

**To what extent does International and European law protect
unaccompanied minor migrants from human trafficking in the
European Union?**

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Abstract

At least 10,000 migrant children have been declared to be missing in Europe. These children, especially unaccompanied minor migrants, are extremely vulnerable due to their young age and migrant status. Such vulnerability makes them an ideal target for human traffickers. The alarmingly huge number of missing children brings up the question how well are these children protected from human traffickers by law. This dissertation seeks to clarify the extent to what International and European law provides protection to unaccompanied minor migrants.

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Abbreviation

CoE	Council of the European Union
CRC	United Nations Convention on the Rights of the Child
EC	Europea Commission
EU	European Union
Europol	Europol European Union law enforcement agency
Eurostat	European Union statistical office
EP	European Parliament
Interpol	International Criminal Police Organization
IOM	International Organization for Migration
UAMS	Unaccompanied minor migrants - UAM
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	The United Nations Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime

1. Introduction

It is said that European Union's (hereinafter the EU) commitment to human rights is tested by the escalating migration crisis.¹ According to recent data established by the European Commission (hereinafter the EC), over 1 million people arrived to Europe solely by sea in 2015.² The EU has never before seen such a strong immigration flow, and is thus facing new challenges that have proved to be extremely difficult to tackle.³ One of the most pressing issues that have arisen with the immigration crisis is the protection of minor migrants, particularly with regard to the precarious position of unaccompanied minor migrants (hereinafter UAMs).⁴ They are one of the easiest and the most targeted victims by criminal organizations such as human traffickers.⁵ This has been confirmed by numerous international organizations and European institutions. For example, in January 2016, the EU's criminal intelligence agency Europol released a public announcement stating that at least 10,000 unaccompanied child refugees have gone missing within the past two years after arriving to Europe.⁶ It further argued that the pan-European gangs target minors for human trafficking purposes which most likely lead to slavery and sex abuse.⁷ Additionally, the EC has confirmed that there is strong evidence showing the migration crisis has been and still is exploited by human traffickers to target the most vulnerable groups⁸ Concern has further been voiced by well-recognized international organizations such as The United Nations Children's Emergency Fund (hereinafter UNICEF), United Nations High Commissioner for Refugees (hereinafter UNHCR), International Organization for Migration (hereinafter IOM), and Save the Children.⁹

The increasing difficulty to protect UAMs from criminal organizations does not entail a lack of legislation and regulation on the matter. In fact, there are several important International and European legal instruments against trafficking in human beings, specifically dedicated to the protection of children. Furthermore, many International and European institutions have called on governments to more closely monitor sex trafficking and to pay extra attention to

¹ Park 2016.

² EC May 2016, p. 10.

³ Lazardis et al. 2016, p. 1-2.

⁴ EC 2010, para. 5.1.

⁵ *Ibid.* para. 6.1.7.

⁶ EP News, April 2016.

⁷ *Ibid.*

⁸ EC February 2016, p. 9.

⁹ EC June 2016.

vulnerable migrants such as UAMs.¹⁰ However, practice shows that it is rather questionable whether the current laws on International and European level are sufficient and effective enough to protect precisely UAMs from human trafficking.¹¹ Therefore, the principal aim of the present paper is to examine to what extent International and European law protects UAMs from human trafficking.

It is important to note that this thesis will not be dealing with minors who are nationals of the Member States of the EU. Rather, it will only concentrate on third country minors, coming from outside of the EU. In addition, this contribution only addresses the status of UAMs who become victims of human trafficking in the territory of the EU, and not those already brought to the EU already as victims of human trafficking. However, it should be kept in mind that illegal migration and human trafficking can be closely connected. According to Brian Donald, Europol's chief of staff: *“there is a tremendous amount of crossover between those smuggling refugees across borders and gangs ensnaring people for exploitation in the sex trade or as forced labor.”*¹² Already from 2013 Europol has named facilitation of human trafficking and illegal immigration as the top two high priority threats in the EU.¹³

The structure of this thesis will be following: the first Chapter establishes the definition of UAMs describing its root causes, giving current statistics and explaining their vulnerability and threats they are facing with. The second Chapter deals with human trafficking. It provides a definition of human trafficking, and establishes the key features of the crime. Further, the main targets of the traffickers will be identified and lastly current statistics will be provided. The third and fourth Chapter will address International law and European law, examining more specifically the legal instruments that are used to fight against human trafficking, and the legal instruments that are protecting children. The fifth Chapter will give a brief analysis of International and European law on the protection of UAMs from human trafficking and establishes the main lacunas in the law. This contribution will end with a conclusion.

¹⁰ UN Commentary 2011.

¹¹ Eurostat 2016, p. 1.

¹² Genua 2015.

¹³ Europol 2013, p. 34.

2. Unaccompanied minor migrants

2.1. Definition

International law does not provide a specific definition for UAMs. The UN Convention on the Rights of the Child (hereinafter the CRC) has defined a child as “*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”¹⁴ In June 2005, the UN Committee of the CRC published General Comment No. 6 on the *Treatment of Unaccompanied and Separated Children outside Their Country of Origin, providing a clear definition of “unaccompanied children”*.¹⁵ According to this definition, an unaccompanied child is a child that has been separated from his or her parents and /or relatives, and who is not been taken care of by any adult who has the responsibility to do so by custom or law.¹⁶

A similar definition for UAMs can also be found in EU law, namely Article 2 (1) of the European Union Directive No. 2011/95/EU, also known as Qualification Directive.¹⁷ The definition therein states that:

“a third-country national or stateless person below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States.”

The above definition is used throughout the Common European Asylum System, including the Reception Directive¹⁸ and the Procedure Directive¹⁹. In contrast to International law, the definition used in the EU law specifically includes children who are left unaccompanied after they have entered the territory of the Member State.

¹⁴ UNGA 1989.

¹⁵ UNGA 2005. para. 7.

¹⁶ *Ibid.*

¹⁷ EP & CoE 2011.

¹⁸ CoE 2003.

¹⁹ CoE 2013.

Therefore, the term “child” is used throughout the thesis in line with the definition given in the CRC, and the term “UAM” will be used in accordance with the definition used in the European Common Asylum System. Thus, this thesis will limit itself to third country minors that are not nationals of the EU. However, there will be no restrictions regarding to the motivations of the children. In other words, it is irrelevant whether the minor intends to apply for asylum in the EU.

2.2. Motivations

There is a very wide range of motivations and reasons why UAMs come to the EU. They can essentially be divided into two groups: security and economy.²⁰ However, these groups should be taken very abstractly as they often collide and there are many other factors that play a role. Sometimes it is not even clear for UAMs themselves why they came to the EU.²¹ This is mainly due to their early age or trauma either from the long and dangerous journey or from the situation in their country of origin.²² In fact, in many cases the decision to migrate is made by the family of UAM and not by themselves.²³ There might also be reluctance by UAMs to tell the real reasons for migration due to the fear of consequences, shame of the past or interest to continue their journey to another state.²⁴

A distinction is made between the motives of asylum-seeking UAMs and non-asylum seeking UAMs.²⁵ According to European Migration Network Synthesis Report 2015 the EU Member State have listed fear of persecution and/or human rights violations in the country of origin as the most used reasons of the asylum-seeking UAMs.²⁶ This can also be supported by the fact that most of UAMs applying for asylum come from countries where violation of human rights are common and/or the security situation is problematic. Eurostat analyses report 2016 establishes that the main countries of origin of UAMs are Afghanistan, Eritrea, Syria, Somalia, Gambia and Morocco.²⁷ A study about Afghan UAMs, who constitute the biggest number of

²⁰ EMN 2015, p. 5-6.

