and Slovakia. Now the Optional Protocol has 17 States Parties and 49 signatory States (as of 25 June 2015).
with regard to this particular vulnerable group of children.”59 It calls upon States not to discriminate on the basis of their alien status but to provide the extensive protective assistance offered to vulnerable domestic children, including shelter, housing, health services and education. In addition, when evaluating refugee claims, States shall do so in a child-sensitive manner, thereby acknowledging persecution of a child-specific nature.60 Moreover, it provides that unaccompanied children are not limited to the rights granted in the Refugee Convention. Therefore, if they do not satisfy the requirements in Article 1A(2) Refugee Convention, a child shall still benefit from other “available forms of complementary protection to the extent determined by their protection needs.”61 States are also required to appoint a guardian or advisor in order to “secure proper representation of an unaccompanied or separated child’s best interests.”62 Children’s views and wishes should thereby also be taken into consideration.63 Also, in accordance with the best interests of the child principle, as a general rule, children should not be detained. It is only justified for exceptional reasons. Detention should only be used as last resort and should be for the shortest appropriate period of time.64 The General Comment moreover specifies that states have to ensure an adequate living standard, and shall provide material assistance and support programs to this extent.65 With regard to family reunification, children:

“[s]hall not be separated from his or her parents against their will, [and] all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views.”66

59 CRC Committee, General Comment No. 6, supra note 52, para. 4.
60 Id., para. 74.
61 Id., para. 77-78.
62 Id., para. 33.
63 Id., para. 25.
64 Id., para. 61.
65 Id., para. 44.
66 Id., para. 81.
3.5.3 The United Nations High Commissioner for Refugees

As successor of the International Refugee Organisation, the UNHCR was established on 1 January 1951.\textsuperscript{67} Although initially created for three years, the General Assembly later removed the temporal limitation on the continuation of the Office of the High Commissioner until the refugee problem was solved.\textsuperscript{68} The UNHCR is a subsidiary organ of the United Nations under Article 22 of the UN Charter.

As set out in its Statute, the primary responsibility of the UNHCR is to ensure protection to refugees, as well as supporting governments in seeking “permanent solutions for the problem of refugees.”\textsuperscript{69} This includes “promoting the conclusion and ratification of international conventions for the protection of refugees supervising their application and proposing amendments thereto.”\textsuperscript{70}

3.5.3.1 Guidelines of the United Nations High Commissioner for Refugees

While the Refugee Convention does not include child-specific provisions, the UNHCR has noticed the specific needs necessary for the protection of refugee and asylum-seeking children.

Bhabha addresses the three main points brought forward from the UNHCR’s 1979 Handbook on Procedures and Criteria for Determining Refugee Status:

- “[t]he importance of ‘enrol[ling] the services of experts conversant with child mentality’ to assess maturity and mental development in relation to the asylum claim;
- The receiving [S]tate’s responsibility ‘to ensure that the interest of an applicant for refugee status who is a minor are fully safeguarded,’ and the importance of appointing a guardian as an appropriate measure to this end;

\textsuperscript{67} UN Doc. A/RES/428 (V) (1950).
\textsuperscript{68} UN Doc. A/RES/58/153 (2003).
\textsuperscript{69} UN Doc. A/RES/428 (V) (1950), supra note 67, Annex I, para. 1.
\textsuperscript{70} Id., Annex I, para. 8(a).
Chapter 3: Unaccompanied Minor Asylum Seekers: the International Legal Framework

- The need for a ‘liberal application of the benefit of the doubt’ by [S]tates in determining whether the ‘well founded fear’ standard has been met by a minor.71

Moreover, the UNHCR has promulgated two guidelines that are especially important to unaccompanied minor asylum seekers, namely the 1994 Guidelines on Protection and Care of Refugee Children and the 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum. In the latter, attention is directed to essential protection issues specific for children that are unaccompanied, such as initial identification and interviewing by professional qualified officials; need for interim care; specific aspects of determination of their refugee status, containing priority for their applications and availability of trained representatives; and lastly, stressing the need for durable solutions for these children.72

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71 Bhabha & Crock, supra note 4, at 56.
72 UNHCR (1997), supra note 19.
4. Unaccompanied Minor Asylum Seekers in the Netherlands

4.1 Introduction

In this chapter the implementation of the CRC and the Refugee Convention in Dutch legislation will be examined, as far as relevant for unaccompanied children, whereby European Union law is of major importance. Indeed, as observed earlier in this study, the Netherlands is party to both treaties. After analysing the relevant rules, further assessment will be made with regard to the application of these rules in practice.

4.2 Dutch Law

The status of international law in national law varies between states. The Dutch Constitution provides that international agreements take precedence over national law, regardless of whether the specific national law is enacted prior or after the treaty. Also, national law will be regarded invalid when it contradicts an international agreement.\textsuperscript{73}

Immigration law in the Netherlands is regulated in the Dutch Alien Act, (Vreemdelingenwet 2000) whereof Article 13 provides:

\textsuperscript{73} Article 93 and 94 Dutch Constitution (Grondwet).
The application for a residence permit shall only be granted if:

a. International obligations so require;

b. The presence of the alien is of essential interest for the Netherlands; or

c. Compelling reasons of humanitarian nature require thereto.\(^\text{74}\)

The definition of unaccompanied or separated minor asylum seekers in international law is similar to the definition under Dutch law. An unaccompanied minor asylum seeker is defined as “an asylum seeker that has not yet reached the age of 18 and is residing in the Netherlands without assistance or legal guardian.”\(^\text{75}\)

On 1 April 2011, Marc Dullaert was installed as the first Dutch Children’s Ombudsman (Kinderombudsman). He observes children’s rights in the Netherlands, may receive complaints and start investigations. He advises the parliament and governmental institutions on request or on his own initiative.\(^\text{76}\)

Policy rules on unaccompanied minor asylum seekers have recently been reviewed and have entered into force on 1 June 2013.\(^\text{77}\) It aims to inform the unaccompanied minor asylum seekers as quickly as possible about their prospects in terms of residence or return. In the case that the unaccompanied minor asylum seeker does not meet the requirements for entitlement to protection, and thus has to return, the State must make every effort to ensure adequate care is available in the country of return. Moreover, the revised legislation also introduces a new safety net for unaccompanied minors: a residence permit under the not-at-fault policy (buitenschuldvergunning). This permit may be awarded to unaccompanied minor asylum seekers who were under the age of 15 upon entry of the Netherlands, and who are not able to return to a

\(^{74}\) Article 13 Dutch Alien Act (Vreemdelingenwet 2000). Free translation from: “Een aanvraag tot het verlenen van een verblijfsvergunning wordt slechts ingewilligd indien: a. internationale verplichtingen daartoe nopen; b. met de aanwezigheid van de vreemdeling een wezenlijk Nederlands belang is gediend, of c. klemmende redenen van humanitaire aard daartoe nopen.”

