MISSING IN EUROPE:
A CRITICAL ANALYSIS OF THE EUROPEAN UNION'S POLICIES REGARDING
UNACCOMPANIED MINORS

by

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DEDICATION:

This thesis is dedicated to the thousands of unaccompanied minors who go missing during their migration journeys each year and those who have dedicated their lives to advocating for them.

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ABSTRACT:

EU policies aim to ensure unaccompanied minors (UAMs) who seek asylum alone receive rights-based treatment and feel protected under state care. However, Europol reported that more than 10,000 UAMs went missing from EU reception centres during the "refugee crisis" in 2015. Research suggests many chose to abscond from the system due to rights-violations. This prompts the research question: why did EU policies that intend to protect unaccompanied minors fail in practice during the crisis? Using the frameworks of historical and discursive institutionalism, and social construction of target populations theory, this thesis explores a case study of the EU's approach to UAMs and irregular migration will suggest the root cause of these disappearances is structural xenophobia at the EU level. This thesis will examine how structural xenophobic discrimination created at the EU-level translates in different national contexts by comparing state practices towards UAMs in Italy and Sweden.

LIST OF ABBREVIATIONS USED:

CEAS	Common European Asylum System
DI	Discursive Institutionalism
EU	European Union
EURODAC	European Dactyloscopy System
EUROPOL	The European Union Agency for Law Enforcement Cooperation
FRONTEX	Frontières Extérieures
HI	Historical Institutionalism
HRW	Human Rights Watch
NGO	Non-governmental organization
SCTP	Social Construction of Target Populations
TCN	Third Country National
UAM	Unaccompanied Minor
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees

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CHAPTER 1: INTRODUCTION

1.1 Missing Unaccompanied Minors in the EU

In 2015, conflicts in the Middle East and North Africa resulted in the highest numbers of asylum applications in European countries since World War II (Weinar, Bonjour, & Zhyznomirska, 2019). This became known as Europe's "refugee crisis,"[1] which saw more than a million asylum seekers arriving in Southern Europe by sea in 2015; a fourfold increase over the previous year (UNHCR, n.d.-a). Among the arrivals were 96,000 unaccompanied minors (UAMs) who applied for asylum in the EU in 2015 (UNICEF, 2016). UAMs are those under the age of 18 who seek asylum without a guardian present (EU Agency for Fundamental Rights, 2010). This is an extremely vulnerable population that has been recognized by international law as deserving of protective rights (UNHCR, 1967; United Nations, 1989).

However, during the crisis, Europol reported that more than 10,000 UAMs who sought asylum in Europe in 2015 went missing from EU reception centers (Townsend, 2016). National reports on missing UAMs during the same period indicate that the number of missing UAMs is likely much higher than Europol's figures (Greene & Toscano, 2016).

EU member states are required by international law and EU policies to provide UAMs with special rights-based protections that include: treating UAMs as children first, acting in their best interests, avoiding detention and deportation at all costs, ensuring the expedient assignment of a guardian, acting quickly to unify UAMs with family members in Europe, and ensuring UAMs are consulted and informed during the application process

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[1] The term crisis is used throughout this thesis to bracket the period in which the EU saw high volumes of asylum applications and more than 10,000 UAMs went missing. However, the term was constructed by the media and politicians who framed it as a crisis for Europe. This thesis does not intend to contribute this framing, but rather uses the term as a reference for the period under study.

(European Commission, 2010; CONNECT, n.d.; UNHCR, 1997; UNHCR, 1967; EU Agency for Fundamental Rights, 2010; United Nations, 1989). These EU policies are based on the UN Convention on the Rights of the Child (UNCRC) and the UN Refugee Convention and Protocol; which afford UAMs protections such as the right to a standard of living adequate for a child's physical and mental wellbeing, right to protection from all forms of sexual abuse, right to not be subjected to inhumane or degrading treatment, and right to receive state care (United Nations, 1989; UNHCR, 1967).

Despite these protective rights-based policies, researchers found that UAMs' rights were often violated during the crisis and that these rights violations led to UAMs absconding from the system. Non-governmental organizations (NGOs) and advocacy groups that researched conditions at reception centers in Southern Europe from 2015-16 found that UAMs (both male and female) were detained with adult males, were not allowed to go outside, had long wait periods in unacceptable conditions, were not allowed to contact family, had no legal representation appointed, and were not given services afforded to them under the United Nations Convention on the Rights of the Child (UNCRC) such as access to health care or education (Amnesty International, 2015; Human Rights Watch, 2016; Cosse, 2019; Human Rights Watch, 2016c).

Studies have found that UAMs disappear due to negative experiences at reception centers, such as detainment and lack of access to services, as well as lack of trust in the system due to fear of deportation, denial of family reunification, and long periods in application limbo (Di Stefano, 2016; Sigona & Allsopp, 2016; Allsopp & Chase, 2019; UNICEF, 2016; Gerace, Santagata, & Valastro, 2014; Hedberg, 2014).

The fact that UAMs disappeared from reception centers in the EU due to rights-violating experiences suggests that EU policies and legislation that intend to protect UAMs through a variety of measures (European Council, 2013b; European Council, 2013a; European Council, 2011; European Council, 2001; European Council, 2013c; European Council, 2014; European Commission, 2010) failed in practice during the crisis. Therefore, it is understandable why thousands of minors chose to abscond from the system in 2015. However, it is not immediately clear why these rights-violating push factors existed in the EU – a region governed by liberal democratic norms (European Union, 2019) and protective policies for UAMs (European Commission, 2010). This prompts the research question: *Why did EU policies that intend to protect unaccompanied minors fail in practice during the crisis?*

One argument is that rights-violations of unaccompanied minors occurred during the crisis due to the resource strain caused by the large numbers of arrivals (Merriman, 2016). Another argument in the literature is that various weaknesses in the Common European Asylum System (CEAS) (such as the Dublin Regulation, which places extra pressure on strained states, or narrow definition of what "family" is for justifying reunification) created push factors for UAMs to flee during the crisis (Sigona & Allsopp, 2016; Mucci & Paravicini, 2016). The EU institutions place responsibility on the member states to ensure asylum seekers receive rights-based treatment and follow EU policies (Di Stefano, 2016; European Parliament Research Service, n.d.); while member states argue they are not receiving adequate support from EU institutions to properly manage asylum and migration flows (Barlai, Fahnrich, Griessler, & Rhomberg, 2017). However, this thesis will argue that while resources and the structure of the CEAS are certainly factors,

something deeper underpins the negative experiences UAMs faced throughout the asylum-seeking process in the EU: structural xenophobia.

Achiume, (2014) defines structural xenophobia as structural discrimination through laws and policies that cause indirect harm to asylum seekers and "other foreigners that results from the disparate effects of various measures on these groups even in the absence of explicit prejudice" (p. 326). Achiume (2014) adds that structural xenophobic discrimination can be found in specific laws and policies, but also in more complex cases where laws, policies and practices interact cumulatively to cause harm to asylum seekers. Achiume defines structural xenophobia as distinct from explicit prejudice-based discrimination, implying that structural xenophobic discrimination occurs without prejudice-based intent: "Typically, the policies and practices at the heart of structural xenophobic discrimination are not motivated by explicit prejudice. Instead, they are intended to serve an independent, legitimate purpose" (Achiume, 2014, p. 337).

This project will expand Achiume's (2014) concept of structural xenophobia by suggesting there are three types of structural xenophobic discrimination in the EU's policies towards asylum seekers: 1) structural xenophobic discrimination that intends to cause harm to asylum seekers, 2) structural xenophobic discrimination that does not intend to cause harm to asylum seekers, and 3) structural xenophobic discrimination that occurs when policy-makers become aware of unintentional harm caused by laws and policies, but do not reform legislation. This thesis will provide evidence that these three forms of structural xenophobic discrimination undermine the EU's protective policies aimed at UAMs and foster asylum-seeking experiences that encourage disappearances.

Through the frameworks of historical institutionalism (Hall & Taylor, 1996), discursive institutionalism (Schmidt, 2010), and the public policy theory of social construction of target populations (Schneider & Ingram, 1993); and upon observations of the EU's approach to irregular migration[2], the following hypothesis is formed: *structural xenophobia at the EU-level undermines policies that intend to protect UAMs.*

As UAMs often arrive through irregular methods, such as smuggling networks (Greene & Toscano, 2016), and the EU's common asylum and migration system aims to keep irregular migrants out of the EU (Carrera & Allsopp, 2017), this thesis contends that the EU's protective policies for UAMs are undermined by intentional structural xenophobic discrimination that criminalizes irregular migrants. UAMs are irregular migrants due to the fact that they rely on smuggling networks to gain access to the EU. Therefore, this thesis argues that UAMs are unintentionally harmed by policies that intend to discriminate against irregular migrants due to a policy gap that does not account for their irregular methods of arrival. It will also contend that unintended harm was caused by gaps in the CEAS such as the Dublin System (which decides which state is responsible for processing asylum applications and has harmful effects for UAMs); a narrow definition of family reunification that only allows UAMs to reunite with their parents; and by a lack of standardized data collection methods and reporting procedures on missing UAMs in the EU. The third type of structural xenophobic discrimination – awareness of unintended harm without reform – is evident as some gaps in the EU's approach to UAMs were highlighted prior to the crisis but were not reformed. This thesis contends that the first type of structural xenophobic discrimination (intended structural xenophobia) against irregular migrants is

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[2] Irregular migrants are those who enter the EU without proper entry requirements such as visas (Spencer, 2018).

due to negative social constructions of irregular migrants throughout the historical and discursive evolution of harmonized European asylum and migration policies. As UAMs are procedurally categorized by the EU asylum system as irregular migrants due to the fact that they often arrive through smuggling networks and without proper documents for entry requirements, this thesis contends that the intentional criminalization of irregular migration by the EU unintentionally undermines the EU's policies that aim to protect UAMs due to the norm of viewing and treating those who arrive irregularly as criminals. An overview of the EU's regional approach to irregular migration, UAMs and the CEAS will be examined in the single-n case study to discover how structural xenophobic discrimination formed at the EU-level undermines protective policies towards UAMs.

In addition to conducting a region-level analysis, the single-n case study will also examine of the effect of structural xenophobia on practices at the EU member state level. The Swedish and Italian governments' policies, statements and responses to the issue of missing UAMs and the crisis more generally; testimonies from both UAMs and practitioners in each state; and data on UAMs in each state will be examined to see how structural xenophobic discrimination created at the regional level affects the treatment of UAMs in different national contexts. The criteria for the selection of local contexts will be elaborated upon in Chapter 3.

While the phenomenon of minors seeking asylum alone in the EU is not new (CONNECT, n.d.; European Migration Network, 2015), it is a fairly new area of study in social sciences. However, in political science, the phenomenon remains an under-researched subject that is often subsumed under the wider study of irregular migration. UAMs are an extremely vulnerable population with international legal protections that are

unique from those of adults. Therefore, their frequent and large-scale disappearances from EU reception centres warrants a more specific analysis.

This is a timely study in the field of political science due to Europe's ongoing refugee crisis and current tensions at the US/Mexico border which are unfolding as this project is being written. Liberal democratic countries that championed the UN's 1951 Refugee Convention and 1967 protocol in the post-World War II era are now responding negatively to increased levels of asylum seekers. States that receive asylum seekers hold a position of power over this vulnerable population; therefore, it is important for social scientists to research how that power is used and why governments are shirking their international responsibilities to these children.

This research also has normative implications. The current reality of many asylum seekers in the EU is that they are met with discrimination through processes that are intended to prevent their arrivals and expediate their deportations. Therefore, this project is important for academic interests, but it is also important as it brings structural forces of discrimination against vulnerable populations to the attention of policymakers, politicians, and the citizens who legitimize these anti-asylum policies. Global migration trends suggest that the EU and destination states around the world will continue to face periods of mass numbers of asylum applications. Therefore, it is important to understand gaps in policies in order for this vulnerable population to be better protected by future governments in times of crisis.

1.2 Research Design:

The theoretical approach for this thesis is adapted from Historical Institutionalism (HI), Discursive Institutionalism (DI), and Social Construction of Target Populations Theory (SCTP).

An analysis of the EU's regional approach to UAMs and irregular migrants will be conducted using HI, DI and SCTP to determine the historical and discursive context in which UAMs and irregular migrants have been socially constructed in the EU and policy implications of these social constructions. The purpose of this analysis will be to determine if there is evidence of structural xenophobic discrimination that harms UAMs and if so, how this developed historically and discursively through process tracing and examining statements and discursive research on the EU's approach to harmonized asylum and migration policy decisions.

As the EU is a complicated governing structure that has both regional and local levels of institutional action (policy-making at the EU-level and implementation at the state-level), the analysis of the EU's approach to irregular migration and UAMs will be followed by two chapters that examine how structural xenophobia at the regional level affects practices at the local level of policy implementation. The two member states that will be examined are Sweden and Italy. The Swedish and Italian government's historical approaches to asylum and migration, responses to the 2015-16 migration crisis, and response to the issue of the missing UAMs during the crisis will be analysed to examine how structural xenophobic discrimination at the EU-level affects member-state practices towards UAMs in different social/political/economic/geographic contexts. Chapter 3 will expand on the theoretical approach of the project and the methodologies that will be used to test the hypothesis.

1.3 Chapter Outline:

Chapter 2 will include a review of relevant literature in the field related to the study of UAMs as well as background information on policies and data. It will also examine research on UAMs from related disciplines as well as gaps in the approach taken in the field of political science to researching this phenomenon. The purpose of this chapter is to position this thesis within the existing literature.

Chapter 3 will outline the theoretical framework and methodological approach of the thesis. The purpose of this chapter is to lay the foundation for the argument concerning structural xenophobia and the analysis of the EU's approach to irregular migration and UAMs in Chapter 4.

Chapter 4 will utilize historical and discursive institutionalism to establish the historical and discursive context that shaped the EU's policy approach to unaccompanied minors and its contrasting approach to irregular migration. Insights from the framework of social construction of target populations will be utilized to explain why policies related to irregular migrants and UAMs contrast, resulting in conflicting policies (policies that aim to protect UAMs and policies that subject them to treatment as criminals as they are also irregular migrants).

Chapter 5 will examine how the EU's policies affect state practices towards UAMs in Italy to determine how structural xenophobic discrimination from the EU translates in the Italian context. This chapter will provide an overview of the historical and discursive context in which the Italian government approached non-EU asylum-seekers leading up to and during the crisis, its response to the crisis and the issue of missing UAMs in Italy.

Chapter 6 will follow the same format for examining the Swedish government's response to the crisis and the issue of missing UAMs.

The thesis will conclude in Chapter 7, which will synthesize the findings of the case study and will draw logical conclusions based on the outcomes of the research conducted. It will also discuss the limitations of the project and will set an agenda for future research.

CHAPTER 2: MAKING SENSE OF AN EMERGING TOPIC:
A LITERATURE REVIEW

2.1 Introduction:

The goal of this project is to understand why EU member states did not uphold their international responsibilities to protect unaccompanied minors (UAMs) during the 2015-16 migration crisis. Therefore, understanding what scholarly investigations have been undertaken regarding this vulnerable population is necessary to illustrate the scope and foundation of academic work on this topic.

The phenomenon of increasing numbers of UAMs migrating globally has sparked the interest of scholars from a variety of fields including law, sociology, anthropology, psychology and political science. Correa-Velez, Nardone, & Knoetze (2017) note that this is due to the vulnerable nature of this population, which "…presents considerable humanitarian, legal and policy challenges to many countries around the world" (p. 141). In sociology, the literature focuses on socialization processes and strategies among families who send their children unaccompanied to another country (Vidal, 2011) as well as the mixture of perceptions of UAMs within receiving societies (Fischer & Hamilton 2012). Anthropological research such as that conducted by Heidbrink (2017) is concerned with understanding the lived experiences and narratives of UAMs. Literature in the field of law focuses on the legal rights of UAMs, such as the right to deportation hearings (Scharf & Hess, 1988); exploring whether the legal rights that exist are sufficient (Gates, 1999); under what circumstances UAMs should be legally admitted (Steinbock, 1989); what obstacles UAMs face in accessing their international rights (Bhabha, 2009); and legal issues surrounding the use of medical procedures to determine the age of undocumented UAMs (Abbing, 2011). Literature in the field of psychology focuses on common mental health

problems UAMs face due to separation from family members (Delaney, 2006) and how various levels of social support in receiving states affect their well-being (Sierau, Schneider, Nesterko, & Glaesmer, 2018). Numerous psychological studies also found UAMs to be at high risk for developing mental health issues due to "…a high level of past traumatic experiences, age, being female and post-migration factors connected to their current living situation, such as daily stressors and uncertainty" (Vervliet et al., 2014, p. 33). Therefore, the phenomenon of UAMs is of interest to several fields of social science. However, as Donato and Perez (2017) state: "Most of our knowledge (of UAMs) derives from journalistic accounts, which offer rich detailed accounts of the conditions and experiences of children as they cross borders, but which do not broadly analyze the systemic factors that push children to migrate from particular countries or regions" (p. 117). Therefore, despite this phenomenon becoming more prominently researched in social sciences, it is still a largely unexplored topic. While the fields of law, sociology, anthropology, and psychology offer insights into the social, legal, psychological and practical issues UAMs face when seeking asylum alone, they do not address how politics and policies affect their experiences. This is where political scientists enter the discussion.

The field of political science has been largely silent on the issue of UAMs and even more so on why they disappear after arriving in liberal democracies. However, UAMs fall under the category of "irregular migrants," a topic which has received significant attention from political scientists. Political science has addressed irregular migration in terms of security (Robinson, 2017; Huysmans, 2000; Bigo, 2005) challenges facing global governance (Koser, 2010; Martin, 2010; Munck, 2008) and historical and structural factors that contribute to irregular migration (Baldwin-Edwards, 2008). How governments and

institutions in Europe handle irregular migration has received significant attention from political scientists recently (Weinar et al., 2019; Zhyznomirska, 2019; Follis, 2019; Trauner, 2019). Irregular migration is also a popular topic within the field of political science in the context of the US (McNevin, 2007; Correa-Cabrera & Rojas-Arenaza, 2012; Donato & Perez, 2017) and Australia (Correa-Velez et al., 2017). Despite the attention given to irregular migration in the field, this thesis will contend that UAMs warrant more specific political analysis than they currently receive by being absorbed under this classification. This is a population which has been assigned unique legal protections internationally due to their vulnerability, and therefore a comprehensive discussion of how various political factors affect this population is warranted.

2.2 The European Context:

While irregular migration has received significant attention in the European context, UAMs are largely neglected. Therefore, EU policies, directives, grey literature such as media reports and reports from organizations such as the European Migration Network, UNHCR, Eurobarometer and Eurostat will be used in addition to peer reviewed literature.

International legal protection afforded to UAMs is codified in both Article 25 of the EU's common asylum policy (European Parliament, Council of the European Union, 2013), the Convention on the Rights of the Child (United Nations, 1989), and the UN's 1951 Refugee Convention and 1967 Protocol (UNHCR, 1967). However, Bhabha (2009) writes that international legal rights of migrant children are unenforceable in practice. As international law is unenforceable, how they are treated is largely up to the state in which they seek asylum. Frontex, the EU's common border protection agency, stated in a report

that: "Regardless of whether unaccompanied minors are considered as legitimate asylum seekers or not, responsibility for them falls on the state – and often the municipality – where they are identified" (Frontex, 2016).

EU member states' border practices fall under the EU's irregular migration policies and directives, which many scholars have criticized for criminalizing the asylum-seeking process in the EU at the cost of international rights of irregular migrants (Carrera & Allsopp, 2017; Guild, 2010). Additionally, Bendel, (2019) among others has identified the discretionary nature of the EU's common asylum policies that allow for member state interpretation and implementation as problematic, as it allows EU member states to largely address irregular migration as they please.

According to Luedtke, (2019) the EU has worked towards creating a common European asylum regime in accordance with international law since the Maastricht Treaty of 1993, followed by the implementation of a supranational system of immigration law implemented by the Lisbon Treaty in 2009. The Hauge Programme, adopted by the EU in November 2004, proposed the idea of a common European asylum system and led to the 2009 establishment of the European Asylum Support Office, which is intended to assist EU states in efforts to implement a consistent and fair asylum policy and through technical and operational support to states facing resource pressures (Eurostat, 2018).

In May 2010, The EU released its action plan for UAMs (European Commission, 2010). The action plan states that the European Commission will use the standards established by the United Nations Convention on the Rights of the Child (UNCRC) when taking any action concerning UAMs (European Commission, 2010). The action plan recognized that there is a need for "…greater coherence and more cooperation within the

EU and with countries of origin and transit, so that the EU Member States provide concrete and effective responses. A common approach is therefore needed" (European Commission, 2010). The action plan states that the common approach should be based on the EU Charter of Fundamental Rights and the UNCRC principle of "…'the best interests of the child' which must be the primary consideration in all action related to children taken by public authorities" (European Commission, 2010). This action plan was adopted by the European Commission and the European Council in June 2010, setting out a common approach based on respect for the rights of the child under the UNCRC that aims to ensure that "any child needing protection receives it and that, regardless of their immigration status, citizenship or background, all children are treated as children first and foremost" (CONNECT, n.d., p. 7). However, it has been observed that the "best interests" of the UAMs is subject to interpretation, and EU member states' views of what is in the best interest of the UAMs is not always aligned with the view of the minors; moreover, often what is viewed as "best" is detention or deportation (Allsopp & Chase, 2019). Therefore, there is a gap between the goals of the EU's action plan and how UAMs are treated at the border under the watch of EU member states. However, the field has not explored this gap in depth.

Since the European Union's competencies related to migration and asylum have become institutionalized, research in European migration studies has focused on the politics of migration at the EU level (Weinar et al., 2019). Scholars who have focused on migration studies at the EU level since the early 2000s, include Geddes, (2005); Guiraudon and Joppke, (2001); Lavenex, (2001); Triandafyllidou, (2001); and Boswell, (2003). Weinar et al. (2019) note that recent European migration studies offer a broad range of research; however, the research has been largely limited to Western European states:

"…the research that examines the experiences of Central and Eastern European countries within and beyond the EU, has not entered the mainstream of academic migration studies" (Weinar et al, 2019, p. 6). An exception to this is the work of Jandl, (2007) who argues that enlarging the EU to Eastern European countries affected state approaches to irregular migration. However, there remains a large gap in migration literature related to Eastern European states.