²¹ *Ibid.* p. 5.

²² *Ibid.*

²³ Lazaridis, p.146.

²⁴ EMN 2015 p. 12.

²⁵ Suárez-Orozco 2009, p. 27.

²⁶ EMN 2015 p. 5.

²⁷ EC May 2016, p. 3.

UAMs in Europe, found that one of the main reasons why the minors take such journey and why parents allow or insist them to leave the country of origin is the lack of security.²⁸ Other threats mentioned were Taliban fights or recruitment, and fear of warlords who abduct and abuse children.²⁹ These examples were often coupled with economic difficulties faced by the families of UAMs. Economical and aspirational motives are found to be the main reasons of the non-asylum seeking UAMs. The minors come to Europe to get better education and more job opportunities, which would guarantee a better income.³⁰ Often, this income is sent to the families of UAMs that stay in the country of origin.³¹ There are also other motives that have been addressed less, such as domestic violence, fear of recruitment of child soldiers, escaping from child marriage and female genital mutilation.³² Motives for entering a particular Member State are generally multiple and only in few occasions stand-alone. State reports have indicated three main motives. They are namely: 1) reunification with family members, 2) joining a migrant community, and 3) for educational and aspirational reasons.³³ Where the motive is to go to a particular State, UAMs often do not apply for asylum before they reach to this particular country. Despite of these preferences, in reality UAMS often end up in countries where they did not intend to go. This can happen if they are found by Officials of the State where they are currently located. It can also depend on the smugglers who adapt the routes and destination countries to changes in border control strategies.³⁴

In conclusion, asylum seeking and non-asylum seeking UAMs driven by the desire for “better life” and “brighter future”, are prompted to embark on exhausting and extremely perilous journeys to Europe.³⁵ The idea of a brighter future generally stands upon three pillars: security, opportunity to develop, and to find a job which would allow a better income.

²⁸ Echavez *et al*, p. 13.

²⁹ *Ibid.*

³⁰ EMN 2010, p. 25-26.

³¹ Echavez *et al*, p. 13.

³² EMN 2010, p. 24.

³³ EMN 2015, p. 5-6.

³⁴ *Ibid.* p. 14.

³⁵ Echavez *et al*, p. 11.

2.3. Current situation in the EU

It is very difficult to give exact number of UAMs that have reached the EU. The most complete data can only be concluded through the children who have applied for asylum.³⁶ According to the European Migration Network the number of UAMs in the EU has constantly increased since 2010.³⁷ Eurostat reports confirm this: while the number of UAMs applying for asylum in the period of 2008-2013 stood within 11,000-13,000, in 2014 the number increased to 24,075, and reached a staggering 88.300 applicants.³⁸ The countries that received the highest number of asylum-seeking UAMs in the EU in 2015 were Sweden (40%), Germany (16%), Hungary (10%) and Austria (9%).³⁹ The listed countries took more than three-quarters of the total number of UAMs applying for asylum in the EU. Sweden and Germany have not only received the highest number of asylum applications within the last two years across the EU but also the highest number among 82 countries that have reported to the UNHCR.⁴⁰ UAMs mainly come from Afghanistan, Syria, Eritrea, Iraq, Somalia, and Gambia.⁴¹ Half (precisely 51%) of the total number of registered UAMs in 2015 were Afghans. From the total number of asylum-seeking UAMs 91% were boys and 9% girls. Most asylum-seeking UAMs were 16-17 years old (57%). 14-15 year old UAMs constituted 30%, and 13%, proximately 11 800, consists UAMs aged less than 14.⁴²

Unfortunately, there is a lack of comprehensive and comparable data on the numbers of the non-asylum seeking UAMs.⁴³ It is therefore unknown how many UAMs are currently located in the EU. According to statistics given by some Member States non-asylum seeking UAMs constitute much bigger percentage of UAMs than the ones that are looking for asylum. For example, Belgium established that in 2013 the number of non-asylum seeking UAMs was three times bigger than the number of asylum-seeking UAMs.⁴⁴ Only few Member States have been able to provide some kind of data about the non-asylum seeking minors. According this data, in 2013 the number of UAMs in the EU not seeking asylum reached over 8,500.⁴⁵

³⁶ EMN 2015, p. 9.

³⁷ *Ibid.*

³⁸ EC May 2016, p. 1.

³⁹ *Ibid.* p. 2.

⁴⁰ UNHCR 2015, p. 31.

⁴¹ EC May 2016, p.3.

⁴² *Ibid.*

⁴³ Nikolova 2015, p. 16.

⁴⁴ EMN 2015, p. 5.

⁴⁵ *Ibid.*

However, it is clear that the number cannot be relied upon and in reality the number of UAMs is actually much higher. This argument can be supported by the fact that 8,461 of the estimated 8,500 were registered only in Italy alone.⁴⁶

In addition to Europol's rough estimation on 10,000 missing children, there have been numerous international, regional and State organizations that have published their own - rather astounding - ratings on missing children. One of the most recent ones is by the international organization Save the Children. According to the organization the estimation of children that have disappeared in Hungary during February 2016 is roughly 90-95%. In January 2016, the German Federal Criminal Police stated that 4749 children have been considered to be missing in Germany. It further stated that 431 of the total number is younger than age of 13.⁴⁷ The Italian Ministry of Welfare has reported that 62% of UAMs who had arrived within the first five months have gone missing.⁴⁸ According to a Swedish coastal town of Trelleborg 1,000 minors from 1,900 who arrived in September 2015 have gone missing.⁴⁹ The British Asylum Screening Unit reported that in the UK 60% of UAMs accommodated in social care centers go missing.⁵⁰

However, it is important to add that this is not a new phenomenon. Already in 2008 Save the Children released a report stating that 60% of the 1,860 children placed in care homes in Italy, have gone missing.⁵¹ In 2010 Terre des Hommes reported that up to half of UAMs in reception centers in France, Switzerland and Belgium had disappeared.⁵² The previous facts show that this problem did not emerge from the current migration crisis in Europe. Nevertheless, due to the fast increase of UAMs arriving to Europe, the problem has become bigger as the quantity has increased and therefore it is more visible to the public. It is not certain what exactly happens with them after they disappear. Generally, the reason for disappearance is that UAMs choose another destination or move into the 'informal economy'. However, due to their vulnerability, it is certain that many of them, no matter what their reasons are to disappear, end up exploited.⁵³

⁴⁶ *Ibid.* p. 10.

⁴⁷ Missing Children Europe homepage.

⁴⁸ Greene 2016, p. 10.

⁴⁹ *Ibid.*

⁵⁰ Frontex 2010 p. 22.

⁵¹ *Ibid.*

⁵² Bradley 2010.

⁵³ Glind 2010, p. 13.

