

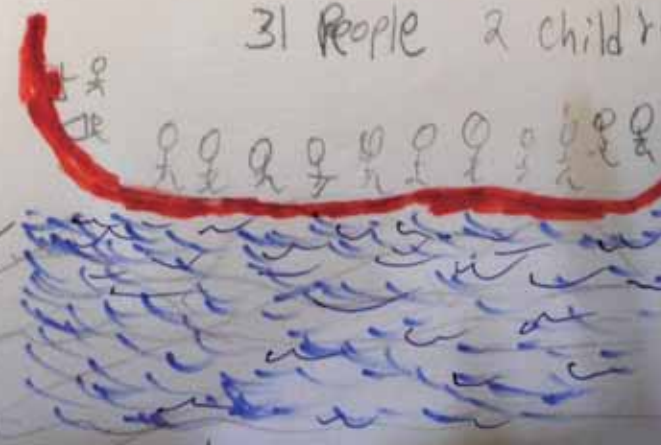
BOY  
10YRS

# BILISSA JOURNEY TO Malta

Ethiopia  
↓



31 People & children



## CAUGHT IN A NET

UNACCOMPANIED MIGRANT CHILDREN IN EUROPE



# INTRODUCTION

Unaccompanied migrant children are some of the most vulnerable in Europe, subject to detention and brutality, unable to access their rights to education, health care, or to seek asylum, and left without adequate legal protections in domestic legal systems throughout the continent.<sup>1</sup> One might think that in Western Europe, where child mortality is close to zero, and social services and institutions well developed, children’s rights would be more secure. Not, however, when the children in question are unaccompanied migrants.

All too often the thousands of unaccompanied children arriving without parents or caregivers find themselves trapped in their status as migrants, with European governments giving little consideration to their vulnerabilities and needs as children. Many end up without the humane treatment Europe claims to stand for. Instead they may face exploitation, prolonged detention, intimidation and abusive police behavior, registration and treatment as adults after unreliable age exams, bureaucratic obstacles to accessing education, and abuse when detained or housed in institutions.

Compounding this, many suffer from a pervasive lack of legal defense that leaves them unable to claim their rights. They may be prevented from seeking redress in case of ill-treatment, from challenging their detention, from appealing a negative asylum decision, or simply from having access to a lawyer to protect their rights.

Around 10,000 unaccompanied migrant children claim asylum in one of the 27 EU countries each year, and there are more children who enter the EU but never claim asylum.<sup>2</sup> This is a tiny fraction of all migrants entering Europe, yet the EU and national governments have failed to secure protection for these particularly vulnerable children.



Commercial trucks on ferry between Italy and Greece; Patras port in the background. Migrant children desperate to reach Italy stow away between the axles, inside fuel tanks, or inside refrigerated containers of trucks like these.  
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## HAZARDOUS JOURNEYS

**Every year, thousands of unaccompanied migrant children make their way to Europe, some fleeing violence, others in search of a better life. These children—typically boys between 14 and 17 years old, but some as young as 10—travel from Afghanistan, Somalia, Eritrea, and elsewhere. They often travel for months, without parents or other caregivers, paying smugglers thousands of dollars. Yet when they arrive in Europe, they face additional obstacles in the countries they first reach, and the Dublin II Regulation prevents them from being able to move within the EU, to seek better conditions or to reunite with extended family.**

Human Rights Watch has, over the course of the last 10 years, documented the journeys taken by unaccompanied migrant children and the issues faced when they reach Europe.

For example, Labaan X. said he left Somalia in 2009 when he was 15, shortly after his father was killed. He travelled north by himself, taking months to make his way over land through Sudan and Libya with smugglers. In Tripoli, he contacted another people smuggler, and then boarded a rickety boat with about 100 other migrants. After days at sea, without much water or food, the boat reached Maltese waters. Malta put Labaan in detention for three months, with unrelated adults and no access to education, while they went through a lengthy procedure to determine his age.<sup>3</sup>

Labaan's story is not unusual. Unaccompanied migrant children who reach Europe can face detention, destitution, and a legal quagmire, unable to cross internal EU borders to claim asylum or reunite with family members.