Carrera and Allsopp (2017) explain that in its attempts to take a common approach to migration, the EU has criminalized irregular migration through the implementation of various tools that are aimed to increase the number of irregular expulsions while decreasing the number of irregular arrivals. The criminalization of irregular migration in Europe has received significant attention from migration scholars such as Guild, (2010); Provera, (2015); Parkin, (2013); and Mitsilegas, (2015). Luedtke (2019) and Orchard (2019) provide insight into this history of migration governance in Europe, while Bendel (2019) explores the change in EU asylum policies from focusing on protection of asylum seekers to focusing on prevention and security. Carrera and Allsopp (2017) write that the criminalization of migration has taken a visible approach through the adoption of various EU directives that apply penalties to the facilitation of entry and residence of irregular migration; EU directives that require member states to stipulate penalties to carriers transporting third-country nationals without proper documents with intentions to enter the EU; and by setting a common minimum standard on expulsions.

2.3 Data Sources:

It is noted repeatedly throughout the literature that the lack of consistent data collection on UAMs across the EU is problematic for research. However, the literature does not look

critically at what a lack of comparable data sets regarding UAMs says about the EU's management of this population.

Europol's Chief of Staff Brian Donald highlighted the crisis of 10,000 missing UAMs throughout Europe in 2015 (Townsend, 2016). In the same statement to the press, Donald revealed that 5,000 UAMs disappeared from Italy, and 1,000 went missing in Sweden (Townsend, 2016). However, reports from internal ministries of EU member states indicate that the number of missing UAMs during the 2015 refugee crisis was much higher than Europol's estimate (Di Stefano, 2016). Mouzourakis (2014) notes that different collection methods, definitions and treatment of UAMs by a variety of data sources including national databases and sources such as UNHCR, Eurostat, DG Home, the European Asylum Support Office, Frontex, and the European Migration Network often produce different results; and the data is further complicated by the fact that member states often fail to submit data to Eurostat to disaggregate statistics by age and the data is often different than the data held in national databases, "…contrary to their obligations under Regulation 862/2007" (Mouzourakis, 2014, p. 1). As a result, Mouzourakis argues that EU member states misuse statistics to achieve political ends; which in the asylum context, can mean justifying restrictive measures (2014).

Another issue is that there is no common approach to registering a UAM in the EU and some do not register UAMs until their applications for asylum are submitted (GMDAC, 2016). An additional issue in tracking UAM data is that many arrive without proof of identification or lie about their age to avoid deportation (GMDAC, 2016). There is also the issue of double tracking. When a UAM flees one reception center and re-enters

the EU at another entry point, their information could be collected twice, which complicates the data (GMDAC, 2016).

However, sufficient data exists to assert with confidence that thousands of UAMs went missing during the crisis, as Europol reported that at least 10,000 children went missing in 2015 from reception centres throughout Europe (Sigona & Allsopp, 2016). Some national statistics are also available through municipal and interior ministry reports to provide sufficient evidence to establish that UAMs went missing from reception centres across the EU (Ferrara et al., 2016; Ministero del Lavoro e delle Politiche sociali, 2015; Greene & Toscano, 2016).

Therefore, this project will rely on datasets from Eurostat related to UAMs, available reports from interior ministries, grey literature from media sources and reports from organizations such as European Migration Network, Missing Children Europe, Amnesty International, UNHCR and UNICEF to establish that thousands of UAMs that sought asylum in the EU during the year 2015 went missing. Greene & Toscano's (2016) SUMMIT study will be a key document used in this project. The SUMMIT report provides analysis and key statistics regarding missing UAMs in Europe both before and during the 2015 crisis. The SUMMIT report provides evidence that UAMs regularly went missing from EU reception centres prior to the crisis, which is key information in defence of the counterargument that resource pressures during the crisis caused states to neglect the rights of UAMs.

2.4 Conclusion:

While there is extensive literature on irregular migration in the European context, there is a gap in both the literature and data collection when it comes to UAMs. UAMs are typically

addressed as side-notes when the literature discusses irregular migration, rather than as the focus of analysis. There is also a gap in exploring how structural xenophobia at the EU-level towards irregular migrants in EU policies may have affected the treatment of UAMs at the level of EU member states. The aim of this project is to address these gaps by examining how the EU's policies targeted towards UAMs have been historically and discursively constructed, how structural xenophobic discrimination affects UAMs who seek asylum in the EU, and how structural xenophobic policies created at the EU level translate in local implementation in Sweden and Italy.

CHAPTER 3: THEORETICAL FRAMEWORK AND METHODOLOGY:

<u>3.1 Introduction:</u>

The term structural xenophobia used in this thesis is adapted from Achiume (2014), who describes structural xenophobia as institutionalized discrimination through laws, policies, practices and decisions that negatively affect foreigners. Achiume (2014) adds that structural xenophobia is *indirect* discrimination, as it occurs through "rights violations that result from the disproportionate effect of facially neutral measures on refugees due to their status as foreigners" (p. 323). Achiume's definition implies the discrimination through laws and policies are unintentional. For example, Achiume states that if an asylum-seeker is denied access to education due to the fact that they are required to present a transcript and birth certificate, but they cannot due to the fact that all documents were lost in a war, then they are being unintentionally discriminated against and their wellbeing is harmed as a result of a "facially neutral" policy that intends to ensure eligibility for registration in a school. Achiume (2014) notes that structural xenophobic discrimination differs from explicit and *direct* prejudice-based xenophobic discrimination such as TCNs being targets of verbal and physical harassment; however, Achiume (2014) argues the effects of structural xenophobic discrimination are still damaging to a TCN's wellbeing: "My theory of structural xenophobic discrimination captures discriminatory effects of single laws or policies…[and] more complex cases where multiple laws, policies or practices interact with each other cumulatively to cause structural human rights violations" (Achiume, 2014, p. 327). Additionally, Achiume (2014) notes that structural xenophobic policies and laws are typically "not motivated by explicit prejudice" (p. 337). Therefore, Achiume's (2014) theory of structural xenophobia assumes institutions can indirectly discriminate against

asylum seekers and other TCNs by instituting laws, policies and practices that cause unintended harm to this specific population.

Applied to this project, the concept is expanded to three forms of structural xenophobia. The first is an unintended form of structural xenophobia borrowed from Achiume (2014), which looks at how EU policies and decisions in relation to its common approach to asylum and migration caused unintended harm to UAMs. The second form of structural xenophobia applied in this case study is intentional structural xenophobic discrimination towards irregular migrants, which this thesis will argue formed as a result of negative social constructions of this population and historical and discursive processes that normalized the treatment of those who enter the EU irregularly as criminals; which unintentionally harmed UAMs due to their irregular methods of entry during the crisis. Additionally, this thesis will contend that a third type of structural xenophobic discrimination is evident in the EU's treatment of asylum seekers and UAMs following the crisis: awareness of unintended harm through policies, laws, and tools without reform.

This chapter will outline the theoretical approach that will be used in this thesis to evaluate if structural xenophobic discrimination exists within the EU and if it negatively affects UAM's asylum-seeking process. The theoretical approach will utilize historical institutionalism (HI), discursive institutionalism (DI) and social construction of target populations theory (SCTP) to analyze the EU and its range of institutional decisions related to UAMs, asylum seekers and irregular migrants.

It will be argued that the theoretical approach of adapting these three frameworks to analyze the EU's range of laws, policies and decisions regarding irregular migration and UAMs offers the best lens for a project of this nature.

3.2 Theoretical Framework:

The asylum-seeking process is one that highlights social constructions of "self" and "other" within a society. It is the process of government agents determining who is acceptable to live in a society and who is not based on standards set by institutions, informed by a common understanding of acceptability. Therefore, it is an inherently politicized process that displays an institution's norms and values. Those who are viewed and valued as "negative" are denied access while those who are viewed and valued as "positive" are accepted in the asylum-seeking process. As the subject of this project is challenges facing asylum-seeking minors in the EU, a theoretical approach that accounts for how norms of acceptability within a society are created and how they inform institutional decisions that affect a specific population is ideal for this project.

Frameworks that emphasize the importance of understanding how perceptions of populations are historically and discursively formed and how those populations are consequently targeted by policy designs are appropriate for this study as this knowledge will be helpful in understanding if and how structural xenophobic forces developed. This thesis contends that an adaptation of three theoretical frameworks that view historical developments, culture and discourse as important components for understanding how social constructions form and affect policy outcomes for specific populations is the most appropriate method for evaluating whether structural xenophobia negatively affects UAMs. Therefore, the theoretical approach of this project is informed by a combination of tenets from HI, DI and SCTP.

Historical institutionalism (HI) offers insight on how deeply embedded norms and culture affect institutional behaviour (Hall & Taylor, 1996), while discursive

institutionalism (DI) emphasizes the importance of interactive discourse in shaping and changing institutional norms (Schmidt, 2010). Additionally, the public policy theory of social construction of target populations (SCTP) offers assumptions about how social constructions of a population have correlating policy implications – negative policy implications if the population is constructed negatively, and positive if the population is constructed positively among the powerful within a society (Schneider & Ingram, 1993). SCPT is helpful for understanding why certain populations are disadvantaged by policies and how policy-makers are influenced by powerful populations and public opinion (Schneider & Ingram, 1993). This section will demonstrate why combining tenets from HI, DI, and SCTP is an appropriate approach for understanding why EU policies failed to protect UAMs during the crisis.

3.2.1 Historical Institutionalism:

Hall and Taylor (1996) describe HI as one of three "new institutionalisms" that emerged in the post-behavioural period to emphasize the role institutions play in political outcomes. Rather than focusing on the behaviour of individuals, historical institutionalists emphasize the role of ideas and the persistence of institutional choices over time (Peters, 2011). Schmidt (2010) describes historical institutionalism as a framework that "…details the development of political institutions, described as regularized patterns and routinized practices subject to a 'logic of path dependence'" (Schmidt, 2010). Path dependence of institutional decisions is one of HI's main tenets and it suggests that "choices formed when an institution is being formed, or when a policy is being formulated, have a constraining effect into the future" (Greener, 2005, p. 62). Therefore, the history of an institution or policy is important for an HI analysis. Greener (2005) adds that HI contends that path

dependence within institutions is natural "because institutions and policies have a tendency towards inertia; once particular paths have been forged, it requires significant effort to divert them onto another course" (p. 62). Therefore, one must understand the history of an institution or policy to understand future developments, "because formations put in place in the early stages of an institutional or policy life effectively come to constrain activity after that point" (Greener, 2005, p. 62).

To determine the history of a policy or institution, historical institutionalists employ process tracing, which is the method of tracing "the sequence of events constituting a process to establish the causal relations among them and identify the underlying causal mechanisms that produce the outcome they are assumed to produce" (Halperin & Heath, 2017, p. 248). This thesis will employ the HI method of process tracing to determine the historical process through which the EU harmonized asylum and migration policies were shaped, how those policies are underpinned by xenophobic concerns of EU leaders and how the evolution of the harmonization process solidified a common asylum system in Europe that is focused on security and control of non-EU citizens arriving in member states rather than the human rights of asylum seekers and UAMs.

Overall, HI emphasizes the role of history and persistence of institutional culture in influencing institutional behaviour. This understanding of institutions is helpful for understanding the inertia of EU procedures, routines, norms, and conventions in relation to irregular migrants and UAMs.

Although HI offers insight into how institutional norms are formed over time and how policy inertia affects institutional behaviour, it is a limited framework. Schmidt (2010) notes that historical institutionalism, as well as the other two "new institutionalisms"

(rational choice and sociological): "…have been much better at explaining continuity than change" (p. 2). Hall and Taylor (1996) note that historical institutionalists "….devoted less attention than the other schools to developing a sophisticated understanding of exactly how institutions affect behaviour" (p. 950). To address historical institutionalism's gaps, this project will combine HI's assumption of institutional path dependency with the assumptions of what Schmidt (2010) describes as the "fourth new institutionalism": discursive institutionalism, which views discourse as a mechanism through which ideas influence inertia or change in an institution's behaviour.

3.2.2 Discursive Institutionalism:

As this project is interested in understanding how perceptions of irregular migrants affect the treatment of UAMs during the asylum-seeking process, discursive institutionalism (DI) is also a fitting lens for this project. DI emphasizes the discursive contexts that shape policy decisions and provides insight to how actors' participation within a discourse can change institutional behaviour. Schmidt (2008) writes that discursive institutionalists have four traits:

> 1) they take ideas and discourse seriously; 2) ideas and discourse are set in an institutional context – following the work of one of the other institutionalisms; 3) they put ideas in a "meaning context" while they see discourse and following a "logic of communication"; 4) they take a more dynamic view of change, in which ideas and discourse overcome obstacles that the older versions of institutionalism wouldn't have accomplished (p. 304).

The emphasis DI gives to the interactive process addresses a weakness in HI, as it identifies discourse as a mechanism through which institutional practices are influenced and can be

changed; however, HI assists DI as HI provides the "meaning context" DI requires by emphasizing the importance of the history and culture of an institution. Discursive institutionalism focuses on "…not just ideas or 'text,' (what is said) but also context (where, when, how, and why it was said). The term refers not only to structure (what is said, or where and how) but also to agency (who said what to whom)" (Schmidt, 2008, p. 305). Carstensen and Schmidt (2016) write that DI also examines how actors shape other actors' beliefs through discursive interaction. Therefore, the framework of DI is helpful for understanding the discursive context in which the EU policies, directives and practices aimed at irregular migration and UAMs are shaped, as well as the discursive interplay between EU member states and EU institutions and how this affects EU policy design. It also is helpful for understanding what would be needed to interrupt the status quo of asylum and migration policies in the EU and enact change. Therefore, it is a helpful framework for assessing what is needed to address shortcomings in the EU's approach to UAMs in the future.

As the historical discourse from the beginning of harmonization of asylum and migration in the EU is mainly contained within official libraries of the EU that are unattainable within the limits of this project, this thesis will rely on discourse analysis conducted within peer reviewed literature that examined the trajectory of discourse related to this topic within the EU from the 1980s to the crisis, as well as limited primary documents available through the EU's online database and statements made by EU leaders in the media that offer insight to their justifications for policies.

While DI emphasizes the role of discourse in guiding institutional behaviour, DI does not adequately explain how historically and discursively constructed perceptions of a

given population affects policy outcomes in a nuanced way. Schneider and Ingram's (1993) theory Social Construction of Target Populations fills this gap by providing insight into how the historical and discursive context in which an institution operates creates social constructions of specific populations, how and why those social constructions affect policy design, and how policy design targets specific populations in a positive or negative way.

3.2.3 Social Construction of Target Populations:

Schneider and Ingram's (1993) Social Construction of Target Populations Theory (SCTP) is a public policy theory that focuses on how socially constructed values affect specific groups through policy design (Pierce et al., 2014). SCTP has a normative component in that it also seeks to explain why some groups are advantaged, while others are disadvantaged, "and how policy designs can reinforce or alter such advantages" (Pierce et al., 2014, p. 3). Pierce et al. note that Schneider and Ingram's SCTP theory does not embrace the more common relativistic conception of social construction that has been criticized as unfalsifiable: "Rather, Schneider and Ingram's brand of social construction relies on a variant of bounded relativity where meaning varies by context but does so in a systematic and generalizable fashion" (Pierce et al., 2014, p. 2). Social construction in SCTP refers to: "the cultural characterizations or popular images of the persons or groups whose behaviour and well-being are affected by public policy" (Schneider and Ingram, 1993, p. 334). Schneider and Ingram (1993) contend that these characterizations portray groups in positive or negative terms through symbolic language, metaphors and stories. By examining these characterizations, SCTP seeks to "illuminate how policy designs shape the social construction of a policy's targeted population, the role of power in this

relationship, and how policy design 'feeds forward' to shape politics and democracy" (Pierce et al., 2014, p. 2).

Mondou & Montpetit (2010) highlight three core assumptions of SCTP: 1) that politicians behave strategically and prioritize their re-election; 2) politicians are risk averse; 3) policy designs intend to send messages to specific groups: "Consequently, they will avoid targeting groups that have electoral influence with negative messages. More importantly, they will be unlikely to target groups deprived of electoral influence with positive messages" (Mondou & Montpetit, 2010, p. 704). By "messages" SCTP means sending a message to a targeted population in terms of policies that reinforce their social constructions – either negatively or positively (Schneider & Ingram, 1993). Schneider and Ingram (1993) explain that public officials act this way due to a feeling of pressure to "provide beneficial policy to powerful, positively constructed target populations and to devise punitive, punishment-oriented policy for negatively constructed groups" (p. 334). Schneider and Ingram (1993) note that research has indicated two important motivations for elected officials when designing policy: to produce public policies that will assist in their re-election and to produce policies that will be effective in addressing widely acknowledged public problems:

> Thus, the electoral implication of a policy proposal depends partly on the power of the target population itself (construed as votes, wealth, and propensity of the group to mobilize for action) but also on the extent to which others will approve or disapprove of the policies being directed toward a particular target (Schneider and Ingram, 1993, p. 335).

Therefore, SCPT contends that policy design is influenced by how a policy-maker perceives a powerful group (a group with significant influence on the chances of a politician's re-election) will view a policy choice; but it also contends that policy designs reinforce these values: "these policy designs subsequently institute and reinforce socially constructed knowledge" (Pierce et al., 2014, p. 3). This creates what Pierce et al. (2014) call a "feed-forward" effect that contributes to what HI calls path dependency.

Pierce et al. (2014) divide SCPT's assumptions into three categories (See Table 1). The first category deals with the model of the individual and posits that actors cannot process all information needed to make a decision so they rely on mental shortcuts to decide what information is pertinent and filter the information in a biased way that perpetuates their pre-existing beliefs (Pierce et al., 2014). The second category of assumptions of SCTP deals with is power; and assumes that power is not equally distributed within a society (Pierce et al., 2014, p. 4). The third category of assumptions pertains to the political environment and assumes that policy designs "feed forward" to affect future politics (Pierce et al., 2014).

Table 1. Assumptions of the Theory of Social Construction and Policy Design

Model of the Individual
1. Actors cannot process all of the information relevant to make a decision, and therefore rely on mental heuristics to decide what information to retain.
2. Mental heuristics filter information in a biased manner, thereby resulting in a tendency for individuals to confirm new information that is consistent with preexisting beliefs and reject information that is not.
3. People use social constructions in a subjective manner that is evaluative.
4. Social reality is boundedly relative where individuals perceive generalizable patterns of social constructions within objective conditions.

Power
5. Power is not equally distributed among individuals within a political environment.

Political Environment
6. Policy creates future politics that feeds forward to create new policy and politics.
7. Policies send messages to citizens that affect their orientations and participation patterns.
8. Policies are created in an environment of political uncertainty.

Table 1: Assumptions of the Theory of Social Construction and Policy Design

Source: (Pierce et al., 2014, p. 4).

Based on these assumptions, target populations are classified within SCTP theory along two dimensions: social construction (as either negatively or positively socially constructed) and power (on a scale of powerful to no power) (Pierce et al., 2014). Schneider and Ingram provided a visual representation of the SCTP classification scales (See Fig. 1):

More Powerful

Advantaged   Contenders

More Deserving   Less Deserving

Dependents   Deviants

Less Powerful
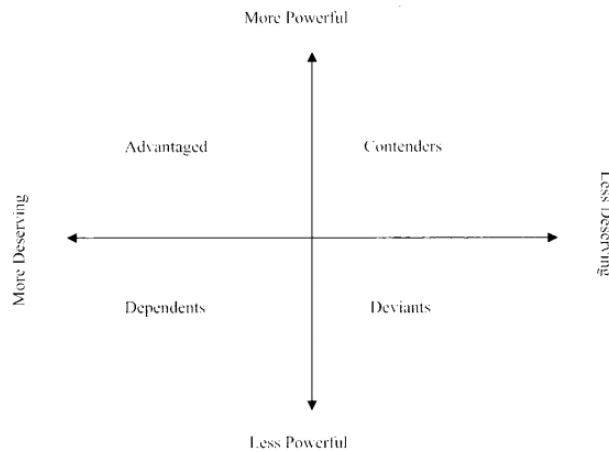
Figure 1: SCTP Characterizations of Target Populations

Source: (Mondou & Montpetit, 2010, p. 705).

Where a population falls on the classification scale affects policies designed to target them. For example, if a population is constructed as "Less Deserving" and "Less Powerful," then they are classified as "Deviants," and policy makers are likely to target them in a negative way to please the "More Powerful and "More Deserving" – the advantaged in society.

This project will apply Schneider and Ingram's (1993) assumptions about the influence of social constructions of target populations on policy design to understand how the social constructions of irregular migrants among powerful populations affect institutional decisions at the EU-level that result in policies that negatively affect irregular migrants. This framework is also helpful for understanding how UAMs have been constructed in contrast to irregular migrants as a population that requires protection and how falling under the procedural category of irregular migrants at EU borders undermines

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policies designed to protect UAMs. The historical and discursive context that will be established using HI and DI will be the basis for understanding the social constructions examined using the assumptions of SCTP.

In conclusion, SCTP is a useful theory to combine with the assumptions of HI and DI. HI and DI provide the historical and discursive context to understand how social constructions of a target population form and propel institutional behaviour, while SCTP offers a more nuanced understanding of how these social constructions affect policies targeted towards specific populations and how policies perpetuate social constructions through a "feed forward" effect (Pierce et al., 2014). This project will utilize the frameworks of HI, DI and SCTP in Chapter 4 to establish the historical and discursive context in which EU-level intentional structural xenophobic decisions related to irregular migrants have been shaped and justified, as well as how social constructions of irregular migrants affected the treatment of UAMs during the crisis.

3.3: State-level Analysis: Comparing Sweden and Italy within the EU Context

In addition to conducting an analysis of the EU's approach to UAMs and irregular migration at the regional level through the frameworks of HI, DI and SCTP, this project will also examine how structural xenophobia created at the regional level translates into practices in member states with different historical, social, economic and geographic contexts.

The two EU-member states that will be examined are Sweden and Italy during the crisis. These two states are comparable in that they are both EU member states that have external EU borders, they both experienced an increase in asylum applications during the crisis – with Sweden experiencing a 50 percent increase and Italy experiencing a 22 percent

increase in asylum applications in 2015 (Eurostat, 2019a) – and they are both party to EU-level policies and decisions related to asylum and migration.