2.4. Vulnerability

The European Court of Justice stated in its judgment on *M.A. V. UK* that UAMs have double vulnerability: they are vulnerable due to their young age and due to the fact that they are migrants.⁵⁴ Children, whether coming alone to the EU or being separated from their parents in the territory of the EU, are especially vulnerable to violence, deception, exploitation and coercion. This is especially the case for UAMs who have crossed the border illegally, do not speak the language of the country of destination, and/or are below the minimum age of employment.⁵⁵ There are several reasons why UAMs constitute one of the most vulnerable groups. First of all, children usually look help and support from adults. They are more likely to trust strangers and become dependent of them. Therefore, it is very easy for adults to take advantage of their vulnerability and dependency. Another reason is that UAMs generally have very few legal channels they can use to migrate to the EU. Therefore, most of them, being undocumented and having no authorization, get to the EU illegally.⁵⁶ Consequentially, UAMs are exposed to additional dangers in transit and at destination. As they have more difficulties to access social services they often purposely try to avoid the local legal entities that could help them.⁵⁷

Most of the minors end up working in the informal economy in the country of destination, where it's more likely that they will be exploited. UAMs can mainly access illegal jobs through adults, which results in an unequal power relationship. Monitoring the informal economy is very difficult impeding the State to provide protection to the abused. Thirdly, a research carried out in 2013 by Swedish and Norwegian academics found that within the first years of resettlement, these children have very high rates of mental health problems. The most common ones are post-traumatic stress disorder and depression.⁵⁸ Last but not least, the level of knowledge and preparation for traveling and staying in another country plays an important role. UAMs arriving to the EU have generally very little knowledge of the actual situation in the EU. The Europol's chief of staff Brian Donald stated, there is a tight cooperation between

⁵⁴ *ECJ: M.A. v. UK.*

⁵⁵ Glind 2010, p. 9.

⁵⁶ *Ibid.* p. 13.

⁵⁷ *Ibid.*

⁵⁸ Eide & Hjern 2013, p. 666.

those smuggling refugees to the EU and criminal enterprises recruiting or kidnapping people for human trafficking.⁵⁹

3. Trafficking in Human Beings

3.1. Definition

According to Interpol trafficking in human beings is “a multi-billion dollar form of international organized crime which affects every region in the world”.⁶⁰ The first internationally binding definition of ‘trafficking in persons’ was established through the Palermo protocol in 2010.⁶¹ The definition is widely recognized within the international community. It has been adopted by many international organizations and institutions, including the EU.⁶² According to the definition trafficking in persons is:

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Pursuant to the definition there are three fundamental elements: 1) the act; 2) the means; 3) and the purpose. However, section c of article 3 of Palermo Protocol stipulates that the second element is not required when it comes to trafficking in children.⁶³ The definition points out several key features of trafficking in human beings. Some of them however are commonly misunderstood. First, smuggling of migrants is not the same as human trafficking.⁶⁴ These two distinct greatly as the goals of the two crimes are completely different. The purpose of

⁵⁹ Sheerwood 2015.

⁶⁰ Interpol 2015, p. 1.

⁶¹ UNGA 2000.

⁶² EP & CoE April 2011, article 2(1).

⁶³ UNGA 2000.

⁶⁴ Salt 2002, p. 31-32.

human trafficking is to exploit human beings while the goal of smuggling is to transfer migrants across the borders. Furthermore, human trafficking is often combined with other criminal activities, such as prostitution and drug trade that fall under the networks controlled by the organized criminal gangs.⁶⁵

As human trafficking is much more severe and intrusive, it should not be compared to smuggling.⁶⁶ Second, trafficking does not affect only women and girls as traditionally believed. Also men and boys can be victims of trafficking.⁶⁷ The scope of the victims of human trafficking has been significantly extended as criminals constantly find new ways to exploit people. Third, human trafficking does not require a cross-border element. It is not a requirement that the victim is taken to another country.⁶⁸ Last but not least victims cannot consent to trafficking.⁶⁹ In other words, criminals cannot escape from law by stating that the victim agreed with the illegal act. Once the crime has been established, this justification will be invalid. The impossibility to consent is also another way how to make a difference between human trafficking and illegal smuggling. In addition, the victims consent to some of the human rights violations that occurred during the trafficking process does not lenient the sentence.⁷⁰

As already mentioned above, the definition of human trafficking constantly changes with time. Kevin Bales compared modern slavery to the slavery of past with following key elements: high number of potential victims due to the irrelevance of ethnic differences.⁷¹ Thus, there is also low cost of slaves and high profits for traffickers. In addition, the relation between a trafficker and the slave is generally rather short.⁷² Taking those characteristics into consideration, one can conclude that modern time slavery is very flexible. From their practice, it can also be seen that traffickers can easily change their methods and patterns to fit with the demand and supply.⁷³ Nowadays factors such as age, gender, nation or religion do not play as

⁶⁵ Väyrynen 2003, p. 10.

⁶⁶ *Ibid.* p. 4.

⁶⁷ Jones 2010, p. 1162.

⁶⁸ OHCHR 2014, p. 3-4.

⁶⁹ Salt 2002, p. 32.

⁷⁰ UNODC 2014, p. 8-9.

⁷¹ Bales 2004, p. 14- 15.

⁷² *Ibid.* p. 15.

⁷³ EC June 2012, p. 14.

important role as they did in the past. It is rather driven by a number of different elements such as cultural, social, and economical.⁷⁴

3.2. Root causes and main targets

Anyone can fall into the trap of human trafficking. It is enough for a person to be in a wrong place at a wrong time to lose control over their life. However, some people are more likely to become victims of human trafficking than others. Eurostat has listed following factors as main root causes of trafficking: poverty, domestic violence, social and/or gender inequality, armed conflicts, economic exclusion, demand for sexual and cheap labor services.⁷⁵ Reflecting from previous experiences criminal enterprises are more interested of getting their victims easily and without any notice by the society. As mentioned above, specific characteristics such as age, gender, nationality or any other factor does not matter anymore. This can be demonstrated by the fact that there has been an increase in trafficking persons with disabilities.⁷⁶ For criminals of modern human trafficking a perfect target is mostly a person who is weak, in a vulnerable position, and deprived in society.⁷⁷ According to the theory of *'Push and pull factors of human trafficking'* people's living conditions play a critical role.⁷⁸ This also explains why there is a strong linkage between migration and human trafficking. In fact, most of the victims of trafficking are initially migration seekers.⁷⁹ People with poor living conditions, and with economic and social struggle, have the urge to go look for a better life. Being in a different unknown environment, however, can be more dangerous than believed. Human traffickers can easily take control over the migrants before the State notices them. As a result, authorities do not know about these people and no action is taken in order to help them, making them a perfect target for traffickers.

Taking the above into consideration, it is very likely that with the current migration flow, human trafficking has also increased. National disasters and armed conflicts can substantially

⁷⁴ UNODC 2008. p. 454-455.

⁷⁵ Radjenovic 2015, p. 58.

⁷⁶ U.S. Department of State 2012.

⁷⁷ Väyrynen 2003, p. 5.

⁷⁸ Stanojoska & Petrevski 2012, p. 4.

⁷⁹ Cho 2015, p. 2.

help human trafficking to flourish.⁸⁰ This is mainly due to weakening social service support systems and bad infrastructure. In emergency situations it is common that the crisis-affected individuals who also have the biggest potential to become victims of human trafficking are ignored by the authorities.⁸¹ However, if the authorities do not notice and the media does not highlight the problem to the public at large, the perpetrators can work peacefully and get more migrants to the illegal businesses. As explained above UAMs in particular need protection from criminal organizations as they will be looking for adults to depend on.

According to the Europol's head of staff there is evidence that a number of UAMs in Europe have already been victims of sexual exploitation. He added that within the past 18 months there has developed an entire criminal infrastructure that exploits the migrant flow. There is proof that cooperation between people smuggling refugees into the Union and human trafficking gangs occur. Those criminal gangs exploit the migrants for sex, child labour and slavery. This statement can be supported by the fact that longstanding criminal gangs who have been involved with human trafficking before are now appearing in Europol's Phoenix database for crimes related to migrant smuggling.⁸² Therefore, it can be argued that human traffickers are targeting the migrants who are coming into the EU.