\(^{75}\) Article 1(e) Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005. Free translation from: “Voor de toepassing van deze regeling wordt verstaan onder alleenstaande minderjarige vreemdeling: een asielzoeker die de leeftijd van 18 jaar nog niet heeft bereikt en die zonder begeleiding of verzorging van een ouder of voogd in Nederland verblijft.”


\(^{77}\) Staatscourant 13143, 22.5.13 - WBV 2013/9, Wijziging A3/ B1/ B8/ C1, 7.5.13.
situation that provides adequate care for his or her, although it is not their fault. Nevertheless, in a report of Defence for Children, concerns have been expressed because of the strict prerequisites to become eligible for such residence permit under the non-at-fault policy. Many children will be excluded, since most children that arrive in the Netherlands are between the ages of 15 to 17, thus many will not qualify for the not-at-fault policy due to the age limit of 15 years old.

4.3 European Law

With regard to immigration law, European Union law is of great importance for the Netherlands; it explicitly provides for standards on the rights of children that have to be implemented in national legislation. In 2013, new EU legislation was adopted under the Common European Asylum System, which reaffirmed the increasing importance of the position of the child that will be further discussed in this Chapter. In addition, judgments of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have given clarification on the interpretation of treaties and EU law regarding rights for children. The CJEU has observed that the CRC is one of the international instruments for the protection of human rights “of which it takes account in applying the general principles of Community law.” Moreover, the European Union Agency for Fundamental Rights (FRA), one of the EU’s decentralised agencies, has issued the comparative report on asylum-seeking children in European Union Member States.

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79 In 2012, 29% of the children with a guardian from Nidos were between the age of 12 to 16, and 47% of the children were between the age of 16-18. See Nidos, Jaarverslag 2012, at. 11 (2012); Defence for Children, Implementatie van de kwaliteitsstandaarden voor voogden van alleenstaande minderjarige vluchtelingen in de praktijk, beleid en wetgeving. Nationaal rapport Nederland, 11 March 2013, at 11 (2013).
80 Kinderombudsman, Kinderrechtenmonitor 2014, supra note 3, at 164.
Primary sources of EU law, such as the Treaty on the European Union (TEU) explicitly provide that the European Union shall contribute to the rights of the child. Moreover, all EU Member States, including the Netherlands, are bound to the Charter of Fundamental Rights of the European Union (CFREU) when they are implementing EU law. Article 24 CFREU stipulates the following:

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

According to the commentary on the CFREU, the wording of Article 24 originates from Articles 3, 9(3), 12 and 13 of the CRC.

Secondary EU law can be distinguished between unilateral acts and agreements listed in Article 288 Treaty on the Functioning of the European Union (TFEU), and those that are not listed. Article 288 provides, amongst others, for regulations and directives. Regulations are binding acts that must be applied in its entirety by all EU Member States. A directive, on the other hand, lays out an aim that must be achieved. The Member States enjoy certain discretion in deciding on how to accomplish this

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83 Article 3(5) TEU.
84 After entry into force of the Lisbon Treaty on 1 December 2009.
85 Article 51 Charter of Fundamental Rights of the European Union.
87 Other legislative acts of the EU are decisions, recommendations and opinions.
aim. Thereby, unlike regulations, directives have to be converted in national legislation.\(^88\)

Under the Common European Asylum System several important directives have been adopted, which include:\(^89\)

- The recast Qualification Directive;\(^90\)
- The recast Dublin (and EURODAC) Regulation(s);\(^91\)
- The recast Asylum Procedures Directive;\(^92\) and
- The recast Reception Conditions Directive.\(^93\)


\(^89\) Directive 2001/55/EC is the only directive under the Common European Asylum System that has not yet been recast. It regulates minimum standards for giving temporary protection in the event of a mass influx of displaced persons.


The Regulations came into effect 1 January 2014; the Qualification Directive entered into force on 21 December 2013, the transpositions of the Reception Condition and the Asylum Procedures Directives are foreseen by 20 July 2015.

4.3.1 Qualification Directive

The recast Directive 2011/95/EU (Qualification Directive) addresses in its preamble that the ‘best interest of the child’ principle should be the primary consideration of States when implementing this Directive.94 It moreover states that EU Member States, when assessing applications from minors for international protection, should have regard to child-specific forms of persecution,95 such as the recruitment of child soldiers, sexual exploitation and forced labour.96 The Qualification Directive also broadens the notion of ‘family members’, whereby it considers the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.97

4.3.1 Reception Conditions Directive

The recast Directive 2013/33/EU (Reception Conditions Directive) on the standards for the reception of applicant for international protection requires modification of the Dutch Alien Act.98 Article 11 of the Reception Conditions Directive regulates the rules for holding unaccompanied minors in detention. According to Article 12, Member States shall as far as possible maintain family unity within their territory. Article 14 provides that minors shall have access to the education system under similar conditions as minors with the nationality of the Member State, so long as an expulsion measure against them or their parents is not actually enforced. Moreover, Article 23 states that the living standard shall be adequate for the minor’s well-being, security and social development, by taking into regard the views of the minor itself. The minor shall also have access to leisure activities, and access to rehabilitation services for traumatized minors. Article 24 stipulates, *inter alia*, that an

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94 Preamble para. 18 Qualification Directive.
95 Preamble para. 28 and Article 9(2)(f) Qualification Directive.
97 Preamble para. 19 Qualification Directive.
unaccompanied minor shall be provided a representative that will assist him or her to enable them to benefit from their rights, and also to ensure that he or she complies with the obligations provided for in this Reception Directive. Unaccompanied minors shall also be provided appropriate accommodation suitable for minors. Furthermore, family members shall be as soon as possible be detected, unless this endangers the safety of the unaccompanied minor.

4.3.2 Asylum Procedures Directive

The recast Directive 2013/32/EU (Asylum Procedures Directive) will most likely have major effects on the asylum procedures system in the Netherlands, especially concerning the accelerated procedures and appeal in court. The Asylum Procedures Directive regulates, *inter alia*, that according to Article 7(3), minors have the right to make an application for international protection on own behalf, or through his or her parents or through a representative. Moreover, Article 15(3)(e) provides that interviews with minors have to be conducted in a child-appropriate manner. Article 25(1) states that unaccompanied minors shall as soon as possible be appointed a representative. They shall also be appointed a legal advisor or counsellor under their right to legal assistance, according to Articles 22 and 23. Under Article 25(5) examination of the minor’s age is only permitted when in doubt. The asylum application may be accelerated in certain circumstances, and may be subject to several conditions to their guarantees available. According to Article 25(6), “the best interests for the child shall be the primary consideration for Member States when implementing this Directive”.

