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Working Toward a Global Discourse on Children's Rights: The Problem of Unaccompanied Children and the International Response to Their Plight

CRYSTAL J. GATES*

"Imagine being forced to abandon your home, your belongings, your everyday life. Imagine being separated from . . . your family . . . [and] herded into a camp alongside thousands of others . . . as a massive purge sweeps your country."1

INTRODUCTION

The treatment of children has radically "improved over the last century as the status of children has evolved from being regarded as property to being valued as persons."2 This ideological shift has paved the way for an international discourse on children's rights, which eventually culminated in the United Nations Convention on the Rights of the Child (Children's Convention or Convention).3 However, even with this discourse, many children—unaccompanied child asylum seekers and refugees in particular—continue to suffer the effects of war, poverty, population growth, and exploitation.4

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4. O'Rourke von Struensee, supra note 2, at 591.
Presently, unaccompanied child asylum seekers and refugees receive, \textit{at best}, the same care and protection as do other children under the Children's Convention. In fact, this Convention does not specifically acknowledge the plight of unaccompanied minors, nor does it distinguish between their painful and often traumatic childhoods and those experienced by accompanied children—a childhood often filled with loving parents, peaceful schools, and harmonious playgrounds. Despite the fact that many unaccompanied children "confront additional risks of murder, torture, rape . . . imprisonment, abduction, enslavement, robbery, and starvation,"\textsuperscript{5} the loss of family care and protection is perhaps the greatest loss to these children.\textsuperscript{6} Thus, "[e]ven when they reach the apparent safety of a refugee or displaced person camp, their problems—physical, mental, material, and cultural—may be far from over.\textsuperscript{7}

Unaccompanied children exist in virtually every emergency situation in the world.\textsuperscript{8} Though they come from various parts of the globe and their life stories may differ, invariably their plights are the same—filled with hardship, confusion, and often violence. Many of these children have witnessed atrocities that adults cannot even imagine—death by the masses, violence, and separation. Some unaccompanied children have even seen their own family members slaughtered during flight. Others have been forced to act as soldiers. Consequently, unaccompanied child asylum seekers or refugees generally suffer extreme psychological trauma which requires counseling and other psychological services.

The international community must reach out to and protect these children. The mandates of the Children's Convention simply are not enough to protect unaccompanied children. The United Nations High Commissioner for Refugees (UNHCR) has recognized the arduous plight of these children through the \textit{Guidelines on Policies and Procedures in Dealing with Unaccompanied Children} (Guidelines).\textsuperscript{9} Although these promulgated guidelines were not intended as law, the ideas behind them must be enunciated into either a supplement to the Children's Convention or a new instrument on children's rights altogether.

\begin{thebibliography}{9}
\bibitem{P} Maslen, supra note 5, at 334.
\end{thebibliography}
This Note will examine the international community’s response to the rise of children’s rights and will suggest how more can be done to protect unaccompanied children. Part I will briefly examine the historical background of the international children’s rights movement. Next, it will discuss the uniqueness of the Children’s Convention and will describe some problems of implementation. Part II will address the specific problem of unaccompanied children, focusing on the interplay between the Children’s Convention and international agencies. It will discuss the role of the UNHCR and the Guidelines. Finally, Part III will explore possible solutions to the problems of unaccompanied children, suggesting that a supplementary or new convention is in order.

I. THE CONVENTION ON THE RIGHTS OF THE CHILD:
DEVELOPING A CULTURE OF RESPECT FOR CHILDREN

A. The Declaration of Geneva and the Declaration of the Rights of the Child

The international community initially recognized a child’s need for special care and protection in 1924, when the League of Nations adopted the Declaration of Geneva (Declaration). In its Preamble, the Declaration recognized that “mankind owes to the child the best it has to give,” yet the body of the Declaration focused solely on protecting children’s basic material needs. Among the children’s rights identified in the Declaration were emotional and physical well-being, family, aid in time of war or national disaster, education or training, and recognition of a child’s place and responsibility in the human family.}


12. Declaration of Geneva, supra note 10, at Preamble; see also Corcos, supra note 10, at 176-77 (citing Cohen, Freedom from Corporal Punishment: One of the Human Rights of Children, 2 HUM. RTS. ANN. 95, 124-25 (1984)). The Declaration of Geneva established five basic principles. The Declaration provides:

By the present Declaration of the Rights of the Child, commonly known as the ‘Declaration of Geneva,’ men and women of all nations, recognizing that mankind
Although revolutionary for its time, the Declaration of Geneva was insufficient to establish and protect children’s rights. It suffered three conspicuous limitations: (1) “rather than addressing civil and political rights, [it was] almost entirely devoted to economic, social, and cultural interests;” 13 (2) it viewed children as recipients of treatment and not as holders of specific rights; 14 and (3) “the Declaration lack[ed] enforcement mechanisms because its drafters never intended to create an instrument which bound States.” 15

Accordingly, in 1946, children’s rights advocates argued that the Declaration of Geneva was archaic in light of the tremendous developments which had taken place in the fields of health care and child welfare since 1924. 16 These advocates did not wish to abandon the principles embedded in the Declaration; rather, they wanted to expand its scope to reflect society’s emerging view of children’s rights. 17

The plight of children following World War II brought further international attention to children’s needs. 18 The world was outraged by the

owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured.
3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow-men.

Declaration of Geneva, supra note 10, arts. 1-5.

13. Fitzgibbon, supra note 11, at 329.
15. Fitzgibbon, supra note 11, at 329.
16. VEERMAN, supra note 10, at 161-62 (1992). Specifically, many criticized the Declaration of Geneva because it did not recognize:

[1] that child-welfare and social security should be integral parts of the social policy, and the duty of the State; [2] that growing up in a family had a positive influence on the development of the personality; [3] that it was necessary to protect the child against abuse by politicians; [4] that juvenile delinquency should be prevented; [and] [5] that [all forms of] discrimination should be prevented.

Id.
17. Id. at 162.
illness, exploitation, daily abuses, and murder of children during the War. In fact, far from being shielded from the cruel realities of war, children had been subjected to abuses of the worst kind, including rape, savagery, and mutilation. In addition, underground movements had used children as participants in the fight against the Nazis. These appalling revelations “led to an international movement to establish a separate human rights treaty governing the rights of children.”

Consequently, in 1959, the United Nations General Assembly (UN) passed the Declaration of the Rights of the Child (DROC). The DROC urged, but did not and indeed could not, oblige nations to protect their children. Thus, by itself, the DROC was devoid of any real mechanism for change in the global protection of children’s rights. However, the DROC was “progressive in its conceptual thinking of children’s rights” and served as a foundation for future international agreements protecting the rights of children. In fact, in 1979, as a tribute to the International Year of the Child, Poland utilized the principles embedded in the DROC to draft a binding treaty for the protection of children. Ten years later, after a lengthy drafting process—including several intense studies on the rights of children in international law—the UN modified Poland’s proposal and adopted it as the 1989 Convention on the Rights of the Child.

B. The Convention on the Rights of the Child

The Children’s Convention represents the “culmination of half a century of international efforts to set universal standards in the field of human
Because it was built upon the principles enshrined in the DROC, the Convention is one of the most detailed and comprehensive treatises of all existing international human rights instruments. Moreover, the passage of the Children’s Convention “signifie[d] the United Nations’ recognition of the need to institutionalize the concept of children’s rights in international law.” That recognition has been embraced by the international community. Today, the Children’s Convention has been ratified by, and is in force in, every country in the world except the United States and Somalia.

