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THE ROLE OF PARLIAMENTS IN PROTECTING THE RIGHTS OF CHILDREN, IN PARTICULAR UNACCOMPANIED MIGRANT CHILDREN, AND IN PREVENTING THEIR EXPLOITATION IN SITUATIONS OF WAR AND CONFLICT

***Explanatory memorandum submitted by
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A total of 193 States have signed the Convention on the Rights of the Child to date, implying global recognition that the protection of children's human rights transcends political considerations and national borders.

Article 19 of the Convention on the Rights of the Child sets forth the principle by which States Parties are bound to adopt appropriate measures to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

Children separated from their parents and families because of war, internal conflict, natural disasters, internal displacement or due to economic and social reasons, as well as unaccompanied migrant children, are vulnerable to human rights violations and are at increased risk of violence, abuse, forced recruitment, sexual harassment, child labour, discrimination and even death.

The United Nations estimates that the number of migrants globally increased from 155 million per year in 1990 to 214 million in 2010. Among these, some 35 million migrants worldwide are under 20 years old.

UNICEF estimates that some 300,000 children - boys and girls under the age of 18 - are involved in more than 30 conflicts worldwide.

Although the exact number of migrant children is unknown, the Economic Commission for Latin America and the Caribbean (ECLAC) estimates that one in every five migrants in that region is a child or adolescent.

The Office of the United Nations High Commissioner for Refugees (UNHCR) indicated that over the past 10 years, unaccompanied children represented roughly 5 per cent of all asylum-seekers in the European Union.

The United Nations Secretary-General's 2012 Report on Children and Armed Conflict states that serious violations against children occurred in 21 countries, with two new country situations added.

The increasing involvement of children as active soldiers in armed conflict zones and as members of international organized crime networks have a direct impact in the right of the child to life and development.

Unaccompanied migrant girls and girls in situations of war and armed conflict, including situations of organized crime, are extremely vulnerable to sexual exploitation, including rape, trafficking or early marriage.

The *lex specialis* character of the Convention on the Rights of the Child renders Article 2, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights in reference to unaccompanied and separated children inapplicable, hence the need to prioritize the allocation of resources to such children.

Standard 13 of the Minimum Standards for Child Protection in Humanitarian Action specifically states that "Family separation is prevented and responded to, and unaccompanied and separated children are cared and protected according their specific needs and best interests".

Article 3 of European Council Resolution 97/C 221/03 on unaccompanied minors who are nationals in third countries establishes minimum guarantees for all unaccompanied children, including: obtaining information on the identity and situation of the minor through an interview; identifying the place of residence of the minor's family members; ensuring that the minor is represented by a legal guardian or national agency in charge of caring for the minor; and granting the minor access to education and health services.

Separation of children can be the result of a variety of causes and in order to properly secure the protection of unaccompanied and separated children, it is crucial to tackle the root causes that lead to a child's separation and work towards finding a solution early on.

The right of the child to freely associate and assemble is sometimes abused in public demonstrations and political rallies, where children are used as human shields, thus jeopardizing their right to life and development and to be protected from violence.

The Convention on the Rights of the Child recognizes that those with primary responsibility for children's well-being and care are their parents, legal guardians or other individuals legally responsible for them. Therefore, parliaments must address the protection of unaccompanied and separated children in a multi-faceted manner.

The protection of unaccompanied migrant children and separated children in situations of war and armed conflict is an international issue. Therefore, a comprehensive approach must be adopted aimed at establishing a protection system that draws on policies from various countries.

Sound legislation aimed at protecting unaccompanied migrant children and separated children in situations of war and armed conflict must include initial assessment and measures, such as: prioritizing identification of a child as separated or unaccompanied immediately upon arrival or as soon as their presence in the country becomes known to the authorities; prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner; providing children with their own personal identity documentation; and tracing family members as soon as possible.

Legislation on initial assessment and measures should include provisions on the appointment of a guardian and legal representative or counsel; entitlement to care and accommodation; full access to education and guarantee of the right to an adequate standard of living, the right to enjoy the highest attainable standard of health and access to treatment and rehabilitation facilities; measures to prevent trafficking and sexual or other forms of exploitation, abuse and violence; prevention of military recruitment and protection against the effects of war.

Article 22 of the Convention on the Rights of the Child establishes the obligation to take appropriate measures to ensure that children, especially unaccompanied children seeking refugee status, receive appropriate protection.

Every effort should be made to return an unaccompanied or separated child to his or her parents as an ultimate aim and lasting solution, except when further separation is necessary in the best interest of the child. In such a case, local integration, inter-country adoption or resettlement in a third country should be considered depending on the child's cultural and social background.

The accompanying draft resolution reflects our proposals, as co-Rapporteurs on a range of important issues for which parliamentary action is required, so as to better protect the rights of children, in particular unaccompanied migrant children, and in preventing their exploitation in situations of war and conflict.