4.3.3 Dublin Regulation

The recast Regulation (EU) No. 604/2013 (Dublin Regulation) determines which EU Member State is responsible for the examination of the asylum application of non-EU

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100 Article 24(3) Reception Conditions Directive.
persons. It thereby aims to avoid that asylum seekers lodge multiple applications in different EU countries. Article 6(4) holds that Member States have to take action, as soon as possible, to identify whether the family members, siblings or relatives of unaccompanied minors are present in other Member States, whilst protecting the best interests of the child. If such is not the case, then the Member State where the unaccompanied minor has lodged its application is responsible for the asylum procedure, provided that it is in their best interests.\textsuperscript{104} In CJEU ruled in the case of \textit{MA and others v. Secretary of State for the Home Department} that, in certain situations, unaccompanied minor asylum seekers should not be transferred to another Member State where it earlier submitted an asylum application. Such is the case when the unaccompanied minor asylum seeker does not have any relatives present in the EU. Then, he or she may not be transferred; the Member State in which the child is present is then responsible for consideration of the application.\textsuperscript{105} Although still under discussion by the European Parliament and the Council of the EU, the European Commission has proposed an amendment to Article 8(4) of the recast Dublin Regulation, in order to seek compliance with CJEU’s judgement.\textsuperscript{106}

\subsection{European Commission: Action Plan on Unaccompanied Minors 2010-2014}

In May 2010, the European Commission adopted the Action Plan on Unaccompanied Minors. It addresses three main strands of action: prevention, regional protection programmes and, reception and identification of durable solutions, whereby the best interests principle is the primary consideration.\textsuperscript{107} In its mid-term report, the European Commission observed several positive developments on the implementation of this Action Plan. Through better co-ordination and consistency between various

\begin{itemize}
\item \textsuperscript{104} Article 8(4) Dublin Regulation.
\item \textsuperscript{105} CJEU, \textit{The Queen on the application of MA, BT, DA v. Secretary of State for the Home Department}, C-648/11, Judgment of 6 June 2013.
\item \textsuperscript{106} European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State, COM(2014) 382 final 2014/0202 (COD).
\end{itemize}
legislative, financial and policy instruments, it enabled “improvement of data collection, the prevention of unsafe migration and trafficking, the protection of children once they are in the EU and the identification of durable solutions.”\textsuperscript{108} The Commission however calls for further efforts in terms of exchanging knowledge, and in terms of finding durable solutions for this group. It also suggests the need to strengthen co-operation between the EU and its Member States with non-EU countries of origin, transit and destination, to discuss issues such as prevention, re-establishing family unity and ensuring safe return.\textsuperscript{109}

4.4 Application: Unaccompanied Minor Asylum Seekers in the Netherlands

The Netherlands has made, among others, a declaration with regard to Article 22 CRC on the definition of ‘refugee’.\textsuperscript{110} In the Concluding Observations to the third State Report, the CRC Committee has recommended that the Netherlands withdraw this declaration.\textsuperscript{111} Moreover, the Netherlands has not signed the Third Optional Protocol to the CRC, which establishes a complaint mechanism for children. Children up to the age of 18 may appeal to the CRC Committee when they consider their rights under the CRC are violated, provided that they have exhausted all local remedies. The Children’s Ombudsman encourages the Dutch government to sign and ratify this Optional Protocol, but it has not done so until this day.\textsuperscript{112}

\begin{itemize}
\item \textsuperscript{109} Id., at. 11-12.
\item \textsuperscript{110} Declaration to Article 22: With regard to article 22 of the Convention, the Government of the Kingdom of the Netherlands declares:
  a) that it understands the term "refugee" in paragraph 1 of this article as having the same meaning as in article 1 of the Convention relating to the Status of Refugees of 28 July 1951; and
  b) that it is of the opinion that the obligation imposed under the terms of this article does not prevent - the submission of a request for admission from being made subject to certain conditions, failure to meet such conditions resulting in inadmissibility; - the referral of a request for admission to a third State, in the event that such a State is considered to be primarily responsible for dealing with the request for asylum.
\item \textsuperscript{111} CRC Committee, Concluding observations to third Periodic Report of the Netherlands, \textit{supra} note 50, at. 12, para. 69-70.
\item \textsuperscript{112} Kinderombudsman, \textit{supra} note 76, at 3.
\end{itemize}
Now several issues concerning the treatment of unaccompanied minors that apply for asylum will be discussed: EU law, the ‘best interests of the child’ principle, identification, appointment of a guardian, family tracing, social benefits, and detention.

4.4.1 EU law

With regard to EU law, the Children’s Ombudsman observes that EU law continues to promote for enhancing protection of unaccompanied minor asylum seekers. However, Resolution 2012/2263(INI) of the European Parliament illustrates the fragmentation of EU law concerning unaccompanied minor asylum seeker’s rights, adopted on 12 September 2013. This resolution emphasises the pressing need for the European Commission and the EU Member States to come up with a coherent response to protect this group. In its Resolution the European Parliament goes further than the provisions of the revised directives discussed above. Although not binding, its an important document because it calls upon the European Commission to ensure respect of the core principles of the child’s best interests throughout the asylum process (including the admission procedures, accommodation, return policies, integration and co-operation with the countries of origin).\footnote{113 Kinderombudsman, Kinderrechtenmonitor 2014, \textit{supra} note 3, at 149.}

4.4.1.1 Procedure Directive

The CRC Committee is concerned about accelerated asylum procedure, also known as the 24-hours speedy procedure. Often, as a result of these short procedures, it is not possible for minors to express their views concerning the reasons for their asylum application. The CRC Committee sees this as a breach of the Netherlands’ obligation under Article 22 CRC, and it thus recommends the Netherlands to ensure that the determination of refugee status of minors conforms to international standards.\footnote{114 Kinderombudsman, Kinderrechtenmonitor 2013, \textit{supra} note 78, at 141. \textit{See also} CRC Committee, Concluding Observations to the second Periodic Report of the Netherlands (Netherlands and Aruba), CRC/C/15/Add.227, 30 January 2004, at 10-11, para. 53-54.}
4.4.1.2 Dublin Regulation

