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NAVIGATING THE EU: PAST FAILURES AND FUTURE IMPROVEMENTS FOR CHILD REFUGEES AND ASYLUM SEEKERS IN ITALY

**95 It is not uncommon today to read an article or hear a news report about migrants lost at sea off the coast of Italy, abuses against migrants in France, polarizing speeches by right-wing politicians against EU immigration, and the growing number of refugees around the world. Within the contemporary immigration debate there are various issues surrounding the different categories of migrants, including the one of refugees and asylum seekers. Children are often caught up in this debate, even though they are typically unable to represent themselves or fight for their rights.*

**96 This paper is a condensed and updated extension of the research conducted for a Master's thesis. It will examine aspects of the refugee/asylum seeker debate within the EU, and in particular within Italy. Unaccompanied asylum-seeking minors will be used as a specific example of a vulnerable population and the effect that policy has on them and their human rights. Policies will be evaluated and the current situation within the EU will be explored. At the end of the analysis, recommendations will be made in an effort to promote sustainable solutions in order to improve the lives of refugees and asylum seekers.*

I. INTRODUCTION

Throughout the world, migration flows are dictated by factors such as economics, family ties, and work opportunities. Within the category of migrants are those who are forced to leave their home countries due to events such as war, genocide, political turmoil, and natural disasters. Members of this group tend to be asylum seekers and refugees. According to the European Commission, in 2012 there were more than 330,000 people seeking asylum within the EU, where asylum flows are neither constant nor evenly distributed between member states. (European Commission 2014, 3) In 2011, there were not only “hundreds of thousands of refugees living in temporary accommodation, with inadequate international protection and without a durable solution,” but also “millions of new categories *97 of forced migrants emerging” globally through mixed migration flows.¹ (Loughry 2011, 6) Furthermore, these “new categories of

¹ Mixed migration flows are defined as the following:

‘Mixed flows, or mixed migratory movements’ occur when refugees are included in migratory movements. They use the same routes and means of transport. They employ the services of the same smugglers and they purchase fraudulent documents from the same suppliers. They move along the same routes through the same transit countries and often in the hope of reaching the same countries of destination. In many cases these refugees are joined by other people on the move with specific protection and assistance needs and rights, including victims of trafficking as well as unaccompanied minors and separated children. (Loughry 2011, 1)

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forced migrants not only do not meet the definition of refugee as laid out in the 1951 Refugee Convention, but they also lack the assistance and protection, albeit inadequate, that such recognition would possibly provide.” (Loughry 2011, 6- 7) For the purpose of this article and in order to shed further light on the subject of asylum, the EU and in particular Italy, will be examined and used as examples of places where there are currently a large amount of asylum seekers. EU asylum procedures and the extent to which they are upheld in Italy will also be assessed, with particular attention paid to the reception and treatment of unaccompanied asylum-seeking minors.

II. MIGRATION FLOWS

When the home countries of asylum seekers to the EU are analyzed, the typically intense and necessary causes of their departures are made evident. For example, in 2009 and 2010 the top five originating countries of asylum seekers to the EU were Afghanistan, Russia, Serbia, Iraq, and Somalia, which are all known to have ongoing conflicts and political turmoil. (Eurostat 2011b, 2) In 2010, 71,350 asylum applicants in the EU were minors, and 10,700 were unaccompanied, with approximately four out of every five being male.² (Eurostat 2011a, 2) In 2013 the number of unaccompanied asylum-seeking minors within the EU increased to 14,155. (Eurostat 2015) Conflicts and natural disasters also played a major role in migration flows to Italy, as have other factors such as its geographical location. Examples of this are the migration effects of the Arab Spring, which have escalated to the point of being called the “North African emergency” in Italy. (Bongioanni 2013, 1)

These migrants arrive by both land and sea. Most are journeying in search of a safe place to make asylum claims. Due to intensified border ***98** patrol efforts, an increasing amount of those who arrive in Italy are forced to make the perilous journey across the Mediterranean. The crossing is dangerous for many reasons, including the use of inadequate and unsafe ships, inexperienced crews who sometimes abandon the migrants in the middle of the sea, adverse weather conditions, and the overcrowding of boats. In 2011, approximately 1,500 people lost their lives attempting this journey, including “one particularly harrowing case in which a small

² This statistic excludes the Czech Republic. (Eurostat 2011a, 2)

boat left Tripoli with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors.” (Council of Europe 2012, 1) In September of 2013 more than 350 migrants drowned after a shipwreck off the coast of Lampedusa, further echoing these dangerous conditions and causing the Italian navy to begin its major rescue operation called Mare Nostrum. (Human Rights Watch, 2015a) Even with the help of operations such as Mare Nostrum, which has saved tens of thousands of lives, within the last ten years approximately 20,000 people have lost their lives attempting to make this journey, with last year being the deadliest when 3,500 migrants died while endeavoring to cross the Mediterranean. (Human Rights Watch, 2015a) This year is already off to a rough start. In early February alone, 300 migrants have already lost their lives while making this journey. (Human Rights Watch, 2015a)