1. Emphasis on the “Best Interests” of the Child

A prominent feature of the Children’s Convention is that it places a “best interests” standard at the heart of international children’s rights law. Article 3(1) of the Children’s Convention provides that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Implicit in the Convention’s adoption of this “best interests” principle is a recognition that “there would be times when certain rights of the child would come into conflict with the rights, prerogatives, and responsibilities of parents or guardians and with those of the state.” In those instances, the Children’s Convention requires that the child’s interests be given primary consideration. The “best interests” standard places an affirmative duty upon each State Party to take the necessary legislative and administrative measures to provide for and protect a child’s

29. Id.
30. Fitzgibbon, supra note 11, at 336.
31. Cohen & Kilbourne, supra note 18, at 635. On February 16, 1995, the United States signed the Children’s Convention; however, it has not officially ratified the Convention. O’Rourke von Struensee, supra note 2, at 592-93. Presently, Somalia has neither signed nor ratified the Convention. See Cohen & Kilbourne, supra note 18, at 635.
32. Children’s Convention, supra note 3, art. 3(1).
34. Id. The language of Article 3 only requires State Parties to give primary—as opposed to paramount or prevailing—consideration to the needs of the child. However, some argue that “[i]t appears that the parties’ obligation to give precedence to the child’s best interests is countered . . . by the use elsewhere in the Convention of the term ‘paramount’ in regard to these interests.” Id. (discussing Article 21 of the Children’s Convention). In fact, Philip Alston argues that the Convention used the term “primary” rather than “paramount” to “provide the flexibility needed to give priority to other interests when circumstances so dictated, as in ‘extreme cases.’” Id.
GLOBAL DISCOURSE ON CHILDREN'S RIGHTS

This standard serves as the “basis for evaluating the laws and practices of the States Parties,” regarding any matter not governed by a positive right in the Children's Convention. In fact, “each article in the Convention must be measured by the best interest[s] of the child standard, particularly when determining solutions for the [sic] those children whose lives weigh in the balance of meaningful governmental action.” Accordingly, Article 3(1) is an umbrella provision that States should consider when they engage in making decisions that affect children.

2. Rights Protected by the Children's Convention

The Children's Convention offers an extensive program for the protection of children's rights by setting forth three basic categories of rights: (1) survival and development; (2) protection; and (3) empowerment. Survival and development rights resulted from the Convention's recognition that “of the [fourteen] million deaths of children each year, at least two-thirds were preventable through proper treatment in such areas as diarrhea, neonatal tetanus . . . respiratory infection, and measles.” The Convention further divides a child's right to survival and development into two groups of rights: physical and qualitative. Physical rights encompass a child's right to health and include the right to life and physical health care. Meanwhile, qualitative

35. Seitles, supra note 22, at 174.
37. Seitles, supra note 22, at 175.
39. Fitzgibbon, supra note 11, at 337. The rights embodied in the Children's Convention include civil, political, economical, social, and cultural rights. Id. Generally, civil rights are “those rights that: safeguard our lives, and protect our bodies from torture and from contact with harmful materials . . .; that protect us from arbitrary arrest, detention and expulsion; . . . [and that are against] our freedom of thought, conscience and religion.” VEERMAN, supra note 10, at 25-26.
40. MOWER, supra note 33, at 32.
41. Physical rights encompass a child's right to health, whereas qualitative rights bestow upon the child a right to quality of life (i.e., children with disabilities are to receive the necessities that make life rewarding). Id. at 33.
42. Children's Convention, supra note 3, arts. 6, 27.
rights accord the child a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. The right to life proclaimed in the Children’s Convention “is not an entitlement to good health as such . . . but to services and programs that are conducive” to providing a child with proper medical health care. Accordingly, the Convention obliges State Parties to take appropriate measures to diminish child mortality, ensure medical assistance and health care, and develop preventative health care for children.

Moreover, to ensure the development of the child, the Convention endows children with the right to mental and social development. This right focuses on, but is not limited to, a child’s right to an education. Article 28 of the Children’s Convention requires States to:

(a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, [and] make them available and accessible to every child . . .; (c) Make higher education accessible to all on the basis of capacity by every appropriate means.

43. See id. art. 28(1). The Children’s Convention grants the child a right to an education. Id.
44. Id. art. 14.
45. Id.
46. Id. art. 17.
47. MOWER, supra note 33, at 32. Article 24 of the Children’s Convention requires State Parties to acknowledge “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” and “to ensure that no child is deprived of his or her right of access to such health services.” Children’s Convention, supra note 3, art. 24.
48. Id. art. 24(2); see also MOWER, supra note 33, at 32-33.
49. MOWER, supra note 33, at 34. The Convention also gives the child a right to “to life as a distinct personality, possessing a legally recognized identity.” Id. at 29. This right to an identity includes the right to a name, nationality, and the right to be cared for by one’s parents. Children’s Convention, supra note 3, art. 7. This identity right prevents State Parties from treating children as mere possessions. Fitzgibbon, supra note 11, at 338.
50. The right to development includes the right to an education (arts. 28-29), special care for disabled children (art. 23), spiritual and moral development (art. 14), and social development (art. 17). MOWER, supra note 33, at 34-37.
51. Children’s Convention, supra note 3, art. 28(1). The State’s obligation with respect to the development of children “through the educational process applies not only to children within its jurisdiction but also to those in other countries.” MOWER, supra note 33, at 35. Article 28(3) provides that: State Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.
In addition to identifying the elements necessary to adequately serve the child's right to an education, the Children’s Convention “defines the objectives toward which this education is to be directed.” These objectives are to develop the “child’s personality, talents and mental and physical abilities to their fullest potential . . . [and to encourage] respect for the child’s parents, [and] his or her own cultural identity, language and values.”

Another significant portion of the Children’s Convention deals with a child’s rights to protection. These rights recognize a child's need to be free from abuse, neglect, and exploitation. Article 19 of the Children’s Convention provides that:

State[] Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect . . . maltreatment or exploitation . . . while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

In accordance with Article 19, States are required to develop social programs that not only provide necessary support for children but that also encourage identification, investigation, and reporting of child abuse. Moreover, the protection rights ensure the child’s right to be free from abduction and abandonment. Article 35 of the Children’s Convention obliges State Parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” Meanwhile, Article 20 provides that: “A child temporarily or permanently deprived of his or her family environment . . . shall be entitled to special protection and assistance provided by the State.”

Children’s Convention, supra note 3, art. 28(1).
52. MOWER, supra note 33, at 35.
53. Children’s Convention, supra note 3, art. 29(1).
54. Id. arts. 19, 34; Seitles, supra note 22, at 168.
55. Children’s Convention, supra note 3, art. 19(1).
56. Id. art. 19(2). These programs should also follow up on reported instances of mistreatment. Id.
57. Id. art. 35.
58. Id. art. 20.
59. Id. art. 35.
60. Id. art. 20(1). In addition, Article 20(2) requires State Parties to ensure alternative care for these abandoned children. Id. art. 20(2).
Finally, the Children’s Convention provides the child with empowerment or participation rights. Specifically, a child has the right to express his or her opinion, as well as the right to freedom of thought, conscience, and religion. Children also enjoy the right to privacy. Article 16 of the Convention provides that: “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, . . . nor to unlawful attacks on his or her honour and reputation.” Thus, as a result of the Children’s Convention, children enjoy a panoply of substantive protections and empowerment rights, including the right to live and develop peacefully in society.

3. Implementation and Current Status of the Children’s Convention

The Children’s Convention highlights the international community’s aspirations for children. However, its implementation mechanism is premised on the idea that ratifying States will incorporate its provisions into their national laws. Thus, the degree to which the Children’s Convention will improve children’s lives will depend greatly on whether State Parties actually implement and comply with the Convention by adopting measures which conform to its mandates.