The Netherlands has transferred unaccompanied minor asylum seekers on the basis of the Dublin Regulation. However, transfers to certain EU Member States, such as Italy, Malta and Hungary, have raised concerns with regard to, *inter alia*, accommodation facilities, detention conditions and entry to the asylum procedure. Various Dutch judges have adjudicated, in several cases, that the transfer of unaccompanied minor asylum seekers to Italy was unlawful.\(^{115}\) It stated that the Netherlands had breached its obligation to ensure careful transfer of the unaccompanied minor asylum seeker to the Italian authorities. Nevertheless, the highest administrative court in the Netherlands (Afdeling bestuursrechtspraak van de Raad van State (ABRvS)) reasoned to the contrary, and allowed the transfer to Italy.\(^{116}\) Several individuals have lodged application before the ECtHR, such as the Afghan family Tarakhel. This family with six minor children entered the EU by crossing the Italian border. After applying for asylum in Switzerland, the Swiss authorities asked the Italian authorities to take charge of the family under the Dublin Regulation. The ECtHR found that there was a breach of Article 3, if the family was returned to Italy, since adequate accommodation facilities specific for families could not be guaranteed. This judgment has consequences for all EU Member States, which may lead to non-transfer to Italy until guarantees to keep families together and accommodation adequate for young children’s ages are satisfied.\(^{117}\)

Subsequent the *MA and others v. Secretary of State for the Home Department* judgment,\(^{118}\) the European Commission proposed clarification of the Dublin Regulation concerning the issue of unaccompanied minor asylum seekers and the

\(^{115}\) See e.g. Dutch District Court of Maastricht (Rechtbank), Judgment of 10 December 2012, AwB 12/8774; Dutch District Court of Zwolle (Rechtbank, voorzieningenrechter), Judgment of 27 February 2013, Awb ZWO 12/39796.


\(^{118}\) *MA and Others* case, *supra* note 105.
Member State’s responsibility for examining their application.\(^{119}\) Despite the judgment, the Netherlands has nevertheless transferred some 20 unaccompanied minor asylum seekers to other EU Member States in 2013.\(^{120}\) This is less than the year before, where 30 unaccompanied children were transferred; it is however uncertain whether the transfers in 2013 took place before or after the judgment. Additionally, in the same year, about 70 unaccompanied minor aliens disappeared to unknown destinations, despite the introduction of a pilot project centre (Dienst Terugkeer en Vertrek).\(^{121}\) Unclear is whether these minors may already have lodged an asylum application in another Member State or if have been reunited with family members.\(^{122}\) The CRC Committee recommends that the Netherlands should further strengthen the measures already adopted to avoid the disappearance of asylum-seeking children from happening.\(^{123}\)

4.4.2 Best Interests of the Child

With regard to the ‘best interests of the child’ principle,\(^{124}\) Defence for Children and UNICEF have made several recommendations for the Netherlands concerning the revised policy rules on unaccompanied minor asylum seekers.\(^{125}\) It recommends an explicit referral of this principle, and that an explanation thereof. The Minister of Immigration has responded thereto and argued that such referral is already the case in several issues, and that the best interests of the child are always considered implicitly. The principle is expressed in, for example, the child-specific guarantees during the asylum procedure, the access to education and social benefits. Moreover, following Article 3(1) CRC it can be observed that the best interests of the child is not the only interest, because it refers to “a primary consideration” (emphasis added).\(^{126}\)

\(^{119}\) European Commission, supra note 106.  
\(^{120}\) Kinderombudsman, Kinderrechtenmonitor 2014, supra note 3, at 148.  
\(^{121}\) Id., at 148, 154-155.  
\(^{122}\) Kamerstukken II 2013/2014, 27062, nr. 89.  
\(^{123}\) CRC Committee, Concluding observations to third Periodic Report of the Netherlands, supra note 50, at. 12, para. 67-68.  
\(^{124}\) Article 3(1) CRC.  
\(^{125}\) Defence for Children & UNICEF, Bescherming alleenstaande minderjarige vreemdelingen in de knel. Zorgpunten & aanbevelingen bij de herijking van het beleid, April 2013.  
\(^{126}\) Kamerstukken II 2013/14, 27062, nr. 91, at 6-7.
In its Concluding Observations of 2009, the CRC Committee has stated that the Netherlands should take:

“all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 of the Convention, is adequately integrated into all legal provisions and applied in judicial and administrative decisions and in projects, programmes and services which have an impact on children.”

However, as the Children’s Ombudsman had observed, new policy, laws and regulations are currently not “adequately and systematically assessed in terms of the CRC.” Despite the recommendations by the Children’s Ombudsman in 2012 and 2013, such assessment is still not initiated in Dutch legislation.

Also the Children’s Ombudsman notices that migration law and policy is lacking a general vision of how the interests of the child should be protected. He adds: “The interests of children are barely raised in asylum and aliens policies and the same counts for individual decisions: the interests of the child are not determined and considered in a systematic and discernable manner.” He therefore recommends for the development of a vision and policy, conform the CRC. And that the “psychiatric damage caused by uprooting children, [is considered] as an independent assessment criterion within migrant policy.” Moreover, the Children’s Ombudsman observes that in migration law, the interests of children are not evaluated separately and independently from their parents. The Children’s Ombudsman stresses that this is very important, especially when far-reaching decisions are to be made, for instance decisions about evictions, denial of applications for residence permits, expulsion, or when an asylum seeker’s family has to split up. Asylum-seeking children should also receive information as early as possible about what is expected to happen to them.

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127 CRC Committee, Concluding observations to third Periodic Report of the Netherlands, supra note 50, at. 12, para. 29.
128 Kinderombudsman, supra note 76, at 2.
129 Id., at 2.
130 Id., at 12.
131 Id., at 12.
132 Id., at 13.
With regard to asylum-seeking children who have lived in the Netherlands for years and as a consequence are fully integrated in the Dutch society, but do not have a residential status, may still receive a residence permit under the regulation for long-term resident children, commonly known as the Children’s Pardon (Kinderpardon). The Children’s Ombudsman has monitored and evaluated the application process of the Children’s Pardon, whereby he concluded that the criteria was inconsistent with the criteria deriving from the CRC, because some criteria is not concurrent with the best interests of the child principle under the CRC.