However, Sweden and Italy differ in terms of the political and social context in which they deal with asylum seekers and migrants. The two states differ in terms of spatial vulnerability to increased periods of asylum applications due to geographic location. Italy is a Southern member-state that faces the challenge of being a main point of arrival for asylum seekers and migrants due to its location on the Mediterranean Sea across from North Africa (Triandafyllidou & Maroukis, 2012), which makes Italy a natural destination for smuggling networks that facilitate irregular boat arrivals from North Africa. In contrast, Sweden is a Nordic state that is far removed from the mass entry points to the EU. Despite its geographic advantage in this regard, Sweden is a highly-sought after state for asylum seekers due to its liberal asylum policies and reputation as a welcoming state (Bucken-Knapp, 2017), which brings a different set of challenges to Sweden's migration authorities.

Public opinion in Italy was also negative towards immigration during the crisis; however, Sweden was a state with pro-immigration public opinion during the crisis (See Fig. 2 and 3).

Please tell me whether each of the following statements evokes a positive or negative feeling for you.
Immigration of people
from outside the EU
(11/2015)
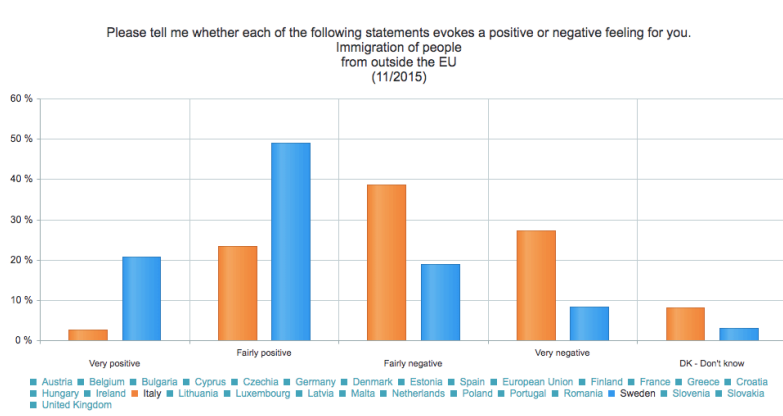
Figure 2: Swedish and Italian Citizen Responses to November 2015 European Commission Survey on Non-EU Immigration.

Source: (European Commission, 2015b)

Please tell me whether each of the following statements evokes a positive or negative feeling for you.
Immigration of people
from outside the EU
(11/2016)

50 %

40 %

30 %

20 %

10 %

0 %

Very positive   Fairly positive   Fairly negative   Very negative   DK - Don't know

■ Austria ■ Belgium ■ Bulgaria ■ Cyprus ■ Czechia ■ Germany ■ Denmark ■ Estonia ■ Spain ■ European Union ■ Finland ■ France ■ Greece ■ Croatia ■ Hungary ■ Ireland ■ Italy ■ Lithuania ■ Luxembourg ■ Latvia ■ Malta ■ Netherlands ■ Poland ■ Portugal ■ Romania ■ Sweden ■ Slovenia ■ Slovakia ■ United Kingdom

Figure 3: Swedish and Italian Citizen Responses to November 2016 European Commission Survey on Non-EU Immigration.

 Source: (European Commission, 2016)

The states were also in different economic situations following the 2008 global financial crisis, which occurred only seven years prior to the height of Europe's 2015-16 migration crisis. Sweden is one of the wealthiest countries in the EU and fared the financial crisis well; even experiencing favourable growth during the period of 2008-2010 (Bergh, 2013). On the other hand, Italy experienced a protracted period of relative economic vulnerability following the financial crisis (Zamagni, 2018). Zamagni (2018) notes that at the time of the migration crisis, the Italian economy had not fully recovered from the 2008 financial crisis and that this state was negatively impacted by the global crash more than other EU countries due to features of the Italian economy such as high public debt: "Although the Italian economy has revived since 2014, it proceeds at a very slow pace because investments are still lagging behind and public debt is not shrinking" (Zamagni,

2018, p. 52). Therefore, Sweden and Italy were in two very different economic situations during the migration crisis of 2015-16.

Sweden has been identified by researchers as a "destination state" for UAMs (meaning a state in which UAMs ultimately aim to apply for asylum) while Italy is often viewed as an "state of first arrival," meaning a state through which UAMs enter the EU, but do not view as their final destination in their asylum-seeking journey (Menjivar & Perreira, 2019).

Despite differences in each national context, both states are party to EU-wide policies related to asylum, migration and unaccompanied minors. Therefore, the purpose of comparing the two EU member-states within the single-n case study of the EU is to determine how structural xenophobic discrimination at the EU-level affects state practices towards UAMs in different national contexts.

The state-level analysis will examine the Swedish and Italian governments' national implementation of EU policies, how they responded to the issue of missing UAMs and each state's response to the crisis more generally using peer reviewed literature, official government speeches, and statements by government officials in media reports. The phenomenon of UAMs absconding from the system in both states will also be examined using data from Eurostat, reports from NGOs and advocacy organizations, and peer reviewed literature that examined the issue of missing unaccompanied minors to establish the national-level context of the issue in each case.

CHAPTER 4: THE EU, STRUCTURAL XENOPHOBIA, AND UNACCOMPANIED MINORS

4.1 Introduction:

This chapter will apply the theoretical framework comprised of HI, DI, and SCTP assumptions to analyze the EU's policies relating to UAMs and irregular migration more generally. The purpose of this chapter is to understand how negative social constructions of irregular migrants formed within a historical and discursive context and created intentional structural xenophobic discrimination against irregular migrants that, due to policy gap, negatively affected unaccompanied minors. The social construction of UAMs as a "deserving" population in contrast to irregular migrants through policy will also be examined, suggesting further policy gaps exist that have unintended negative effects on UAMs.

This chapter will begin by examining the historical and discursive context in which the EU has designed policies related to unaccompanied minors. The following section will examine the historical and discursive context in which the EU has designed policies related to irregular migration and how irregular migration overlaps with unaccompanied minors. The chapter will examine how the historical and discursive context shaped social constructions of irregular migrants in the EU, how this affected policy design, and how these policies have resulted in unintended structural xenophobic discrimination against UAMs.

4.2 The EU and Unaccompanied Minors:

The issue of unaccompanied minors disappearing within the EU was highlighted by the 2015-16 crisis, but UAMs were absconding from the common asylum system prior to this period of increased arrivals. For example, a study conducted by Child Focus in 2005 found

that 25 percent of UAMs in Belgium disappeared within 48 hours of arrival; in 2010, Terre de Hommes (an NGO based out of Switzerland) found that half of UAMs went missing from reception centres in Belgium, France, Spain and Switzerland within the first 48 hours of arrival; and in Italy, the CONNECT project found that 24 percent of UAMs went missing from reception centres in 2013 (Greene & Toscano, 2016, p. 26). Therefore, the issue of UAMs arriving in the EU and absconding from the system is not limited to the 2015-16 crisis. This suggests that lack resources due to the crisis, or inadequate multi-level governance of the crisis cannot solely explain their disappearances as they also disappeared outside the context of the crisis.

Evidence suggests the structure of the EU's CEAS allows for the conditions that prompt UAMs' decisions to abscond from the system. One of the reasons UAMs choose to abscond from the system is related to fear of deportation (Di Stefano, 2016). Despite the requirement for state agents within the EU to respect the principle of acting in the best interest of the child, field research conducted by Allsopp and Chase (2019) found that most UAMs who apply for asylum have their applications rejected, despite the minor feeling it is in their best interest not to return to their country of origin: "Our research suggests a frequent tension between the young person's conception of their best interests and the requirements of the state, leading them to disengage with authorities and look to alternative resources and means to pursue their goals" (Allsopp & Chase, 2017, p. 5). Menjivar & Perreira (2019) note that UAMs often arrive irregularly through smuggling networks and therefore do not have proper visa or identity documentation. However, Guild (2005) notes that the structure of the CEAS allows state authorities to reject applications of asylum seekers if they are not able to prove their origin country or obtainment of a visa through

documentation, despite the fact that the visa system makes it difficult for asylum-seeker to apply through legal routes. Therefore, despite being required to act in the child's best interest by international law and EU policies, UAMs are often denied refugee status due to the irregular nature of their arrivals that are prompted due to the restrictive structure of the CEAS system. Allsopp and Chase (2019) found that when UAMs are denied refugee status, many are kept in state care facilities until they turn 18 and can be deported as adults. As UAMs wait in reception centers or with guardians for their deportation, many choose to abscond from the system rather than wait for a forced return to their origin country – a future they do not feel is in their "best interests" (Allsopp and Chase, 2019, p. 5). For example, a UAM named Bashir from Afghanistan who chose to abscond from the system and was interviewed by Allsopp and Chase (2019) said: "I have seen so many of my friends that have been deported…so I just decided, 'I will stay and see whatever happens later on,'…So that's it…I just quit" (Allsopp & Chase, 2019, p. 299). Research suggests their fears were well-founded considering the majority of UAM applications are rejected (Allsopp & Chase, 2019). For example, of the 3,043 UAMs that applied for asylum in the UK in 2015, 646 of which were from Afghanistan, the majority were deported to their countries of origin (Gladwell et al., 2016); despite the fact that Afghanistan was experiencing a period of continuous conflict and the highest levels of civilian causalities since 2009 at the time of deportation (Amnesty International UK, 2017). Gladwell et al., (2016) add that since 2007, 2018 UAMs who applied for asylum in the UK were returned to Afghanistan upon turning 18. Therefore, fear of deportation was a well-founded reason why UAMs decide to disappear from state care in EU countries during the crisis.

In addition to fear of deportation, research suggests negative experiences at reception centers also prompt UAMs to abscond from the system. Negative experiences included abuse, detainment with adults, long wait periods without access to basic services such as education, health care or communication with their family members (Hedjam & Boeton, 2010; UNICEF, 2016; Allsopp & Chase, 2017; Di Stefano, 2016). More specific examples of negative treatment and fear of deportation causing UAMs to abscond from the system will be outlined in the state-level analyses of Sweden and Italy in Chapters 5 and 6. These examples are based on field research conducted by academics and advocacy organizations.

To understand why these push-factors existed during the crisis, a comprehensive understanding of how the EU has historically approached UAMs in policy must be provided and analyzed. This section will provide an overview of the EU's historical approach to UAMs leading up to and during the crisis. The overview will suggest that the EU's historical and discursive approach to UAMs is one that constructs this population as deserving of protection and safety. It will also suggest that the EU's policy approach intends to protect UAMs from exploitation because of their extreme vulnerability – intentions that should have not allowed for the conditions that pushed UAMs to flee reception centres during the crisis. Therefore, this section will suggest that there is an unintended gap between the EU's policy approach to UAMs and how they are treated in practice. It will then examine evidence of structural xenophobia at the regional level that this thesis suggests undermines protective intentions and obligations.

4.2.1: The EU's Historical and Discursive Approach to UAMs

The EU offered specific provisions for the protection of UAMs in its common asylum and migration legislation based on regulations for treatment of UAMs in the United Nations Convention on the Rights of the Child (1989) and the United Nations Refugee Convention and Protocol (1967) (EU Agency for Fundamental Rights, 2010; European Commission, 2010). Initial protections built in to the CEAS included: 1) the Asylum Procedures Directive, which outlines how states should grant international protection and includes provisions for UAMs including the right to be heard, right to a guardian and adequate living conditions; 2) The Family Reunification Directive, which provides entry and residence for first degree relatives (parents, children or siblings) and requires states to conduct individual assessments to identify special needs of UAMs, requires states to provide psychological support and requires states to ensure detainment is only used as a last resort; 3) The Returns Directive, which requires states to investigate whether returning a UAM to their origin country will place the minor in an unsafe environment, to ensure that in the case of a return the minor will return to a sustainable solution in their origin country, and to establish the best interests of the child before making a decision (Di Stefano, 2016). However, a growing number of UAM arrivals in the European Union in the late 2000s alerted the European Commission to the issue that its approach was inefficient in adequately addressing the unique needs of this population (European Commission, 2010). The EU announced its intention to develop an "Action Plan on Unaccompanied Minors" in June 2009 to ensure UAMs receive rights-based protections in every EU-member state (European Commission, 2010). This indicates that the EU prioritized the safety of UAMs as an issue that required solving.

Although existing EU legislation on asylum, immigration and human trafficking already addressed (either directly or indirectly) the unique needs of UAMs and provided "enforced protection of their rights" (European Commission, 2010, p. 2), the action plan was the first official attempt from the EU to identify weaknesses in its existing approach and to develop a harmonized approach among EU member states and relevant agencies for dealing with this population (Di Stefano, 2016). It recognized "a need for greater coherence and more cooperation within the EU and with countries of origin and transit, so that the EU and member states provide concrete and effective responses" (European Commission, 2010, p. 2). The action plan was adopted by the European Council and European Parliament in 2010 and was the standard which EU member states were expected to adhere to when dealing with UAMs during the crisis years (Di Stefano, 2016).

The action plan was based on the United Nations Convention on the Rights of the Child (UNCRC) (United Nations, 1989) and the EU Charter of Fundamental Rights (European Commission, 2012), both of which afford UAMs specific protective rights (See Figure 4 and 5). Therefore, the common EU policy for receiving UAMs at borders during the crisis included ensuring they received rights-based treatment; as stated in the action plan: "It is fundamental to ensure that any child needing protection receives it and that, regardless of their immigration status, citizenship, or background, all children are treated as children first and foremost" (European Commission, 2010, p. 2).

The action plan offered three guiding pillars for dealing with UAMs: prevention, reception procedures, and finding durable solutions (European Commission, 2010). The first guiding pillar focused on preventing UAMs from making the journey to the EU through funding, relations with third countries, fighting trafficking of children in migration,

and assisting origin countries in establishing protection programs for UAMs to prevent their lone migration (European Commission, 2010).

**UNHCR Guidelines for protection of unaccompanied minors (1997)
Article 7: Interim Care and Protection of Children Seeking Asylum**

7.1 Children seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection

7.2 Changes in accommodation should be limited to a minimum

7.3 Siblings should be kept together

7.4 Children who have adult relatives living in the country of asylum should be allowed to stay with them pending determination of their status.

7.5 Children seeking asylum should be under regular supervision and assessment by qualified persons to ensure their physical and psychological well-being.

7.6 Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children

7.7 Detention should only be used as a measure of last resort for the shortest appropriate period of time and they must not be held under prison like conditions.

7.8 Asylum-seeking children have the right to education

7.9 Asylum-seeking children have the right to the same level of health care as national children.
Source: (UNHCR, 1997)

Figure 4: UNHCR Guidelines on Protection of UAMs.

Source: (UNHCR 1997)

UNCRC Rights of the Child: Relevant Articles for protection of UAMs:

Article 10: "Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, human and expeditious manner" (p. 4)

Article 12: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all manners affecting the child, the views of the child being given due weight in accordance with age and maturity of the child" (p. 4)

Article 20: "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State" (p. 7)

Article 20.3: "Such care could include inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. (p. 7)

Article 22: 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 the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties (p. 8)

Article 22.2: ...protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can 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. (p. 8)

Article 27.1: State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (p. 11)

Article 28: States Parties recognize the right of the child to education (p. 11)

Article 34: State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse (p. 13)

Article 35: States Parties shall 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. (p. 14)
Source: (United Nations, 1989)

Figure 5: UNCRC Rights Relevant to UAMs.

Source: (United Nations, 1989).

The first guiding pillar focused on preventing UAMs from making the journey to the EU through funding, relations with third countries, fighting trafficking of children in migration, and assisting origin countries in establishing protection programs for UAMs to prevent their lone migration (European Commission, 2010).

The second main pillar of the action plan relates to how EU member states should deal with UAMs when they are identified on EU territory. This principle is most relevant for this thesis, which is interested in reasons why push factors existed at the reception level. This pillar is titled "Reception and Procedural Guarantees in the EU" (European Commission, 2010, p. 7), and it focuses on ensuring UAMs have access to rights-based treatment regardless of their immigration status. The language in this section is focused on the concept of protection and depicts UAMs as an extremely vulnerable population deserving of safety, stating: "From the first encounter, attention to protection is paramount" (European Commission, 2010, p. 7). This pillar of the action plan requires EU member states to immediately appoint UAMs a representative upon arrival; to ensure UAMs are informed of their rights and have access to complaint and monitoring mechanisms; to ensure they are separated from adults: "to protect them and sever relations with traffickers or smugglers and prevent (re)victimization" (European Commission, 2010, p. 7); to ensure UAMs are placed in "appropriate accommodation and treated in a manner that is fully compatible with their best interests" (European Commission, 2010, p.7); to only resort to detaining a UAM when it is "exceptionally justified, it is to be used only as a measure of last resort, for the shortest appropriate period of time and taking into account the best

interests of the child as a primary consideration" (European Commission, 2010, p. 7). Therefore, the Reception and Procedural Guarantees outlined in the action plan are in line with the UN's guidelines for rights-based treatment of UAMs upon reception and the rights outlined in the UNCRC and EU Charter of Fundamental Rights.

The third pillar focuses on finding "durable solutions" for UAMs who arrive on EU territory. This pillar requires member states to find solutions for the UAM that are "based on the individual assessment of the best interests of the child" (European Commission, 2010, p. 11). Options for consideration outlined by the action plan include: 1) returning and reintegrating the UAM into their country of origin; 2) granting international protection status or other legal status allowing minors to integrate into the member state in which they've applied for asylum; or 3) resettlement (European Commission, 2010). In deciding which action to take, the action plan reiterates that member states must follow the UNCRC principle of acting in the best interest of the child. Therefore, finding "durable solutions" must be a solution that considers the child's interest, which may not necessarily be the in interest of the member state. If the best option is to grant protection status or other legal status, the action plan notes that funds for integration efforts are available through the European Refugee Fund (ERF) (European Commission, 2010).

Overall, the language in the EU's policies related to UAMs emphasize the need for this population to be protected due to their extreme vulnerability to the actions of the member state agents throughout the asylum-seeking process. The language in EU policies related to UAMs also emphasize the need to ensure the best interests of the child are considered before any action towards the minor is taken and to consult with the UAM in determining best interests. However, the reasons UAMs chose to abscond from the system

during the crisis suggests these policies are insufficient for ensuring this population is protected in practice. The next section will examine gaps in the EU's approach to UAMs.

4.2.2 Gaps in the EU's "Protective Policy" Approach to UAMs

Despite the adoption of the action plan in 2010 (European Commission, 2010) and inclusion of protective measures in the CEAS for UAMs (European Parliament, Council of the European Union, 2013), reports from NGOs on the ground during the crisis and researchers that interviewed UAMs indicate the action plan failed in practice to protect these minors during the refugee crisis, (UNICEF, 2016; Amnesty International, 2015; Sigona & Allsopp, 2016; Human Rights Watch, 2016), which led to thousands of UAMs absconding from the system during the crisis.

The EU's response to Europol's report of 10,000 missing unaccompanied minors was to commission a report on how to better protect unaccompanied minors throughout the asylum-seeking process in Europe (European Commission, 2010). The report, titled "Harmonising the protection of unaccompanied minors in Europe," reiterated existing EU policies that intend to protect unaccompanied minors that had been in place prior to the crisis, including Recommendation 1596 in 2003, which outlined how unaccompanied migrants should be treated by member states; a report (Doc 12539) in 2011, which proposed 15 common principles for ensuring rights-based treatment of UAMs; and Recommendation 2056 in 2014, which focused on alternatives to detention of UAMs (Di Stefano, 2016).

The response report to the issue of 10,000 missing UAMs ultimately recommended that EU member states follow the EU guidelines and policies already in place for treatment of UAMs (Di Stefano, 2016). The report states that: "it appears clear that there is no lack

of appropriate international legislation, recommendations, guidelines, best practices and policies. There is, however, both very uneven transposition of international standards into national regulatory frameworks," (Di Stefano, 2016, p. 13). The report also concluded that "the crisis revealed shortcomings in national policies which relate to the treatment of all children" and that EU member states need to harmonize their treatment of UAMs to EU and international standards (Di Stefano, 2016, p. 13). Therefore, the response from the EU to the issue of 10,000 missing UAMs was to reiterate its existing stance, placing blame on member states for not following harmonized polices and guidelines. However, this thesis contends that the EU's reiteration of existing policies ignores substantial gaps in the EU's approach to protecting this population – gaps that subject UAMs to structural xenophobic discrimination. Evidence of structural xenophobic discrimination will be explored in the succeeding sections of this chapter.

4.2.3: The Issue of Data Collection:

Researchers who examined the issue of missing UAMs consistently report that there is a lack of consistent data collection on this population, and even less information available on those who go missing. Hedjam and Boeton (2010) released a study conducted from 2008-2009 on the phenomenon of missing UAMs in Europe and stated that "No state is in a position to give accurate figures concerning the number of [UAMs] present on its territory. The same goes for figures concerning the amount of young people leaving facilities that took them into care," (p. 31). Additionally, Hedjam and Boeton (2010) noted a consistent issue is the inability of agents to trace and find a missing UAMs due to insufficient and scattered data across different institutions: "The sharing of the data would avoid the same minor having separate files in each of the care administrations. When a

minor disappears from an institution, search procedures are cumbersome if the information relating to the minor is scattered" (Hedjam & Boeton, 2010, p. 68). The lack of consistent data collection causes harm to UAMs due to the fact that without consistent data collection and sharing between relevant agencies and member states, the issue of UAMs absconding from the system cannot be properly identified and addressed by policy-makers. This suggests unintentional structural xenophobic discrimination, as it is a gap in institutional behaviour that causes indirect harm to UAMs due to a policy gap in the EU's protection of this population.

However, despite pre-crisis criticisms of the lack of consistent data collection across the EU, the EU's institutions did not effectively address the issue. During the crisis, there was no common practice among EU member states for UAM registration, data collection, or procedures for sharing information once a UAM went missing (Di Stefano, 2016). Research conducted by the Global Migration Data Analysis Center (GMDAC) during the crisis found that "Only half of European Member States hold statistics on UAMs who went missing or absconded. Where statistics are available, these are often not comparable or systematically collected" (GMDAC, 2016, p. 5). Additionally, GMDAC found that there was no consistency among member states on what constitutes a UAM in their data (GMDAC, 2016). For example, Poland does not recognize an asylum-seeking minor as unaccompanied unless they arrive alone, while other states recognize UAMs as unaccompanied if the minor states that they do not have a guardian present regardless of whether they arrive with others (GMDAC, 2016). Therefore, due to the inconsistent data collection on UAMs and missing UAMs within member states, "Data on UAMs aggregated at the European Union level from national statistics lack overall coherence" (GMDAC,

2016, p. 4). Therefore, when a UAM went missing in Europe during the crisis, there was no consistent data collected across the EU for policy-makers to be aware of the extent of the issue or to be held accountable for their disappearances.