As nations ratify the Children’s Convention, they become State Parties and agree to “respect and ensure the rights” proclaimed to “each child within their jurisdiction.” State Parties have a duty to “undertake all appropriate legislative, administrative, and other measures” to enforce the rights contained in the Children’s Convention. Therefore, each State determines which measures to adopt to effectuate appropriately the Convention and submits

61. Id. art. 13.
62. Id. art. 14.
63. Id. art. 16.
64. Id.
65. Seitles, supra note 22, at 168.
66. Fitzgibbon, supra note 11, at 340.
67. Id.; see also Children’s Convention, supra note 3, art. 2.
68. Id. art. 4. Article 4 of the Children’s Convention requires State Parties to undertake “all appropriate legislative, administrative, and other measures, for the implementation of the rights recognized in this Convention.” Moreover, regarding economic, social, and cultural rights, Article 4 provides that “State Parties shall undertake such measures to the maximum extent of their available resources.” Unfortunately, this Article may result in an “escape clause” for poorer nations (i.e., the very nations where the mandates of the Children’s Convention are the most needed). Seitles, supra note 22, at 172. Accordingly, poorer States may “opt out” of the Convention if their resources are inadequate. However, some scholars argue that “[l]ack of resources alone is not an acceptable excuse for a State’s failure to comply with the provisions of the [Children’s Convention].” Rios-Kohn, supra note 38, at 301.
progress reports to Convention organs concerning their performance. The State Party is obliged to submit an initial report two years after ratification. Subsequently, periodic reports are due every five years.

a. The Self-Reporting Aspect of the Children's Convention

By means of these initial and periodic reports, State Parties are able to notify Convention organs regarding their efforts in enforcing the precepts of the Children's Convention. The effectiveness of this type of self-reporting system "depends not only on promptness in the submission of reports, but also on the quality of the reports themselves." These periodic reports must inform the Convention organs of the progress taken by the State Party in realizing the rights embodied in the Children's Convention, as well as the difficulties encountered in meeting their implementation obligations. In fact, Article 44 provides that "[r]eports shall ... contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned." The initial report submitted by the government of the Sudan provides a useful illustration of the specificity and detail required in such State Party

69. MOWER, supra note 33, at 4.
70. Children's Convention, supra note 3, art. 44(1)(a).
71. Id. at 44(1)(b). The Children's Convention is only binding on the State Party to the extent that the State has not entered a reservation beside a specific provision. VAN BUEREN, supra note 14, at 380. In reality, many States accompany their ratification of the Children's Convention with reservations. A reservation "is a unilateral statement ... made by a State when signing, ratifying, accepting, approving or acceding to a treaty, that purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." William A. Schabas, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, 3 WM. & MARY J. WOMEN & L. 79, 79-80 (1997). The Children's Convention contains no express provision authorizing the use of reservations; however, fifty-six states have formulated reservations to substantive provisions of the Convention. Id. at 86. In addition, nine states have made general reservations "whereby the [Children's] Convention is deemed to be subject to the states parties' constitutional or Islamic laws." Id.

Article 51 of the Children's Convention specifically limits the use of reservations by providing that: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted." Children's Convention, supra note 3, art. 51(2). Despite this limitation, many argue that reservations impede the effectiveness of the Convention by allowing States to pick and choose which provisions of the Convention to implement. O'Rourke Von Struensee, supra note 2, at 626.

72. MOWER, supra note 33, at 109.
73. Children's Convention, supra note 3, art. 44(2); see also Brice, supra note 19, at 593. The Children's Convention requires that State Parties make their reports widely available to the public in their own countries. Children's Convention, supra note 3, art. 44(6).
74. Id. art. 44(2).
The Sudanese report begins with an introduction proclaiming the country's commitment to enforcing the articles of the Children's Convention. The information in the report is then divided into two headings: country profile and specific rights. The first section of the country profile "deal[s] with the Sudan's geographic features, including its natural resources, and with . . . demographic items [such] as public health, classification of children by age group, primary education . . . and the economically active population." Another section of the profile describes the policies and approaches taken in response to a "disastrous decline in production," caused by the disruption of the Sudan's economic infrastructure. The third part of the country profile concerns the Sudan's political system and its history of military coups and civil wars. This section also addresses problems of peace and the "establishment of a just peace" as one of the "principal challenges to be met."

Lastly, the "Children's Rights" heading of the Sudanese report contains detailed information regarding the implementation of various provisions enumerated by the Children's Convention. This section is divided into nine subheadings and thirty sub-subheadings, each delineating the Sudan's response to issues such as the training given to personnel working with children, the effect of the country's health conditions on children, and problems facing children who are disabled, homeless, or internally displaced. In light of the Sudanese report, one can see the level of detail and specificity required in these State reports by the Children's Convention.

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75. MOWER, supra note 33, at 127. A committee–composed of representatives from the Ministry of Social Affairs, the Ministry of Health, the Ministry of Education, the Supreme Council for National Resources, the National Council of Non-Governmental Organizations, and a jurist–prepared the initial report. Id.


77. Id.

78. Id.

79. Id. at 128.

80. Id.

81. These headings included: (1) definition of the child; (2) general principles: the right to life; (3) civil rights and freedoms; (4) family environment and community protection of the family; (5) health and welfare; (6) education, leisure, and cultural activities; (7) factors and difficulties impeding the implementation provisions of the Convention; (8) protection of special categories; and (9) popular participation in human and social development. Id. at 128-29. These headings correspond directly with the CRC's guidelines on the submission of reports. See infra Part I(B)(3)(b).

82. For a complete listing of these sub-sub-headings, see MOWER, supra note 33, at 128-29.

83. Id. at 139.
b. The Committee on the Rights of the Child: Monitoring Compliance with the Children's Convention

Article 43 of the Children's Convention established a monitoring body, the Committee on the Rights of the Child (CRC), to review these obligatory progress reports and to monitor compliance. The CRC is composed of ten experts from different legal systems and regions of the world, and is especially concerned with the policies that State Parties pursue with regard to their most vulnerable and least privileged children. The purpose of the CRC's inquiry is not to criticize State Parties for unsuccessful actions they may have taken on behalf of children's rights, but rather to encourage debate over the plight of children and to aid in the enforcement of the Children's Convention. Indeed, the ultimate goal of the CRC is to identify implementation problems and discuss necessary remedies. Accordingly, the CRC's role is to ensure that States are taking the necessary steps to execute the Convention "to the maximum extent of their available resources."

To assist State Parties in their reporting obligations, the CRC "has grouped together provisions of the Convention under [eight] different but equally ranked sections: (1) General Measures of Implementation; (2) Definition of the Child; (3) General Principles; (4) Civil Rights and Freedoms; (5) Family Environment and Alternative Care; (6) Basic Health and Welfare; (7) Education, Leisure, and Cultural Activities; and (8) Special Protection Measures." In addition, the CRC has defined specific guidelines for each section. For example, in the first section, "General Measures of Implementation," the State Party must provide all relevant information pertaining to Article 4 of the Children's Convention. Thus, States must "include information on measures taken to harmonize national law and policy with the [C]onvention's provisions ... on existing or planned mechanisms at the national or local level to coordinate policies relating to children.

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84. Id. at 43.
86. Thomas Hammarberg, Justice For Children Through the UN Convention, in JUSTICE FOR CHILDREN 59, 69 (Stewart Asquith & Malcolm Hill eds., 1992).
87. Id. at 70.
88. VAN BUEREN, supra note 14, at 390.
89. MOWER, supra note 33, at 105-07.
90. Id. at 105. For a review of the language of Article 4 of the Children's Convention, see supra note 68.
91. MOWER, supra note 33, at 105.
Likewise, in the section entitled "Definition of the Child," the report must "indicate the age when majority is attained and the minimum age for such purposes as legal or medical counseling without parental consent, end of compulsory education, . . . sexual consent, [and] voluntary enlistment in the armed forces." Under the heading "General Principles," State Parties are to provide information concerning their implementation of the principles embedded in Articles 2, 3, 6, and 12. In the "Civil Rights and Freedoms" portion of the report, States should provide the following information:

name and nationality (Article 7); preservation of identity (Article 8); expression (Article 13); . . . thought, conscience, and religion (Article 14); association and peaceful assembly (Article 15); protection of privacy (Article 16); [access to appropriate information (Article 17)]; and nonsubjection to torture or other cruel, inhuman, or degrading treatment or punishment.