4.4.3 Identification

Since many unaccompanied minor asylum seekers do not have the required formal identification papers, it may be problematic to determine their age. Age assessment may then be required. The Asylum Procedures Directive provides that the examination to establish the age of an unaccompanied minor should be the least invasive and should be carried out with full respect of the minor’s dignity. The European Asylum Support Office has issued a report that has evaluated the different methods of age assessments used by the various EU Member States. It concluded that many different methods are used and that there is not one correct procedure, and recommends for a multidisciplinary holistic method. Before proceeding with medical examination, age assessment though analysis of the documents should take place first. However, the Dutch Minister of Immigration has pointed out that such method is only useful when it is of added value of the examination that is already taking place in the Netherlands. He adds that unaccompanied minor asylum seekers should not be overly exposed to different types of examination methods if that is not necessary or

133 Kamerstukken II 2012/13, 19637, nr. 1597, at 5.
134 Kinderombudsman, supra note 76, at 13. For additional information: Defence for Children, supra note 79, at 11.
135 Article 8 CRC.
beneficial. Nonetheless, criticism on Dutch methods of age assessments still exists, especially concerning the use of x-rays, in determining the age of a child.

4.4.4 Family Reunification/Tracing

Concerning family reunification and family tracing, the Children’s Ombudsman has carried out a research on the Dutch policy regarding refugee minors joining their parents abroad, and whether the implementation of this policy was in conform the CRC, in the period 2008-2013. Results of the research show that it was not in accordance with the CRC, for instance concerning the hearings that were conducted with these children were not age appropriate. The Children’s Ombudsman therefore recommends that the Immigration Services should describe in what way the best interests of the child principle is taken into consideration during the procedure itself and in the decision-making after.

Moreover, according to Art 24(3) of the Reception Conditions Directive, States have the obligation to start as soon as possible with tracing the unaccompanied minor’s family. In the Netherlands family tracing only takes place at the end of the asylum procedure, namely when an unaccompanied minor is forced to return to his or her country of origin. The Dutch Minister for Immigration has commented on this and stated that it will ensure family tracing in an earlier stage in order to comply with the obligations deriving from the Reception Conditions Directive.

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137 Kamerstukken II 2013/14, 27062, nr. 91, supra note 126, at 7-8.
139 Article 22(2) CRC.
140 Kinderombudsman, supra note 76, at 13-14.
141 Kamerstukken II 2013/14, 27062, nr. 91, supra note 126, at 13.
4.4.5 Appointment of a Guardian

States have to ensure that unaccompanied minors are represented and receive legal assistance during their asylum application. Unaccompanied minor asylum seekers receive guardians from the organisation Nidos, an independent guardianship and family supervision state agency, which receives funding from the Dutch government but is strictly not under supervision of the government. The role of the guardian also encompasses the representation of the child in legal affairs. However, Defence for Children analysed that not all guardians join the children during important meetings with the immigration authorities or in court. It has noticed that there are many positive developments with regard to guardians, such as with respect to their qualifications and professional knowledge; however, it concluded that there is room for improvement.

4.4.6 Social Benefits

The Netherlands has made a reservation with regard to Article 26 CRC (on entitlement to social security, including social insurance). This law is enshrined in Article 10 Dutch Alien Act, providing that an alien without residence permit is prevented from access to social services. The CRC Committee has recommended in its Concluding Observations, “to take effective legal and other measures to ensure adequate protection of refugee and unaccompanied children and implement programmes and policies to ensure their access to health, education and other social services.”

An exception is made for alien children; therefore Article 10 Dutch Alien Act...

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142 Articles 18(2) and 20(1) CRC; Article 25 Asylum Procedures Directive, and Article 24 Reception Conditions Directive.
143 European Migration Network, Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors. An EU comparative study, 6 May 2010, at 37.
144 Defence for Children, supra note 79, at 50-60 (2013).
145 Declaration to Article 26: The Kingdom of the Netherlands accepts the provisions of article 26 of the Convention with the reservation that these provisions shall not imply an independent entitlement of children to social security, including social insurance.
146 The lawfulness of this provision is confirmed by the Supreme Court (Hoge Raad), Judgment of 23 November 2012, (JV 2013/115), and the Administrative Jurisdiction Division of the Council of State (ABRvS) Judgment of 13 February 2013, JV 2013/146.
147 CRC Committee, Concluding observations to third Periodic Report of the Netherlands, supra note 50, at. 12, para. 69-70.
Act does not apply with regard to education. In addition, the Dutch Minister for Immigration has held that alien children will also have access to necessary medical treatment.

4.4.6 Detention

Although most unaccompanied minor asylum seekers are put in varies types of shelter, still a small group of children are put in detention centres. Albeit the CRC stipulates that detention may be only used as last resort under Article 37 CRC. The Reception Conditions still allows States to detain unaccompanied minor asylum seekers in exceptional circumstances. Concerning the reception of unaccompanied minors, children are put in different facilities depending on their age. Children under the age of 13 are placed with in foster families that are under the supervision Nidos. Between the age of 13 and 15, children are allocated in COA (Central Reception Organisation for Asylum Seekers) reception centres and children above 15-years-old are hosted in campus sites.

The Children’s Ombudsman notices a decrease of the numbers unaccompanied minors that are put in detention centres in 2013 compared to in 2012. He also notices that the duration of children placed in detention centres is shortened. However, several NGOs, and also the European Parliament assert that minors should never be placed in detention centres in the first place. Still, the Dutch District Court of Amsterdam ruled that a stay of fourteen days at the detention centre of Schiphol Airport might be suitable for families with young children. As pointed out by the Advisory Committee on Affairs Concerning Aliens (Adviescommissie voor Vreemdelingenzaken), the State is not always aware of the alternative means of

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148 Article 28, 29(1)(c), 30 & 32 CRC.
149 Kamerstukken II 2012/13, 19637, nr. 1630, at. 5.
150 Article 11 Reception Conditions Directive.
151 See No Child in Detention Coalition, Dad, have we done something wrong? Children and parents in immigration detention, January 2014. The No Child in Detention Coalition exists of several NGOs, including Amnesty International, Defence for Children, UNICEF, the Netherlands and the Dutch Council for Refugees.
152 Dutch District Court of Amsterdam (Rechtbank), Judgment of 11 December 2013, AWB 13/10668.
detention and in certain cases adequate legal assistance is not available. The Dutch Minister for Immigration has announced that he will examine alternative means of custody for unaccompanied minor asylum seekers.

The Children’s Ombudsman is, although the EU directives under the Common European Asylum System are revised, concerned about the continuing discretion of States to allow detention. However, now more protection measures are proposed in compliance with Article 37 CRC. Moreover, the UNHCR issued the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012). Although not specifically focused on unaccompanied minor asylum seekers, it does give relevant guidance on the issue of detention.

154 Kamerstukken II 2013/14, 19637, nr. 1827.
155 Kinderombudsman, Kinderrechtenmonitor 2013, supra note 78, at 141.
5. Unaccompanied Minor Asylum Seekers in the U.S.