3.3. Statistics

In 2009 the estimated number of people who were enslaved as a result of human trafficking was roughly 12.3 million in the world.⁸³ According to the Global Slavery Index the number now is about 35.8 million.⁸⁴ The United Nations established in 2014 Global Report on Trafficking in Persons which covered the period from 2010 to 2012. The report showed that 49% of the victims of human trafficking were women, 18% men, 12% boys and 21% girls. As the given numbers demonstrate females are significantly more trafficked than males. The main reason for human trafficking was sexual exploitation, which constituted 53% of the whole crime. 40% of trafficking ended up in forced labor, 0.3% was for organ removals and 0.7% other. The report established that the number of detected children as victims of human

⁸⁰ Balbin 2015, p. 3.

⁸¹ *Ibid.*

⁸² Sherwood 2015.

⁸³ OHCHR 2009.

⁸⁴ Global Slavery Index.

trafficking had been constantly increasing. The increase could be seen from both genders. However, the number of girls is much bigger than the boys.⁸⁵

In 2014 also the EC published a press release about the statistics of human trafficking in Europe within the period 2010-2012.⁸⁶ Pursuant to the press release, 30,146 victims were registered within that time period in the EU. Female victims constituted roughly 80% of the total number while male victims 20%. Children formed 16% of the total number of registered victims. About 35% of the victims were outside of the EU.⁸⁷ In the period of 2008-2010, there was a significant increase in percentage of presumed and identified victims outside of the EU. The percentage of foreign female victims increased from 18% to 39% while for foreign male victims the percentage increased from 12% to 37%.⁸⁸

The press release, published by the EC in 2014 had also statistics about different forms of exploitation. According to these statistics 69% of the victims were trafficked for sexual exploitation (predominantly female - 95%), 19% were trafficked for forced labor and 12% constituted different reasons for exploitation such as removal and selling organs.⁸⁹ The statistics made demonstrated that within the time period of three years there was a constant increase in trafficking for sexual exploitation (in 2008 58%, in 2009 60%, and in 2010 66%). This was also confirmed by the United Nations Office on Drugs and Crime (UNODC; 2010), which named Europe as a region where there is the highest percentage of sexual exploitation in the world.⁹⁰ It estimated that the market that deals with sexual exploitation within the EU is around €2.5 billion annually.⁹¹

Unfortunately, it is impossible to give exact statistics about human trafficking of UAMs. Both: human trafficking and the legal and illegal migrants in the EU can only very roughly be estimated. As the two areas are illegal, the activities falling within their scope are tried to be hidden from the State, making its tracking exceptionally difficult.⁹² Therefore, this paper cannot provide more concrete information about the number of UAM victims of human trafficking.

⁸⁵ UN Crime Congress 2015.

⁸⁶ EC 2014.

⁸⁷ Jobe 2010, p. 15.

⁸⁸ Eurostat 2013, p. 10.

⁸⁹ *Ibid.* p. 14-15.

⁹⁰ Hughes 2014, p. 2-3.

⁹¹ *Ibid.* p. 2.

⁹² Kangasounta 2015, p. 86.

4. International law

4.1. Introduction

International law has been recognized as a powerful mechanism for fighting human trafficking.⁹³ States and organizations have numerous times collaborated efforts at international level to create programs, task forces and institutions with the aim of combating such crime. Also, many international treaties have been concluded for this specific purpose.⁹⁴ Most of the treaties explicitly emphasize the necessity to protect women and children since these two groups are the most vulnerable, and consequentially most targeted by criminal organizations.⁹⁵ Regarding the protection of migrant children, one can mostly find treaties which only briefly address the importance of protecting these children. For example, the Universal Convention relating to the Status of Refugees does not include any articles dedicated to the rights of migrant children.⁹⁶ It merely stipulates in the Register of the Convention that the Conference recommends ‘*The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.*’⁹⁷ Hence, the following Chapter will mainly look at Palermo protocol – one of the most well-known international legal instruments to fight against human trafficking, and the CRC – the main international instrument providing rights to children.

4.2. International law against human trafficking: Palermo Protocol

One of the latest and highly respected legal instruments to fight against human trafficking is the United Nations Convention against Transnational Organized Crime, and its additional protocol, the Palermo Protocol (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children).⁹⁸ The Palermo Protocol was adopted in November

⁹³ King 2008, p. 88.

⁹⁴ Gallagher 2010, p. xxiii-xlvi.

⁹⁵ King 2008, p. 88.

⁹⁶ UNGA 1951.

⁹⁷ *Ibid.* IVB(2) Register.

⁹⁸ UNGA 2000.

2000 and entered into force in December 2003.⁹⁹ Today 166 States are members to the protocol, including the EU.¹⁰⁰ The Protocol has contributed significantly to the fight against human trafficking, as it was the first international legal instrument to provide a definition of ‘human trafficking’.¹⁰¹ This definition has by now been adopted by most legal instruments dealing with that specific crime. It is also of great importance as it introduced the widely accepted ‘3P’ paradigm for national anti-trafficking laws: 1) Prevention 2) Protection and 3) Prosecution.¹⁰² These three elements recur in Article 2 of the protocol which stipulates that the purpose of the instrument is to ‘*prevent and combat trafficking in persons, paying particular attention to women and children*’; ‘*protect and assist the victims of such trafficking, with full respect for their human rights*’; and ‘*to promote cooperation among States Parties in order to meet those objectives*’.

In numerous provisions throughout the Protocol it has been indicated that children belong to a particularly vulnerable group, and require specific attention. The Protocol also provides less strict conditions for children to be considered as victims of trafficking in comparison with grownups. Article 3(c) of the protocol precludes the requirement of means that is listed in subsection (a) as a necessary condition for a person to be considered as victim of human trafficking, in case the victim is a child. Article 9 of the protocol focuses on prevention of human trafficking. Subsection 4 of the article obliges State Parties to take or strengthen precautionary measures to reduce vulnerability, highlighting women and children. Subsection 5 of the article obliges State Parties to strengthen or adopt legislative or other measures like educational, cultural or social measures, to discourage the demand that leads to trafficking.

Even though the Protocol has been recognized as a significant step forward in combating human trafficking, it has also received widespread criticism for its ambiguity and inefficiency.¹⁰³ For example, the Protocol does not provide any articles specifically dedicated to minors. The Protocol only emphasizes the vulnerability of children, leaving out any direct instructions for States how to effectively provide the necessary protection. Thus, it is effective for specifically UAMs only in combination with other treaties that provide more detailed

⁹⁹ *Ibid.*

¹⁰⁰ U.S. Department of State 2015, p. 11.

¹⁰¹ Brusca 2011, p. 1.

¹⁰² Bruckmuller & Schumann 2012, p. 106.

¹⁰³ Shoaps 2013, p. 932.

provisions. Another major critique towards the protocol is its focus on women and children.¹⁰⁴ Numerous legal scholars have argued that such kind of emphasis perpetuates the traditional conceptualization of females as the sole victims of human trafficking.¹⁰⁵ Samuel Jones Vincent noted in his article ‘*The Invisible Man: The Conscious Neglect of Men and Boys in the War on Human Trafficking*’ that by making females the iconic victims of human trafficking; boys are left out of the crucially needed attention.¹⁰⁶ He argued that consequentially law enforcement officials are directed more to notice girls and women rather than boys. This in turn has led to a point where criminal organizations are more attracted to specialize in trafficking of boys as this is an easier and safer ‘business’ for them.¹⁰⁷ The lack of necessary attention to boys is especially problematic when it comes to the protection of UAMs. As stated above, 91% of the UAMs that arrived to Europe in 2015 were boys. This means that the majority of UAMs are influenced negatively by the female-focused approach and potentially receive less attention from law enforcement officials than they should. Therefore, it could be argued that Palermo Protocol contains serious lacunas preventing it to effectively protect UAMs from human trafficking. It follows from here that additional legal instruments must be observed.