Another shortcoming in the data collection of UAMs is found in the Statistics Regulation (European Commission, 2007), which requires member states to report disaggregated data on UAMs, but only requires data on UAMs who apply for asylum, not those who arrive at borders but do not apply for asylum: "This limitation creates shortcomings in harmonised and complete statistics on all unaccompanied minors arriving on EU territory. Statistics should therefore cover all unaccompanied minors" (European Commission, 2010, p. 2).

Despite identifying these gaps in the EU's data collection of UAMs prior to the crisis, fact-finding missions conducted during the 2015-16 crisis found that inconsistent and insufficient data collection on UAMs continued during the crisis (Greene & Toscano, 2016; Di Stefano, 2016; GMDAC, 2016). The 2010 action plan states that "The situation cannot be properly assessed, nor appropriate solutions found, without a clear evaluation based on comprehensive, reliable and comparable data," (European Commission, 2010, p. 3). However, research shows that five years after the release of the action plan, member states continued to fail to collect and submit relevant data as required (Di Stefano, 2016).

Although it appears that based on the positive social construction of UAMs as a vulnerable population through policies and EU documents that depict UAMs as deserving of protection, the lack of consistent data collection appears to be an unintentional gap in this policy that was highlighted during the crisis when Europol announced that 10,000 were missing. However, the lack of action from EU policy makers on pre-crisis critiques of the

lack of data on UAMs suggests that the EU did not prioritize the issue of data collection, despite the fact that policymakers cannot address an issue if it is not measured. This suggests the third type of structural xenophobic discrimination is also at play in this case: EU policy-makers were aware of the unintended harm caused to UAMs by a lack of consistent data collection enforcement and policies by the EU but did nothing to reform its approach once made aware. This led to thousands of UAMs going missing during the crisis without awareness of the extent problem at the EU level and reduced ability for states to cooperate on the matter.

Therefore, the EU's response to the case of 10,000 missing UAMs that places blame on member states ignores structural xenophobic discrimination by neglecting the need for enforcement of consistent and comparable data collection on this phenomenon. In addition to the issue of data collection of UAMs, other forms of structural xenophobic discrimination can be found when examining the EU's approach to irregular migration and its common asylum system through which UAMs must apply.

Due to the overlapping nature of UAMs who seek asylum and irregular migration, this thesis contends that how the EU deals with irregular migration directly affects the asylum-seeking experiences of UAMs. This argument will be developed in the next section, which will examine the EU's historical approach to irregular migration, how it overlaps with UAMs due to their irregular methods of arrival, and how this overlap negatively affects the asylum-seeking experiences of UAMs and encourages them to abscond from the system.

4.3 The EU and Irregular Migration: Path dependency of Security and Control over Human Rights:

Although the European Union promotes liberal democratic norms and values (European Union, 2019), its member states have a different historical relationship to immigration than liberal democracies that are historic countries of settlement, such as Canada and the United States. Unlike immigrant-built nations of North America, Europe generally has not been an overly welcoming region for non-EU nationals seeking a better quality of life on its territory: "This has particularly been the case in relation to those who are deemed not 'useful' to the labor market or in need of international protection, and thus fall within the elusive label of 'irregular migrants'" (Carrera & Allsopp, 2017, p. 70).

"Irregular migrants" is a term that describes a broad categorization of asylum seekers and migrants who enter the EU without proper documentation such as visas or identification and therefore do not meet "entry requirements" (European Parliament Research Service, n.d.). This is how many UAMs arrive in the EU as they often arrive without a visa or identification and typically rely on smuggling networks to reach their destination (Hedjam & Boeton, 2010; Menjivar & Perreira, 2019). Therefore, they procedurally fall under the categorization of irregular migrants, which means at EU borders, "they are obligated to meet evidentiary requirements and must navigate the system similar to adult refugees" (Menjivar & Perreira, 2019, p. 202). A fact-finding mission conducted by the European Commission in response to the issue of 10,000 missing UAMs during the crisis found that "many of the shortcomings observed in national reception facilities, asylum application processes and integration frameworks stem from their non-differential treatment of minors and adults" (Di Stefano, 2016, p. 8). In fact, directions from the EU during the crisis demanded "100% identification," meaning UAMs were subject to criminalized measures due to their irregular methods of arrival such as

fingerprinting in a context where authorities were given permission to use force to obtain this data if necessary (Pinelli, 2018). Therefore, due to the overlap between UAMs and irregular migration, understanding the historical, discursive and political context in which the EU has designed policies related to irregular migration is crucial to understanding the experiences of UAMs at EU borders.

The official statements of the EU's Migration and Home Affairs office suggests its institutions accept and fulfill their international obligations to asylum seekers. For example, in its description of the Common European Asylum System (CEAS), the EU states: "Asylum is a fundamental right; granting it is an international obligation…EU member states have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring that they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar" (Migration and Home Affairs, 2019, para. 1-3). However, despite official statements of responsibility to asylum seekers, Carrera and Allsopp (2017) write that since the beginning of European Union, "European integration processes have displayed an ambivalent relationship with the mobility of non-EU nationals" (p. 70). Rather than being part of European countries' "national foundings or ongoing nation-making myths, immigration in Europe has historically been perceived as exceptional to the normal state of things" (Weinar et al., 2019, p. 1). This section will aim to demonstrate that negative social constructions of irregular migrants as criminals shaped intentional structural xenophobic forces aimed at preventing arrivals and increasing deportations of non-EU citizens who arrive irregularly; and that this undermines the EU's statements of responsibilities to asylum seekers and ultimately, the treatment of UAMs in member states.

Asylum seekers often must navigate their journey to Europe through irregular methods to gain access to Europe due to the difficulty of securing the necessary documents for legal entry under a restrictive CEAS that aims to minimize the number of non-EU citizens attempting to live in the region (Liempt & Sersli, 2013). For example, Guild (2005) notes that the EU's visa system requires nationals from the countries that produce the highest number of asylum seekers (Afghanistan, Iraq, Somalia, etc), to obtain a short-stay visa in order to legally apply for asylum that expires after three months. There are obvious difficulties for asylum seekers from these countries to obtain the required visa prior to entering the EU including application costs, ability to apply through an embassy, identification requirements, and planning – which those fleeing conflict and persecution are unlikely to have (Guild, 2005). Additionally, asylum seekers typically need more than three months in a country for their application to be processed (Guild, 2005). Therefore, "the visa system is designed, inter-alia, to prevent asylum seekers from getting to the territory of the member states lawfully so that they can apply for asylum" (Guild, 2005, p. 35). Therefore, the system is designed to restrict access for asylum seekers from Middle Eastern and North African countries where the majority of asylum-seekers in the EU are fleeing; leading those with the resources and determination to arrive irregularly to do so – often through the use of smuggling networks.

Triandafyllidou and Maroukis (2012) describe the connection between irregular migration, smuggling, and asylum seekers as three overlapping circles (See Fig. 6): "…being smuggled into a country does not necessarily make one an irregular migrant, as a person smuggled into a country may be fleeing persecution and be entitled to asylum. Thus we may consider human smuggling, irregular migration and asylum-seeking as three

overlapping circles" (Triandafyllidou & Maroukis, 2012, p. 8-9). However, despite the overlapping nature of asylum seekers and irregular migration, the EU has separated the two groups discursively, which ignores the reality on the ground. Asylum seekers are framed as a "responsibility," (Migration and Home Affairs, 2019) in EU discourse, while irregular migrants are framed as "security threats," (Huysmans, 2000), despite the fact that asylum seekers – including UAMs – must often resort to irregular methods of arrival in order to make their case: "It no longer matters to a border guard if someone is escaping from a despotic regime; the inquiry will focus on how that person crossed the border, with whom, and whether their legal identity papers are in order" (Liempt & Sersli, 2013).
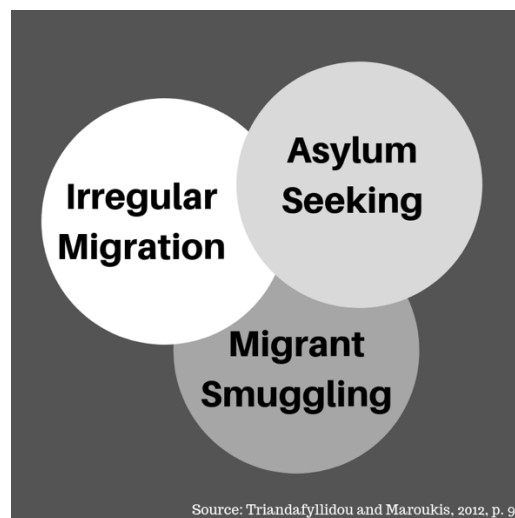
Figure 6: Overlapping Circles.

Source: (Triandafyllidou & Maroukis, 2012, p. 9).

Therefore, the EU's harmonized asylum system has made it difficult for asylum seekers to gain access to EU territory through legal methods, forcing many to resort to smuggling to be able to make their claims (Liempt & Sersli, 2013). However, the EU has criminalized irregular migration through the use of tools and policies that aim to prevent and control irregular entries (Carrera & Allsopp, 2017; Huysmans, 2000; Mitsilegas, 2015).

Therefore, asylum seekers who enter through irregular methods are treated as a threats and criminals, despite having legitimate claims for refugee status.

To understand why irregular migration has been framed as a security issue while asylum-seeking has been framed as an international responsibility (and the problems this creates for rights-based treatment of asylum seekers such as UAMs) the history of European integration in the area of asylum and migration must be understood.

4.3.1 Process Tracing: The Harmonization of a Common Approach to Asylum and Migration in the EU:

There is an argument that the harmonization of asylum and migration policies in the EU was prompted by the inertia of European integration. Prior to the policy harmonization in the area of migration and asylum, non-formal structures emerged in the 1980s among European states that were the precursors to a common asylum system including the Ad Hoc Group on Immigration and the Schengen Group (Huysmans, 2000). The EU formally came into being in 1993 under the Maastricht Treaty (Wood & Yesilada, 2007) and as European countries became further integrated over time, more areas of jursidication evolved from member-states to the institutions of the EU including a common approach to asylum seekers and migration (Luedtke, 2019). Weinar et al. (2019) argue that harmonization in the area of migration and asylum was due to two main influences: 1) the influence pan-European institutions on EU member states that were purported to "add value" to EU membership; and 2) the EU acting as a "major centre of gravity on the continent with an active normative agenda" (Weinar et al., 2019, p. 3).

However, the inertia of EU integration is only part of the story. Fear of "others" was also a factor among EU policy makers. Huysmans (2000) notes that in the years leading up to harmonization, migration was increasingly the focus of policy debates about public

order and stability of the region: "These debates also represented migration as a challenge to the welfare state and to the cultural composition of the nation. A key theme running through these debates was that migration is a danger to domestic society" (Huysmans, 2000, p. 756). Beginning as early as the 1970s, EU leaders painted immigration as an economic burden and pushing out immigrants was a proposed solution to rising unemployment following the petroleum crisis: "for the first time, the professionals of politics specifically targeted immigrants and wanted them to return to their respective countries of origin" (Bigo, 2005, p. 60). In the 80s, the discourse from EU politicians shifted from tying immigration to solely economic concerns to tying it to cultural ones as well, with those immigrating from the Global South as particular targets: "the discussion developed along the lines of identity and belonging, with a subtext of invasion that different populist parties promoted" (Bigo, 2005, p. 62). Bigo (2005) adds that those from the Global South who arrived at EU borders – even if only on a tourist visa – were viewed with suspicion; especially if they were coming from "a Muslim Country" (Bigo, 2005, p. 63). This implies racism was present in the discourse that surrounded the early debates about migration in the EU.

The framing of non-EU asylum seekers and migrants as economic and cultural threats continued in the post-Cold War era, when a series of periods of increased numbers of asylum seekers and migrants from former Soviet Union countries prompted EU member states to call for harmonization in the area of asylum and migration (Luedtke, 2019). States expressed hope that working together would quell concerns regarding large influxes of asylum seekers and migrants, concerns that were xenophobic in nature: "With European integration moving forward in other areas, the member states began to experiment with ad-

hoc, intergovernmental cooperation on policies towards migrants from outside the EU, spurred on by the end of the Cold War and the arrival of large numbers of asylum seekers" (Luedtke, 2019, p. 16).

Luedtke, (2019) adds that media discourse in the post-Cold War era added to the portrayal of non-EU asylum seekers as a threat: "dire predictions of ex-communist refugee swarms grabbed headlines across the continent" (p. 17). This discourse that was highly promoted by far-right political parties and media agencies proved highly successful in early debates (Bigo, 2005); as a common concern across EU member states was protecting national sovereignty in times of heightened arrivals of non-EU citizens: "The national interests of the (then 12) EU member states coincided quite readily on security issues, which allowed an increasingly systematic discussion of harmonisation" (Luedtke, 2019, p. 17). In a discourse analysis of the debates held among EU leaders beginning in the 1980s related to harmonizing asylum and migration policies, Bigo (2005) found that "migration was constructed as a political problem at the very beginning of the eighties by different political discourses differentiated by right/left and the nationalist/European cleavages, but united in the same broad assumptions about control at frontiers as a way to solve immigration policies" (p. 54). Bigo (2005) adds that the link between borders and controlling entry was framed from the beginning as "a security issue, as a well-balanced organization between freedom of movement (within) and necessary measures to protect the insiders from people entering from outside" (p. 54). Therefore, from the beginning of debates regarding migration as an EU-wide issue, it was constructed as a threat.

Bigo (2005) suggests this framing of "outsiders" as threats in the early debates was due to Europe's history as a continent vulnerable to invasion and war: "For a long time the

enemy – the 'natural' enemy – was the territorial neighbour; the frontier served as a protection against the neighbour. The frontier was in fact a 'military zone' more than a barrier," (Bigo, 2005, p. 55). Bigo adds that migration has been linked to the idea of a border threat in Europe because periods of mass migration to Europe "were often slow and contiguous movements. So, the state builders tried to control these flows by organizing military controls at the frontiers in order to take away the possibility for the outsiders to enter without permission," (Bigo, 2005, p. 55). Bigo suggests that the framing of migration as a security issue at the beginning of harmonization discussions in the 70s and 80s was not only due to periods of economic uncertainty or the end of the Cold War, but also deeply embedded European norms and ideas regarding freedom, security and borders – norms that view "outsiders" as threats.

Leudtke (2019) adds that EU leaders' motivations to harmonize in the area of asylum and migration in the 90s were also driven by fears of what the establishment of free-movement of people within the EU with the implementation of the Schengen zone would mean for their states. The Schengen zone would abolish internal border checks and the concept of the free-movement of people prompted fears among EU leaders about non-EU citizens' mobility in their own countries (Luedtke, 2019). Bendel (2019) supports this claim, stating that harmonization of refugee and asylum policies at the EU-level was a "consequence of the Schengen Agreements…This led member states to acknowledge that immigration and asylum could not be managed on the national level alone anymore" (p. 294). Bigo (2005) notes that debates over the Schengen Agreement (which was applied in a small number of participating member states in 1995 and was eventually extended to all member states over the next 12 years), offers further insight to the process of the social

construction of non-EU immigration as a threat within the EU. By conducting an analysis of the Schengen documents of 1985 and 1990, Bigo (2005) finds a dominant discourse that expressed concerns that: "terrorists, criminals, Mafiosi, immigrants would enter freely if border controls were to be removed. And the success from this discourse was immediately important in all the administrations…this period is still structuring the current debates" (Bigo, 2005, p. 67). Bigo (2005) adds that this discourse dominated over calls from humanitarian advocates who called for a more rights-based approach to asylum and migration in the EU. Using assumptions from DI, one can assume this was due to more persuasive tactics and actors involved on the "threatening" side of the debate. An example of the success of discourse that frames non-EU immigration as a terrorist or violent threat is provided by an article written during the 2015-16 crisis on a UK newsite with the headline "Migration crisis and terror threat fuelled by unpoliced seas on Europe's doorstep" (Batchelor, 2016). The article states: "Terrorists, people traffickers and drug smugglers are exploiting Europe's vast un-policed coastline to flood the continent with contraband, it is feared" (Batchelor, 2016). Importantly, the article does not provide evidence that these fears are based in fact and quotes a military official as stating that there is a terrorism threat due to maritime smuggling networks – even though there is no evidence. The military official described irregular migration as a terrorist threat as a "dog that has not yet barked…But the potential is there" (Batchelor, 2016, para. 6-7). Therefore, the security discourse that began framing migration as a security threat in the early stages of harmonization has proven to remain prevelant through to the migration crisis of 2015-16.

Bigo (2005) adds that this fear of "others" runs deep in European culture, as "the securitization of immigration is based on debatable beliefs concerning a certain reading of history (as a permanent war between people, civilizations, and races), the relationship between man and the territory he occupies (feeling of ownership of the first occupant and fear of invasion)" (Bigo, 2005, p. 71). This implies that the concerns of policy makers regarding non-EU asylum-seekers and migrants in the post-Cold War context in which harmonzied European policies were designed were not based in fact or experience, but unfounded anxieties of what *may* happen if this population gained access to their territory. This implies xenophobia among those who debated and designed Europe's common approach to asylum and migration.

Huysmans (2000) adds that the "threat" discourse in the EU relied on economic and cultural justifications for a securitized approach towards migration: "migration has been increasingly presented as a danger to public order, cultural identity, and domestic and labour market stability; it has been securitized" (Huysmans, 2000, p. 752). Therefore, EU leaders presented the arrival of non-EU citizens as a threat to both economic and cultural stability.

The economic argument against non-EU immigration from EU leaders focused on how asylum seekers would be a drain on social resources: "One of the recurring themes in the problematization of immigration in various European countries is the notion that Europe has been receiving the wrong kind of immigrants – specifically not the best and the brightest but rather the ones with poor prospects" (Weinar et al., 2019, p. 4). Weinar et al. (2019) add that "because of their low education and poor skills, they are deemed to be those who are likely to impact European economies and welfare states negatively rather than

positively" (p. 4). Therefore, a stereotype emerged that accepting asylum seekers into European societies would have a negative economic impact on the welfare state (Jakubiak & Kaczmarczyk, 2019). However, Jakubiak and Kaczmarczyk, (2019) note that this argument should be dismissed in the European context, stating: "In nearly all European states, immigrants make a positive net contribution to welfare systems" (p. 374). Additionally, the discourse that frames asylum seekers and migrants as economic threats is challenged by empirical research: "The general conclusion is that the net fiscal impacts of immigration are small (usually below 1 percent GDP) and can hardly impact the wellbeing of natives" (Jakubiak & Kaczmarczyk, 2019, p. 379). The idea that accepting asylum seekers will negatively affect the economies of European states is also challenged by Kancs and Lecca (2018), who acknowledge that while there are short-term upfront costs to receiving asylum-seekers (providing accommodation, health care, food, etc), that integrating asylum seekers into the European labour market may result in long-term economic and budgetary gains. Asylum-seekers have also proven to benefit European economies by filling positions in industries where there are labour shortages and adding to an aging European workforce (Kancs & Lecca, 2018). Koser (2010b) notes that there is a global pattern throughout history of governments using asylum seekers and migrants as scapegoats for wider economic issues. For example, during the Great Depression of 1929-1923, Latin Americans were deported from the US and governments (such as Canada and France) introduced highly restrictive policies at the time (Koser, 2010b). Additionally, the 1973 Oil crisis prompted restrictions on immigration in Europe and the Asian financial crisis of 1997-99 prompted several Southeast Asian countries to deport migrant workers and to adopt restrictive immigration policies (Koser, 2010b). Therefore, there is a pattern

of governments turning inward in times of financial stress and framing the existence of non-citizens in the country as part of the problem. However, the argument appears to be based in anxiety rather than fact or experience, as empirical research points to the benefits of integrating these populations into European economies and the lack of economic impact on natives (Jakubiak & Kaczmarczyk, 2019; Kancs & Lecca, 2018). The Organization for Economic Cooperation and Development (OECD) also points to the economic benefits of immigration, particularly to the European labour market (Candu, 2019). Candu notes that far-right parties in Europe have depicted migration as an economic threat, despite evidence that immigration would improve the economy:

> Marine Le Pen in France, Matteo Salvini in Italy, Viktor Orban in Hungary and Theo Francken in Belgium have all chosen to demonise immigration for electoral purposes despite consensus among economists that migration flows are positive for the economy…Despite costs their arrival may represent in the short term, refugees either have a neutral or positive impact on the economy" (Candu, 2019, para. 15).

Therefore, framing asylum seekers and migrants as economic threats was not based in fact or experience, but rather on unfounded anxieties that were disseminated by a persuasive discourse that affected policy design and the social construction of asylum seekers and migrants within European societies.

The impact of this discourse that characterizes asylum seekers and migrants as cultural/economic/terrorist threats on this population's social construction is evident in studies of public attitudes towards immigration in the EU. Dancygier and Laitin (2014) note that academic researchers have consistently found that native populations in Europe are concerned about the ethnic and cultural differences between themselves and TCNs.

Additionally, Dancygier and Laitin (2014) add that "Other research – though not necessarily denying the importance of culture – places more emphasis on the economic drivers of hostility and has argued that immigration's adverse effects on local economies, native wages, jobs, or tax burdens constrain support for immigration" (p. 45). Therefore, the justifications EU leaders give for a securitized discourse (economic, cultural and terrorism concerns) as identified by Huysmans (2000) match reasoning given by citizens for aversion to immigration – concerns about impact of immigration on their culture and economy. This suggests that the discourse from EU leadership and the media contributed to what SCTP theorists describe as the "feed-forward effect" (Pierce et al., 2014); reinforcing negative social constructions of non-EU asylum-seekers and migrants, which affects future policy decisions regarding this population.