5.1 Introduction

After analysing the Netherlands, now this study will examine the position of unaccompanied minor asylum seekers in the U.S. Under U.S. law, ratified international legal instruments automatically pass into domestic law. As noted earlier in the Introduction of this study, the U.S. has failed to ratify the CRC. Nevertheless, it has signed the CRC and it should therefore not legislate contradictory to its provisions. Although the U.S. is not party to the 1969 Vienna Convention on the Law of Treaties (VCLT), since it has only signed it but not ratified it, it is argued that Article 18 VCLT reflects customary international law. The U.S. is thus bound to the obligation to refrain from actions that would defeat the object and purpose of the treaty, a claim that is not denied by the U.S.\textsuperscript{157}

5.2 U.S. Law

Similar to the Netherlands, the U.S. immigration law addresses only adults. Moreover, U.S. legislation on child welfare only provides privileges for children with

U.S. nationality. As a result, unaccompanied minors are in many cases not protected under either of these bodies of domestic law.\textsuperscript{158}

The U.S. has a complex immigration policy. It provides several types of protection for all of those who apply for protection from persecution at a port of entry or from within the country (thus, including minors). They can apply for protection on the bases of: (i) asylum, for those claiming a well-founded fear of persecution; (ii) withholding of removal for those facing a probability of harm if returned,\textsuperscript{159} and (iii) relief under the CAT.\textsuperscript{160}

The U.S. Refugee Act 1980 provides for most of the provisions deriving from the Refugee Convention; it contains, inter alia, the refugee definition and the prohibition against refoulement.

The Immigration and Naturalization Act (INA) is the body of law governing U.S. immigration policy. Concerning the definition of unaccompanied minor asylum seekers, in U.S. immigration and asylum agencies and legislation, different terms are used. This results in confusion and inconsistency during the identification and treatment of unaccompanied minor asylum seekers. The INA does not provide a clear definition that applies to unaccompanied children,\textsuperscript{161} and therefore the U.S. Homeland Security Act 2002 introduced a new term, ‘unaccompanied alien child’. It is describes it as a child who:

“[h]as no lawful immigration status in the United States, has not attained 18 years of age and with respect to whom there is no parent or legal guardian in the United States or [there is] no parent or legal guardian in the United States is available to provide care and physical custody.”\textsuperscript{162}

\textsuperscript{158} Bhabha & Crock, supra note 4, at 61.
\textsuperscript{159} ‘Withholding’ is possible for those who do not qualify for refugee status, because they do not fall under one of the five grounds determined in the Refugee definition or because the U.S. authorities uses their discretion by refusing to provide them refugee status.
\textsuperscript{160} Relief under the CAT is only for those that have been threatened with torture.
\textsuperscript{162} Homeland Security Act, 6 U.S.C. § 279(g).
Immigration in the U.S. is created upon the following principles: “the reunification of families, admitting immigrants with skills that are valuable to the U.S. economy, protecting refugees, and promoting diversity.”

Due to conflict of interests in dealing with unaccompanied minor asylum seekers, the Immigration and Naturalization Service (INS) was abolished in 2002. Instead, its functions were spread between two departments: the U.S. Department of Homeland Security (DHS) and the U.S. Department of Health and Human Services (HHS). Within the DHS, the U.S. Citizenship and Immigration Services (CIS) provides service and the U.S. Immigration and Customs Enforcement (ICE) takes care of enforcement. After being referred by immigration authorities, unaccompanied alien children are given under care to the Office of Refugee Resettlement (ORR), a federal agency within the HHS. The ORR is responsible for the care and custody of unaccompanied alien children until they are removed, released from detention, granted asylum or another legal status.

When soliciting asylum, two possible procedures are available for unaccompanied minors. First, the affirmative process, concerns these children are in the U.S. legally with some kind of temporary status and those children that are undocumented but have not come under the attention of the U.S. authorities. At the Asylum Office they are required to submit an application for asylum, which will be determined by the officers within the CIS. Second, the defensive process comes into play when unaccompanied minors are apprehended at the U.S. border, port of entry or within U.S. territory (prior to being able to make an affirmative claim). This second asylum process concerns the vast majority of unaccompanied children applying for asylum. The applicants are put in ‘removal proceedings’ in the Immigration Court, whereby they may request ‘deportation relief’, which may be in the form of asylum or withholding of removal. Immigration judges in the Immigration Court decide on these removal proceedings. If the claim of an unaccompanied minor following the affirmative process is denied, it is permitted to request review of its application.

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164 Bhabha & Crock, supra note 4, at 65.
165 Id., at 65-66.
following the defensive process. The Executive Office for Immigration Review (EOIR) will carry out this re-evaluation, whereby an immigration judge with jurisdiction may uphold or overturn the Asylum Office’s finding.\textsuperscript{166}

5.3 Application: Unaccompanied Minor Asylum Seekers in the U.S.

Moving on to the application of U.S. legislation relevant for unaccompanied minor asylum seekers, the following issues will be evaluated: the ‘best interests of the child’ principle, reception, court hearings, appointment of a guardian, social benefits, and detention.

5.3.1 Best Interests of the Child

Although the U.S. is not a State Party to the CRC, the CRC still does play a role with respect to setting “a normative and widely accepted standard”.\textsuperscript{167} The ‘best interests of the child’ principle\textsuperscript{168} is implicitly referred to in two official immigration manuals: in the ‘Guidelines for Children’s Asylum Claims’ for asylum officers, and ‘Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children’ for immigration judges.\textsuperscript{169} The U.S. Homeland Security Act 2002 also refers to “the interests” of a child, although not to “best interests”. Furthermore, in the case of \textit{Beharry v. Reno}, Judge Weinstein has stated that non-ratification of the CRC does not entail that this eliminates the impact the CRC has in U.S. law.\textsuperscript{170} He went on to suggest that the ‘best interests of the child’ principle was:

“not so novel as to be considered outside the bounds of what is customary. […] Given its widespread acceptance, to the extent that it acts to codify longstanding, widely-accepted principles of law, the CRC should be read as

\textsuperscript{166}Center for Latin American & Latino Studies, Unaccompanied Migrant Children from Central America Context, Causes, and Responses, Clals Working Paper Series No. 7, November 2014, at 31-32.
\textsuperscript{167}Bhabha & Crock, supra note 4, at 60.
\textsuperscript{168}Article 3(1) CRC.
\textsuperscript{169}Bhabha & Crock, supra note 4, at 61.
customary international law. […] Congress's failure to ratify the CRC is not a sufficiently clear statement to constitute repudiation of the customary international law principles contained in and underlying this treaty.”\textsuperscript{171}