In Italy in 2011, most asylum claims came from Tunisia (2,165), Afghanistan (250), Pakistan (230), Nigeria (225), Turkey (215), and 900 additional claims were made from various other countries. (Eurostat 2011b, 8) According to EU statistics, 4.4 percent of these asylum applicants were between the ages of 0- 13 and 2.7 percent were between the ages of 14- 17, making 7.1 percent of the 3,985 asylum applicants minors. (Eurostat 2011b, 6) Those coming from the Middle East or further afield, often travel from Iraq and Afghanistan, through Turkey and Greece before they reach Italy, with the greatest number of unaccompanied minors in Italy being boys from Afghanistan. (UNHCR 2010, 36) Those coming from Africa often leave from Libya in an attempt to cross the Mediterranean by boat, with an ***99** estimated 1 in 10 dying before they reach the island of Lampedusa. (UNHCR, video) For some, Italy is the new country they hope to call home, while for others it is merely another leg of their journey or a bridge into other EU Member States.³

III. ITALY’S UNACCOMPANIED ASYLUM-SEEKING MINORS

Since undocumented migrants often come through Italy on their way to northern European countries, it is not uncommon to have tension between Italian citizens and migrants, as well as

³ Besides the trends listed above, no other specific patterns were found with regards to Italy. The two main geographical sources of migrants and asylum seekers to Italy seem to be Africa and the Middle East (for reasons listed above, including geographical location, conflicts, and natural disasters). As these events occur, they contribute to the fluctuation of migrants and asylum seekers traveling to Italy and the rest of Europe from these regions.

with the rest of the EU. These tensions extend to children, and more specifically to those who are unaccompanied. Minors are particularly susceptible to human rights abuses and often their rights are not protected. Among these unprotected rights are their legal rights. Unaccompanied minors are not represented legally as minors or actors, but under the scope of immigration law they are viewed as adults and objects. (Thronson 2002, 10) According to Amnesty International, “vulnerable categories – which include children above all – are among the first victims of the failings of Italian policies on asylum and immigration.” (Amnesty International 2006, 16) Failings of the system include unsatisfactory and often inhuman reception conditions. (Pro Asyl 2011, 5) For instance, the state-run Protection System for Asylum Seekers and Refugees (SPRAR- Sistema di Protezione per Richiedenti Asilo e Rifugiati) “only provides 3,000 places despite the fact that the number of asylum seekers arriving in 2008 was around 31,000 and in 2009 around *100 17,000.” (Pro Asyl 2011, 8) Furthermore, “a state funded system providing the minimum requirements of accommodation and subsistence support is nonexistent.” (Pro Asyl 2011, 10)

IV. POLICY ANALYSIS AND VIOLATIONS

There is a consensus among scholars and legal experts that within the international system, laws are put into place in order to insure justice and the protection of human rights. One such piece of legislation is the “Minimum Standards on the Reception of Applicants for Asylum in Member States.” This is a EU Directive, in this case one which has been passed and signed by all EU Member States.⁴ Since this Directive was passed before the issue of asylum fell under the scope

⁴ Of the variation of EU legislation:

The most important is probably the *Directive*, which sets out a policy objective but requires national legislation to implement, or ‘transpose.’ This gives a certain amount of leeway to the member states and allows for differing conditions, as well, inadvertently perhaps for different degrees of enthusiasm. A time limit for transposition, usually two years or less, is laid down in each directive, but this is often breached. Where such a breach occurs, or if the Commission is not convinced that national implementing legislation is adequate, the ECJ has the final word, but court cases also take time, of course, and may allow a member state to delay fulfilling its responsibilities. (McGiffen 2005, 32)

of qualified majority voting (QMV), EU Member States, as none opposed it, have little excuse not to uphold its requirements, which are legally binding.⁵

The Directive sets out guidelines and minimum standards for asylum seekers, including specific obligations of the state in regards to unaccompanied asylum-seeking minors. In cases where these guidelines were not previously provided for in national law or practice, laws and/or ***101** practice must be amended to bring the member state in question into compliance with the Directive. A EU Directive does not apply within the member state until this is done, though compliance is subject to a time limit. The designated time limit can vary but typically two years or eighteen months is the period implemented, with the former applying in this case.