Overall, the responses from EU leaders to periods of economic downturn, increased arrivals of non-EU nationals, and loss of internal EU borders was to join together out of fear of non-EU nationals attempting to integrate into their countries by developing a common approach to asylum and migration that aims to curb non-EU immigration and perpetuating a discourse that constructs non-EU nationals attempting to live in the region as threats. This implies a negative perception among EU policy-makers of non-EU nationals and explains a perceived need for "control" and "security" when increased numbers of non-EU nationals were arriving in the region. This impression is supported by Bendel (2019), who notes that "security and control issues were therefore inherent in EU policies on immigration and asylum right from the start" (p. 294). Therefore, this thesis contends that xenophobia – unfounded fear of 'outsiders' – underpinned the design of harmonized asylum and migration policies at the EU-level, as the focus of early debates in

the 70s through to harmonization in the 90s was on securing the region from non-EU arrivals based on anxieties dissemenated through discourse that they would be an economic, cultural or violent threat to EU states despite a lack of evidence or experience that suggested that this would be the case.

After the early phases of harmonization, the dominant discourse in the EU continued to portray non-EU citizens attempting to live and work in the EU as threats. Huysmans (2000) notes that as the EU integrated further in the area of asylum and migration, the institutional discourse tied migrants to criminal and terrorist activity. Liempt and Sersli (2013) note that the discourse that tied migration to terrorism became particularly prominent in the post-911 era: "Since the events of September 11th, 2001, human smuggling has increasingly been framed as associated with terrorism…the smuggling business is seen as a potential source of income for terrorist networks. Human smuggling is thus increasingly framed as a threat to the state" (Liempt & Sersli, 2013, p. 1032). However, Bigo (2005) notes that while linking terrorism and migration may have become more prominent after 9/11, the events of September 11, 2001 did not create a new agenda within the EU. Instead, Bigo's (2005) analysis finds that: "the policies after September 11 remained along the exact same lines of the previous years of active anti-immigrant rhetoric and its connection with terrorism and crime" (p. 72). Huysmans (2006) adds that "not everything changed after 9/11. The routines, the hardware, the credibility of politically linking terrorism and asylum…are embedded in longer-term institutional and political histories and are enacted in everyday, ordinary practice" (p. 5). Therefore, the anti-non-EU-migration discourse within the EU was reinforced by the events of 9/11, despite the fact that there is little evidence that asylum seekers have been perpetrators of

terrorist attacks in Europe. For example, Zunes (2017) notes that asylum seekers fleeing terrorist regimes in the Middle East are often educated professionals who can afford the high-costs demanded by smugglers and are often victims of terrorist regimes: "As a result, these are among the least likely people to become terrorists or terrorist sympathizers" (Zunes, 2017, p. 3). Zunes (2017) adds that in the post 9/11 period, the only case of an asylum seeker being arrested for terrorist related charges was reported to German authorities by other refugees. Therefore, the linking of terrorist activity to a security justification for restricting asylum seekers' access to the EU is unconvincing. The more compelling explanation for this discourse in the post 9/11 period is that it is a continuation of the existing norm of viewing irregular migrants as criminals due to decades of EU policies and discourse that have socially constructed this population as a threat.

Returning to the historical process of harmonizing asylum and migration in the EU, a series of integration phases that began with the founding of the EU and continued into the 2000s increased EU integration on migration and asylum and reinforced the securitization of migration through the adoption of supranational laws (Luedtke, 2019) (See Fig. 7). The post-9/11 context saw the enactment of the 2009 Lisbon Treaty, which elevated the common asylum system to a "fully supranationalised realm of law, with full jurisdiction for EU institutions" (Luedtke, 2019, p. 22). Luedtke (2019) adds that the Lisbon Treaty's focus on securitization eased concerns from member states about evolving further asylum and migration jursidiction to the EU: "Secure in the knowledge that EU control had allowed them to be 'tough' on immigration by passing restrictive measures (most notably various steps to reduce the number of asylum seekers)…member states

suprsingly agreed in the 'constitution' to further expand EU control" (Luedtke, 2019, p. 22).
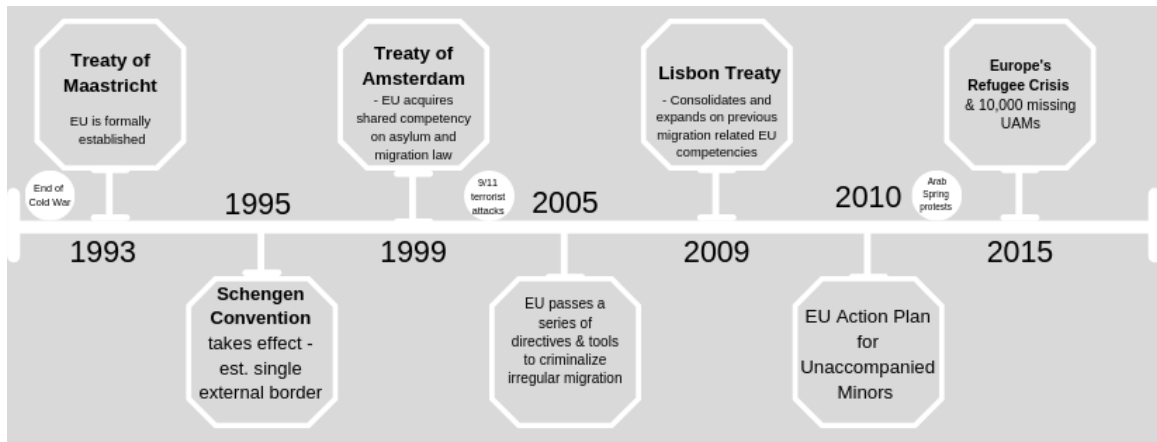

Figure 7: Timeline of EU Harmonization of Asylum and Migration Competency

Sources: (Carrera and Allsopp, 2017; Triandafyllidou and Maroukis, 2012; European Commission, 2010; Wood and Yesilada, 2007).

Expansion of EU control over immigration in the Lisbon Treaty included: "a supranational immigration policy, with unqualified EU competence for immigration, including the ability of any national court to request an ECJ preliminary ruling on an immigration case" (Luedtke, 2019, p. 22). Luedtke (2019) adds that "control incentives offered by EU membership made Brussels a useful border guard," (p. 22). This is an important point for understanding the EU's historical approach to irregular migrants: the incentive for EU members to agree to supranational laws on asylum and migration in the post 9/11 context was based on a promise to ensure secure borders – not to ensure a humanitarian approach to those seeking to achieve EU citizenship. Placing this knowledge within the discursive context in which migration has been shaped as a threat to the EU's economy, culture and security, this suggests that the historical and discursive shaping of migration manifested in laws that promised to increase EU member states' abilities to keep

non-EU citizens on the other side of their borders. This supports the claim that the EU has developed its harmonized approach to irregular migration through a security lens that is underpinned by xenophobia – fear of "others" living in their societies.

The securitization of migration within EU policies and discourse throughout the development of a harmonized approach has led to what the literature refers to as the criminalization of irregular migration (See Fig. 8). Extensive attention has been paid to the criminalization of irregular migration by scholars, who argue that the EU's common approach to asylum and migration has resulted in the normalization of the treatment of those who enter the EU through irregular methods, such as smuggling, as criminals (Carrera & Allsopp, 2017; Huysmans, 2006; Liempt & Sersli, 2013; Provera, 2015). Irregular migrants are non-EU nationals (either asylum seekers or migrants) who enter the EU without legal documents and without proper entry requirements (Spencer, 2018).
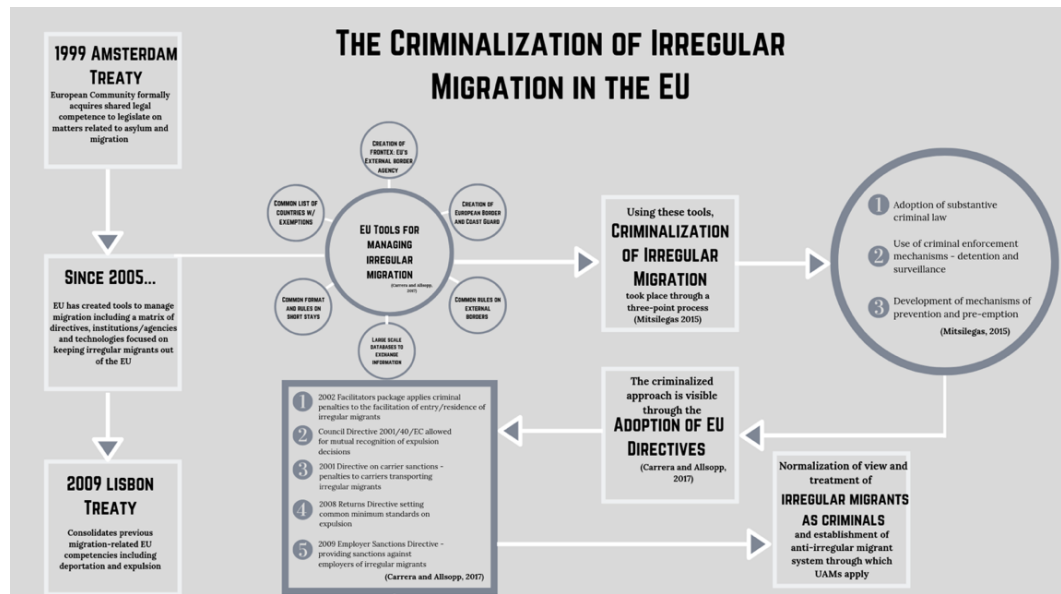

Figure 8: Graphic Depicting Process of Criminalization of Irregular Migration in the EU

Sources: (Carrera & Allsopp, 2017; Mitsilegas, 2015)

Carrera and Allsopp (2017) write that since 2005, the EU has established a myriad of laws, institututions, agencies and technologies aimed to strengthening the control of irregular migration, which has been a process of "merging of criminal and migration law" (p. 71). Mitsilegas, (2015) writes that the process of criminalization of irregular migration in the EU has taken place through three visible steps: 1) adopting criminal laws; 2) using criminal enforcement mechanisms such as surveillance and detention; 3) developing mechanisms to prevent arrival of irregular migrants. Carrera and Allsopp (2017) add that the criminalization of irregular migration is evident through the adoption of specific directives that construct irregular migrants as criminals including: 1) the facilitators package adopted in November 2002, which applies criminal penalties to those who facilitate irregular entries; 2) Council Directive 2001/40/EC, which allows for mutual recognition of expulsion decisions; 3) Council Directive 2001/51, which places criminal penalties on carriers transporting irregular migrants to the EU; 4) the Returns Directive (Directive 2008/115/EC), which set standards for deportation of irregular migrants; and 5) the Employers Sanctions Directive (Directive 2009/52), which places penalities on anyone who employs an irregular migrant. Carrera and Allsopp (2017) argue that these directives demonstrate the treatment of irregular migrants by the EU as criminals. Importantly, Carrera and Allsopp (2017) add that the policy developments that have criminalized irregular migration have been "justified by suggestions to either increase the number of returns of irregular migrants, or decrease the number of arrivals," (p. 73). Therefore, the focus of the EU's approach to irregular migration has been to keep irregular migrants out of the EU; and to penalize the ones who arrive, those who facilitate their arrivals, and those who employ them with criminal measures.

The linking of asylum and migration to the idea of a threat can be viewed as a long-term process in the EU developed over decades of discourse and policies that have built on the xenophobic notions – fears of "others." Tracing the process of harmonization demonstrates how the EU's policies and discourse since the 70s have continually shaped asylum and migration as a security issue. Securitizing asylum and migration in the EU has been justified with economic concerns, cultural concerns, and terrorism concerns over the years, but this thesis contends that unfounded xenophobic concerns – "fears of others" – is the true underlying reason for anxieties that prompted a framing of non-EU migration and asylum as a threat in the European context. The process tracing provided in this chapter provides evidence that is visible throughout the discourse that began in the 70s, continued throughout the design of harmonized policies and was reinforced in the post 9/11 era leading up to the 2015-16 migration crisis.

Applying the assumptions of SCTP, the social construction of non-EU immigration was historically and discursively shaped as a negative phenomenon from the beginning of EU-wide debates in the 70s (Bigo, 2005) through to the crisis of 2015-16. This contributed to the HI concept of path dependency of a securitized approach to border control and the justification of strong securitized migration policies – contributing to a "feed-forward" effect that reinforced negative perceptions of non-EU citizens attempting to live and work in the EU among policy-makers and the public.

Overall, the historical and discursive process through which the EU developed its common approach to asylum and migration was underpinned by xenophobic fears of foreigners and loss of border control which consequently shaped common policies and

legislation that focus on security and control rather than ensuring rights-based treatment of asylum seekers who arrive using irregular methods.

This thesis contends that the criminalization of irregular migration is problematic for ensuring rights-based treatment of UAMs as Triandafyllidou and Maroukis' (2012) overlapping circles demonstrates, asylum-seeking unaccompanied minors (despite the existence of UAM specific protective policies) are subsumed under a categorization of irregular migrants due to the norm of relying on smuggling networks to reach reception centres in the EU (Menjivar & Perreira, 2019). As the European Commission fact-finding mission found, UAMs were treated as adults throughout the asylum-seeking process during the crisis (Di Stefano, 2016). Therefore, this project contends that xenophobia underpinned the development and implementation of asylum and migration policies and tools in the EU and that this created an anti-irregular migration system that normalized the treatment of those who enter the EU through irregular methods as criminals – including UAMs. This thesis argues that the criminalization of irregular migration is evidence of intentional structural xenophobic discrimination against irregular migrants, as it aims to cause harm to "foreigners" through policies, tools, and laws that aim to keep them out of the EU. The intentional structural xenophobic discrimination through the criminalization of irregular migration was born out of a xenophobic concerns of policy-makers from the 1970s and 1980s, reinforced by xenophobic concerns of policy-makers in the wake of the end of the Cold War and the events of 9/11, and manifested in a series of legislation leading up to the 2009 Lisbon Treaty that gave member state the tools and laws to combat migration as a security threat. This intentional type of structural xenophobic discrimination at the EU-level unintentionally harms UAMs, due to the irregular nature of their arrivals and the fact

that they must navigate a system that has been designed as anti-irregular migration. When a minor arrives alone on EU territory without documentation, the historical and discursive process of criminalizing of irregular migration has normalized their treatment as criminals. This explains negative experiences UAMs have testified to experiencing at borders where they were treated as prisoners who are forced to be detained in deplorable conditions, feared deportation, experienced abuse, and were denied basic services they are entitled to receive under the UNCRC. Specific examples of these negative experiences will be outlined in member state-level analyses of how structural xenophobic discrimination from the EU affects practices towards UAMs in national contexts.

4.3.2 Unintended Issues in the CEAS that Encourage Human Rights Abuses of UAMs:
In addition to intentional structural xenophobic discrimination at the EU-level through the criminalization of irregular migration that undermines protective policies related to UAMs, this thesis contends that the crisis of 2015-16 highlighted policy gaps in the CEAS that contributed to unintentional structural xenophobic discrimination against UAMs.

The Dublin III Regulation, officially titled Regulation EU No 604/2013 (European Council, 2013c), has been criticized for placing excess burden on member states with external borders that receive the majority of asylum seekers (Beirens, 2018). The Dublin Regulation was initially adopted in 2003 as a measure to clarify which states are responsible for processing an asylum application (UNHCR, n.d.-b). Ten years after its initial adoption, the regulation was amended to its current iteration: Dublin Regulation III (European Council, 2013c). Dublin Regulation III included amendements to address concerns about Article 3.2, which states: "the first Member State in which the application for international protection was lodged shall be responsible for examining it" (European

Council, 2013c, p. 7). Critics were concerned due to the fact that transferring of asylum seekers to states of first arrival "creates fertile ground for human rights violations" (Beirens, 2018, p. 15), as it places the burden of processing asylum applications in external states which are already under strain in times of crisis. The new itieration of the regulation included measures intended to prevent human rights abuses caused by excessive pressure on external states, including stipulations that: 1) transfers to state of first arrival shall not take place if the state of first arrival does not guarantee full and fair hearings for asylum claims; 2) detainment should only be a last resort for those seeking asylum; 3) the best interest of the child should be respected; 4) asylum seekers should not be transferred to countries under severe strain; 5) asylum applicants should always be interviewed (UNHCR, n.d.-b). The UNHCR notes that the updates to the regulation under Dublin Regulation III were welcomed by critics of previous itierations of the regulation (UNHCR, n.d.-b). However, the 2015-16 crisis exposed gaps in ensuring compliance of the Dublin Regulation III, such as a lack of incentive for EU states to follow the updated rules of Dublin Regulation III (such as contingencies on EU funding or laws) (Beirens, 2018).

Therefore, the Dublin Regulation resulted in states of first arrival feeling overwhelmed as they received Dublin transfers during the crisis – contributing to already strained accommodations and services for asylum seekers in states of first arrival, particularly in Southern Europe. The effects of overwhelmed centers due to gaps in the Dublin Regulation encouraged asylum seekers (including UAMs) to flee their first state of arrival and apply in another EU member state (Fullerton, 2016). The Dublin Regulation III requires states to not return asylum applicants to states under great strain; however, research suggests that states neglected this in practice during the crisis (Fullerton, 2016).

The inability of the current system to ensure member states comply with the amended regulation drew criticism and calls for reform or suspension of the current Dublin system; reforms that would ensure destination states would assess applications lodged in their state rather than relying on Dublin Transfers that would send applicants back to their state of first arrival:

> It would be more efficient for the states to decide the substance of the applications submitted to them, rather than engaging in an elaborate process to swap asylum seekers…It would also benefit asylum seekers by expediting the decisions on their requests for protection and thus more quickly eliminate uncertainty about their status (Fullerton, 2016).

However, calls for Dublin reform were stalled in the European Parliament (Human Rights Watch, 2018) and remained stalled as this project was being written. As previously noted, researchers found that long-wait periods and fear of Dublin transfers – which are both unintended effects of the gaps in the Dublin system – were some of the reasons why UAMs chose to abscond from the CEAS during the crisis (Sigona & Allsopp, 2016). Therefore, it appears the Dublin system contributes to unintentional structural xenophobic discrimination, as it causes indirect harm to UAMs by causing unease due to the regulation's effects of creating a backlog of applications and consequential long-wait times for their applications to be processed. It also causes fear of being transferred to centers that are overwhelmed and under-resourced, and countries where they may not have social or family contacts that they intend to live with (Sigona & Allsopp, 2016).

Another structural policy gap in the CEAS that contributes to unintentional structural xenophobic discrimination against UAMs is the EU's narrow definition for

family reunification. The EU's definition of family reunification only allows for spouses and parents/children to qualify as family (Council of Europe, 2018). UNICEF identified this narrow definition of family as an issue in a 2016 report, stating: "Every effort should be made to reunite unaccompanied children with their families when it is in the child's best interests, taking into account that for many of these children, family ties go beyond European law's narrow definition" (UNICEF, 2016, p. 6). Sigona and Allsopp (2016) – who conducted two research projects on unaccompanied minors and the crisis – identified the narrow definition as problematic as it denies UAMs their ultimate migration goals of living with their social contacts in Europe: "Significantly, some minors may have family, friends and other social connections in other EU countries and know that joining them as soon as possible is the best way to start a meaningful life for them in Europe" (Sigona & Allsopp, 2016, para. 8). Therefore, the EU's narrow definition of family reunification results in denial of UAMs' requests to connect with their family networks – despite the relief for reception centers that settling UAMs with family members would provide during times of resource strain. The result of denied family reunification claims is long-wait periods in the CEAS, which has been identified as a reason why UAMs abscond from the system: "As they wait for their applications to be processed – which can take months – refugees and migrants are often housed in sports halls, former military barracks or other temporary shelters. Children in these shelters do not always have access to mainstream schooling, adequate psychosocial support or regular recreational activities" (UNICEF, 2016, p. 4). Therefore, a narrow definition of family reunification caused UAMs to spend long periods in application limbo, in conditions that encourage them to flee, and also led to rejection of claims – which also encouages UAMs choose to go missing and connect

with their families outside of the system (Sigona & Allsopp, 2016; European Migration Network, 2015). Therefore, the narrow definition of family reunification is another form of unintended structural xenophobic discrimination within the structure of the CEAS, as it is a policy gap that causes indirect harm to UAMs who wish to reunite with their families but cannot due to a disconnect between how UAMs and EU policy define "family" for the purpose of reunification claims.

4.4 Social Construction, Policies, and Public Opinion:

The previous sections of this chapter demonstrated the historical and discursive context in which the EU has operated in relation to managing irregular migration and UAMs. The historical and discursive context offers insight to how irregular migrants have been socially constructed within the EU as criminals and security issues that require control. However, UAMs are constructed as a population that requires specialized protections through EU policy. SCTP will be utilized in this section to synthesize the findings of this chapter and to understand how social constructions shaped by the historical and discursive context in the EU affected public opinion and consequently, policy design.

Across the EU, citizens surveyed in a Eurobarometer poll from 2014-2016 consistently chose "fairly negative" over other answers on a spectrum ranging from very positive to very negative, indicating that across the EU, public opinion towards non-EU immigrants was fairly negative (Figures 9-11).
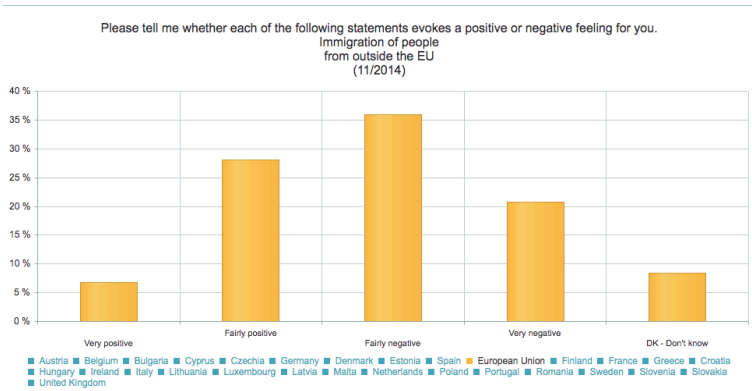
Figure 9: EU-wide Responses to Non-EU Immigration 2014.
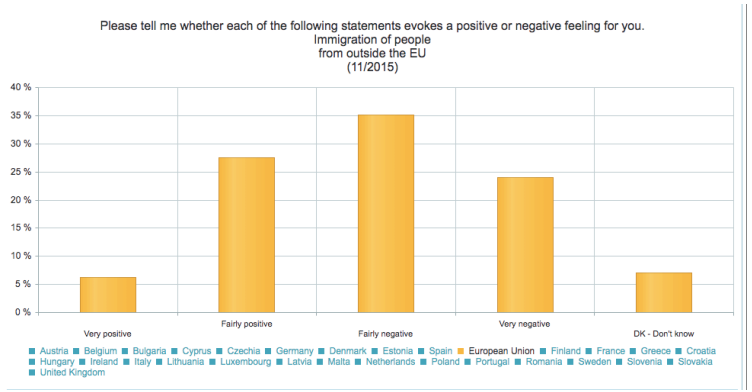
Source: (European Commission, 2014).