5.3.2 Reception

Most children given custody to the ORR come from countries at the southwest border of the U.S., primarily from Honduras, Guatemala, and El Salvador.\textsuperscript{172} The majority of unaccompanied children arrive through the crossing of borders. However, some may attempt to enter the U.S. by sea, where there is a big chance to get physically intercepted and arrested by the U.S. Coast Guard under their ‘Alien Migrant Interdiction’ program. Most of the intercepted migrants do not get informed and thus remain unaware of their rights, such as the right to legal representation or any right of appeal against refusal of their asylum claim. No distinction is made between adults or children during these harsh processing procedures. A study by Yale Law School proves that the policy concerning definition and identification of unaccompanied minor children is sincerely deficient; since no written guidelines have ever been created, the Coast Guard officers are unequipped with the needed procedural guidance on how to address the needs and how to protect these children.\textsuperscript{173}

The INA regulates several types of protection, as discussed in Chapter 5.2, but it does not offer child-specific protection. However, certain innovative legal standards have developed leading to better protection of unaccompanied minor asylum seekers. By introducing the several immigration statuses: Special Immigrant Juvenile Status (SIJS) visa, the T-Visa and the U-Visa. SIJS visa entails legal permanent resident status and may be granted to children who are under the age of 21 and who have been abused, neglected, or abandoned by one or both parents. The court must establish that reunification with one or both parents is not viable and that return to their home

\textsuperscript{171} Id., para. 600.
country will not be in the child’s best interests.\textsuperscript{174} Recent years have proven that 15% to 30% of unaccompanied minors have applied for SIJS, with high approval rates. The T non-immigrant visa is set-aside for children who are victims of severe forms of trafficking (including sex trafficking or forced labour, excluding migrant smuggling).\textsuperscript{175} U non-immigrant visa is an option for children who have been victims of certain crimes who have suffered mental or physical abuse and who have or will assist U.S. authorities in their investigation or prosecution of that crime.\textsuperscript{176}

5.3.3 Court Hearings

On 9 July 2014, the U.S. Department of Justice announced that it would implement a series of measures to control the influx of migrants entering the U.S. through the southern border. This includes prioritization of cases of newly arrived unaccompanied minors, entailing courts to hold initial hearings within 21 days after the commencement of the removal proceedings. Advocates and immigration attorneys have expressed concern over these expedited hearings, arguing it undermines unaccompanied minor asylum seeker’s rights to due process.\textsuperscript{177}

Specific policies of the EOIR regulate that during the conduct of removal hearings, it has to assure that unaccompanied minors “understand the nature of the proceedings, can effectively present evidence about their cases, and have appropriate assistance.”\textsuperscript{178} In order to enable the child for better preparation to present a claim or to participate more actively in the proceedings, immigration judges are expected to:

\textsuperscript{174} More information available at: http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij See also Bhabha & Crock, supra note 4, at 64-65.
\textsuperscript{175} Center for Latin American & Latino Studies, supra note 166, at 35.
\textsuperscript{177} U.S. Department of Justice, Department of Justice Announces New Priorities to Address Surge of Migrants Crossing into the U.S, press release, July 9, 2014; Center for Latin American & Latino Studies, supra note 166, at 36.
- “Establish special dockets for UAC so that they are separated from the general population;
- Allow child-friendly courtroom modifications (e.g., judges not wearing robes, allowing the child to have a toy, permitting the child to testify from a seat rather than the witness stand, allowing more breaks during the proceedings);
- Provide courtroom orientations to familiarize the child with the court;
- Explain the proceedings at the outset;
- Prepare the child to testify; and
- Employ child-sensitive questioning.”

5.3.4 Appointment of a Guardian

In a defensive process, children are, unlike the government, generally not guaranteed a legal representative in the Immigration Court. The government’s representative is a DHS trial attorney, which basically functions as a prosecutor. The U.S. immigration system does not provide counsel to immigrants, irrespective of their age, or their inability to understand the proceedings. Children are allowed counsel, but they will have to finance it themselves or they have to find someone pro-bono. As a result, thousands of children appear before the Immigration Court without any legal representation. This is similar to the affirmative process; although they are not entitled to legal representation by the U.S. government, they may bring someone to their asylum interview only if they can arrange it themselves.

According to the Homeland Security Act of 2002, the ORR has to assure that children in ORR custody have access to legal representation. Since counsel is not ensured at government expense, children in ORR custody usually had higher rates of representation than those children released to sponsor care. A study by the Transactional Records Access Clearinghouse, 90% of the children without legal representative were commanded to leave the country, while the odds of staying of

179 Id., at 10-11.
181 Id., at. 8.
182 Bhabha & Schmidt, supra note 161, at 139.
children with legal representation increases from 10% to almost 50%. Moreover, important steps have been made into creating a pro bono movement of law firms that provide quality legal assistance to unaccompanied children. Still, the resources are insufficient to meet the high demand each year. Notwithstanding, policy guidelines for EOIR firmly encourage immigration judges to use pro bono legal representatives if a child is not represented.

5.3.5 Social Benefits

Children under HHS’s Unaccompanied Alien Children Program receive assistance from the state-licensed ORR-funded care providers, such as educational, health and case management services.

5.3.6 Detention

Special laws govern the custody of a child that takes the ‘best interests’ into consideration concerning their welfare standards. In comparison with adults, when apprehended at the border, they are commonly put in short-term U.S. Custom and Border Protection (CBP) custody, before they are transferred to ICE custody. A DHS report held that, although immigration laws are of civil nature, the facilities used by ICE to detain aliens were, “with only a few exceptions […] built, and operate as [criminal] jails and prisons.” Children, on the other hand, have to be transferred by the DHS to the custody of HHS within 72 hours. HHS’s statutory responsibilities entails that unaccompanied children that are put in custody must be “promptly placed in the least restrictive setting that is in the best interest[s] of the child.” The average stay in HHS custody is currently near 35 days, and about 85% are released from

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185 Congressional Research Service, supra note 178, at 11.
186 See Office of Refugee Resettlement, supra note 172.
188 Victims Protection Reauthorization Act 2008 8 USC § 1232(b)(3).
custody and then live with a sponsor until the end of their immigration proceedings. Under the Unaccompanied Alien Children Program, the ORR provides to housing for children in one of four detention settings: shelter care, staff-secure care, secure care, or short-term foster care, if it cannot be reunited with a family member. The landmark case *Flores v. Reno* established the current policy concerning the treatment and detention of unaccompanied minor children: the Flores Agreement. It provides for the following order of preference for sponsor types: (1) a parent, (2) a legal guardian, (3) an adult relative, (4) an adult individual or entity designated by the child’s parent or legal guardian, (5) a licensed program willing to accept legal custody, or (6) an adult or entity approved by ORR. According to the ORR, most children are cared for through a network of state licensed ORR-funded care providers to satisfy ORR requirements to safeguard a high level of quality of care. Moreover, about 85% of the children are temporarily released to family present in the U.S., while the determination of their immigration status is pending.