4.3. International law protecting Children’s Rights: The CRC

The most well-known international instrument that focuses on the rights of children is the CRC.¹⁰⁸ The CRC was adopted in November 1989 by a consensus of the members of the UN and it entered into force in September 1990.¹⁰⁹ By now 194 States, including all EU Member States, have ratified the CRC.¹¹⁰ In 2011 the EC stated that the ‘standards and principles of the UNCRC must continue to guide EU policies and actions that have an impact on the rights of the child’.¹¹¹ The CRC has been characterized as a “comprehensive indivisible instrument”.¹¹² The convention contains four general principles that are believed to be its cornerstones. These are 1) the principle of ‘the best interests of the child’ stipulated in article

¹⁰⁴ *Ibid.* p. 936.

¹⁰⁵ Gallagher 2010, p. 78.

¹⁰⁶ Jones 2010, p. 1162.

¹⁰⁷ *Ibid.* p. 1162-1163.

¹⁰⁸ Stern 2015, p. 244.

¹⁰⁹ UNGA CRC 1989.

¹¹⁰ Human Rights 2014.

¹¹¹ Canetta et al 2012, p. 9.

¹¹² Zeldin 2007, p. 2-3.

3(1) CRC; 2) the principle of non-discrimination provided in article 2(1) CRC; 3) the principle of child's rights to maximum survival provided in article 6 CRC; and 4) the principle of development and the respect of the views of the child stipulated in article 12 CRC. These principles guarantee that the CRC applies regardless of the immigration status of the child.¹¹³

The CRC explicitly provides children protection from human trafficking. Article 35 CRC obliges State Parties to take all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. In addition, in May 2000 the United Nations General Assembly adopted optional protocol to the CRC: "*Sales of Children, Child Prostitution and Child Pornography*".¹¹⁴ The protocol obliges States to prohibit the sale of children, child prostitution and child pornography. The Preamble of the Protocol reflects CRC's language regarding the protection of children from economic exploitation and doing dangerous work. The preamble also calls upon State Parties to implement specific provision of the CRC, including articles 34 and 35 which cover the protection of the children against trafficking, abuse and sexual exploitation. It contains provisions, such as article 12, on strengthening the cooperation of State Parties in regard to sex trafficking of minors and on reporting requirements.¹¹⁵ However, the only children that are required to be specially protected are the child victims of human trafficking.¹¹⁶

The CRC also provides specific protection to migrant children. Special treatment is enjoyed by the "*children deprived of their family environment*" provided in article 20 CRC, and/or "*children seeking for asylum or already having refugee status*" provided in article 22 CRC. Pursuant to article 20 CRC, children that are permanently or temporarily deprived of their families are entitled to State's assistance and to special protection. Article 22 CRC obliges States to provide appropriate protection and humanitarian assistance to children that are seeking refugee status or who are have given refugee status. Therefore, article 20 CRC/22 CRC in conjunction with article 35 gives specific protection from human trafficking to the children that are either deprived of their families or that are seeking for asylum.

¹¹³ UNGA 1989, para. 12.

¹¹⁴ UNGA 2001.

¹¹⁵ UNGA 1989.

¹¹⁶ *Ibid.* Article 8.

UAMs are not explicitly addressed by the CRC. While it is clear that the asylum-seeking UAMs fall within the special protection of article 22 CRC, it is questionable whether all the non-asylum seeking UAMs are covered by article 20 CRC. Pursuant to article 20 CRC, States must provide special protection and assistance to children that ‘*temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment.*’ The vagueness of the article leaves room for interpretation. According to a Commentary on CRC, article 20 applies to all children without parental care, regardless of their motivation for traveling to another State.¹¹⁷ Such interpretation is in line with the main principles of ‘non-discrimination’ and ‘child’s best interest’. However, practice shows that States mostly consider irregular UAMs as children who have “voluntarily”¹¹⁸ left their homes for a better life, meaning that they are not deprived from their family environment and hence are not eligible for special protection.¹¹⁹

Furthermore, the motivation of children has also been made substantial through the principle of non-refoulement. This principle is covered by treaty and customary law.¹²⁰ Pursuant to this principle, States are prohibited to return asylum seekers (including UAMs) if that results in violating their human rights.¹²¹ Consequentially, all asylum-seeking UAMs must always be allowed to enter the EU, regardless of the entry requirements that Member States might have. The non-asylum seeking UAMs do not have such guarantee, leaving it up to the Member States’ national legislation to decide whether they can or cannot enter the State.¹²² Consequentially, most of the EU Member States for example, treat non-asylum seeking UAMs as adult third country nationals and keep the right to refuse them when they do not fulfill the entry requirements (Austria, Belgium, Croatia, Czech Republic, Estonia, Germany, Greece, Finland, France, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Slovak Republic, Sweden, United Kingdom, Norway). Only a small group of EU Member States have included in their national legislations that UAMs cannot on any grounds be refused to enter the State (Bulgaria, Hungary, Italy, Spain).¹²³

¹¹⁷ Cantwell & Holzscheiter 2008, p. 46.

¹¹⁸ In most cases children are either forced by their parents or their economically and/or socially poor situation to leave their country.

¹¹⁹ Galance 2014, p. 745-746.

¹²⁰ UNHCR 1994.

¹²¹ *Ibid.*

¹²² EMN 2015, p. 15.

¹²³ *Ibid.*

In 2005 the Committee of CRC established a General Comment No. 6 on the vulnerability of separated and unaccompanied children.¹²⁴ In its comment, the Committee noted that the prohibition of non-discrimination in particular forbids any “*discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant*”.¹²⁵ It further acknowledges the large number of protection gaps in the treatment of such children, and recognizes that UAMs face greater risks of inter alia sexual exploitation and abuse, child labor and detention.¹²⁶ The Committee further remarked that even though the problem of trafficking of children goes beyond the scope of this General Comment, it must be noted that there is generally a connection between trafficking and the situation of separated and unaccompanied children.¹²⁷ It also suggested several measures to improve the situation: the prompt appointment of the guardians, the improvement in informing the children about the dangers they may encounter, and the establishment of measures to provide follow-up to children particularly at risk.¹²⁸ Pursuant to the Committee’s statement States are required to have a proper legal framework and take measures to adequately represent the UAMs best interest.¹²⁹

4.4. International instruments protecting UAMs from human trafficking

Up to date there are no legally binding provisions under International law that specially concentrate on the protection of UAMs against human trafficking. As the previous examples have demonstrated there is a general prohibition of human trafficking of children, and specific groups of UAMs have been granted special benefits. However, it is uncertain to what extent exactly all UAMs protected.

There is a number of non-binding guidelines and recommendations that give more specific instructions to States about UAMs. Various organs such as the UN Refugee Agency, the Office of the High Commissioner for Human Rights, and the Committee of CRC have

¹²⁴ UNGA 2005.

¹²⁵ *Ibid.* para. 2.

¹²⁶ *Ibid.* para 3.

¹²⁷ *Ibid.* para 23.

¹²⁸ *Ibid.* para 24.