Figure 10: EU-wide Responses to Non-EU Immigration 2015.

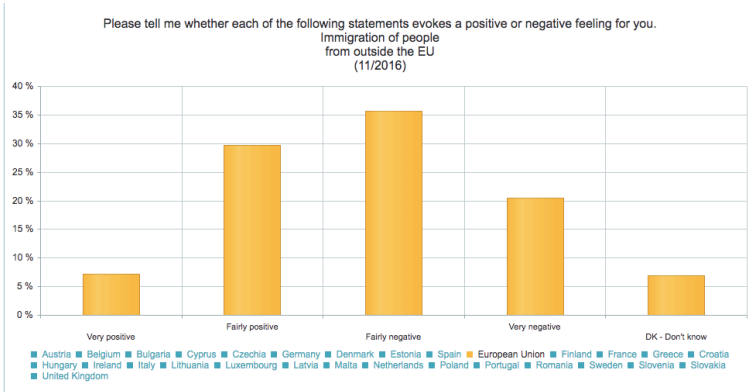Source: (European Commission, 2015b).

Figure 11: EU-wide Responses to Non-EU Immigration 2016.

Source: (European Commission, 2016).

Using the assumptions of SCTP, we can assume that negative public opinion towards non-EU immigration would result in policy-makers attempting to address those concerns with the restrictive policies presented in the previous sections. As the case study has suggested, the historical and discursive context in which policies were designed towards irregular migration were focused on preventing and controlling the mobility of non-EU citizens within the region with criminalized penalties for those who attempt to enter irregularly.

The findings of the case study through the lens of SCTP theory suggests that EU policy design was influenced by negative perceptions of irregular migrants among EU leaders and a discourse that constructed this population as economic, cultural and violent threats to the EU. The fact that public opinion is negative towards immigration of non-EU citizens across the EU membership supports SCTP's assumption of how policy designs influenced by negative social constructions of a population affect public perceptions of a population and contribute to a reinforcement and strengthening of a population's social construction (Schneider & Ingram, 1993).

Therefore, negative social constructions of non-EU asylum seekers and migrants contributed to policy designs that intended to keep this population out of the EU and led to restrictive and punitive measures towards those who are forced to enter the EU through irregular methods due to an inability to gain legal access.

As this chapter has demonstrated, UAMs enter the EU through irregular methods and therefore fall under the socially constructed population of criminals in practice, despite being constructed as a deserving population in policy and EU discourse. This thesis suggests that this overlap of a deserving identity within a criminalized group has resulted

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in abuse of UAM rights at reception centers as they must apply for asylum within a criminalized context. Therefore, the criminalization of irregular migration is an intentional structural xenophobic discrimination against irregular migrants, and an unintentional form of structural xenophobic discrimination towards UAMs; as the criminalization of irregular migration indirectly harms UAMs due to its effects at reception centers.

The case study also finds that there is evidence of unintentional structural xenophobic discrimination towards UAMs due to policy gaps in the EU's CEAS as well. The Dublin Regulation and a narrow definition for family reunification appear to fit with Achiume's (2014) concept of structural xenophobia as these policies cause unintended harm to UAMs due to their status as asylum seekers through policies that have legitimate, unprejudiced-based intentions. The Dublin Regulation was intended to ensure fairness within the common asylum system, but in fact led to excess burden on resource-strained states that have external borders during periods of mass numbers of applications. Additionally, the definition of family reunification was intended to ensure UAMs are able to reunite with their family members, but a disconnect between what a UAM and what the policy considers family led to denial of claims and UAMs deciding to flee as a result. Therefore, policy gaps within the CEAS caused unintended harm to UAMs that, according to testimonies from UAMs that will be elaborated upon in the forthcoming state-level analyses, encouraged them to abscond from the system.

Additionally, lack of consistent data collection of UAMs and lack of harmonized data collecting protocols for when they go missing from state care was highlighted as a problem for addressing the issue of missing UAMs in Europe. This appears to be an unintentional form of structural xenophobic discrimination as it was a policy gap that

caused indirect harm to UAMs. However, despite pre-crisis criticisms regarding the effect of inconsistent data collection and reporting among EU member states on UAMs, the EU did not take action to ensure this was corrected. The awareness of unintentional harm through policy gaps but lack of reform suggests the third type of structural xenophobic discrimination is also at play in the case: awareness without reform.

Therefore, the evidence from this regional-level analysis of the EU suggests that EU-level structural xenophobic discrimination through laws and policies unintentionally cause UAMs distress in their asylum-seeking journeys that prompts them to abscond from the system. Therefore, this regional-level analysis suggests structural xenophobic discrimination at the EU-level undermines policies that intend to protect UAMs in practice.

4.5 After the crisis: lack of reform

The 2015-16 crisis presented the EU with what historical institutionalists describe as a critical juncture: "an event which sets in motion courses of action that become difficult to reverse…this is because once institutions begin to move in a particular direction, positive feedback generates reinforcing mechanisms that help to prevent further change by removing certain options from the subsequent menu of possibilities" (Halperin & Heath, p. 245). This thesis argues that the crisis was a critical juncture as it was a point at which the EU could have adapted its policies to address weaknesses in the common system that were exacerbated by the crisis – or continued with the status quo. However, due to tensions among member states regarding the question of "burden-sharing," the status quo remained in effect (Luedtke, 2019). Political tensions between EU member states and EU institutions contributed to a "feed-forward" effect (Pierce et al., 2014) that strengthened negative social

constructions of irregular migrants within the EU and further solidifed the EU's security-focused approach to irregular migration.

The prioritization of security over human rights of asylum seekers that existed from the outset of harmonization continued during the crisis. Carrera and Allsopp (2017) note that the EU's response to the 2015-16 crisis was focused on increasing the "effectiveness" of the EU's control of asylum seekers and migrants: "in particular increasing the enforcement rate of expulsions of irregular migrants" (p. 70). EU policy-makers viewed the system as "effective" based on the number of deportations and how effectively the EU could prevent arrivals of irregular migrants (Carrera & Allsopp, 2017, p. 70). Massey and Coluccello (2015) also argue that the response to the crisis was a continuation of a securitized approach to irregular migration: "as of June 2015, the strategies imposed by the EU and by individual member states to address irregular migration flows continue to emphasise securitisation over humanitarian responses" (p. 1) This was evident in the response from the EU to conclude the Italian Navy's search and resuce mission (Mare Norstrum) that aimed to save asylum seekers and migrants in dangerous smuggling boats in the Medeterrainean and to replace it with an EU-led security mission (Operation Triton), led by FRONTEX that aimed to secure Italian borders (Massey & Coluccello, 2015).

Additionally, the European Commission's 2015 Joint Foreign and Home Affairs Council Ten Point Action Plan on Migration (European Commission, 2015a) offers further evidence of a path dependency of security over human rights during the crisis. The action plan was the result of a joint meeting of Foreign and Interior Ministers of EU member states (European Commission, 2015a). The plan developed an EU-wide response to the issue of irregular migrants crossing the Mediterranean via smuggling networks and

included reinforcing EU-led missions in the Mediterranean that aimed to capture and destroy vessels used by smugglers, ensuring all migrants are fingerprinted and ensuring the "rapid return" of irregular migrants" (European Commission, 2015a). Additionally the EU Political and Security Council Decision CFSP 2015/778 established the EU military operation titled EUNAVFOR MED, which intended to disrupt "the business model of human smuggling and trafficking networks in the Southern Central Mediterranean, achieved by undertaking systemtic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers" (The Council of the European Union, 2015, p. 1). These responses from the EU to the 2015-16 crisis demonstrate that the institutional pattern of fear of foreigners and an institutional focus on security rather than humanitarian obligations to asylum seekers continued during the crisis.

Utilizing the assumptions of DI, these responses also suggest that a persuasive actor that advocated for a rights-focused response to the crisis did not emerge to change the discourse nor the path of the EU's approach to asylum seekers and migration. Consequently, due to deeply embedded negative social constructions of asylum seekers and migrants within the EU, the critical juncture resulted in a reinforcement of the EU's historical and discursive approach to asylum and migration rather than a reform of its approach to ensure rights-based protection of asylum-seekers and UAMs.

4.6 Conclusion:

Overall, the historical path of the EU's harmonized asylum system has been one informed by fear of foreigners and social constructions of irregular migrants as criminals and threats. This has led to the formation of policies, directives and tools that have developed an approach to irregular migration that aims to keep them out and to respond with punitive

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measures in the case that they do arrive. This contrasts with the EU's official policies and statements regarding asylum seekers, which is problematic as irregular migrants *are* asylum seekers in many cases. However, "EU law does not allow for the regulated arrival of asylum seekers, so their entry into EU territory is usually irregular, due to lack of necessary documentation and/or the use of unauthorized border-crossing points" (European Parliament Research Service, n.d., para. 3). In fact, Carrera and Allsopp (2017) note that "researchers have argued that the 22,000 documented deaths at sea over the past twenty-five years have been the structural product of EU migration policies that have denied legal access to EU territory to the impoverished citizens of the Global South since the end of the 1980s" (Carrera and Allsopp 2017, p. 75). Therefore, despite having official statements that suggest the EU recognizes its international obligations to asylum seekers, lack of legal entry methods forces them to be "irregular migrants," which the EU under the influence of leaders of EU member states has determined is a common threat to the region, thereby undermining its stated intention to protect those who require asylum.

This criminalization of irregular migration has harmful consequences for UAMs who are framed as a population that needs protection on one hand, but in practice fall under a population that has been constructed as an economic/cultural/terrorist/security threat to the EU that requires a securitized and criminalized approach. This undermines the EU's protective policies towards UAMs as it normalizes the view and treatment of those who arrive through irregular methods as criminals. As UAMs arrive through irregular methods, they are also viewed as criminals. This explains the negative treatment such at reception centers such as detainment and abuse of rights – experiences that encouraged UAMs to abscond from the system rather than comply with the EU's asylum system (Di Stefano,

2016). Therefore, the criminalization of irregular migration has been indentified as intended structural xenophobic discrimination against irregular migrants that undermines the EU's protective policies regarding the treatment of UAMs.

Additionally, this chapter identified regional policies that appear to have unintentionally discriminated against UAMs including the Dublin Regulation III and the narrow definition of family reunification. The Dublin Regulation III has been identified as unintended structural xenophobic discrimination against UAMs due to its intended purpose of ensuring fairness among EU member states within the asylum system, but its effect of causing UAMs to be transferred to states that are overburded and where they do not envision their migration journeys unfolding. The narrow definition of family reunification also appears to cause unintended harm to UAMs as EU policies views family for UAMs are parents only, while UAMs may have plans to reunite with other family members such as uncles, sisters, brothers, aunts, etc. Their intention to reunite with these family members is blocked due to this policy which results in denial of claims, fear of deportation and the absconsion of UAMs from the system who choose to find their relatives outside of the system. Therefore, these gaps in the CEAS result in unintentional structural xenophobic discrimination against UAMs that results in these minors fleeing reception centers.

Finally, the lack of data collection is another gap in the EU's approach to UAMs as a lack of harmonized data collection methods among EU member states for the registration of UAMs and when they go missing means the extent of the issue cannot be identified for policy-makers who need to be aware of issues before they can take measures to solve them. The lack of harmonized data collection was brought to the attention of policy-makers prior to the crisis, but evidence provided in this chapter shows that despite awareness, there was

a lack of reform. This suggests a third type of structural xenophobic discrimination undermined the EU's policies that intend to protect UAMs during the crisis: awareness without reform.

The next two chapters will examine how these forms of structural xenophobic discrimination translate into member state practices towards UAMs by examining the cases of Italy and Sweden during the crisis. The purpose to the member state-level analysis is to test whether these structural xenophobic forces negatively affected EU member states ability or willingness to ensure rights-based treatment of UAMs.

CHAPTER 5: EFFECTS OF EU-LEVEL STRUCTURAL XENOPHOBIA ON ITALIAN PRACTICES TOWARDS UAMS:

5.1 The Italian Context:

Italy's geographic position makes it a natural first entry-point for those seeking asylum in the EU through irregular methods. Italy is an EU member state located on the edge of Europe and across the Mediterranean Sea from North Africa. The Mediterranean has become an established route for smugglers, who use the sea as a pathway to the EU (Liempt & Sersli, 2013).

Italy switched from being a country of emigration to a country of immigration in the 1960s, but escalated to a prime location for irregular sea arrivals between the early 90s and the 2015-16 crisis due to a series of political events including the end of the Cold War, the civil war in former Yugoslavia, the enlargement of the EU, the Arab springs, and Syrian conflict (Stocchiero, 2017). Public concerns in Italy about immigration began with the arrival of Albanian migrants after the end of the Cold War: "This event marks the beginning of the immigrant public debate," (Stocchiero, 2017, p. 169). From the beginning, Italy's approach to irregular sea arrivals has been "shaped by an emergency setting that it has never really cast off; indeed, the echo of this state of emergency actually provides the foundation for the entire system of refugee protection" (Pinelli, 2018, p. 736). The Italian government's reaction to increased numbers of asylum seekers and migrants was to enact laws to restrict immigration in 1986, 1990 and 1998 (Stocchiero, 2017). Stocchiero (2017) adds that one particular law enacted in 2002 was more restrictive than previous measures taken by the Italian government and is still in force – Law n.189, which includes the following restrictions:

immigrants for entering should own a labour contract signed by the migrant and an Italian employer in the origin country; family reunification and portability of pension contributions have been downsized; Italian consulates abroad can refuse the release of visa for security reasons – practically without specific motivations; asylum seekers can be 'held' – practically detained – in identification centres in case they lack identity documents or to verify their status; the introduction of stronger penal norms (Stocchiero, 2017, p. 170).

This law intends to restrict asylum seekers rights by intentionally making it very difficult to obtain refugee status in Italy. Additionally, Stocchiero (2017) adds that the Italian government increased readmission agreements with third countries to increase control and increase the effectiveness of the repatriation process: "Since 1994, more than 50 agreements have been signed…the implementation of these agreements is often unclear and several civil society organizations have denounced episodes of violation of human rights" (Stocchiero, 2017, p. 170). One particular decision that has been widely criticized was the Italian government's 2008 agreement Libya. The deal was signed in 2008 between Italian Prime Minister Silvio Berlusconi and Libyan dictator Mummar el-Quaddafi, which pledged five billion dollars to Libya to ensure it stops irregular migrants in its country from crossing the Mediterranean to Italy (New York Times, 2008).

Overall, the Italian government's response to increased numbers of arrivals of "foreigners" since the end of the Cold War has been to restrict their ability to claim immigration and focuses on prevention, rather than ensuring rights-based treatment of asylum seekers.

Public opinion data collected by the European Commission from the years 2014-2017 suggests that during the crisis, public opinion matched the Italian government's anti-immigration measures. The data consistently shows that non-EU immigration evokes "Fairly Negative" or "Very Negative" feelings for the majority of surveyed Italian citizens between 2014-2016 (See Figures 12-14).
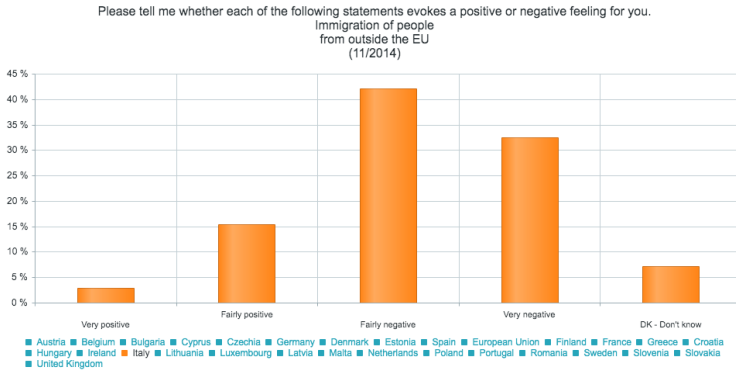

Figure 12: Italian Citizen Responses to Non-EU Immigration 2014

Source: (European Commission, 2014)
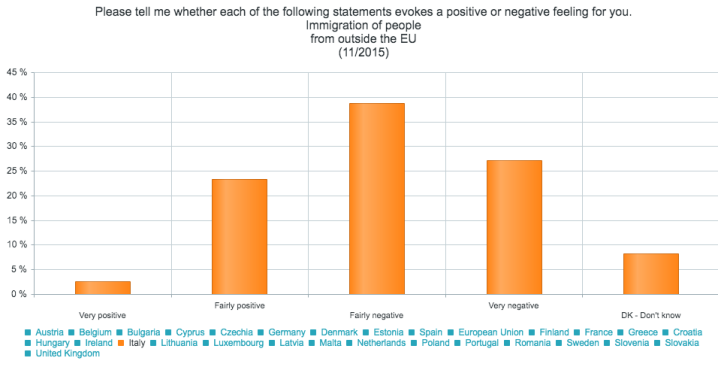
Figure 13: Italian Citizen Responses to Non-EU Immigration 2015
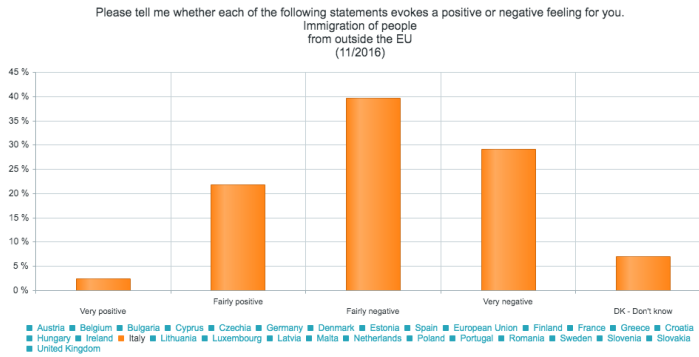
Figure 14: Italian Citizen Responses to Non-EU Immigration 2016

Source: (European Commission, 2016)

Considering the fact that fairly negative to very negative responses significantly outweigh the fairly positive to very positive responses, the Italian public seems to be in general agreement with the Italian government's stance towards non-EU immigration, giving merit to SCTP assumption that policy design is both influenced by and informs public perceptions of a population. The Italian government's focus on laws and policies that aim to restrict and prevent non-EU immigration, coupled with public opinion that support these policies suggests a negative social construction of irregular migrants in the Italian context. The restrictive and punitive Italian policies towards asylum seekers and migrants are legitimized by public opinion for policy-makers, contributing to what SCTP describes as the feed-forward effect; which reinforces negative social constructions of asylum seekers and migrants (Pierce et al., 2014). This explains the persistence of anti-irregular migration policies, laws, and public opinion in Italy from the end of the Cold War/beginning of EU harmonization to the 2015-16 crisis.

5.2 Italy and the 2015-16 Crisis:

In the early stages of the Europe's migration crisis, Italy garnered international attention when smuggler ships carrying irregular migrants capsized on the Eastern Mediterranean route from Libya to Italy (Pinelli, 2018). The shipwrecks came shortly after Italy was criticized for abusing human rights of asylum seekers by the European Court of Human Rights (Pinelli, 2018). In response to this international attention, the Italian government felt pressured to respond in a humanitarian way to the issue of asylum seekers and migrants risking their lives in Italian waters: "Italy began to display a new institutional face, and on 1 November 2013 launched a sea rescue operation called Mare Norstrum. This operation was funded by the Italian government, and directed by the Italian Navy" (Pinelli, 2018, p. 728). Mare Nostrum is reported to have saved 170,000 lives during its year-long operation, but faced criticism from Italian politicians and Italian media for potentially encouraging irregular migrants to make the dangerous journey and for its high cost of 9 million euros per month (Pinelli, 2018). Eventually, the operation was replaced with the EU-led Operation Triton, which focused more heavily on protecting Italy's coastlines from smuggling operations than humanitarian operations (Massey & Coluccello, 2015).

Despite humanitarian actions of the Italian government through the Mare Norstrum operation, the response from the Italian government to the crisis was largely negative and dismissive towards those who landed in Italy in search of a better life during the crisis. Accounts of the initial screening process of those who landed through irregular methods on Italian soil indicate racism was deeply embedded in Italian filtration processes at the border (Pinelli, 2018). Additionally, Italy was criticized for the state of its reception facilities during the crisis, which advocates argued fostered an environment of inhumane treatment of asylum seekers (Human Rights Watch, 2016c; Amnesty International, 2016).

To address the inadequacy of Italian reception centers to deal with the large numbers of asylum seekers arriving in Italy during the crisis, the EU set up "hotspots" as a form of logistical support to help with the timeliness of processing of the thousands of asylum seekers at the Italian borders (Human Rights Watch, 2016c). The hotspot approach was recommended by the European Commission in May 2015 and was endorsed by the European Council in June 2015 with the intention that irregular migrants would be quickly identified through fingerprinting, screened to identify any protection needs (such as unaccompanied minors) and subsequently would be filtered into two groups: 1) those who would move forward in the asylum application process and would be redistributed to other EU member states; and 2) those who would be returned to their origin countries (Amnesty International, 2016). However, the hotspots failed to adequately distribute asylum applications throughout the EU, meaning reception centers remained over-burdened and continued to be an environment that allowed for rights abuses of asylum seekers: "Control paired with responsibility-sharing were the buzz words back then. One year on, it is clear that only the first has really happened, and at considerable cost to the rights of refugees and migrants" (Amnesty International, 2016, p. 5). A report from Amnesty International found that the hotspot approach did little to reduce wait-times and of the 131,000 arrivals in Italy by the end of 2016, only 1,196 people were relocated to other EU countries (Amnesty International, 2016). Therefore, the hotspot approach failed to achieve its purpose.