Ahmed M., who was living on the streets in Patras, Greece, when Human Rights Watch interviewed him, said he was the oldest boy in his family. He was 16 years old and in the 10th grade when he fled Afghanistan in 2011, following a knife attack by six men who, Ahmed said, claimed to be Taliban. He traveled over land with people smugglers through Iran and Turkey before reaching Greece. Though he had been in Greece for seven months, he had been unable to apply for asylum and had been subjected repeatedly to police violence on the streets of Patras. He had tried to enter Italy by stowing away on trucks crossing from Patras to Italy by ferry—for example, he once hid on a box between two axles of a truck for 18 hours—but had been caught and sent back to Greece.<sup>4</sup>





## BRUTALITY, DETENTION, AND DESTITUTION

Greece, one of the major gateways for migrants entering the EU, has perhaps the worst practices for migrant children of the countries we have investigated in the EU. Children can spend months in detention centers—often in the same cell with adults—in conditions that the European Committee for the Prevention of Torture termed “unacceptable.”<sup>5</sup> Released from detention, they are typically served an order to leave the country. If they do not, they may find themselves back in detention, no matter how vulnerable they are or whether they have a claim for asylum.

Even outside detention they are far from protected. Greece offers a mere 300 places in reception centers for an estimated annual arrival of 1,000 children. With no safety net, even for trafficked children and others most at risk, children can end up homeless in a daily struggle for survival and in a vicious cycle of exploitation.

According to children interviewed by Human Rights Watch, brutality by officials is common. Sixteen-year-old Jafar P., for example, who was traveling with two other boys, described their encounter with the port police in Patras: “First they threw my bag into the sea, and then [us]. They took us out and beat us. I was thrown inside the sea, taken out, and beaten, thrown into the water again, taken out, and beaten again.”<sup>6</sup>

Children have also been prevented from seeking asylum. For instance, 16-year-old Ali M. arrived alone at Athens airport from an African country in February 2008. He said he tried to apply for asylum at the passport-control counter but didn’t speak any Greek or English. He was detained at the Petrou Ralli detention center for two months. He told Human Rights Watch that he was not given an opportunity to ask for asylum, and he was never provided with an interpreter.

Some children are trafficked into Greece. Because the country lacks adequate identification procedures and interpreters, trafficked children are neither identified nor protected. One boy, who had been released from detention and was on the way to meet one of the smuggler’s contacts, said he would be kept “like a prisoner” by the man who smuggled him if his uncle back home did not pay the agreed US\$6,000 smuggling fee. Others are at risk of falling into the hands of trafficking networks once they are in Greece. A 14-year-old unaccompanied Afghan boy told Human Rights Watch that a stranger approached him in a park, promising free passage to another European country for him or other children who had not been fingerprinted by the Greek authorities.<sup>7</sup>

A 14-year-old unaccompanied migrant boy from Afghanistan stands outside the abandoned house in which he lives with 25 other Afghan migrants in Patras, Greece. Like many other migrants, he is trying to stow away on ships to Italy to claim asylum. © 2012 Alice Farmer/Human Rights Watch



# WORSE OFF THAN ADULTS

Unaccompanied migrant children may face additional bureaucratic obstacles to effective protection as their age demands, such as awaiting the appointment of a guardian before they can apply for asylum or awaiting the outcome of an age determination procedure before they can be released from detention. Malta, for instance, presumes that anyone who is not “visibly” a child, meaning anyone who looks older than about 12, is an adult. Migrants claiming to be children must go through a prolonged age determination process and are locked up in an adult jail for weeks or months while the proceedings unfold.<sup>8</sup>



A presumption of adulthood—as opposed to giving children the benefit of the doubt—has a significant impact on child welfare. In detention facilities, children may be exposed to periodic violence and those interviewed in Malta related instances of exploitation. Abdi M., a Somali boy who was 17 when he was detained, told Human Rights Watch: “Every day a big man from Mali came and said, ‘Give me your food.’ And one day I said no and he hit me. I was out on the floor [unconscious] for half an hour. I told the soldiers but they said, ‘We don’t care.’ No one helped me, I just cried and went to sleep.”<sup>9</sup>

But being found to be a child does not solve the problem. Because migrant children are underage, many governments deem them incapable of making important decisions. As persons considered legally incapable, they are assigned a guardian (a person or institution) mandated to decide all matters on their behalf. Guardianship is intended to safeguard children’s interests, especially because children tend to be unaware of their entitlements. In reality, guardians too often lack the necessary powers or expertise, and do not challenge government action.