The "Family Environment and Alternative Care" portion of the report must include information concerning the measures taken with respect to parental guidance and responsibilities, separation from parents, family reunification, adoption, and periodic review of placement. Under the heading of "Basic Health and Welfare," States must inform the CRC of efforts taken on behalf of the child's right to survival and development, health, social security, and child care services. In the "Education, Leisure, and Cultural Activities" section of the report, State Parties must provide information regarding the child's right to education and recreational activities. Finally, in the "Special Protection Measures" portion of the report, States are required to apprise the CRC of their efforts to accommodate children in situations of

92. Id.
93. Id. Article 2 ensures that State Parties enforce the rights embodied in the Convention in a non-discriminatory fashion. Children's Convention, supra note 3, art. 2. Article 3 sets forth the "best interests of the child" standard that flows throughout the Convention. Id. art. 3. Meanwhile, Article 6 provides that a child has the right to life, survival, and development. Id. art. 6. Finally, Article 12 asserts that States should respect the views of the child. Id. art. 12.
94. MOWER, supra note 33, at 106.
95. Id. In this section, the State Parties must provide information regarding the implementation of Articles 5, 10, 11, 18, 19, 20, 21, 25, 27, and 39.
96. Id. at 106-07. This portion of the report focuses on Articles 6, 23, 24, 26, and 27 of the Children's Convention.
97. Id. at 107. This section of the report deals with Articles 28, 29, and 31.
emergencies (such as child refugees or asylum seekers), conflicts with the law, or in situations of exploitation. 98

c. Effectiveness of Implementation

Clearly, by means of these enunciated guidelines, the CRC is better able to monitor a State Party’s compliance with the Children’s Convention. However, the monitoring function of the Convention still poses numerous problems for successful implementation of children’s rights. First, many States may find themselves inundated by “the sheer volume of . . . work that must be done . . . in order to discharge their reporting responsibilities.” 99 This plethora of work may induce State Parties either to submit incomplete initial and periodic reports or to bypass the reporting system entirely, by failing to submit the reports to the CRC. 100

Another problem with the monitoring aspect of the Children’s Convention is that the reporting process imposes a “task of major proportions” on the ten-member CRC. 101 To cope with its imposing workload, the CRC has requested the Secretary General to “provide it with a minimum of two additional professional and one additional General Service posts.” 102 The CRC has also increased the number of reports considered in one session by setting a flexible six- to nine-hour time limit for its discussion and review of each report. 103 However, this time frame may not allow the CRC sufficient opportunity to seriously discuss the submitted reports.

98. Id. This final section focuses on the implementation of Articles 22, 30, and 32 through 40. For a look at the implementation mechanism of the Children’s Convention, see, for example, MOWER, supra note 33, at 126-42 (discussing the Sudan experience). For an illustration of the CRC’s thematic guidelines in action, see LEBLANC, supra note 85, at 247-49 (discussing initial reports submitted by Sweden and the Russian federation).

99. MOWER, supra note 33, at 112. The substantive part of the Children’s Convention contains 40 Articles—31 of which are multi-sectional. Id. In addition, States may be parties to other human rights instruments, thus, compounding their reporting obligations. Id.

100. Id. at 113.

101. Id. at 118. A look at the following statistics will indicate the enormity of this monitoring task on the members of the CRC: in 1992, the year when the first initial reports were due, “reports were due from 56 states parties, and these were to contain information on 69 items under 8 categories in the guidelines.” Id. at 119. Thus, if every State Party submitted a satisfactory report, the CRC would have had a total of 3,864 pieces of information to evaluate. Id.

102. Id. at 120 (citing Committee on the Rights of the Child, Convention on the Rights of the Child, Official Records, “Compilation of the Conclusions and Recommendations Adopted by the Committee on the Rights of the Child,” CRC/C/19/Rev.4, p. 7). These additional posts are expected to ease the workload for the CRC by providing additional man-power to review the State Parties’ reports. Id.

103. Id. at 119-20. The CRC had originally set a six-hour limit on each report, but soon realized that this time frame was simply inadequate to sufficiently review the State’s reports. Id.
A final problem with the implementation mechanism of the Children’s Convention is that, apart from its monitoring function, the CRC has no enforcement powers and must rely exclusively on international publicity and pressure from other State Parties to implement its recommendations. In practice, for any meaningful change to occur in children’s lives, the State’s national legislature and court system must affirmatively bring these international standards and recommendations into the national arena through its domestic laws. Hence, the Children’s Convention is “soft law,” its objective is to develop moral standards regarding the treatment of children. Some critics argue that although the Children’s Convention purports to safeguard children, it is essentially void of substance. However, the true significance of the Convention must not depend entirely on how effective its mandates are in protecting children, but rather on the extent to which it forms the basis for political change concerning children’s rights.

4. The Paradigm Shift from Objects to Human Beings: The Children’s Convention and Other Global Humanitarian Instruments

The Children’s Convention denotes a revolutionary shift from viewing children as parental objects to respecting children as human beings with their own set of rights. In fact, “[i]nstead of merely picturing the child as a being in need of services, the Convention depicts the child as an individual with the right to have an opinion, to be a participant in decisions affecting his or her life, and to be respected for his or her human dignity.” Also, the Convention prevents adults from treating children as possessions or commodities by endowing the child with the right to an identity, name, and nationality. Prior human rights instruments did not go as far in protecting and preserving children’s survival and developmental rights.

104. Fitzgibbon, supra note 11, at 341. The CRC lacks the authority to receive petitions alleging violations of the Children’s Convention, either from State Parties or individuals. Seitles, supra note 22, at 172.
106. Seitles, supra note 22, at 172.
107. Hammarberg, supra note 86, at 70.
108. See Seitles, supra note 22, at 166.
110. Children’s Convention, supra note 3, art. 8(1); see also Fitzgibbon, supra note 11, at 338. An individual’s identity is very important, for it is what makes a person visible to society. VAN BUEREN, supra note 14, at 117. In addition, the right to a name is a fundamental right because it “confirms the existence of a specific legal personality capable of bearing rights and duties.” Id.
GLOBAL DISCOURSE ON CHILDREN'S RIGHTS

a. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (Universal Declaration), adopted in 1948, "[p]roclaims ... a common standard of achievement for all peoples and all nations," extending, by implication, to children. However, few if any, of the rights enunciated in the Universal Declaration contemplate children as anything but corollary beneficiaries. The drafters of this Declaration merely assumed that children's rights would be preserved by the rights of adults. However, as time passed, scholars learned that a child's physical and mental vulnerability justified an instrument in addition to the Universal Declaration. They argued that:

[W]hen defining a child's rights in a series of entitlements, it must be recognized that as a child grows, many of his developmental needs and characteristics change, including his capacity for mastering certain tasks. Children in the same developmental phases can have differing needs. ... Public policy and action ... must rest upon this knowledge if it is to provide our children with the opportunities for healthy growth, internal well-being, and fulfillment.

Unlike the Universal Declaration, the Children's Convention recognizes that children have unique developmental needs. Consequently, the Children's Convention provided the child with the right to an education as well as physical and psychological health care.

111. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., art. 2 at 72, U.N. Doc. A/810 (1948). The Universal Declaration states that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind." Id. However, as one commentator pointed out, "merely because an international instrument is capable of being applied to children does not mean that it incorporates a coherent child-centered approach setting out all the rights necessary to ensure the basic dignity of children." VAN BUEREN, supra note 14, at 19.


113. Id.

114. VEERMAN, supra note 10, at 163.

115. Id. at 57 (internal citation omitted).
b. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights

The Children's Convention is the "only human rights treaty that incorporates both civil-political and economic-social-cultural elements in one instrument." Prior to the Children's Convention, these elements were divided into two international human rights covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These Covenants complemented each other, elevating the status of children by providing them with "special measures of protection and assistance."

The division between civil-political and economic-social-cultural rights did not emerge out of the intrinsic nature of these five categories of rights. Rather, this division materialized as part of the ideological and political debates during the Cold War. Thus, after the demise of Socialism and these ideologies, the drafters of the Children's Convention discerned that the division could no longer be justifiably sustained. Accordingly, the Children's Convention merges both the civil-political and protective care rights of these two Covenants into one instrument, treating this broad range of rights as an indivisible whole.

II. UNACCOMPANIED CHILDREN

As previously noted, the principal objective of the Children's Convention is to protect children from abuse and exploitation. Accordingly, the success
of the Convention should be measured, in part, by how effectively it protects and furthers the rights of the most vulnerable children—those with special needs. Unaccompanied children comprise one distinct group of minors with special needs. Generally, these children are those “separated from [their] parents and . . . who [are] not being cared for by any adult who is legally or customarily responsible for [them].”