¹²⁹ *Ibid.* para. 33.

consistently highlighted the extreme vulnerability of UAMs in their recommendations and have invited States and International Organizations to take further action in improving the relevant legislations.¹³⁰ There are also instructions provided in the UNICEF Guidelines on the protection of Victims of Child Trafficking (2006), Separated Children in Europe Programme Statement of Good Practice¹³¹, Joint UN Commentary on EU Trafficking Directive¹³², and the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the Office of the High Commissioner for Human Rights.¹³³ However, most of these instruments only dedicate their instructions to child victims of human trafficking, and do not give any guidelines how to effectively prevent the child from becoming a victim. One of the most recent and collaborative reports made to protect UAMs is the UNHCR and the UNICEF established report: Safe and Sound: What States can do to ensure respect for the child's best interests of unaccompanied and separated children in Europe.¹³⁴ It gives a number of recommendations to States to effectively protect UAMs. For instance, it stipulates that:

“Regardless of the immigration status of an unaccompanied or separated child, continuous efforts at tracing of family, whether immediate or extended, is of utmost importance to determine whether reunification would be in the child's best interests.”

Even though there is nothing specific mentioned about the protection of UAMs from human trafficking, these guidelines contribute significantly on this particular issue as well. Thus, it can be concluded that International law gives a protection to UAMs from human trafficking. The binding rules establish the obligation of States to protect migrant children from human trafficking, and the non-binding guidelines give more specific instructions on how to achieve this objective.

¹³⁰ EC June 2016.

¹³¹ SCEP 2010.

¹³² UN Commentary 2011.

¹³³ OHCHR 2002.

¹³⁴ UNHCR 2014.

5. European Union law against human trafficking

5.1. Introduction

Since 1990s the EU has actively been addressing the problem of human trafficking. A large number of agreements, initiatives and funding programs have been created for this purpose.¹³⁵ However, the open borders within the EU make it difficult to prosecute criminal organizations dealing with cross-border crimes. In addition, unexpected changes within the EU such as the recent migration flow, can impact greatly on the increase of human trafficking. For example, in a report from 23 May 2016, the Commission confirmed that the refugee crisis is causing a great increase in human trafficking, especially in trafficking of UAMs.¹³⁶ Consequentially, EU laws and policies are increasingly addressing the situation of separated and unaccompanied children who have reached to the EU. The EU has established a number of specific obligations for Member States regarding the unaccompanied children. It has also revised the EU Directive on trafficking in human beings, the Common European Asylum System, and the EU Return Directive.¹³⁷

5.2. European instruments to combat human trafficking

The EU legislative framework contains prohibition of human trafficking in its primary and secondary legislation. In addition, the EU has become a member to several international treaties that combat against human trafficking.¹³⁸ The most important instruments to fight against human trafficking that have been established at European level are directive 2011/36/EU and the Anti-Trafficking Convention of the Council of Europe.¹³⁹

Under primary legislation the following provision is relevant: article 5 of the Charter of Fundamental Rights of the European Union prohibits slavery and forced labor.¹⁴⁰ In fact, human trafficking is the only organized crime that is prohibited by the Charter. According to

¹³⁵ European Commission webpage.

¹³⁶ EC Report 2016, p. 8.

¹³⁷ EP 2002.

¹³⁸ UNGA 2000.

¹³⁹ EP & CoE 2011; European Council 2005.

¹⁴⁰ EU 2012.

article 79 in conjunction with article 83 of the Treaty on the Functioning of the European Union, human trafficking is regarded as a particularly serious crime with a cross-border dimension, and thus minimum rules regarding the definition of criminal offences and sanctions need to be harmonized by the EU. In recent years the combat against human trafficking has begun to play very important role in both: the European Agenda on Migration and the European Agenda on Security.¹⁴¹

For secondary legislation, directive 2011/36 must be analyzed.¹⁴² Article 1 of the directive stipulates that the directive provides minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It further clarifies that common provisions to strengthen the prevention of the crime as well as the protection of the victims are provided.

Articles 13 - 16 of the directive focus on assistance and protection of child victims of human trafficking. According to article 16 UAMs especially should receive extra attention due to their high vulnerability. Member States are recommended to apply reception measures that are appropriate for children and provide relevant procedural safeguards until a durable solution is found. The primary consideration should be to find a durable solution within the shortest possible period based on an individual assessment. However, articles 13 - 16 of the directive focus on UAMs who have already become victims of human trafficking, leaving out the same necessary protective measures for UAMs who have arrived to the EU and have not yet been captured by human traffickers. Only article 18 of the directive deals with the prevention of such crime. Pursuant to that article, Member States must ‘take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.’ It further requires States to take necessary measures to raise awareness, promote regular training for officials who are likely to come into contact with victims or potential victims.

Another important legislation is the Anti-trafficking Convention by the Council of Europe.¹⁴³ The purpose of this legislation is to promote combating against human trafficking, to protect the human rights of the victims, and to promote international cooperation.¹⁴⁴ Pursuant to

¹⁴¹ Eurojust 2015, p. 2.

¹⁴² EP & CoE April 2011.

¹⁴³ Europe an Council 2005.

¹⁴⁴ *Ibid.* Article 1.

article 5(5) all State Parties must take ‘*specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.*’ The legislation has also a specific provision on UAMs. According to article 10(4) State Parties must as soon as an UAM is identified as a victim 1) Provide representation for the child, 2) Try to establish his/her identity, and 3) Try to locate his/her family if it is the best interest of the child. However, as articles 13-16 of directive 2011/92, the provision provides special attention only to the UAMs who are or have been victims of human trafficking.

5.3. Instruments protecting migrant children

The EU has been promoting the rights of children since it was created. This can be seen in its primary legislation - article 3 of Treaty on European Union.¹⁴⁵ However, never before has it given that much attention to the rights of migrant children, especially to UAMs, as it is doing now. As the number of UAMs has increased greatly within the last decade, various amendments, new legislations and action plans have been made regarding the protection of migrant children.¹⁴⁶

Primary legislation provides rights to children via the following articles: Article 3(5) of the Treaty on European Union stipulates that the Union will contribute to the protection of human rights, in particular the rights of the child. It also highlights the importance of the principle of non-discrimination.¹⁴⁷ Article 24 of Fundamental Rights of the European Union lists the basic rights of children: 1) right to be protected and cared as necessary for their well-being, 2) right to express their views freely, 3) principle of best interests.

Regarding specifically migrant children, the EU has established or amended by now several provisions in secondary legislation to increase the rights and protection accorded to the most vulnerable group.¹⁴⁸ The European Agenda on Migration has highlighted the particular necessity to protect children in migration.¹⁴⁹ The EU funding programmers have earmarked more than €200 million to protect this group. Furthermore, the EU has planned to support the

¹⁴⁵ EU 2002.

¹⁴⁶ O’Donell 2014, p. 10-20.

¹⁴⁷ EU 2002.

¹⁴⁸ Papademetriou 2014, p. 4.

¹⁴⁹ EC February 2016, p. 1-2.

IOM, Save the Children, UNCHR and UNICEF with €3.5 million to further implement a shared child protection with the special focus on the children of migration in the EU.¹⁵⁰

The principle of best interest of the child is represented in all recently established legislation regarding migrant children. According to article 6 of directive 2013/32/EU on the Asylum Procedures, the principle shall be a primary consideration for Member States.¹⁵¹ For the assessment of the best interest of child, safety and security consideration play a pivotal role. The principle is also important regarding the obligation of Member States to appoint a legal guardian. There is no explicit general obligation of appointing a guardian for UAMs under EU law. However, it has been argued that the child's best interest principle implicitly obliges states to choose a legal guardian since it most likely to ensure the UAM's overall well-being and help to overcome their limited legal capacity.¹⁵² Also according to article 24 of the directive 2013/33/EU on the Reception Conditions and article 25 of directive 2013/32/EU on Asylum Procedure require legal representative for unaccompanied children seeking asylum.¹⁵³

Furthermore, the EU has recently established several regulations that highlight the necessity of giving special attention to UAMs. This, for example, can be seen in article 7 of the European Border Surveillance System Regulation 2013 where it is stated that the Member States must comply with fundamental rights, the principle of non-refoulement and respect human dignity, giving priority to vulnerable groups such as the special needs of children and UAMs.¹⁵⁴ This requirement is also reiterated in article 4 (4) of the Regulation 656/2014¹⁵⁵ regarding the External Sea Borders which stipulates the following:

“Throughout a sea operation, the participating units shall address the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, persons in need of international protection and other persons in a particularly vulnerable situation.”