Children may be powerless to object to guardians who do not act in their interest. Spain deported unaccompanied migrant children to Morocco until 2008 on the assumption that the children’s return was in their best interest. Government institutions acted as the child’s guardian, but officials did not consult with the child and they ignored consistent reports of children’s ill-treatment and detention upon return.<sup>10</sup>

An absent guardian can turn into an obstacle that prevents the child from escaping his or her legal limbo. For instance, France requires that every unaccompanied migrant child arriving at Charles de Gaulle airport be represented by a guardian. Yet these guardians are ultimately not effective. If for any reason no guardian is available, or the guardian arrives “too late” to meet the child, this does not prevent authorities from detaining and deporting children. In 2008 around 30 percent of children never met with their appointed guardian, often because they were deported before their representative arrived. Yet, without that guardian, children cannot legally challenge their detention or deportation, as they are themselves considered “incapable” to file legal acts or even to appoint a lawyer.<sup>11</sup>

In Greece, children Human Rights Watch spoke to in 2008 and 2009 were unaware they had a guardian, even if one had been appointed, and guardians were unable to tell us how many children they represented. Police in some cases did not even bother to inform guardians about a child’s existence. In such situations, children below age 14 are barred from accessing the universal right to seek asylum because they need a guardian to do so. For example, a 10-year-old unaccompanied girl from Somalia who Human Rights Watch met in June 2008 could not file an asylum application because she had no effective guardian. She remained an irregular migrant instead, and Greek police detained her multiple times in facilities with no access to guardianship or understanding of migrant children’s needs.<sup>12</sup>

A Ghanaian boy sits in an open center for migrants in Malta. Children with their families, as well as unaccompanied children, are often taken to detention the same day the police apprehend them. Families are typically released more rapidly than unaccompanied migrant children. © 2012 Alice Farmer/Human Rights Watch





A recreation area at the Safi Barracks detention facility in Malta. Virtually all migrants, including unaccompanied children, are automatically detained on arrival in Malta.  
© 2012 Alice Farmer/Human Rights Watch



# DELIBERATE LEGAL GAPS

**Within a given country, unaccompanied migrant children are typically dealt with under two different and often contradictory sets of laws: immigration legislation and child-protection legislation. All too often, authorities resort to immigration legislation first and child-protection second, which has direct and dire consequences for children. European governments have all signed the main United Nations treaty protecting the rights of children, the Convention on the Rights of the Child (CRC), which prohibits discrimination against migrant children. Still, some have excluded migrant children from entitlements otherwise granted to children through reservations and declarations to the CRC that give deference to immigration legislation. In other words, children are considered migrants first and children second.**

The fact of two sets of legislation applying to unaccompanied migrant children means that at least two government bodies are in charge of them. One would like to think this might mean double assistance and protection. But the reality is that children fall through the bureaucratic cracks. Social policy ministries and interior or immigration ministries, the two types of bodies typically in charge, have inherently different approaches.

France presents one of the worst examples of what happens when unaccompanied migrant children are dealt with primarily as irregular migrants. It maintains extra-territorial zones, the biggest at Roissy Charles de Gaulle airport near Paris, where unaccompanied migrant children are treated as if they had not entered France. Inside these zones, they are subject to a different legal regime. In practice, the legal fiction that they are not in France means they have fewer rights.