The majority of unaccompanied children are either child asylum seekers or refugees. The UNHCR estimates that of the twenty million refugees and displaced persons within its ambit of concern, half are children under the age of eighteen. Among this large population, unaccompanied children constitute a sizable and ever-increasing number. Similar to other groups of special needs children, such as those with mental or physical disabilities, unaccompanied minors are doubly vulnerable, both as unaccompanied children and as refugees or asylum seekers.

Unaccompanied minors have no responsible adult to represent and protect their best interests. These children become unaccompanied for myriad different reasons: some are orphaned, others are kidnapped or abducted, and many others are separated from their families during war-time evacuations. In fact, “[u]naccompanied children are uniquely at risk during emergency situations” such as wars and national disasters. During these times of crisis, unaccompanied minors are likely victims of malnutrition and other

124. VAN BUEREN, supra note 14, at 356. The UN typically identifies two groups of children with special needs—children who are only able to benefit from the exercise of their rights after their special needs have been met—disabled and unaccompanied children.

125. Id. at 370.

126. Id. at 360.

127. Id.

128. An accurate number of unaccompanied children is hard to determine. Nobody knows exactly how many refugees and displaced children are without their parents or families because “most of them are spontaneously taken-in by generous families in the camps.” Thousands of children have been separated from their families by war. Moreover, it is estimated that unaccompanied children account for 2 to 5 percent of the refugee population in camps. Christiane Berthiaume, Alone in the World (visited Nov. 29, 1999) <http://www.unhcr.ch/issues/children/rm09505.htm>.

129. Unaccompanied child asylum seekers or refugees suffer the additional traumas of being uprooted from their home and resettled. CHILDREN AND DEVELOPMENT IN THE 1990S: A UNICEF SOURCEBOOK 195 (Nancy Borman et al. eds., 1990).

130. RESSLER ET AL., supra note 8, at 258.

131. Berthiaume, supra note 128.

132. Id. The following statistics illustrate how deeply affected children are by conflicts of war: “Children have been the most tragic casualties during the past decade, with more than 1.5 million killed, more than 4 million wounded or disabled, and some 12 million left homeless. Ten million children are believed to suffer war-related psychological trauma.” UNICEF, CHILDREN ARE OUR FUTURE: WORLD SUMMIT FOR SOCIAL DEVELOPMENT 3 (Copenhagen Denmark, 1995) [hereinafter CHILDREN ARE OUR FUTURE].
preventable diseases,133 especially when "they come from countries where dietary standards are poor, primary health care services have collapsed and immunization programmes have been disrupted."134

As these unaccompanied children flee their homelands, they are often the first to fall victim to disease and exhaustion.135 Those who survive the exodus are generally abused and exploited: some are "passed from one family to another and others [lack] such basics as food, clothing, shelter, medical care, and education."136 Other unaccompanied children survive by being adopted into homes or transferred to camps or displaced persons centers.

As a result of their sojourn, many unaccompanied children will suffer severe psychological trauma.137 These children have not only witnessed events that will scar them for life, but they have also experienced the pain of familial separation.138 As one commentator noted:

For a child, it is a terrifying experience in itself to have to flee to an unknown land, having been abruptly wrenched away, under bombing or gunfire, from home, school, friends, everything that was comforting, that gave meaning to life . . . [however, if] the child loses his or her parents—the only remaining reassuring link—and is left alone, it is absolutely atrocious.139

133. Id.
136. Id. at 122. They are sexually exploited and many young girls are forced into prostitution. Berthiaume, supra note 128.
137. JOHANNES ZUTT, CHILDREN OF WAR: WANDERING ALONE IN SOUTHERN SUDAN 37 (1994). Psycho-social trauma is one of the most invidious effects of armed conflict. Many children exhibit sadness, anxiety, and behavioral disorders as a result of the death and violence that they have witnessed. CHILDREN AND DEVELOPMENT IN THE 1990s: A UNICEF SOURCEBOOK, supra note 129, at 194. In fact: Studies in Lebanon and other Middle Eastern countries indicate that children become obsessed with war in conversations, play, and drawings . . . [and that] defiance and violence appear to be part of the psychological coping mechanism that enables children to compensate for the sense of powerlessness and diminished self-esteem that affects them in conflict situations.
138. Berthiaume, supra note 128.
139. Id. (a statement made by Anne Skatvedt, UNHCR’s senior coordinator for refugee children).
For example, "Nicole" is an unaccompanied child who lives in a refugee camp in Rwanda. Nicole lost her eyesight after being struck in the head with a machete and the "last thing she saw was her father and mother being butchered by madmen in Burundi."\textsuperscript{140} That gruesome image will probably haunt Nicole for the rest of her life. Likewise, "Gideon," a boy in Kakuma, recalls: "[W]hen we were in Pochala, our enemies killed many people . . . when I was in Sudan I heard the sound of guns . . . when I am asleep they come into my head like a dream or cinema. That is my suffering."\textsuperscript{141} Gideon has lived with his "suffering" for years and will continue to do so until he receives proper treatment.

Regardless of their individual plights, the abuse that these unaccompanied children have suffered is extensive and must be corrected through physiological and psychological care. In addition, child asylum seekers and refugees—like all other children—require an education to survive and become productive members of society. Unaccompanied children deserve, at a minimum, the same care and protection received by other children. Thus, it is imperative that the UN and State Parties cooperate with each other to act as guardians on their behalf.

\textit{A. Applying the Children's Convention to Unaccompanied Children}

Indeed, the Children's Convention has recognized the arduous plight of unaccompanied children and has included them within its ambit of protection. Specifically, Article 22(1) of the Children's Convention provides:

\begin{quote}
State[] Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which said States are Parties.\textsuperscript{142}
\end{quote}

\textsuperscript{140} Id.
\textsuperscript{141} Zutt, supra note 137, at 37.
\textsuperscript{142} Children's Convention, supra note 3, art. 22(1) (emphasis added).
Moreover, Section 2 of Article 22 commands State Parties to cooperate with the UN and any other inter-governmental or non-governmental organizations to protect and assist child asylum seekers and refugees by tracing their parental units or assigning legal guardians. If parents cannot be found, "the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason." Thus, in theory, Article 22 allows unaccompanied child refugees to enjoy the entire panoply of rights bestowed upon them by the Children's Convention and other UN instruments.

B. State Action and Unaccompanied Children: Falling Short of the Goal

Although the Children's Convention—specifically Article 22—is a critical milestone in the legal protection of children's rights, it cannot overcome one fundamental weakness: the absence of a duty on States to provide asylum for unaccompanied child refugees. Since sovereign States have primary jurisdiction over unaccompanied minors, it is ultimately the responsibility of the individual State Party to implement Article 22 and provide protection to these child asylum seekers or refugees. However, a State's financial resources will frequently dictate its ability to enforce the Children's Convention—providing education, health care, and legal guardianship to unaccompanied minors. Thus, even a State Party with clear intentions to implement the Children's Convention may run afoul of its provisions due to inadequate resources. This is especially true with respect to poorer, underdeveloped countries. In fact, as the CRC concluded its twentieth

143. Id. art. 22(2).
144. Id.
145. Other instruments would include the implicit rights enumerated in the Universal Declaration of Human Rights, the ICESCR, and the ICCPR. The preeminent international instruments governing refugee status are the 1951 UN Convention Relating to Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. GUY S. GOODWIN-GILL, THE REFUGEE IN INTERNATIONAL LAW 18-31 (2d ed. 1996). However, there is no special provision in these two instruments that deal specifically with the needs of unaccompanied minor refugees. Thus, neither the Children's Convention nor these other international instruments provide unaccompanied children with any special care and protection.
146. VAN BUEREN, supra note 14, at 362.
147. RESSLER ET AL., supra note 8, at 267.
148. The Children's Convention recognizes that some nations are not going to be financially able to enforce every principle enunciated in the Convention. Thus, the Convention states that governments should undertake appropriate measures in accordance with their resources. Children's Convention, supra note 3, art. 4. Though some argue that this language provides State Parties with an "escape clause" (see supra note 68), others disagree because a government must demonstrate a genuine intention and "a political will to implement even those articles requiring economic resources." Thomas Hammerberg, The Work of the
session of reviewing State Parties’ periodic reports, it noted that “[a]mong the factors and difficulties impeding the implementation of the [C]onvention in Guinea . . . was that the country was among the least-developed in the world.”