The recent amendments and newly established regulations prove that the EU is putting more attention and effort to provide better protection and a safer environment to migrant children.

¹⁵⁰ *Ibid.* p. 2.

¹⁵¹ CoE 2013.

¹⁵² FRA 2015, p. 15.

¹⁵³ CoE 2013.

¹⁵⁴ EP & CoE 2013.

¹⁵⁵ EP & CoE2014.

However, many critics find that there is still a lot of room for improvement as some crucial areas such as detention laws are still poorly handled.¹⁵⁶

5.4. Specific law for the protection of UAMs from human trafficking

Pursuant to Article 6(2) of the Regulation No 562/2006 on the rules governing the movement of persons across borders ‘in the case of accompanied minors, the border guard shall check that the persons accompanying minors have parental care over them, especially where minors are accompanied by only one adult and there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them. In the latter case, the border guard shall carry out a further investigation in order to detect any inconsistencies or contradictions in the information given.’¹⁵⁷

In 2010, an Action Plan on Unaccompanied Minors (2010-2014) was established by the EU in order to provide a common approach in tackling the problems arising from the increased number of UAMs arriving to the EU.¹⁵⁸ Chapter 4 of the Action Plan focuses on the Reception and Procedural Guarantees in the EU. It stipulates that UAMs should be separated from adults as soon as they are detected in order to protect them and cut off relations with smugglers or traffickers. This would prevent the possibility of victimization and re-victimization of the UAMs. States are also instructed to place UAMs to appropriate accommodations where they would be treated in accordance with their best interest. The Action Plan further recommended the EU to adopt higher standards of protection for UAMs ‘by completing negotiations on the revision of the asylum acquis and by adopting more comprehensive legislation on trafficking in human beings and sexual exploitation of children.’

In 2011, the Council of European Union confirmed that combating disappearance and sexual exploitation of children is a priority for the European Union.¹⁵⁹ The European crime-fighting organs, Europol and Eurojust, have been actively working since then to liquidate criminal

¹⁵⁶ Fagerholm & Verheul 2016, p. 28.

¹⁵⁷ CoE 2006.

¹⁵⁸ EC 2010.

¹⁵⁹ CoE 2001.

networks which are smuggling and trafficking children.¹⁶⁰ The Asylum, Migration and Integration Fund have recently published a dedicated call for grants amounting to €3 million to fight human trafficking.¹⁶¹ The priority of the call has been put on UAMs at risk of trafficking and on early identification and protection of child victims of trafficking.¹⁶²

The European Network of Ombudspersons for Children noted in its 2016 Call for the EU and EC that there is still a need to improve the current legislative framework regarding the protection of children. For example, the UAMs should be exempted completely from the Dublin Regulation, changes should be made in regulating the laws on detention and family reunification, and cooperation on cross-border issues should be increased.¹⁶³

6. Synthesis

Pursuant to the analysis above, it can be observed that International law in combination with the EU law provides a general framework for the protection of UAMs against human trafficking. The main principles of fighting human trafficking and protecting the rights of children are largely in sync between international and EU law. Indeed most international treaties have been transplanted in EU legislation.¹⁶⁴ Hence, States are obliged to prevent and protect children from being trafficked to countries within and outside the EU. States are further required to respect the principles of ‘non-discrimination’ and ‘child’s best interest’.¹⁶⁵ These principles are especially important when it comes to protecting migrant children as States are generally reluctant to provide assistance to non-citizens.¹⁶⁶ In addition, States have been recommended at the EU and International level to give special attention to UAMs. However, the current legislations, policies and practices need to be improved and complemented with further-reaching protections for UAMs.

¹⁶⁰ EC May 2016.

¹⁶¹ EC February 2016.

¹⁶² *Ibid.*

¹⁶³ Fagerholm & Verheul 2016, p. 28.

¹⁶⁴ Canetta et al 2012, p. 9-10.

¹⁶⁵ UNGA 1989 (article 2(1); 3(1) & Council of Europe 2005 (article 4(a)).

¹⁶⁶ Galance 2014, p. 1-2.

Non-asylum seeking UAMs

International law is too ambiguous on the protection that States must provide to UAMs. While articles 20/22 CRC in conjunction with 38 CRC establish a general obligation to protect migrant children from human trafficking, there is no provision, which concretely addresses UAMs.¹⁶⁷ Therefore, it is not fully clear whether all UAMs, such as non-asylum seeking UAMs, fall within the scope of articles providing special protection. Even though the CRC Commission has stated that the motivation of migrant children is irrelevant, in practice this is a factor that significantly influences how States treat them.¹⁶⁸ This is also supported by International law which provides via principle of the non-refoulement a guarantee for asylum-seeking UAMs to enter the country, but gives no such protection to the non-asylum seeking UAMs.¹⁶⁹

Differently from International law, the EU law has explicitly requested Member States to give special care and attention to all UAMs through binding legislation. This, for example, can be demonstrated with the recent regulations: Regulation 656/2014 and European Border Surveillance System Regulation 1052/2013.¹⁷⁰ The EU has further been following an Action Plan dedicated specifically on UAMs.¹⁷¹ Various European institutions such as the Asylum, Migration and Integration Fund have granted money for the fight against human trafficking and protection of children.¹⁷² However, like International law it has failed to sufficiently protect non-asylum seeking UAMs. EU law does not harmonize the Member States' laws on this particular matter. Consequentially, UAM can receive completely different treatment depending on the State he/she is in. For example, the relevant child protection authorities vary from Welfare Authorities (Austria, Estonia, Slovenia) to Youth courts (Latvia, Portugal) and Special Child Protection Services (Belgium, Germany, Spain).¹⁷³ Also, as mentioned above there is a difference in whether the State accepts the child without any conditions or keeps the right to return the child to his/her country of origin.¹⁷⁴

¹⁶⁷ UNGA 1989.

¹⁶⁸ UNGA 2005, para. 4.

¹⁶⁹ UNHCR 1994.

¹⁷⁰ EP and EC May 2014, EP & Council of European Union, 2013.

¹⁷¹ EC April 2010.

¹⁷² EC February 2016.

¹⁷³ EMN 2014, p. 17.

¹⁷⁴ *Ibid.* p. 15.

UAMs do not ordinarily have legal capacity due to their young age.¹⁷⁵ It is commonly acknowledged that children less than 18 years old are not mature enough and thus tend to not fully understand the consequences that may result from their actions.¹⁷⁶ Therefore, illegality of entering a State without the required documents does not necessarily stop children from entering. Especially when they are sent by their parents to receive a better education and a job that can support the whole family.