Up to 1,000 unaccompanied migrant children per year end up in the legal bubble of the Roissy Charles de Gaulle airport transit zone, a zone that goes well beyond the immediate surroundings of the airport to include places as far as 20 kilometers away, and which can be extended at authorities' discretion. The purpose of that transit zone is simple: to insulate migrant children from the rights they would be accorded on French territory, thereby greasing the legal skids for their speedy removal from France. In 2008, for example, those who were removed—around 30 percent of all children who arrived—almost always left without any record of what happened to them.<sup>13</sup>

Systems that prevent unaccompanied migrant children from accessing their rights in Europe are not necessarily the result of sophisticated legal regimes. Legal gaps that either target unaccompanied migrant children—or hit them as “collateral damage”—may be blunt and discriminatory. For example for years the United Kingdom was criticized for excluding migrant children from the full entitlements under the CRC due to their migration status until it lifted a reservation in 2008, announcing its move days before the United Nations was set to evaluate its children's rights record.<sup>14</sup>

A 15-year-old and a 16-year-old in an adult detention facility. Upon arriving in Malta, they were detained with adults pending an age assessment procedure to establish them officially as minors. © 2012 Alice Farmer/Human Rights Watch







An unaccompanied migrant child from Afghanistan in Patras, Greece. Lacking housing or social services, he is forced to live in an abandoned factory with other migrants.  
© 2012 Kyle Knight/Human Rights Watch





## THE RETURNS “SOLUTION”

**As European governments see unaccompanied migrant children arriving and understand that their care incurs costs, the instinct of some European Union member states is to find a cheap and easy solution: the child’s return. While return to their family in the country of origin is only one of several possible lasting solutions for a child, it is too often the solution governments immediately favor, with little consideration as to whether repatriation is in the child’s best interests or family members can even be located.**

In countries of origin where social services barely exist and family tracing and reunification remains difficult, some European host governments are attracted by the idea of building reception centers to which they can swiftly return unaccompanied migrant children. The efforts by a number of EU Member States (including the UK and Sweden, and through the EU-sponsored European Return Platform for Unaccompanied Minors (ERPUM)) to return unaccompanied Afghan minors to Afghanistan despite the inability to trace minors’ families, and a lack of appropriate care facilities for them there on return, show a callous disregard for the child’s best interests. Yet in September 2012, Denmark announced its plans to join the ERPUM initiative.

In May 2012, Ali, a 16-year-old Afghan boy living in Oxford, commented on the UK’s plans to send boys like him back to an institution in Kabul: “I don’t think it’s right... For me, it’s going to be really hard. I came here at a young age, and my mind, my head, it’s changed. They’d send you to a house in Kabul and you’re going to stay there while they look for your family. If I think about that—I don’t wanna think about that. I can’t study, and my mind is racing and going ahead.”<sup>15</sup> Ali said he came to England as an unaccompanied migrant child when he was just 11 years old and has had no contact with his family in Afghanistan since then. He no longer speaks much Pashto, he told us, and has conducted his day-to-day life in English for most of the last five years.

European governments are not simply off the hook once the child is returned. They are directly responsible if the child is ill-treated, detained, or disappears upon arrival if they ignored relevant information before returning a child and did nothing to mitigate such risks. The European Court of Human Rights’ condemnation in 2006 of Belgium for returning a five-year-old unaccompanied Congolese girl by dumping her at Kinshasa airport was a much-needed signal that such actions are illegal. In a decision concluding that Belgium demonstrated “a total lack of humanity,” the court maintained that governments are obliged to take “measures and precautions” against the inhuman treatment of a returned child.<sup>16</sup>

Left: This fence marks the new high-security port in Patras, a coastal town in Greece. Migrants often attempt to sneak onto trucks awaiting transport to Italy by ferries. © 2012 Kyle Knight/Human Rights Watch  
Right: Tents at an open center for migrants in Hal Far, Malta. The facility is run by the Malta government’s Agency for the Welfare of Asylum Seekers. After the mandatory detention period, migrants, including children, are taken to open centers such as the one pictured. © 2012 Alice Farmer/Human Rights Watch





## THE EUROPEAN UNION AND A JOINT APPROACH

The European Union has taken positive steps towards addressing the situation of unaccompanied migrant children, as seen in the Action Plan for Unaccompanied Minors, in which Human Rights Watch and other NGOs have been involved in the development, and which covers important issues such as data collection and age determination. Yet this is just a small first step.

The EU should avoid falling back on myths and false pretexts put forward by some member states. These include myths that detaining children deters future migration and protects children from traffickers, or that intercepting (and returning) migrants before they reach European soil prevents the unnecessary deaths of children. The EU should also avoid repeating broad generalizations that the best place for a child is always with the family, or that better services and laws in Europe will only lead to more children arriving.<sup>17</sup> Not only are such arguments dangerous and unsubstantiated, but they inevitably open up a race to the lowest standards and undermine the ultimate goal of better protection.