Evidence and groundings of Italy's, as well as other EU Member States', failure to uphold the standards laid out by the EU Directive can be found in international law, NGO reports, academic sources, and personal narratives. (Amnesty International 2006; Medecins sans Frontieres 2011; Furia 2012; UNICEF 2010; Odysseus Report 2006; Human Rights Watch 2013a; UNHCR 2012; Terzo Rapporto Anci 2009; Secondo Rapporto Anci 2007; Pro Asyl 2011; Furia and Gallizia 2010- 2011; Human Rights Watch 2014; Human Rights Watch 2015b) Some of the most recent examples of these include police brutality against migrants and asylum seekers in France, as well as summary returns of migrants and asylum seekers, including unaccompanied minors to bad conditions in Greece, without providing them with proper access to resources, including food, shelter, and assistance with filing asylum claims. (Human Rights Watch 2014; Human Rights Watch 2015b)

Partly due to a rise in populist and xenophobic political parties within the EU, there have been obstacles to creating a common EU asylum system (CEAS). These attitudes have only been amplified with the economic crisis. Many citizens and political parties "exploit the current crisis, trying to shift the blame on to immigrant populations." (Malmstrom 2012, 2) This is especially true in Italy, a country that has a history of xenophobic and racist attitudes. Parties such as Lega Nord (Northern League) in Italy are known to promote such ideas and have only been strengthened as a result of the increase in immigration to Italy, as well as the economic recession. Sometimes these attitudes and ideas have even turned into violent acts against

⁵ The passage of the Directive was unopposed at vote, as asylum policy was not converted to qualified majority voting (QMV) until 2007, with the Treaty of Lisbon. It is important to differentiate between these types of voting because "QMV means that laws which are opposed by a sovereign state's government and may be abhorrent to its people can be imposed upon them." (McGiffen 2005, 32)

immigrants, exemplifying the severity of the situation. In 2012, “the UN Committee on the Elimination of Racial Discrimination expressed ***102** serious concerns about racist violence in Italy, and urged measures to improve prevention, investigation, and prosecution.” (Human Rights Watch 2013b, 435)

Despite this highly politicized and often racially discriminatory atmosphere, by the end of this year, new asylum directives should be transposed into national law, thereby officially starting the CEAS. Some key issues outlined in the CEAS include, restrictions on the detention of minors, greater protection for unaccompanied minors, guaranteed humane reception conditions, special treatment for victims of torture and unaccompanied asylum-seeking minors, faster and more efficient asylum procedures, better training for decision-makers, and guaranteed access to NGOs. (European Commission 2014) Although the purpose of these changes is to improve the system and even out the impact of asylum seekers throughout the EU, critics argue that the new system will also exacerbate current problems, such as broad detention practices, restricted access to legal aid, and limited access for unaccompanied asylum-seeking minors to asylum applications and procedures. (European Council on Refugees and Exiles) Until the CEAS is put into practice across the EU, it is impossible to fully determine its impact and whether or not these critiques are justified.

V. POLICY RECOMMENDATIONS

Several credible sources have made recommendations to the various parties involved in this issue and that have the ability to influence the treatment of asylum seekers in the EU, and in particular, unaccompanied asylum-seeking minors in Italy, including the Italian government, the European Union, the Council of Europe, and the United Nations. Many of the recommendations made to the Italian government could also be made to the governments of other EU Member States.

***103** It is recommended that the Italian government respect the wishes of all immigrants who attempt to make an asylum claim, allowing them to enter Italy and follow through with filing their claim. (Human Rights Watch 2013a, 5) These immigrants should also be informed of their rights, situation, and legal options, in a language they can comprehend. (Human Rights Watch 2013a, 5) The government of Italy should “implement best practices for age determination by provisionally treating those claiming to be under 18 as children until age

determination is completed, and establishing a multi-disciplinary approach that does not rely solely on appearance or medical examinations.” (Human Rights Watch 2013a, 5) When age determination procedures are carried out, they should additionally take into account relevant factors such as “the ethnic and cultural background of the concerned children,” as well as their “physical, psychological, cultural and social development.” (UNHCR 2012c, 7) Although they should have been, these age determination issues were not addressed in the CEAS, which could become problematic in the future. It is also recommended that the Italian government “ensure the full implementation of the provisions of the UN Convention on the Rights of the Child, without discrimination of any kind with regard to all minors present on Italian territory.” (Amnesty International 2006, 17) In order to better implement these recommendations, “UNHCR recommends that the Italian Government establish a national body focusing specifically on” unaccompanied or separated children “in need of international protection in order to develop, coordinate and oversee the timely identification of needs and the provision of adequate responses, notably durable solutions, which are in the best interests of the child.” (UNHCR 2012c, 6) When it comes to the right of return, the Italian government should remember the following:

Return is an integral component of comprehensive approaches to irregular migration and, wherever possible, should be voluntary, based on the informed choice of the *104 individual, with respect for the individual’s dignity, and with the prospect of reintegration in the country of origin. In contrast, deportation is costly, often unpopular in public opinion, may create tensions in countries of origin, and rarely addresses the root causes of irregular migration- which could be achieved by, for example, assisting returnees in becoming productive upon their return to their origin countries. (IOM 2010, 36- 37)

Therefore, when returns are necessary not only should the individual’s wishes and concerns be considered, as well as their safety, but also in the case of unaccompanied asylum-seeking minors, this should be done on an age-sensitive, case-by-case basis, with the child’s wellbeing always at the forefront of the decision-making process. Seeing as *refoulement* is illegal, international and EU legal and human rights standards should be upheld when dealing with such cases as well.