The possibility of sending the children back to the country of origin can have a negative effect. With this in mind, UAMs will distrust State authorities and will likely use dangerous illegal approaches to enter the country. Using such illegal measures brings them into contact with criminals, and thus make them extremely vulnerable to be trafficked. It is highly probable that due to their ignorance UAMs will also attempt to illegally enter countries where non-asylum seeking UAMs cannot be sent back to their country of origin. It is exactly by using such illegal measures that UAMs are brought into contact with criminals, increasing the risk they fall prey to traffickers

To minimize this possibility, there should be more information campaigns targeting parents and children who are likely to become UAMs. Raising awareness of the threats, risks, and the situation that UAMs come across in the EU is crucial in order to make potential UAMs and their parents to reconsider. This is especially important for the non-asylum seeking UAMs as their main motive is to find better life. In order to create such campaigns, the regulations on treatment of UAMs in the EU should be further harmonized between the Member States. The current framework, including international, regional, and national legislations, on the protection of UAMs is very complex. Therefore, the structure of the current legal framework should be more easily accessible and drafted in a more comprehensible way so as to enable non-Europeans and minors to understand how the system works, which rights and obligations they have, and which are the consequences of coming to the EU illegally. Nevertheless, once non-asylum seeking UAMs reach the EU, they should be given similar rights and privileges as the asylum-seeking UAMs. In this way they will be better protected from criminal organizations.

¹⁷⁵ Finch 2014, p. 14.

¹⁷⁶ Allik 2004, p. 452-454.

Male victims

Another substantial issue that must be addressed is the lack of attention given to male victims. Many legal scholars have argued that International legislation is focusing only on females, and thus leave the impression that only women are the victims of human trafficking.¹⁷⁷ Indeed most of European and International legal instruments fighting against human trafficking, highlight only the vulnerability of women and children only. Consequentially, there is substantially more attention given to girls than to boys. Even though Europe is known for its ‘blooming’ sex industry, and thus women and girls have been the main targets of criminal organizations, it should not be forgotten that the definition of human trafficking is lot wider than sex industry.¹⁷⁸ Boys mostly face the threat to be used for labor exploitation.¹⁷⁹ However, it appears that they can be forced to work in sex industries as well.¹⁸⁰ Human traffickers tend to target the ones that are most vulnerable and least noticed by society. As most of the UAMs traveling to Europe are boys, there is a high probability that boys are at the moment targeted more by human traffickers but receive substantially less attention by the authorities. Perhaps the easiest solution would be to raise awareness that also boys can be captured by traffickers, and instruct people who come into contact with UAMs more often, to pay equal attention to boys and girls.

Prevention

Third important problem that must be highlighted is the noticeable imbalanced attention that is given to the children likely to become victims of human trafficking and actual victims of human trafficking. At both levels there is a high protection for UAMs that are or have been victims of human trafficking. The additional protocol to the CRC - Sales of Children, Child Prostitution and Child Pornography - solely brings out child victims as a group of children that need special attention and protection.¹⁸¹ The EU directive 2011/36 on preventing and combating trafficking in human beings also focuses mainly on child-victims, and only briefly addresses prevention of the crime.¹⁸² While child victims of human trafficking are more

¹⁷⁷ Gallagher 2010, p. 78.

¹⁷⁸ Hughes 2014, p. 2-3.

¹⁷⁹ IOM 2015, p. 7.

¹⁸⁰ Arosio 2016, p. 8.

¹⁸¹ UNGA 2005.

¹⁸² EP and the Council April 2011.

vulnerable than any other group of children, the law should not only focus on them. Instead, there should be equal attention on children likely to become victims of human trafficking so that there is no need for children to suffer such a tragedy before qualifying for a special assistance from the State.

Prevention of crime is as important as dealing with the consequences of the crime. According to the Secretary-General of the United Nations "*prevention is the first imperative of justice*".¹⁸³ If there is less possibilities to order service from criminals there is less demand. It also influences the criminals. Becker stated in 1995: "*people decide whether to commit crime by comparing the benefits-and-costs of engaging in crime.*"¹⁸⁴ Furthermore, in the long run it is more cost effective as the police has to focus predominantly on proactive crime prevention rather than the re-activity of an investigative response.

Even though there is a general framework to protect UAMs from human trafficking, the increasing number of child migrants and the significant number of disappeared UAMs demonstrate that the current law is not effective enough to protect these children. It is crucial to take all necessary steps to tackle this problem. It is not only helping the innocent children but it also plays fundamental role for the whole society. The more victims human traffickers have, the bigger is the illegal market and the stronger becomes the criminal economy. The number of suppliers increase in the human trafficking market, when there is a clear economic profit in that particular market.¹⁸⁵ This triggers greater competition and consequentially lowers the prices. Lower prices attract more buyers and thus the criminal business expands. In addition, as criminal organizations are nowadays very closely connected, the increase in one sector influences all other sectors. For example, sex industry and trafficking in illegal drugs are often related as traffickers use drugs to manipulate with victims.¹⁸⁶ Increase in human trafficking hence increases the demand for drugs and contributes to the illegal drug market. Another issue is that all these children will grow up in a criminal environment and therefore most likely become criminals themselves. If they live their entire life surrounded by criminal activities - they become criminally intelligent, and thus later it is more difficult to combat against the crimes that they can commit.

¹⁸³ SC 2004, para. 4.

¹⁸⁴ Wheaton et al 2010, p. 123.

¹⁸⁵ *Ibid.* p. 126.

¹⁸⁶ Zimmerman & Stöckl 2012, p. 14.

7. Conclusion

The escalating migration crisis in the EU has resulted in difficult challenges that have not been sufficiently addressed neither by International nor EU law. One of these challenges is the efficient protection of UAMs from human trafficking. According to Europol more than 10,000 children have gone missing over past two years. Hence, it must be observed to what extent exactly does International and European law protect UAMs from human trafficking. International law has two important legal instruments on this specific topic: the Palermo protocol and the CRC. While both instruments address the combat against human trafficking and the right of the child to be protected, they lack specific instructions for States how to effectively provide the necessary protection for UAMs. The EU law on this matter is more detailed. It has more legislations that include provisions on the protection of UAMs. The EU has further used a number of different measures to improve the protection of these children, such as the special Action Plan for UAMs. It has also invested a great amount of money on aiding the organizations dealing with migrant children. However, the increasing number of disappearing UAMs prove that the aid provided up to now is not sufficient.

This contribution finds three substantial problems in International and the EU law that should be tackled in order to improve the protection of UAMs. First, the traditional perspective of females as the main victims of human trafficking must be changed. Human Trafficking preys on the voiceless and vulnerable. A substantial part of UAMs is constituted of boys. Therefore, they should receive equal attention and protection. Second, non-asylum seeking UAMs must be given more rights and privileges. While international law provides a strong protection to asylum seeking UAMs, there is nothing mentioned about non-asylum seeking UAMs. Additionally, the possibility of sending them back to their country of origin encourages the children to use illegal measures to enter the EU, which brings them into contact with criminals and makes them an easy target for traffickers. Raising awareness in the countries of origin of these children is a pivotal preventive measure. However, also the law should provide more rights to non-asylum seeking UAMs once they arrive to the EU. Third, international and the EU law should focus more on preventing human trafficking, rather than just deal with the consequences. Even though it is important to correctly address the crime and give special attention to the children who are victims of human trafficking, the potential victims should receive equal attention. This would contribute to decrease the number of victims of human trafficking, and improve the cost efficiency.

To sum it up, International law with the EU law provides a general framework for protecting UAMs against human trafficking. Nevertheless, it is quite ambiguous and does not sufficiently address some key elements like non-asylum seeking UAMs and prevention of human trafficking. It is clearly impossible to completely stop human trafficking and fully protect UAMs that come to the EU. However, by improving current legislations, it would provide these children better perspectives of their future and help to protect society from an increase of criminal activities.

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