Moreover, State Parties may often experience practical difficulties in fulfilling their role as enforcers of the Convention in relation to unaccompanied children. For example, in times of crisis, the structure of the State may be weakened or even destroyed by the crisis; there may also be other demands on the nation’s resources and so few means to meet those demands that the States simply cannot identify and care for the unaccompanied children. In these circumstances, the Children’s Convention would be inadequate as the sole international source of legal protection for the rights of unaccompanied children.

C. Inter-Governmental and Non-Governmental Organizations: Filling the Void.

Over the past few years, the UNHCR, the United Nations Children’s Fund (UNICEF), and various other inter-governmental organizations (IGOs) and non-governmental organizations (NGOs) have established a close working
relationship with respect to unaccompanied minors. Together, these agencies work to extend protection and assistance to unaccompanied child refugees and asylum seekers. For example, in 1996, UNICEF and UNHCR entered into a memorandum of understanding which gave “primary responsibility for the welfare of refugee children to UNHCR, while UNICEF [assumed] the lead role for children in their country of origin.” Furthermore, in 1997, UNICEF, UNHCR, and other NGOs “participated in a collaborative inter-agency effort for tracing unaccompanied children and reuniting them with their families.”

1. The Role of UNHCR

If State Parties fall short of their obligations under the Children’s Convention, other international agencies can assist unaccompanied children in their time of crisis. However, “[a]n international or voluntary organization must be authorized by the terms of its charter to act . . . on behalf of unaccompanied children if it is to act legally.” The authority of the UNHCR is stated in Paragraph 1(1) of its Statute:

The [UNHCR], acting under the authority of the General Assembly, shall assume the function of providing international protection to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problems of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

153. Carol Bellamy, the Executive Director of UNICEF, recognizes that UNICEF’s work around the world is “closely coordinated with allied agencies and partners,” including UNHCR and other IGOs and NGOs. Carol Bellamy, A Peace and Security Agenda for Children (visited Nov. 29, 1999) <http://www.unicef.org/exspeeches/99espl.html>.
155. Maslen, supra note 5, at 348.
156. Report on Unaccompanied Refugee Minors, supra note 154. This collaborative inter-agency effort focused on finding the families of more than 26,000 unaccompanied children after the mass return of Rwandans from the Congo in the latter part of 1996. Id.
157. Ressler et al., supra note 8, at 268.
158. Id. at 269 (citing G.A. Res. 428 (V) (1950)).
The UNHCR serves a special role vis-à-vis refugees—"to provide international protection to refugees under the auspices of the UN and, together with governments, to seek permanent solutions to their problems." The UN has also requested that the UNHCR help particular groups of refugees and displaced persons. Hence, the protection of certain unaccompanied minors and the reunification of refugee families have been part of the UNHCR's efforts since 1951.

For these unaccompanied minors, the "UNHCR performs protection functions, seeks durable solutions to their plight, and often provides material assistance." The legal basis for its actions is found in Paragraph 8 of its Statute, "which empowers the High Commissioner to promote the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection," to assist State Parties in promoting voluntary repatriation, and to foster the admission of refugees into the territories of the States.

As the international children's rights movement gathered momentum, the UNHCR decided to include a wider range of children within its ambit of protection. Accordingly, in 1987, the UNHCR announced its intentions to assist and include within its protection "refugees, asylum seekers, and displaced persons of concern to UNHCR, up to the age of 18, unless under applicable national law, the age of majority is less." Moreover, in 1988, the UNHCR issued its first Guidelines on Refugee Children, in which the Office confirmed its policy to intervene with governments and "to assume direct responsibility in many situations for protecting ... refugee children." The UNHCR wrote these recommendations to offer State governments guidance on how to manage the unfortunate reality of children as refugees. Revised in 1994, the Guidelines on Refugee Children acknowledge the centrality of the Children's Convention as a "normative frame of reference," by laying down...
legally required standards for State Parties to follow and by establishing goals for children’s rights.

In February 1997, the UNHCR issued its latest version of recommendations on dealing with child refugees: *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum.*[^168] The UNHCR promulgated these Guidelines to “ensure that effective protection and assistance is delivered to unaccompanied children in a systematic, comprehensive, and integrated way.”[^169] Consistent with the underlying theme of the Children’s Convention, the principle of the “best interests of the child” rests at the heart of these Guidelines.[^170]

The Guidelines emphasize that all work with unaccompanied minors must be founded upon concerns for detail and verification, and that State Parties should begin as soon as possible to trace and to promote family reunification.[^171] The “Executive Summary” to the Guidelines states that “[b]ecause of their vulnerability, unaccompanied children seeking asylum should not be refused access to the [appropriate] territory.”[^172] Further, the Guidelines recognize the vulnerability and special status of unaccompanied child refugees,[^173] and thus recommend that their “applications be given priority and that every effort be made to reach a decision promptly and fairly.”[^174]

Moreover, the Guidelines specify certain standards for State Parties to follow when they encounter children who may be unaccompanied and seeking asylum. First, State Parties must promptly determine whether the child is, in fact, accompanied or unaccompanied; *a prima facie* case of an unaccompanied child exists when the child is not chaperoned by his or her parental unit.[^175]
To accomplish this objective, States must establish identification procedures for unaccompanied minors "to find out whether ... the child is unaccompanied and ... to determine whether the child is an asylum seeker." ¹⁷⁶

The Guidelines advise State Parties to thoroughly document the unaccompanied child’s status and other "relevant information ... to ensure that subsequent actions are taken in the "best interests of the child."" ¹⁷⁷ Further, the State Party should appoint a guardian or advisor as soon as the child is identified as unaccompanied.¹⁷⁸ This guardian or advisor should have expertise in the field of child care to safeguard the "child's legal, social, medical and psychological needs."" ¹⁷⁹

If the State concludes that the child is unaccompanied, the next step is to determine whether the child is seeking asylum within the borders of the State Party.¹⁸⁰ If the unaccompanied child is seeking asylum, then the State must promptly decide whether to grant this status.¹⁸¹ Invariably, the State's decision should be grounded upon the principles of family reunification, non-discrimination,¹⁸² and the "best interests" of the child.¹⁸³

¹⁷⁶. Id. at 5.1. The identification process should begin "immediately upon the arrival of the child at ports of entry." Id. at 5.2.
¹⁷⁷. Id. at 5.6.
¹⁷⁸. Id. at 5.7.
¹⁷⁹. Id.
¹⁸⁰. Id. at 5.4. If the child is deemed accompanied then the Guidelines do not apply.
¹⁸¹. Id. If the child is not seeking asylum, then the State should facilitate the return of the child to his or her country of origin. Id.
¹⁸². This non-discrimination principle is similar to the ideas enunciated in the Children's Convention. Moreover, the Children's Convention is a neutral treaty, inasmuch as it repudiates all forms of discrimination based on gender, race, language, or religion. In fact, Article 2(1) of the Convention obligates States to "respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's ... race, colour, [sic] sex, language, religion, political or other opinion, national, ethnic or social origin, ... birth or other status." Children's Convention, supra 3, at art. 2(1). Moreover, Article 2(2) requires State Parties to protect the child against any form of discrimination or punishment resulting from the "status ... or beliefs of the child's parents, legal guardians, or family members." Id.
¹⁸³. Guidelines, supra note 9, at 5.4, 9.8. The Guidelines specify that State Parties should always consider the child's best interests when they register and document unaccompanied children, (Id. at 5.6) appoint a guardian or advisor to the child (Id. at 5.7), and conduct the initial interviews with the child (Id. at 5.8-5.9). Further, if the age of the unaccompanied child is in question, the decisionmaker should assess the child's age by taking into account his or her physical appearance and psychological maturity. Id. at 5.11(a), (b). Any doubt as to the child’s age should be resolved to the benefit of the child. Id. at 5.11(c).