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6. Conclusion

There are many reasons why unaccompanied minors leave their home to find asylum outside his or her country of origin. It may be because of the “effects of war (such as in Afghanistan, Bosnia, Kosovo, Liberia, Sierra Leone, Somalia, Sri Lanka, Sudan, Syria); natural disasters (Ethiopia, Honduras); major civil, political and economic changes (El Salvador, Guatemala, Haiti, Mexico, Nigeria); or a combination of these.”\textsuperscript{193} Wistfully, after their long journeys, these children still face many administrative hurdles before they receive asylum (or in many cases, their asylum application is rejected). Both the Dutch and the U.S. legal systems do not provide for specific migration rules for unaccompanied minors that seek asylum. This study aims to address the question to what extent the United Nations Convention on the Rights of the Child offers protection to the treatment of unaccompanied minors seeking asylum in the Netherlands and the United States. The analyses in the Netherlands and the U.S. show they offer protection to unaccompanied minors, but it also shows that in certain issues that unaccompanied minor asylum seekers are confronted with, both countries do not safeguard essential protection that they enjoy under the CRC. This, despite the Netherlands being party to the CRC, and is thus not fully compliant to the CRC. While the U.S. it is not party to the CRC, it does in certain cases offer protection to unaccompanied minors to rights which are also reflected in the CRC.

\textsuperscript{193} Bhabha & Crock, supra note 4, at 189.
With regard to the Netherlands, the revised EU Directives and Regulations under the Common European Asylum System have been of major influence in the protection measurers that are now enforced in Dutch legislation. These EU instruments all explicitly refer to the CRC; hence it indirectly affects Dutch law. Still, the Netherlands does not always offer protection to certain rights enshrined in the CRC. Such is the case with the accelerated asylum procedures, but also with regard to the transfer of unaccompanied minor asylum seekers under the Dublin Regulation, whereby an exception for these children is not (yet) ensured. Furthermore, the ‘best interests of the child’ principle, regulated in Article 3 CRC, is not always adequately incorporated in new Dutch policies, laws and regulations. Likewise, it lacks a general vision of how this principle should be protected. Additionally, examination methods used to establish an unaccompanied minor’s age still receives much criticism, and calls for a multidisciplinary holistic method can be a further step to protect these children’s rights under the CRC. A more positive note is the Dutch Minister of Immigration’s efforts to ensure tracing unaccompanied minor asylum seekers’ family members at the start of the asylum procedure rather that at the end (when it is decided that the child has to return). The same could be said concerning the appointment of a guardian, positive developments have been observed as to their qualifications and professional knowledge. Although the Netherlands has made a reservation to Article 26 CRC, an exception is made for alien children; they have therefore access to education and necessary medical treatment. Lastly, the Dutch Minister of Immigration has also announced that he will examine alternative means of custody of unaccompanied minor asylum seekers rather than detention. Admitting that less and less unaccompanied minors are put in detention facilities, also for a shorter period of time, it is still worrisome that children are put in detention in the first place.

As to the U.S., the CRC has played and continues to play a role as a normative and widely accepted standard setter, albeit the U.S. has only signed the treaty, but not ratified it. While Somalia and South Sudan have stated their intention to become party to the CRC, the U.S. has not done so. Various U.S. officials and lawmakers, as well as some organizations have posed arguments against ratification of the Convention.  

Still, the U.S. is already in compliance with some elements of the CRC, since it implicitly refers to the ‘best interests of the child’ principle in guidelines for asylum officers and immigration judges. The U.S. Homeland Security Act 2002 also refers to the ‘interests of the child’. Moreover, in the Beharry v. Reno case, it was adjudicated that the ‘best interests of the child’ principle should be regarded international customary law. Although the reception of unaccompanied asylum seekers can be a harsh experience for these children, several legal standards were established to give rise to better protection, by introducing the SIJS visa, T-Visa and U-visa. Still, unaccompanied minor’s rights may be impeded during expedited hearings. In addition, many unaccompanied children appear without legal representation before the immigration court. The appointment of a guardian is allowed, but not guaranteed under U.S. immigration law. Although significant stride is made whereby pro bono attorneys represent children, there are still too many children that arrive the U.S. unaccompanied than the resources allow for. With regard to social benefits, the HHS’s Unaccompanied Alien Children Program provides education, health and case management services. Concerning detention, the HHS statute stipulated that these children must be promptly placed in custody that has the least restrictive setting and is of the best interests of the child. Many children are temporary released from custody to family while awaiting the decision of their asylum status. President Obama has issued a memorandum to respond to the influx of unaccompanied alien children at the southwest border, which he describes as ‘an urgent humanitarian situation’, he therefore calls for adequate measures to react to this situation.\footnote{Presidential Memorandum: Response to the Influx of Unaccompanied Alien Children Across the Southwest Border, 2 June 2014, available at: \url{https://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr}.} Although it remains to be seen to what extent this will improve the protection of unaccompanied minors, it does show that the U.S. government is aware of this situation and willing to enhance better protection measures for children travelling alone.

In certain aspects the Netherlands and the U.S. are similar concerning protection for unaccompanied minor asylum seekers, namely with respect to the appointment of a guardian. Both countries are making steps to improve this, but neither of the two countries guarantees a guardian (or legal representative) under their national
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legislation. Both countries demonstrate differences, such as regarding the asylum process that has to be followed, whereby the U.S. has made a distinction between children that are legally or illegally in the U.S., and those that get apprehended at the border. The Netherlands does not make such distinction. Differences are also observed concerning detention facilities. Furthermore, while Dutch legislation is based on human rights motives through EU instruments and the CRC, U.S. legislation is based on facts, as having to response to the major influx of unaccompanied minors crossing the U.S. border. It is moreover interesting to notice that the U.S. offers, albeit not strictly bound by the CRC, several means of protection for unaccompanied minors that seek asylum. Whereas the Netherlands is fully bound to the CRC, it is not fully in compliance in practice. Therefore, one may ask what the relevance or difference is, when being a State Party to a treaty or not. This may however be nuanced since the CRC is the most ratified treaty in the world, and thus may indirectly set a (moral) standard for countries who are not party to the CRC, in comparison with treaties that are not as widely ratified as the CRC.
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