Another issue with the hotspot approach in Italy was the EU's focus on achieving "100% identification rate" by obtaining fingerprints for the EU's EURODAC system – a system that shares asylum applicant identification records across EU member states (Pinelli, 2018). EURODAC is an outcome to the EU's criminalized approach to irregular

migration (Carrera & Allsopp, 2017). Fingerprinting allows the state of first arrival to be included in an asylum seeker's cross-EU record in the EURODAC system, which means any asylum seekers who attempt to apply for asylum in a country other than the state of first arrival can be returned under the Dublin regulation (Carrera and Allsopp, 2017). Being a state of first arrival subjected to Dublin transfers combined with the inadequacy of the structure of the CEAS and hotspot approach to redistribute applicants to other EU states contributed to overcrowding in Italian reception centers.

Research conducted in overcrowded Italian hotspots found that asylum seekers and migrants were subjected to "cruel, inhumane or degrading treatment, or even torture," (Amnesty International, 2016, p. 6). Additionally, researchers found that the screening process in Italian hotspots was not informed by any legislation and was performed quickly without applicants being aware of their rights, which consequently risked "denying people fleeing conflict and persecution access to the protection they have a right to" (Amnesty International, 2016, p. 6). Researchers also found that upon arrival in Italy, applicants were subjected to torture and police violence during the application process, especially if they resisted registering their fingerprints (Amnesty International, 2018).

Once the identification process was complete, those deemed "acceptable" would be housed in reception centers while those deemed "not acceptable" would be placed in deportation centers (Pinelli, 2018). Asylum seekers, including UAMs, were kept in rights-violating conditions in these hotspot reception centers for months, despite the fact that it was only intended to be a short-term fix for overcrowding at acceptable centers for this population (Human Rights Watch, 2016c).

Amid criticisms of rights violations at reception centers, the Italian government's stance was focused on the lack of support from the EU: "In 2015, the Italian public debate focused heavily on the inability of the EU in implementing a common migration policy," (Stocchiero, 2017, p. 175). In particular, the Italian government requested a reform of the Dublin regulation, "in order to build a fairer and more effective European common asylum system…More internal solidarity and a better distribution of the 'migration burden' were demanded" (Stocchiero, 2017, p. 175). This is evident in a statement by Italian Prime Minister Paolo Gentiloni who accused EU member states who resist reform as "looking the other way" (BBC, 2017). The discourse in Italy during the crisis also focused on curbing arrivals by calling for increased aid to origin countries: "The message is that more aid and development in the origin countries reduce migration flows" (Stocchiero, 2017, p. 179). Therefore, the Italian government's response to the crisis was focused on addressing the high number arrivals by calling for reform of the EU's Dublin System, the CEAS, and for providing aid to origin countries to prevent future arrivals.

5.3 Italy and the Issue of Missing UAMs:

The vast majority of unaccompanied minors that arrived in the EU during the crisis landed in either Italy using the Central Mediterranean sea route or in neighbouring Greece through the Eastern Mediterranean sea route (UNICEF, 2017). Despite being a state of first arrival, many UAMs did not apply for asylum in Italy. As Table 2 demonstrates, only 4,070 unaccompanied minors applied for asylum in Italy in 2015, despite being a main point of arrival for the 95,205 UAMs that applied for asylum across the EU that year (Eurostat, 2019b). This suggests the UAMs who arrive in Italy often travel to make their claims in a different state or go missing.

	2013	2014	2015	2016
Asylum applications by UAMs in Italy	805	2505	4070	6020

Table 2: Asylum Applications by Unaccompanied Minors in Italy 2013-2016

Source: (Eurostat, 2019b)

Ferrara et al. (2016) note that from the year 2012 to 2015, the percentage of unaccompanied minors who arrived and went missing in Italy increased each year; in 2015, about 58 percent of registered unaccompanied minors went missing from the Italian system (See Table 3).

Period	Total unaccompanied minors in reception centers in Italy	Unaccompanied minors registered as missing from reception centers in Italy
2012	5,821	1754 (30.1%)
2013	6,319	2142 (33.9 %)
2014	10,536	3707 (35.2 %)
2015	9,699	5588 (57.6%)

Table 3: Missing Unaccompanied Minors in Italy 2012-2015

Source: (Ferrara et al., 2016)

This table indicates that UAMs were going missing from Italian receptions prior to the crisis, though during the crisis the percentage of UAMs who went missing increased.

According to a fact-finding mission conducted in Italy by Human Rights Watch (HRW) in 2016, UAMs were subjected to degrading and inhumane treatment by Italian authorities at hotspots (Human Rights Watch, 2016c). The report found that UAMs were "kept for weeks in overcrowded and unsafe conditions in the Pozzallo migrant registration

center in Sicily," (Human Rights Watch, 2016c). The report from HRW also found that UAMs were forced to sleep for months in rooms that unrelated adult males had access to, due to lack of space in shelters for minors: "putting them at risk of sexual abuse and violence from adults" (Human Rights Watch, 2016c). One female UAM from Eritrea told HRW that adult men in the center "come when we sleep, they tell us they need to have sex. They follow us when we go to take a shower. All night they wait for us…They [the police, the staff] know about this, everyone knows the problem, but they do nothing" (Human Rights Watch, 2016, para. 7). The center in Sicily had no separate bathrooms or showering facilities for minors and no lockable doors for showers or stalls, exposing them to greater risk of assault and harassment from adults (Human Rights Watch, 2016c).

Additionally, Amnesty International found that due to the EU directive to obtain identification from 100 percent of irregular migrants who arrived in Italian hotpots, UAMs were subjected to the same processes as adults – processes that allowed authorities to use force if necessary to obtain fingerprints and led to a culture that allowed abuse of applicants (Amnesty International, 2016). Amnesty International's fieldwork found that with the approval of the EU to use force if necessary to obtain fingerprints:

> The implementation of coercive measures to force uncooperative individuals to provide their fingerprints has increasingly become the rule, through both prolonged detention and use of physical force…consistent testimonies collected by Amnesty International indicate that some engaged in excessive use of force, cruel, inhumane or degrading treatment, even torture (Amnesty International, 2016).

As UAMs fell under the categorization of irregular migrants and were treated the same as adults in the Italian process, UAMs were subjected to this culture of coercion and abuse

during the asylum-seeking process in Italy (Amnesty International, 2016). UAMs have cited the conditions at Italian reception centers as reasons why they absconded from the system during interviews conducted by Sigona and Allsopp (2016). For example, Ali, a UAM from Africa cited the reason he ran from a centre in Italy as: "We had no freedom…We couldn't go out. They forced us to sleep. We had no phones, you couldn't contact anyone. No internet. One pair of clothes…the caretaker said we should go. Some decided to leave, some to stay. We spread" (Sigona & Allsopp, 2016, para. 5). Mohammed, another missing UAM interviewed by Sigona and Allsopp (2016), also cited poor conditions at Italian reception centers as the reason why he chose to go missing. He stated: "we lived very, very, very badly there. In two months we had no clothes. No clothes and no good food. No proper medical help, nothing…the teacher there told me to come to Rome, to study…If you go elsewhere, she told me, you can study properly. She even got me the ticket" (Sigona & Allsopp, 2016, para. 6). These testimonies provided by the work of Sigona and Allsopp (2016) demonstrate the effect of rights-abuses on UAMs' decisions to abscond from the system. UAMs have the right to education, healthcare, a decent standard of living and to be treated with dignity while living under state care (UNHCR, 1997); yet the conditions at reception centers in Italy did not provide rights-based treatment of UAMs and this encouraged them to take their futures into their own hands. The reasons these conditions existed in Italian reception centers, according to the Italian government, was due to the Dublin Regulation and lack of burden-sharing enforcement within the EU's CEAS which led to an overburdened system in Italy (Stocchiero, 2017).

Therefore, EU policies that focus on upholding the principle of acting in the best interest of the child were clearly not followed in Italy during the crisis. HRW determined

that the reason UAMs were not transferred out of hotspot centers in a timely manner was due to the resource constraints Italy faced due to its position as a point of first arrival; which meant that in addition to being a state the received the majority of irregular arrivals during the crisis, the Dublin System meant they were responsible for processing their asylum applications (Human Rights Watch, 2016c). Even if asylum seekers fled Italy to apply for asylum elsewhere, the Dublin System meant that they could be returned to Italy by a destination country. This means that the Dublin System negatively affected the experiences of UAMs in Italy during the crisis.

However, research conducted by Save the Children Italy prior to the crisis found that reception centers were inadequate prior to the crisis, including "lack of important services such as cultural mediation and legal assistance," (Gerace et. al, 2014, p. 37) and that inadequate reception facilities for UAMs that this prompted them to abscond from the system (Gerace et al., 2014). The report by Save the Children Italy also noted that UAMs regularly went missing between 2007-2013 from Italian reception centers and 1979 UAMs who went missing in that period were never found (Gerace et al., 2014).

Additionally, UAMs absconding from the system due to conditions at reception centers continued after the crisis, further suggesting that a resource strain due to the crisis was not a sole cause of the rights-violations UAMs experienced in Italian hotspots. According to the European Agency for Fundamental Rights (FRA), a fact-finding mission in 2017 found that unaccompanied minors in Italy were living on streets, staying in adult facilities or absconding from the system rather than dealing with the reception center conditions (FRA, 2018). Additionally, the FRA found that the Italian government was only allowing legal counsel for UAMs once they applied for asylum (FRA, 2018). This suggests

the normalization of treating irregular migrants as criminals affected the treatment of UAMs in the Italian context, despite a drop in the number of arrivals after the crisis.

The Italian government made no direct response to Europol's statement of 10,000 missing children. However, the Italian bureau of *The Local,* an international news website, noted that the Italian Prime Minister responded indirectly to a report released in March 2017 by the Council of Europe released based on a fact-finding mission by Special Representative of the Secretary General on migration and refugees that indicated conditions for unaccompanied minors at Italian reception centres were unacceptable (Edwards, 2017). According to the article, Italian Prime Minister Paolo Gentiloni passed the blame to the EU, stating that it was due to lack of EU resources and the EU's inability to manage illegal flows of migrants (Edwards, 2017). Gentiloni stated: "Not even Merlin the wizard could solve the problems of immigration…But it is possible to replace illegal and deadly migrant routes with more acceptable flows and channels…I hope that Brussels will take steps to help the work in Italy" (Edwards, 2017, para 17-18). This statement indicates the position of the government of Italy when faced with criticism regarding its treatment of UAMs was to argue that Italy is not receiving the support it needs from the EU, even after the peak-levels of arrivals decreased in the post-crisis period.

5.4 Chapter Conclusion: Structural Xenophobia and State Agency:

Given Italy's history of restricting access of non-EU asylum seekers and migrants and public opinion that is anti-immigration towards TCNs, it is perhaps not surprising that Italy's response to the crisis and the issue of UAMs was to focus on curbing arrivals and passing blame to the EU while UAMs suffered in its reception centers. Given the Italian context, it also perhaps not surprising that the push-factors for UAMs to flee in Italy were

related to explicit xenophobic discrimination during the application process that violated their rights under the UNCRC. It is therefore not surprising that the EU, which has protective policies in place for member states to follow, would express criticisms of Italy for not complying with the requirements to protect unaccompanied minors during the asylum-seeking process (Di Stefano, 2016). However, this response shirks the EU's role in the mistreatment of UAMs and asylum seekers in Italy. While the Italian government has a level of agency in that it discerns how to implement EU policies at the national level (Bendel, 2019), the EU also allows for the conditions to exist in Italy by not addressing structural xenophobic discrimination it can control – such as the Dublin Regulation.

The Dublin Regulation has been identified as a factor in Italy's overcrowded reception centers. It causes more asylum seekers to be transferred to an already strained and anti-immigration state, contributing to the stress on Italian reception centers and creating conditions for negative asylum-seeking experiences for UAMs. Additionally, the Italian government places blame on the EU's CEAS' inability to ensure fair burden-sharing on its inability to properly protect unaccompanied minors – meaning it offers a justification for mistreatment at the state-level and allows states to dismiss their responsibility in the matter.

Due to the criminalization of irregular migration, Italy was supported by the EU in its efforts to curb irregular arrivals on its territory and Italian agents were encouraged to subject applicants to criminalized processes such as fingerprinting (Pinelli, 2018), which allowed for an environment and culture of coercive and abusive behaviour of agents towards those who resisted the criminalized measures – they viewed and treated asylum seekers and UAMs as criminals despite the fact that they have a right to be treated with

dignity when applying for asylum. This thesis contends that because unaccompanied minors are part of the population that has been criminalized due to their irregular methods of entry, that this explains the negative experiences UAMs had at Italian reception centers. Therefore, although the criminalization of irregular migration has been identified as an intentional form of structural xenophobic discrimination that trickles down from the EU-level; in the case of UAMs it appears to be an unintentional discrimination, as UAMs identity overlaps between those who are intended to be protected by policy and those who are treated as criminals due to the criminalization of irregular migration and the fact that UAMs rely on irregular methods of entry in order to make their asylum claims in the EU.

The final form of structural xenophobic discrimination from the EU affecting the protection of UAMs in the Italian context is lack of coordinated data collection. Due to a lack of coordinated data collection by the EU and lack of enforcement to ensure UAMs are consistently tracked and monitored, UAMs to slip through the cracks of the CEAS without accountability on the Italian state. Gerace et al. (2014) note that in Italy, "there is no specific legislation addressing situations where unaccompanied minors go missing" (p. 38). Additionally, despite the fact that the onus is on managers of reception centers to report the missing minor and on the police to find them, researchers found that in the Italian context there is no accountability when the manager and police do not comply with their expected roles to find and protect the missing minor (Gerace et al., 2014). They also found through interviews with practitioners that went UAMs go missing, often no action is taken to find them (Gerace et al., 2014). If there are no comparable datasets, no cooperation between states, and no EU-wide standard that states are held accountable to when a UAM goes missing, it is difficult to be aware of extent of the issue and to address it properly.

Therefore, this member-state level analysis offers evidence that structural xenophobic discrimination in the form of the criminalization of irregular migration, lack of data and gaps within the CEAS at the EU-level created conditions that unintentionally harmed UAMs and encouraged their disappearances from Italian reception centers.

This does not dismiss the Italian government's agency in its treatment of UAMs. Member states are responsible for the implementation of EU policies and international law. However, this thesis contends that the EU's role in the issue must also be acknowledged. As a regional institution that promotes liberal democratic norms and states that its member states should follow international laws regarding unaccompanied minors and asylum seekers, the EU should acknowledge that it has created structural xenophobic discrimination through its policies and lack of needed policies; which gives anti-immigration states such as Italy license and justifications for the abuse of the rights of UAMs in their state facilities. The conditions in Italian centers that subjected UAMs to rights violations such as detainment with adult men, lack of access to health care, and long wait periods in deplorable conditions without information on the status of their case was aided by structural xenophobic forces that contributed to overcrowding in reception centers, normalized irregular migrants as criminals, and allowed UAMs to go missing without state accountability due to lack of standardized protocols and data collection for when a UAM goes missing. Therefore, this local-level analysis provides evidence that structural xenophobic discrimination at the EU-level translated into negative experiences for UAMs seeking asylum in the Italian context.

Italy's position as one of two countries that received that majority of irregular arrivals during the crisis, as a country that was under immense resource strain during the

crisis, and as a country that has an institutional logic of xenophobia towards non-EU immigration should be juxtaposed against a different national context to determine if structural xenophobic discrimination at the EU-level also affects the treatment of UAMs in a pro-immigration and pro-asylum context. Therefore, a case study that examines Sweden will be conducted in the next chapter.

CHAPTER 6: EFFECTS OF EU-LEVEL STRUCTURAL XENOPHOBIA ON SWEDISH PRACTICES TOWARDS UAMS:

6.1: The Swedish Context:

Sweden has a reputation as a state where asylum seekers are welcome: "Sweden has a long history of providing sanctuary to people in need of international protection and a well-developed system for unaccompanied asylum seeking and migrant children" (Human Rights Watch, 2016a). In contrast to Italy's restrictive asylum laws, Sweden's are lauded by advocates as "generally consistent with international standards," (Human Rights Watch, 2016a). The reason for Sweden's reputation as a desirable place for asylum seekers is not only due to its long history of providing protection, but for its national policies that ensure they are successful citizens in Swedish society when they arrive that go above requirements under international law and EU policy. Parusel (2016) notes that there is strong evidence supporting Sweden's reputation as a welcoming state for asylum seekers. Sweden had the highest protection rates of any member state in the EU for many years, refugees were granted permanent residence upon application approval and asylum seekers had access to the labour market while waiting for the outcome of their applications (Parusel, 2016). Within the European context, Sweden stood out as the best place for asylum seekers leading up to the crisis: "Many new arrivals had heard from relatives, friends or smugglers that Sweden was a good place to start a new life in safety, and that – regardless of whether refugee status or subsidiary protection was granted – beneficiaries of protection had a right to reunite with their families Sweden" (Parusel, 2016). Therefore, although Sweden's geographic position did not make it vulnerable to mass arrivals during the crisis, its reputation did.

In addition to existing policies that encouraged asylum seekers to apply in Sweden, the Swedish government implemented policies in 2013 with the intention of making Sweden a destination state for those fleeing the Syrian conflict: "Sweden's reputation as an attractive destination country was largely facilitated by the 2013 decision of the Swedish Migration Board to grant all asylum seekers from Syria permanent residency and to give them the right to resettle their families to Sweden" (Bucken-Knapp, 2017, p. 284). Sweden's Migration Board Director at the time, Anders Danielsson, said the decision was rooted in international law and its intention was to increase the number of Syrian asylum seekers arriving in Sweden (Bucken-Knapp, 2017).

Public opinion during the crisis suggests the Swedish population supported Sweden's open-door policies towards asylum seekers. In a Eurobarometer poll of what feelings are evoked by non-EU immigration, the majority of surveyed Swedish citizens consistently chose "Very Positive" or "Fairly Positive" over other choices during the years 2014-2016 (See Figs. 15-17):
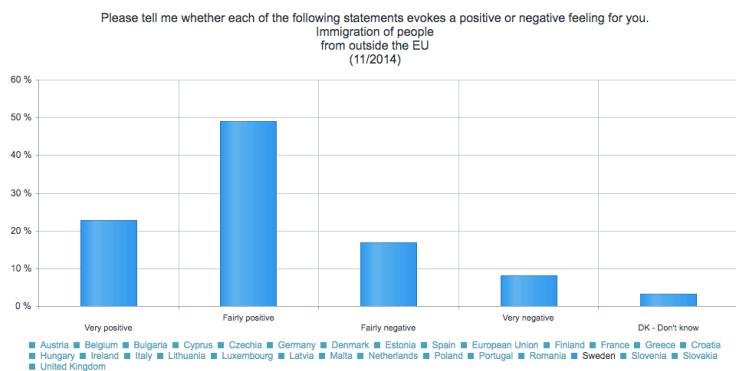
Figure 15: Swedish Public Opinion on Non-EU Immigration 2014

Source: (European Commission, 2014)
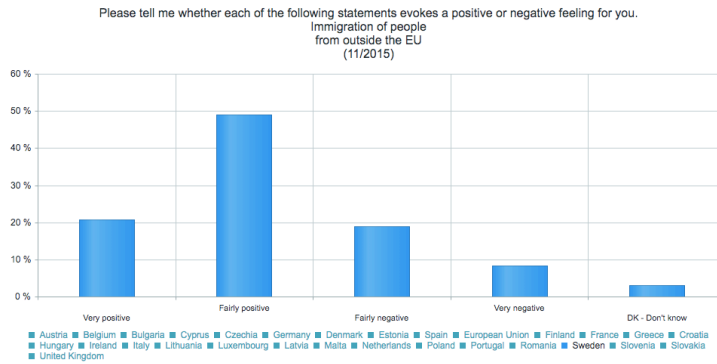
Figure 16: Swedish Public Opinion on Non-EU Immigration 2015

Source: (European Commission, 2015b)
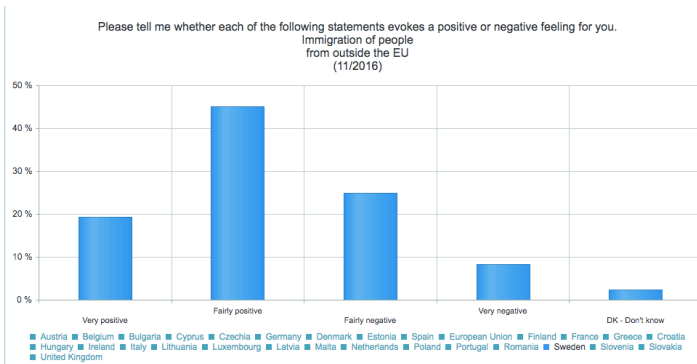
Figure 17: Swedish Public Opinion on Non-EU Immigration 2016

Source: (European Commission, 2016).

The results of the public opinion polls during the years 2014-2016 in Sweden suggest that the public agreed with the Government of Sweden's pro-immigration stance in the early stages of the crisis.

Overall, Sweden exhibits a history of pro-immigration policies that has painted the country as a desirable place for asylum seekers to apply. As the next section will demonstrate, this resulted in a high number of asylum seekers dodging registration in Southern EU member states during the crisis in order to make their case in Sweden.

6.2 Sweden and the 2015-16 Crisis:

The discourse from the Swedish government at the beginning of the crisis was in line with its historical reputation as it focused on Sweden fulfilling its international responsibility to asylum seekers. This is evident in a speech from Sweden's Prime Minister Stefan Löfven in September 2015; in which he stated: "Legal routes for people to seek asylum must be available. Sweden stands up for the right of asylum. In times of crisis this is more important than ever. Those fleeing war and oppression must be able to obtain protection in Sweden" (Government Offices of Sweden, 2015, para. 27-28). Additionally, Prime Minster Löfven called for EU member states to follow Sweden's approach to the crisis: "Responsibility for asylum seekers must be shared in the EU between the EU Member States. No country must be allowed to shirk its responsibilities" (Government Offices of Sweden, 2015, para 29). This suggests Sweden took a leadership role among EU member states in advocating for rights-based treatment of asylum seekers during the crisis.