States should also have professionally qualified and specially trained persons with preferably the same cultural background as the child, interview the unaccompanied child. Id. at 5.12. If there are any language barriers impeding the child's understanding of these procedures, then the child should be given an interpreter so that the child is kept informed, in an age-appropriate manner, of his or her refugee status. Id. at 5.13-5.14. Lastly, State Parties should begin tracing and tracking the unaccompanied child's family as soon as possible. Id. at 5.17-5.18.
If asylum is granted, the Guidelines recommend that State Parties act quickly to integrate the child into the host country. The Guidelines provide State Parties with four hierarchal options with which to locally integrate the unaccompanied child: (1) reunite the child with his or her family; (2) leave the child with the guardians to whom he or she has grown accustomed; (3) place the child in foster care, with a family possessing the same cultural background as the child; or as a last resort (4) place the child in a group home.

If, however, asylum is denied, the State Party must quickly ascertain a stable solution which represents the child’s best interest. For example, the Guidelines maintain that if repatriation is considered as the most appropriate durable solution, the State must locate a parent or an adult caregiver to take responsibility for the child before the child is to be repatriated. The Guidelines provide that:

The best interests of an unaccompanied child require that the child not be returned unless, prior to the return, a suitable care-giver such as a parent, other relative, other adult caretaker, a government agency, [or] a child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate protection and care.

From the moment that the child is identified as unaccompanied to the time where a durable solution is established, children seeking asylum are to receive an education, an explanation of their legal status, and an orientation program discussing their rights. Also, once local placement has occurred, the State must periodically supervise the development of the child. Lastly, the

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184. *Id.* at 9.1. Another possible solution for a child who is granted asylum is resettlement in a third country. However, this solution should only be considered if family unification is an issue in the child’s situation. *Id.* at 9.1, 10.5. In fact, family reunification is the goal underlying the State Party’s decision on resettlement or local integration. *Id.*
185. *Id.* at 10.7-10.8.
186. *Id.* at 9.2.
187. *Id.* at 9.4. This process entails tracing the child’s family and making an assessment that the family can care for the child. *Id.*
188. *Id.* at 9.4. If the child is returned, he or she shall receive counseling. *Id.* at 9.5.
189. *Id.* at 7.1-7.14.
190. *Id.* at 7.5. The Guidelines provide that: “Whether they are accommodated in foster homes or special reception centres, children seeking asylum, should be under regular supervision and assessment by qualified persons, to ensure their physical and psychological well-being.” *Id.*
Guidelines recommend that State Parties provide young adults access to aftercare—including education, psychological counseling, and health care.\footnote{191}{\textit{Id.} at 10.9.} For example, these children "should be assigned a contact person and should have access to information and advice on issues like welfare rights, housing, [and] education."\footnote{192}{\textit{Id.}}

Moreover, the UNHCR Guidelines provide that "[c]hildren seeking asylum should have the same access to health care as national children."\footnote{193}{\textit{Id.} at 7.9.} Thus, unaccompanied minors should receive both physiological and psychological care. In fact, the Guidelines recognize that unaccompanied children require special care and sensitivity because they have experienced trauma that many adults will never encounter, such as separation from family, loss, and violence.\footnote{194}{\textit{Id.} at 7.10.} Accordingly, the Guidelines recommend that these children receive counseling at all stages of the identification process, as well as during aftercare.\footnote{195}{\textit{Id.} at 9.5.} Lastly, the Guidelines suggest that "[e]very child, regardless of status, should have full access to education in the asylum country."\footnote{196}{\textit{Id.} at 7.12.} This appeal to education includes the right of juveniles to enroll in vocational or professional schools.\footnote{197}{\textit{Id.} at 7.14.}

2. \textit{UNICEF}

Similar to the objectives of UNHCR, the ultimate goal of UNICEF is to "help protect the lives of children and promote their development."\footnote{198}{UNICEF, \textit{UGANDA COUNTRY INFORMATION}, supra note 152, at 1.} UNICEF is an IGO that works in conjunction with national governments and local organizations, to provide children with better health, nutrition, water, sanitation, and practical education.\footnote{199}{UNICEF, \textit{Some Questions (and Answers!) About UNICEF} (visited Nov. 29, 1999) \textcopyright http://www.unicef.org/about/}. Accordingly, UNICEF promotes long-term programs "to address the issues of poverty, disease, hunger, and ignorance which interact with one another tragically to impact on the child's predicament."\footnote{200}{\textit{Id.}}
From its inception, UNICEF has worked extensively with children in conflicts, addressing issues such as “underage recruitment of child soldiers, the need for trauma counseling for children caught in conflict and the creation of zones of peace to ensure the care of children during conflict.”

To assist war victims, UNICEF has fought to obtain the release of child soldiers, pioneered programs such as “days of tranquility” and “corridors of peace,” and donated the profits from over three and one half billion greeting cards to the various programs for children. Moreover, UNICEF has appealed to donors on behalf of “[forty-eight] million children who are victims of war, natural disasters, extreme poverty and other forms of violence and exploitation.” Lastly, to protect and assist children in natural disasters, UNICEF provides psycho-social counseling to children and distributes both educational and basic survival kits to families—including tents, kitchen utensils, and water tanks.

3. Role of NGOs

Finally, the activities of NGOs complete and support the various measures taken by other agencies (i.e., UNHCR and UNICEF) to improve the quality of life for unaccompanied children. NGOs include large international organizations such as Doctors Without Borders, CARE, and Save the Children, as well as smaller local agencies like the National Red Cross and Red Crescent Committees. UNHCR describes NGOs as their “right arm”

201. Id. UNICEF recognizes that in modern armed conflict, “children and women are not only the first casualties . . . [but also] they are being deliberately targeted and are being forced to take part in the conflicts.” UNICEF, News in Brief: Headlines (visited Nov. 29, 1999) <http://www.unicef.org/newsline/99pr2.htm> [hereinafter News in Brief].

202. Id. UNICEF has worked—in cooperation with other agencies—to obtain the release of more than 300 children between 1997 and 1998. Id.

203. CHILDREN ARE OUR FUTURE, supra note 132, at 4.

204. Some Questions (and Answers!) About UNICEF, supra note 199.

205. News in Brief, supra note 201.

206. Id.


because NGOs work behind the scenes to turn "UNHCR plans into action in all the different areas of refugee assistance." 209

The role of NGOs in providing humanitarian assistance to children is multifaceted. For example, NGOs are involved with numerous child welfare programs including: nutrition, child development, health protection, education, functional literacy and the war against ignorance, and the creation of facilities for abandoned children. 210 In refugee camps, NGOs care for the sick, distribute food, clothing, blankets, and tents, and set up hospitals and schools for unaccompanied children. 211 In addition, NGOs help refugee families secure asylum, find jobs and housing, and locate educational facilities for the children. In crisis situations, NGOs "are often the only channel of information to the rest of the world." 212 Generally, NGOs are the first to detect repeated human rights violations and ethnic violence. 213 Lastly, NGOs lobby governments to adopt more generous refugee policies for both adults and children. 214

The International Rescue Committee (IRC) and the Action for the Rights of Children (ARC) are two examples of the power of NGOs and their ability to help people throughout the world. In Talangaï, the IRC works alongside local authorities to address urgent water and sanitation needs—including a public health education campaign to ensure proper storage of water—and works with health organizations and community groups to help reestablish Talangaï’s reproductive health facilities and support groups for victims of sexual

209. Id. Santiago Romero-Perez, UNHCR’s NGO Coordinator, likened the relationship between the UNHCR and NGOs to that of an architect and his or her sub-contractors. He said, "UNHCR itself does not have the hundreds of doctors needed to care for refugees from places like Somalia, Rwanda or Liberia, who flee in droves and end up wounded, sick and starving in poor neighboring countries." Id.