To the European Union, it is recommended that “the European Commission’s Directorate General for Justice assess Italy’s (and other EU states’) compliance with its obligations under

regional human rights and European Union law and jurisprudence, including the Dublin II Regulation, and take appropriate measures to remind Italy and other EU states of these obligations.” Specific recommendations regarding the Dublin II Regulation include:

Accord greater weight to the variety of factors that might connect an asylum applicant to a state, rather than the weight currently given to the country of first arrival in assessing the state responsible for examining asylum claims. Such connections go beyond the qualifying family relationships in the Dublin II regulation to include wider family relations (especially for reunification of unaccompanied migrant children with family members other than parents or guardians), community ties, prior residence, language, job skills that might be in demand in one country over another, and the personal preference of the applicant, a legitimate factor to consider. (Human Rights Watch 2013a, 7)

***105** It should be noted that while the new CEAS does include a revised Dublin Regulation in order to enhance “the protection of asylum seekers during the process of establishing the state responsible for examining the application,” as well as to clarify “the rules governing the relations between states,” it does not take into account the above-mentioned issues. (European Commission 2014, 3) While the revised Dublin Regulation within the CEAS is an improvement, more work needs to be done in order to ensure maximum care for this vulnerable population in every member state. Relatedly, Dennis de Jong, a former human rights advisor to the Netherlands’ government and now a United European Left MEP, has also proposed, and is seeking support within the European Parliament for, a more economical system and in particular alternatives to the Dublin Regulation that would include an asylum center where asylum seekers are brought directly when they first enter the EU. (Dutch Socialist Party, 2013) Under his proposed plan, only complicated applications would be divided between different member states. (Dutch Socialist Party, 2013) Implementing changes such as these would be a step in the right direction to a more fair, economical, and humane EU asylum system. Furthermore, it is recommended that the EU and other EU Member States “demand that Italy not violate article 3 of the European Convention on Human Rights by its interdiction and summary return of migrants to a place where they are subjected to inhuman and degrading treatment.” (Human Rights Watch 2009, 18) Finally, the European Union institutions and EU Member States should “direct development assistance to improve respect for human rights and human dignity in

migrants' and asylum seekers' countries of origin to address the root causes of forced migration." (Human Rights Watch 2009, 18)

The European Union should also provide more aid to the Italian navy and share the rescue responsibility when it comes to addressing the crisis of migrants dying during their crossing of the Mediterranean. (Human Rights Watch, 2015a) The Italian government has repeatedly asked for *106 increased aid from the EU to help with these rescue operations. Their efforts with Mare Nostrum have saved a lot of lives but due to political and economic reasons, last year the Italian government came to the official conclusion that they cannot continue in these efforts without increased support from other EU Member States. (Human Rights Watch, 2015a) The EU's proposed alternative, Operation Triton, which is coordinated by the EU border agency Frontex, has received criticism because "it focuses more narrowly on border security- not saving lives," it also "has far fewer ships at its disposal than the Italian navy," and it is restricted to EU waters, so it cannot assist vessels in distress closer to Libya, where the majority of these ships are coming from. (Human Rights Watch, 2015a) It is therefore recommended that the rest of the EU not only step up their rescue efforts in the Mediterranean by creating a kind of "EU-wide Mare Nostrum," but that they also focus on implementing legal and safe ways for migrants and asylum seekers to enter the EU. (Human Rights Watch, 2015a)

To the Council of Europe, it is recommended that "the Commissioner for Human Rights should continue to monitor the situation, following his July 2012 visit to Italy and September 2012 report, and press the Italian government to refrain from automatic returns from Adriatic ports to Greece." (Human Rights Watch 2013a, 8) Continuing to monitor the asylum conditions and providing credible reports on the situation on the ground will help to keep the Italian government accountable and will in turn help to lessen and ideally put an end to the human rights violations that are being endured by unaccompanied asylum-seeking minors in Italy.

VI. CONCLUSION

While certain positive changes have been made, it is clear that many more must be achieved in order to uphold international human rights standards for asylum seekers in the EU. It is however still too early to determine whether or not the CEAS has fulfilled its goals of improving *107 these conditions. Italy was used as a case study, but future improvements are not only necessary

in Italy but also in other EU Member States, which are not currently upholding these standards. These improvements are vital to creating more sustainable solutions and respecting human rights within the European Union as a whole.

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