Instead, the EU should ensure its policies and actions are truly rights-based and treat these children first and foremost as children, and not on the basis of their migration status. It should help member states adopt sound and transparent procedures to guarantee every child a fair, comprehensive, and individualized assessment that leads to a lasting and beneficial solution. The EU should put forward standards to ensure that children enjoy better safeguards, can defend their rights, and are able to challenge government decisions with the help of guardians and lawyers when they face detention, deportation, or go through an asylum interview.<sup>18</sup>

A bulletin board at an open living facility for migrants in Malta shows pictures of unaccompanied migrant children. Children such as these – typically boys between the ages of 14 and 17, from Somalia or Eritrea – frequently try to move further into mainland Europe. © 2012 Alice Farmer/Human Rights Watch





**Human Rights Watch recommends that the EU:**

- Pursue a rights-based approach in all EU action regarding the situation of unaccompanied migrant children in accordance with the EU Charter of Fundamental Rights. Ensure that these children are first and foremost treated as children, with their rights and protection needs given priority in all migration policies. Ensure the fulfillment of these children’s rights in compliance with national and international law while on EU territory.
- Present concrete proposals for strengthening the protection of unaccompanied children in the upcoming revision of European Union asylum directives that guarantee appointed guardians the power to represent the child’s best interests and safeguard the child’s protection needs; that establish clear qualification criteria for guardians who represent unaccompanied children, which should include demonstrated expertise about the rights of children, migrants, and asylum seekers; and that, in addition to a guardian, include the appointment of a qualified lawyer free of charge for unaccompanied children subject to administrative or judicial procedures.
- Provide assistance to countries at the EU border, such as Greece, Italy, and Malta, geared toward improving their capacity to receive, accommodate, and properly process the claims of asylum seekers and to protect, integrate, and provide other durable solutions for refugees, including resettlement to EU member states. Consider reprogramming funds for the construction of new detention centers in favor of funding that will improve these countries’ capacity to provide greater protection for asylum seeking and refugee children.

- Broaden intra-EU relocation of recognized refugees and other migrants with protection status from EU countries, and permit greater family reunification in other parts of the EU of recognized refugees and other migrants with protection status in a EU country, particularly with wider family relations for unaccompanied migrant children.
- After a lawful deportation order has been issued following due process and the exhaustion of legal remedies, and after voluntary repatriation has been offered, and, in the case of children, a best-interests-of-the-child determination has been made, assist EU countries through the European Return Fund. Facilitate voluntary and dignified return and reintegration of migrants who do not have protection needs and who can be safely returned to their home countries, for example, by providing diplomatic assistance with countries of origin to procure travel documents, and financial and logistical assistance to carry out removals.
- Reform the Dublin system by having the Dublin II regulation take into account equitable burden-sharing among member countries that genuinely have common asylum standards and procedures through, for example, consideration of joint EU processing within EU countries for specific caseloads or relocation of recognized refugees from one member state to another.

Left: A migrant from Afghanistan walks through one of the rooms used for shelter in an abandoned factory in Patras, Greece. © 2012 Kyle Knight/Human Rights Watch  
 Right: An unaccompanied migrant child from Afghanistan demonstrates how he runs into the rafters of the abandoned factory where he lives when police come to sweep the area and arrest migrants. © 2012 Kyle Knight/Human Rights Watch



<sup>1</sup> Human Rights Watch, *Boat Ride to Detention: Adult and Child Migrants in Malta*, May 2012, [www.hrw.org/reports/2012/07/18/boat-ride-detention-0](http://www.hrw.org/reports/2012/07/18/boat-ride-detention-0);

*Buffeted in the Borderland: The Treatment of Asylum Seekers and Migrants in Ukraine*, December 2010, <http://www.hrw.org/sites/default/files/reports/ukraine1210WebVersion.pdf>;

*No Refuge: Migrants in Greece*, November 2009, <http://www.hrw.org/sites/default/files/reports/greece1009.pdf>;

*Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport*, October 2009, [http://www.hrw.org/sites/default/files/reports/france1009webcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/france1009webcover_0.pdf);

*Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, December 2008, <http://www.hrw.org/en/reports/2008/12/22/left-survive>;

*Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, November 2008, [http://www.hrw.org/sites/default/files/reports/greeceturkey1108web\\_0.pdf](http://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf);

*Returns at Any Cost: Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards*, October 2008, <http://www.hrw.org/en/reports/2008/10/17/returns-any-cost-0>;

*Unwelcome Responsibilities: Spain's Failure to Protect the Rights of Unaccompanied Migrant Children in the Canary Islands*, vol. 19, no. 4(D), July 2007, <http://www.hrw.org/sites/default/files/reports/spain0707webcover.pdf>.

*Human Rights Watch, Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco*, vol. 14, no. 4(D), May 2002, <http://www.hrw.org/en/news/2002/05/06/spain-and-morocco-abuse-child-migrants>, pp. 28-37.

<sup>2</sup> In 2010, 10 295 children filed a request for asylum in the 27 countries of the EU, according to the 2012 France terre d'asile report, *Le droit d'asile des mineurs isolés étrangers dans l'Union Européenne*. There are no reliable statistics on the total number of unaccompanied migrant children who enter Europe every year. Asylum statistics, although they do not account for all children, are indicative of the proportion of unaccompanied children as compared to other asylum seekers in Europe. According to the United Nations High Commissioner for Refugees (UNHCR), over the past 10 years unaccompanied children have consistently made up 4 or 5 percent of all asylum applicants in the EU. "Addressing the Protection Gap for Unaccompanied and Separated Children in the European Union," Judith Kumin, director, UNHCR Bureau for Europe, Brussels, September 15, 2009. The presentation is on file with Human Rights Watch.

<sup>3</sup> Human Rights Watch interview with Labaan X., Marsa, Malta, March 13, 2012 (name changed).

<sup>4</sup> Human Rights Watch interview with Ahmed M., Patras, Greece, June 26, 2012 (name changed).

<sup>5</sup> European Committee for the Prevention of Torture, "Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 29 September 2008," <http://www.cpt.coe.int/documents/grc/2009-20-inf-eng.htm> (accessed November 1, 2009), para. 53.

<sup>6</sup> Human Rights Watch, *No Refuge*, pp. 5-7.

<sup>7</sup> Human Rights Watch, *Left to Survive*, pp. 53-93.

<sup>8</sup> Human Rights Watch, *Boat Ride to Detention*.

<sup>9</sup> Human Rights Watch, *Boat Ride to Detention*.

<sup>10</sup> Human Rights Watch, *Nowhere to Turn*.

<sup>11</sup> Human Rights Watch, *Lost in Transit*.

<sup>12</sup> Human Rights Watch, *Left to Survive*, pp. 56-57.

<sup>13</sup> Human Rights Watch, *Lost in Transit*, pp. 49-54.

<sup>14</sup> United Nations Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations, United Kingdom of Great Britain and Northern Ireland," CRC/C/GBR/CO/4, October 20, 2008, para. 70.

<sup>15</sup> Human Rights Watch interview with Ali A., Oxford, United Kingdom, May 14, 2012 (name changed).

<sup>16</sup> *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (Application no. 13178/03), October 12, 2006, <http://www.echr.coe.int/>, para. 69.

<sup>17</sup> Host states should trace the family or caregiver of unaccompanied children and seek reunification. In certain cases, however, particularly when the child was subjected to violence, exploitation, or neglect inside the family, or when the family was unable to protect the child from such abuse, a child's best interest may not be the return to parents or caregiver. A decision whether it is in a child's best interest to return to his or her family, therefore, must be subject to a careful assessment and cannot be generally assumed.

<sup>18</sup> EU standards on guardianship should be in line with those of the Committee on the Rights of the Child. UN Committee on the Rights of the Child, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin," General Comment No. 6, UN Doc. CRC/GC/2005/6 (2005), paras. 33-38.

A hole in the fence surrounding the port at Patras, Greece; migrants use holes like these to enter the port and stow away on ships.  
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