Twenty-five years ago, there were approximately 2.5 million refugees in the world. Presently, there are 23 million, not including the 25 to 30 million displaced persons. Id. With this substantial increase in refugee population, it is not surprising that the UNHCR relies so heavily on the work of NGOs. In fact, the UNHCR “works with 104 NGOs in Africa, 85 in Europe, 66 in Asia, 45 in Latin America, and 55 in the Middle East in areas such as health, education, food supply, water supply, shelter, transportation and legal aid.” Id.

210. IILS, supra note 207, at 106-07. Some examples of NGOs which are combating malnutrition are: “Catholic Relief Service, the Red Cross, Caritas and the Inter-cultural Co-operation Association.” Id. at 108. Also, the Red Cross and other volunteer and religious organizations are working to assist children in the field of health protection. Id. at 109.

211. Berthiaume, supra note 208.

212. Id.

213. Id. NGOs play a valuable preventive role in that they sound the alarm when floods of refugees appear on the horizon.

214. Id.
violence. The "IRC has been approached by UNICEF and UNHCR to supervise the care of unaccompanied minors amongst the Rwandan refugees" at a refugee camp. Accordingly, it will work closely with tracing agencies in Rwanda and will help children make wise decisions about whether to return home. The IRC is also working with the UNHCR to provide a health post at the Rwandan ports of entry for repatriating refugees.

Similar to the IRC, the primary goal of the ARC is to increase the capacity and staff of UN bodies and to protect and care for children during all stages of refugee situations—from emergency interventions to the finding of durable solutions. The ARC also identifies pilot projects (which address critical issues affecting children) and trains teams to identify and develop action plans for the needs of children.

III. PROTECTING THE VULNERABLE: ENFORCING AND ENCOURAGING

As the above discussion suggests, many international agencies have the ability and authority to assist State Parties in protecting unaccompanied children. Generally, these agencies are successful in providing children with food, shelter, educational facilities, and other resources essential to a child's survival and development. Also, they can recommend measures that, if adopted by States, would care for and protect unaccompanied child refugees and asylum seekers.

The UNHCR has taken such a measure by promulgating the Guidelines. In theory, these Guidelines would not only extend international protection to unaccompanied minors, but would also provide them with education, health care, and psychological care. The problem with these Guidelines, however, is that they were intended to give State Parties guidance on how to handle and protect unaccompanied children, and as such, have no implementation mechanism behind them to give them credence or force. Thus, despite the

216. Id.
217. Id.
218. ARC is a collaborative effort between UNHCR and the International Save the Children Alliance (ISCA). Report on Unaccompanied Refugee Minors, supra note 154.
219. Id. ARC also addresses concerns of adolescents.
220. Id.
221. RESSLER ET AL., supra note 8, at 270.
UN’s efforts, there is still no universally accepted treatment of unaccompanied children among the international community. Instead, the Guidelines merely represent the UNHCR’s idealistic goals for the protection and care of unaccompanied minors.

A. Overcoming the Difficulties of Enforcement

Presently, the international response to unaccompanied minors is insufficient, especially at the point where principles and guidelines move from theory to practice. For example, theoretically, each State Party should incorporate the articles of the Children’s Convention and the principles articulated in the UNHCR Guidelines into its national policy in dealing with unaccompanied child asylum seekers or refugees. If no such national policy exists, then the State Party should promptly create one that conforms to these promulgated standards.

However, in practice, a State Party’s adherence to the mandates of the Convention “may be complicated by political will or resource limitations.” Some States may simply not have the necessary resources to provide unaccompanied minors with education, health, and psychological care. Meanwhile, other State Parties may have accompanied their ratification of the Convention with reservations on certain articles, thereby making those provisions unenforceable. Moreover, because State Parties have the discretion to enforce or ignore the UNHCR Guidelines, different States may implement their own procedures (no matter how deficient) for the status determination and care of unaccompanied children. This discretion will inevitably lead to a lack of uniformity concerning the international standards on protecting and caring for unaccompanied minors.

1. Legislation: From Guidelines to Law

Ultimately, it is the child, not the State Party, who will suffer from this lack of international uniformity in the care and protection of unaccompanied children. The UNHCR Guidelines are a step in the right direction toward a uniform policy on the procedures for dealing with unaccompanied minors. If properly implemented, these Guidelines could remedy many of the problems

224. See discussion, supra note 71.
225. McCallin, supra note 222, at 110.
faced by unaccompanied children and could provide them with adequate physiological and psychological services. However, presently, implementation of these Guidelines is dependent entirely upon each State Party’s discretion. This discretion must be eliminated in order to achieve uniform policies in dealing with unaccompanied minors. The Children’s Convention is an important milestone in the recognition and protection of children’s rights, but it “is obviously not a final product.”  

Rather, the world must regard it as “a starting-point for further standard-setting within the field of children’s rights.” Accordingly, the international community should set new standards for dealing with unaccompanied children by incorporating the ideas enunciated in the Guidelines into either a supplemental instrument to the existing Children’s Convention or a new convention altogether—one that will recognize the special needs of unaccompanied children and incorporate those needs into law.

This new instrument should go beyond the capacity of the UNHCR Guidelines and require State Parties to provide unaccompanied children with protection and assistance in a comprehensive and integrated manner. Moreover, it should provide unaccompanied minors with proper education, health care services, and psychological care throughout their time of need. Lastly, it should require States to afford unaccompanied minors with counseling from the moment the child is identified as unaccompanied to beyond the time of reunification or repatriation.

2. Cooperation

Even with a supplemental instrument to the Children’s Convention or a new convention altogether, many unaccompanied children will lack adequate survival and developmental resources. For example, some State Parties will not have the necessary funds to provide unaccompanied children with health care, counseling, and an education. In these situations, agencies, such as UNHCR, UNICEF (and other IGOs), and NGOs, must continue to cooperate with each other and the States to meet the needs of unaccompanied children.

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227. Id.
228. In fact, because poorer nations have a hard enough time dealing with their own national children, it is unrealistic to assume that they will be able to adequately care for unaccompanied children, without assistance.
229. For examples of interagency cooperation, see discussion, supra Part II(C).
These international and domestic agencies must collaborate their efforts and share in the responsibility of caring for and protecting unaccompanied children. For instance, "one agency may assume responsibility for the care and placement of unaccompanied children, while another may assist in tracing the families." This type of inter-agency cooperation is vital to meeting the special needs of unaccompanied child asylum seekers or refugees. Thus, inter-agency coordination will likely determine the success of the supplemental instrument to the Children's Convention or of the new convention.

CONCLUSION

The Children’s Convention “specifies the universally accepted minimum standards for the well-being of children,” ranging from survival to developmental rights. For some children—indeed some critics would argue for most—the rights embodied in the Convention are a distant goal rather than a current reality. This is especially true with regard to unaccompanied children.

As the UNHCR Guidelines articulate, children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection. Yet, as it stands, the Children’s Convention provides these children with, at a minimum, the same protection. Unaccompanied child asylum seekers or refugees do not have legal guardians to protect their rights; thus, State Parties must intervene on behalf of these children and act as their guardian.

The existence of international agreements, such as the Children’s Convention and the UNHCR’s promulgated Guidelines, are critical instruments toward eradicating the exploitation and abuse of unaccompanied child refugees. However, effective and realistic enforcement strategies must be developed to reduce the superficiality of these UN instruments and to increase the likelihood of concrete improvements in the lives of these children. By far, the harshest reality for child asylum seekers and refugees comes in the form of ineffective solutions and further dislocation.

230. RESSLER ET AL., supra note 8, at 291.
233. Id.
234. Guidelines, supra note 9, at 7.1.
The UNHCR Guidelines, if properly implemented, would remedy some, though not all, of the problems faced by unaccompanied children. Children will not postpone their growth and development while the international community works to establish durable solutions. Instead, this Note encourages the international community to supplement or create a new children’s rights instrument which will provide adequate protection and assistance to unaccompanied minors. Children are the world’s most valuable resource, and thus, the world must work to protect them.