Protecting unaccompanied migrant children and victims of trafficking and abuse; A role for the 1996 Convention beyond private Law?
Migrant and Refugee Children

- Globally, about 7% of all migrants are refugees and asylum seekers, but in Western Balkans about 80% of individuals attempting entry are refugees from Syria (65%) and Afghanistan (15%).

- Over 400,000 asylum applications in EU in January–July 2015, of which 106,000 below 18 (increase of nearly 50% over 2014 figures).

- 23,000 Unaccompanied and Separated Children to date in 2015 (annual average in EU around 15,000)

- Policy environment in EU and Accession states rapidly changing.

- EU to hold a series of key meetings in coming months on response and coordination.

- Germany has recognized all Syrians entering EU as refugees and suspended aspects of EU immigration policy towards these people.

- Proposals within the EU for relocation of refugees within Europe to relieve the pressure on the states where most refugees enter or transit.
• Globally, about 1.2 Million children trafficked?
• 2005 Estimate – reliable Data a real challenge
• Data often based on convictions of traffickers
• Data – especially from developing countries – often does not have sufficient disaggregation to allow for analysis of specific trends affecting children involved in migration flows.
• Data in developed countries often records unsuccessful claims for asylum and international protection of children, but offers little information on what happens to children afterwards.
• Very little data on ability of children to access education, healthcare and social protection in ‘receiving’ states.
• UNICEF is moving towards indicators that contain a high level of disaggregation and focus on equity
Expanding the scope of the ‘Best Interests’ Principle to include Migrant Children

• Introducing CRC Standards into public policies which concern child migrants and their families.

• Balance between Migration Policy and children’s rights, including the child’s right to participate meaningfully in decisions affecting him/her.

• Rights of children left behind?

• Coherent, long-term approach to increasing numbers of children embarking on independent migration.

• Re-framing migration in and of itself as neutral and act of agency and choice.

• ‘Guaranteeing’ safe return that is always in the child’s best interests.
UNICEF – UNHCR Best Interests Determination Guidance

• Safe and Sound: What States can do to ensure respect for the Best Interests of Unaccompanied and Separated Children in Europe. October 2014.

• Aims to support States in the EU and EFTA in applying the best interests principle as a primary consideration when dealing with unaccompanied and separated children in their territory.

• No ‘perfect’ set of structures or procedures. It does, however, offer suggestions of elements that States may choose to include so as to meet international legal standards and obligations.

• Makes use of examples of practices by EU Member States and a few others.

• The document has been primarily designed for use by policy makers, public and private institutions in the EU and EFTA countries seeking to establish or improve arrangements for identifying unaccompanied and separated children, and according primary consideration to their best interests, including when identifying durable solutions for them.

• Whilst the document builds on the legal and policy framework in place regionally, the best interests principle in Article 3 of the CRC applies to any State that has ratified the CRC. Therefore Safe and Sound may offer inspiration to other countries that are developing or improving their child protection, international protection.
Responding to Changes ....

- **23,000 Unaccompanied and Separated Children** to date in EU in 2015 (annual average in EU around 15,000)

- US/Central America – last year about 70,000, this year fewer, although a recent ‘surge’ of about 10,000

- Traditional family reunification and BID procedures time consuming, resource intensive

- Most children on the move have a firm destination in mind.

- ‘Guaranteeing’ safe return that is always in the child’s best interests?

- At present – something of an imbalance in the care and protection around returns for trafficked children and migrant / asylum seeking children who have been denied international protection.
Unaccompanied Migrant Children

• In the vast majority of cases, no attempt by receiving states to establish jurisdiction through formal court procedures
• Temporary guardianship assumed by migration or child protection authorities awaiting asylum status determination
• State-to-State communications a consular matter
• Quality of guardianship varies greatly from country to country
• Often results in detention / deprivation or restriction of liberty – which is a violation of the child’s rights
• Upon a denial of asylum / humanitarian leave to remain, generally an automatic assumption of transfer of jurisdiction to the state of origin, followed by removal
Unaccompanied Migrant Children

• CRC Article 2: Non Discrimination. In the case of unaccompanied children, are states really meeting their obligation to provide these children with the protection they would afford to national children deprived of parental care?

• Does the lack of a (judicial) process to establish jurisdiction allow states to de facto provide a lesser duty of care?

• Migration authorities are asked to perform two competing roles; to ensure the best interests of the child at the same time as enforcing migration control

• Consular communication mandated but insufficient

• ‘Aging Out’ used as the easiest solution in many cases
The 1996 Convention – possible applications for Unaccompanied migrant children?

• Mechanism to manage the exchange of information regarding these children in cases needs to be established

• A matter between two states, as opposed to private parties - but the 1996 convention has been used by local authorities assuming custodial role.

• Needs to balance rights of children concerned with migration policy and states concerns over sovereign integrity

• Ultimate decision on ‘best interests’ should remain with child protection, as opposed to migration, officials, and be subject to judicial oversight

• Could the 1996 Convention play a role for these children?
The 1996 Convention – possible applications for Unaccompanied migrant children?

• Establishing jurisdiction for upwards of 20,000 children (EU) a year in a manner identical to that undertaken in Hague 1980 /1996 cases would be a logistical challenge

• Receiving and verifying information on the child’s situation and other evidential factors is, in many cases, simply not possible (examples – Afghanistan, Honduras, Iraq etc.)

• Even verification of identity and age almost impossible for many of these children; i.e. Afghanistan BR rate less than 30%

• No ‘ideal solution’ for many of these children; the choices often come down to institutional care in a foreign country whilst ‘aging out’ or return to sub-standard institutional care in country of origin

• Central authorities - potential increase in responsibility (and budget and power?)