However, as the crisis continued and the number of asylum seekers arriving in Sweden increased, the government adopted restrictive measures (Bucken-Knapp, 2017). In reaction to the lack of burden sharing among EU-member states, Sweden's government changed its approach to the crisis in discourse and policy: "the new measures that underpinned the policy clearly reflected the intent to markedly decrease the number of asylum seekers who would opt to file applications for refugee status in Sweden" (Bucken-Knapp, 2017, p. 285). The Government of Sweden announced the reinstatement of border checks in November 2015 (Radio Sweden, 2016). A week after the reinstatement of border checks that required identification to enter the country, the government announced its proposed policy changes that aimed to restrict migration and make it difficult for asylum

seekers to gain permanent residency or family reunification in Sweden (Radio Sweden, 2016). The new policies required asylum seekers to have proof of employment and "proper housing" in order to apply for permanent residency or family reunification (Radio Sweden, 2016). Bucken-Knapp (2017) adds that under the new policies, the right to family reunification would be limited to immediate family members only (following the EU's definition of family reunification which only approves family reunification for spouses and children/parents); medical testing would now be conducted to determine the age of those claiming to be minors, and identification would be required to enter the country – all of which aimed at reducing the "pull factors" to Sweden and to reduce the number of asylum seekers entering the country (Bucken-Knapp, 2017). During the official announcement of the new policies in November 2015, Sweden Migration Minister Morgan Johansson stated that Sweden's open-door policy to asylum was no longer sustainable in light of the lack of burden-sharing among EU member states (Radio Sweden, 2016). In the press conference announcing the plans, Johansson stated:

> Last week we had to conclude that these high numbers we've seen this autumn is not sustainable for us…Therefore, we were forced to take measures to bring down the numbers. This is, as we all know, nothing we wanted to do, but we had to do it. The tragedy is that Europe as a continent could manage the migration flows, but only if we work together as a nation and share the responsibility. Unfortunately, that is not the case. On the contrary, we've seen some countries that are running away from their responsibilities, even breaking promises that they have made (Radio Sweden, 2016).

Therefore, the justification of the Government Sweden gave for restricting its policies was that the EU's CEAS is not effective in distributing the burden as anti-immigration member states are able to shirk their responsibilities and asylum seekers are dodging registration in states of first arrival order to avoid Dublin transfers – which makes Sweden vulnerable to unsustainable numbers of refugees as welcoming state.

The governing SAP party framed the new restrictive policies as: "ones that situate concerns over the financial pressures of refugee resettlements as a question of assuring fair treatment is given to refugees, and burden-sharing among European Union member states," (Bucken-Knapp, 2017).

This framing is in contrast to the discourse from the pre-crisis debates, in which it was a competition among political parties for who was more open to asylum seekers. For example, former Prime Minister Frederik Reinfeldt of the Moderate Party, who left the Prime Minister's Office after the 2014 election, delivered what is now known as the "Open Your Hearts Speech" at the first signs of an increase in asylum seekers emigrating from the Middle East in North Africa in 2014 (Bucken-Knapp, 2017).

In the speech, Reinfeldt stated: "These are people who come into Swedish society to build it together with us. Together we are building a better Sweden. [The scope of migration] will be so comprehensive as to lead to further limits as to what is possible in our public finances" (Bucken-Knapp, 2017, p. 286). In response to the "Open Your Hearts" speech, the leader of the opposing Swedish Social Democratic Party (SAP) Stefan Löfven (who would become the next prime minister following the 2014 election) rejected the notion that there are financial limits to Sweden's ability to help asylum seekers. Löfven stated: "Sweden is a rich country. If people have to flee for their lives, then we will help

them. You can't say that we can manage this or that amount. What we are saying is that we can manage it. We have a national budget of 1000 billion kronor, so of course there are funds for helping" (Bucken-Knapp, 2017, p. 287).

However, the Government's justification for adopting a more restrictive approach under Löfven in 2015 contradicted his statements while in opposition. The justification was based on the "burden" of the number of asylum seekers who apply in Sweden due to other member states shirking their responsibilities (Radio Sweden, 2016), suggesting that there are limits to what Sweden as a wealthy country can handle in terms of capacity for asylum seekers. Therefore, the SAP's reframing of the crisis highlights a shift in its view during the crisis; evident in the switch from Löfven's "longstanding criticism of those who sought to highlight potential costs associated with refugee resettlement, to adopting rhetoric that invokes those same costs in order to justify implementation of the new restrictive policy measures" (Bucken-Knapp, 2017, p. 284).

Therefore, despite being a state that entered the crisis with progressive asylum policies, pro-immigration public opinion and discourse that implies the government valued asylum seekers, the government eventually restricted access during the crisis and justified it as warranted in light of the lack of burden-sharing among EU member states. The inadequacies of the Dublin Regulation to properly distribute the high numbers of asylum seekers and the norm of irregular migrants dodging registration in states of first arrival due to the Dublin System led to Sweden feeling overwhelmed and eventually adopting policies that were more in line with the EU's criminalized approach to immigration by requiring identification for entry, increasing restrictions on asylum eligibility to allow for more deportations that accepted applications, and adopting the EU's narrow definition of family

reunification that would lead to an increase in the number of asylum applications being rejected during the crisis. These policies worked, as the number of applications in Sweden dropped dramatically after the policies, falling from a peak of 162,450 applications in 2015 to 22,790 applications in 2016. Therefore, the policies that were intended to curb pull factors to Sweden were highly effective in deterring asylum seekers.

6.3 Sweden and the Issue of Missing UAMs:

Sweden's reputation as a desirable state for asylum seekers was not limited to adults. Sweden became the country with the most UAM applications of any EU member state with 34,295 UAMs applying for asylum in Sweden in 2015 – which accounts for about 40 percent of the total number of UAM asylum applications in the EU that year (Eurostat, 2019b). Therefore, Sweden was the main destination state for UAMs during the crisis despite its Northern location that is far removed from the Mediterranean smuggling routes. This was because many UAMs did not stay and apply for asylum in their first country of arrival such as Italy or Greece (UNICEF, 2016). To ensure they can apply for asylum in their desired state, "many migratory young people evade detection as they pass through certain countries in order to make it easier to claim asylum or reunite with family members when they arrive in the destination state" (Allsopp & Chase, 2017, p. 7). Many UAMs prefer to remain undetected due to the fingerprinting required in the Dublin System. If their fingerprints are registered in a state of first arrival and the UAM applies for asylum in a Sweden, Swedish authorities will be notified of where they first entered the EU through the EURODAC system that shares identity information across EU member states. Sweden then has the right to transfer the UAM back to the original state where their fingerprints were registered in the EURODAC system (Sigona & Allsopp, 2016). Therefore, the Dublin

System results in UAMs taking dangerous journeys on their own or through smuggling networks in order to evade the system and apply for asylum in the state where they envision their futures (Sigona & Allsopp, 2016).

One of the pull factors for UAMs to Sweden was its lenient policies for UAMs: "In Sweden, although officially entry conditions apply to all TCNs irrespective of their age, it is common practice that a UAM is not denied entry and will never be ordered to return if entry conditions are not met" (European Migration Network, 2015, p. 16). The existence of smuggling networks that facilitate undetected journeys meant UAMs who successfully landed in Sweden undetected could not be transferred back to their state of first arrival; which explains why Sweden received the highest number of UAM asylum applications in 2015 of any EU member state (IOM and UNICEF, 2015).

Mucci and Paravicini (2016) provide evidence of a specific case of a UAM who chose to abscond from the system to arrive in Sweden. Mucci and Paravicini (2016) describe the case of a UAM from Afghanistan named Asif who used four people-smugglers to travel through ten countries undetected to seek asylum in Sweden because as a gun-shot victim of the Taliban, he believed "it would be the European country where he would receive the best treatment" (para. 12). However, despite Sweden's positive reputation for its treatment of asylum seekers, research suggests UAMs like Asif faced difficulties at Swedish reception centers that encouraged them to flee during the crisis.

Sweden was highlighted in Europol's report of 10,000 missing UAMs as one of two EU countries with significantly high numbers of missing UAMs (Townsend, 2016). Europol estimated 1000 UAMs went missing in Sweden in 2015 (Townsend, 2016). However, reports from Sweden's municipalities suggest the number is much higher than

Europol's estimates. For example, the municipality of Trelleborg, Sweden reported that of the 1900 UAMs who arrived at their reception center in September 2015, 1000 had disappeared (Savage, 2015). Additionally, a fact-finding mission conducted by the European Commission in response to the issue of 10,000 missing UAMs in 2016 found that 7-10 UAMs were reported missing in Sweden each week during the crisis (Di Stefano, 2016).

Research conducted by Human Rights Watch from January 25 to February 8, 2016 found that due to the high number of asylum applications lodged during the crisis, UAMs were experiencing several month-long wait periods for an asylum determination interviews (Human Rights Watch, 2016a). As determined by the fact-finding report conducted by the European Commission, long-wait periods are a push factor for UAMs to flee reception centers (Di Stefano, 2016). This was also determined to be a push-factor by an EU-wide study of missing UAMs prior to the crisis (European Migration Network, 2015). Side effects of the long-wait periods included delays in appointing guardians impacted UAMs access to essential services such as education and information about the status of their applications (Human Rights Watch, 2016a). HRW found that UAMs in Sweden experienced "delays and difficulties in getting critical care and support" (Human Rights Watch, 2016b, para. 1). For example, Tabish P., a UAM from Afghanistan interviewed by HRW testified that he had been at a reception center for four months and had yet to meet with a Social Worker (Human Rights Watch, 2016a). Additionally, Karam B., a UAM interviewed by HRW stated he had been at a reception center in Sweden for seven months, which for Karam B. felt like reliving the trauma of imprisonment by ISIS: "We had little hope of living and surviving and we kept being told [by ISIS] that they were going to kill

us any day…The waiting here for my asylum procedure and a decision reminds me of that…the insecurity of not knowing about your life and your future'" (Human Rights Watch, 2016a).

The restrictions imposed by the Löfven government in November 2015 meant that more UAM applications would be denied due to adopting the EU's minimum standards of asylum screening including the narrow definition of family reunification and requirements for documents (Radio Sweden, 2016). As the research conducted by Allsopp and Chase (2019), Di Stefano (2016) and the European Migration Network (2015) has indicated that fear of deportation prompts UAMs to abscond from the system; and as the research conducted by Sigona and Allsopp (2016) indicates long-wait periods of uncertainty, denial of family reunification claims, or asylum-seeking experiences that generally do not meet what the UAM envisioned for their "migration project" consistently cause UAMs to abscond, we can logically conclude that UAMs likely left the system in Sweden during the crisis due to its policy reaction to the inadequacies of the Dublin system and lack of burden-sharing within the CEAS that resulted in increased rejections for family reunification and asylum.

There is a lack of academic fieldwork conducted in Sweden that interviewed UAMs as to why they left the system during the crisis. However, journalistic accounts provide some insight that confirms UAMs fled due to lack of trust in the system and fear of the outcome of state decisions. For example, Asif, a UAM interviewed by Mucci and Paravinci, (2016) said he absconded the system because he feared returning to Afghanistan where the Taliban had shot him. He stated: "I have gone underground since the asylum bid was rejected so the police can't find me and kick me out…So right now I'm just waiting. I

can't work and I can't go to school to learn Swedish; it's a bad situation and Europe is not helping us" (Mucci & Paravicini, 2016). Therefore, this example provides evidence that fear of deportation caused UAMs to flee in Sweden.

Another insight into why UAMs chose to abscond from the system in Sweden is provided by Cecilia Lejon, a practitioner who worked with minors in the municipality of Trelleborg where 1000 UAMs went missing within 30 days of arrival. The Lejon stated that two of the main reasons UAMs left system in Sweden was because they "'have friends and relatives elsewhere in Sweden and want to get there,' while others, 'have absolutely no confidence in the authorities'" (Savage, 2015). Therefore, there is evidence that the long-wait periods due to the Dublin system and the Government's policy turn that included resorting to the EU's narrow definition of family reunification and restricting access to increase rejection of claims affected UAMs' decisions to abscond from the system in Sweden during the crisis.

Therefore, even in a pro-immigration, wealthy state that encouraged the arrivals of Syrian asylum seekers in the early stages of the crisis, gaps in the CEAS resulted in restrictions that caused to UAMs leave the system due to fear of deportation, long wait-periods in state care, and family reunification rejections.

6.4 Conclusion: The Effects of Structural Xenophobia in Sweden

Despite being a pro-immigration country with a history of progressive asylum policies, pro-immigration public opinion, and relative wealth within the EU, discourse from the SAP during the crisis regarding burden sharing indicates that the Swedish Government felt the effects of the Dublin System's inefficacy and reacted with increasingly restrictive policies for asylum seekers that created negative experiences for UAMs in

Sweden during the crisis. As the Dublin System was intended to ensure fairness in distribution of asylum applications, but resulted in Sweden receiving the majority of asylum-seeking UAMs during the crisis; we can conclude that the Dublin Regulation caused unintended harm to the UAMs as its effects on Sweden during the crisis prompted the Government to adopt what Bucken-Knapp (2017) called the most restrictive asylum policies in the EU. The new restrictions meant UAMs' applications were more likely to be rejected due to document and monetary requirements. Additionally, an effect of the Dublin System creating high volumes of applications in Sweden during the crisis was long wait-periods for UAMs. The Government of Sweden attributed its failure to quickly process asylum applications to the EU's inability to properly distribute applicants and the unwillingness of EU member states to reform the Dublin System to allow for fairer burden sharing in times of crisis (Radio Sweden, 2016; Robinson, 2017). As fear of deportation and long wait-periods are consistently cited reasons throughout the literature on why UAMs abscond from the system, the Dublin Regulation caused unintended harm to UAMs in Sweden by creating conditions that have been proven to prompt UAMs to flee state care.

The CEAS' Dublin Regulation was problematic for UAMs applying for asylum in Sweden as fear of Dublin transfers led to high numbers of applications in Sweden that could not be transferred due to asylum applicants appearing for the first time in EURODAC in Sweden; and consequently led to the Sweden Government justifying extremely strict policy adjustments that led to increased deportations and difficulties for UAMs to apply for family reunification due to a requirement for the applicant to be employed (and UAMs are not legal to work). Therefore, the Dublin Regulation appears to be a form of unintended harm to UAMs in the case of Sweden.

The evidence provided in this chapter also suggests the EU's policy regarding family reunification also negatively affected UAMs as the Sweden's adoption of EU minimum standards meant UAMs would now only be approved family reunification under the EU's narrow definition. This would have resulted in rejected claims for family reunification unless the UAMs' parents were in Sweden – which Sigona and Allsopp (2016) have determined is a leading cause of disappearances as UAMs feel they can connect with their family members that fall outside the EU's narrow definition on their own.

The criminalization of irregular migration also affected UAMs' asylum seeking experiences in Sweden. Sweden's implementation of restrictive measures in November 2015 were based on minimum standards required by EU law, which as process tracing in Chapter 4 suggests, was informed by the historical process of criminalization of irregular migration. Therefore, when Sweden restricted its entry and asylum requirements, it was following EU standards that were born out of the normalization of viewing irregular migrants as criminals. These further restrictions were intended to increase the number of declined asylum applications. Therefore, it can be argued that the criminalization of irregular migration unintentionally harmed UAMs in Sweden, as Sweden's adoption of EU standards during the crisis resulted in well-founded fears of deportation – which the literature has proven are reasons why UAMs abscond from state care.

The final form of structural xenophobic discrimination – lack of consistent data collection – arguably would affect the ability of all states to properly protect UAMs as it is an EU-wide issue due to an inability to cooperate transnationally when a UAM goes missing and the inability to compare data between countries due to different collection

methods. Specifically within Sweden, it is an issue as there are no enforceable guidelines for reporting missing UAMs (Hedberg, 2014). Additionally, "there is no systematic information sharing and no formal national procedures to gather information about the child's circumstances" (Hedberg, 2014, p. 42). This further supports the argument that lack of consistent data collection indirectly harms UAMs, as without common data sharing practices among EU member states of this population, it is difficult for states to protect UAMs to do so adequately without the knowledge or ability to track the situation when they go missing.

Overall, structural xenophobia in a pro-immigration destination state like Sweden takes a different form than in anti-immigration states of first arrival like Italy, but UAMs are still unintentionally harmed as a result of the three types of EU-level structural xenophobia nonetheless.

CHAPTER 7: CONCLUSION

<u>7.1 The Effects of Structural Xenophobia:</u>

Although EU policies aim to ensure unaccompanied minors receive rights-based treatment within its member states, the phenomenon of missing UAMs and the reasons they abscond from the system suggests that the EU fails to ensure rights-based treatment in practice at the member-state level. Although the EU's response to Europol's announcement of 10,000 missing UAMs in 2015 was to reiterate that member states should follow existing EU policies, research presented in this thesis suggests that the EU is neglecting significant structural factors that are contributing to UAMs' decisions to abscond from the system. Structural xenophobic forces at the EU-level including the policy gaps in CEAS (Dublin Regulation and narrow definition of family reunification), lack of consistent data collection of missing UAMs, and criminalized policies and tools regarding irregular migration, allowed member-states to justify rights-violating treatment in anti-immigrant countries, and encouraged a more restrictive approach within pro-immigrant countries during the crisis that incited fear of deportation among UAMs and difficulties with family reunification that, based on testimonies and research on general reasons why UAMs chose to go missing, encouraged UAMs to abscond from the system. This thesis has provided evidence that in both pro-asylum (Sweden) and anti-asylum (Italy) countries, UAMs fled in the thousands due to structural xenophobic forces from the EU level during the crisis.

Placing these findings within the historical and discursive institutional context in which the EU designs policies, the following conclusion is drawn: EU institutions, informed by negative social constructions of irregular migrants in EU member states, have designed policies that result in intentional structural xenophobic discrimination through the

anti-irregular migrant system, which undermines policies that aim to protect UAMs in both pro and anti-immigrant countries. UAMs were also encouraged to abscond from the system due to policies gaps that unintentionally affected UAMs' asylum-seeking experiences in a negative way; including the Dublin Regulation and a narrow definition of family reunification. The lack of a consistent EU-wide approach to data collection of UAMs also unintentionally caused harm to UAMs as lack of comparable data means lack of awareness of the issue. This causes issues for inter-state cooperation when a UAM goes missing. It also reduces policy-makers' ability to address the issue of UAMs leaving the system before, during and after the crisis in Europe as without the full scope of the issue in data, it is difficult to justify a change in policy.

Therefore, this thesis contends that policy gaps in the CEAS, the lack of effective data collection of UAMs when they go missing, and the criminalization of irregular migration are evidence that three forms of structural xenophobic discrimination at the EU-level created difficulties for UAMs seeking asylum in both pro and anti-immigrant states. This thesis contends that structural xenophobia is a more compelling argument than the main counterarguments that resource strains due to the crisis and the inefficacy of the CEAS to ensure fair burden sharing during the crisis due to the fact that UAMs chose to abscond the system prior to and after the crisis,. The resource and asylum system arguments are also weakened by the fact that structural xenophobic forces exist outside of the crisis context and create conditions in which UAMs abscond from the system. While resource pressures and multi-level governance issues are factors in the negative experiences UAMs had during the 2015-16 crisis, the underlying causes of the negative experiences UAMs had during the crisis are structural and this thesis contends that until these gaps in the EU's

approach to UAMs are addressed, UAMs will continue to abscond from the system in both times of crisis and times of stability.

7.2 Issues Moving Forward with Addressing Structural Xenophobia:

EU member states' membership in the union, and thus the legitimacy of the union, depends on member states' consent. As we have seen with the United Kingdom's Brexit vote, discontent with EU member states' citizens in areas of EU competency (migration and asylum) can lead to separation of member states from the EU. Therefore, the legitimacy and longevity of the union depends on ensuring EU member states feel the concerns of their citizens are met within EU membership. However, several EU member states have anti-immigrant public opinion and policies (Candu, 2019). As SCTP suggests, career stability of politicians at the member-state level depends on appearing to address powerful voters' concerns. Therefore, states where the public demands strict control of borders and curbing of the arrival of asylum seekers are unlikely to challenge the EU on their structural xenophobic issues that intend to curb irregular migration or agree to reforms that would aim to increase compliance with EU protective policies. This has already been identified as an issue during post-crisis debates on the issue of burden-sharing, in which anti-immigrant states have refused to agree to proposed reforms of the CEAS to ensure fairer burden sharing (Tajani, 2018).

Therefore, the EU is faced with the difficulty of addressing unintended structural xenophobic discrimination against UAMs due to the fact that its membership includes states that are unlikely to agree to reforms that ensure rights-based treatment of asylum seekers. Unless the EU takes strong action in these areas (such as connecting EU funding to compliance with data collection and processing asylum applications; and addressing the

criminalized nature of policies, directives and tools aimed at controlling irregular migration) UAMs' protective rights will continue to be undermined by the structure of the EU's common asylum system and are likely to continue to prefer to flee rather than deal with the challenges the current policies and law create for their asylum-seeking experiences.

7.3 Limitations and Agenda for Future Research:

The phenomenon of UAMs frequently going missing from the EU's common asylum system is an under-researched area. Therefore, this project relied on a small number of peer reviewed academic research projects and heavily on accounts of why UAMs abscond provided by journalists and advocacy organizations. Therefore, this project was limited due to the small amount of research conducted in the field on this research question.

The existing field research allowed for primary conclusions to be drawn based on why UAMs have testified to absconding the system to various researchers and what conditions existed within EU reception centers during the crisis. However, there is a need for additional field research on this topic. Additionally, in contrast to research on asylum seekers and irregular migrants generally, there is a lack of available research on perceptions of UAMs specifically among policy makers and the EU citizens. Therefore, survey and interview work to increase the amount of data on this topic would be a useful endeavour.

There are also elements of this phenomenon that were not explored in this project, including the characteristics of the UAMs who arrived in the EU in 2015 – such as gender, age and origin countries of UAMs and how these elements affect their asylum-seeking experience in the EU. For example, 91 percent of UAMs who applied for asylum in the EU in 2015 were male, 51 percent were from Afghanistan, and over half were between the ages

of 16-17 (Eurostat, 2016). How the characteristics of UAMs affect their asylum-seeking experiences could be explored in future research.

Additionally, the peak of the crisis only ended three to four years prior to the completion of this project. Therefore, future research would benefit from the fact that many UAMs who absconded the system may now be adults who are either settled in the EU or returned to their origin countries. Therefore, they may be more easily located for questioning without fear of being identified to the authorities. Therefore, this project is a stepping stone to further research on this under-explored topic in political science.

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