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“Child Migrants and Human Rights in our Time”

by

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1. Introduction

Today I am going to talk to you about the global movement of separated children within the context of 4 constructs or pillars:

- the first pillar is the size of that global movement of children and the different factors that lead to its creation;
- the second pillar is that notwithstanding the Convention on the Rights of the Child, domestic laws in most mainstream industrialised countries are failing these children and Australia is one of these;
- the third pillar is that punitive responses to stem the flow are proving ineffective/or exact too high a cost;
- the fourth pillar suggests that a co-ordinated response by mainstream industrialised nations, under the umbrella of

the UNHCR/UNICEF, is urgently required to meet this growing challenge.

I should add, at this point, that my work over the past few years and my inquiry on children in immigration detention (CIDI), in Australia, the report of which “*A last resort?*” was tabled in the Australian Federal parliament in May of 2004, has made me even more keenly aware of the fragility of child asylum seekers. But more on that later!

2. The Global Movement of Children

Separated minors are children and young people under 18 years of age outside their country of origin. They have been separated voluntarily or involuntarily - from their parents or care givers.

This is not a new problem.

From the Old Testament, we know that the child Joseph in Canaan was sold to a party of Ishmaelite traffickers who took him to Egypt where he was compelled to work as a slave. Unusually, this story had a happy ending, because he became the Pharaoh’s trusted adviser, saved Egypt from famine and ultimately was reunited and reconciled with his family. He also

provided the source material for the hit Broadway show, “Joseph and the Amazing Technicolour Dreamcoat”!

In 1618, a group of 100 boy 'vagrants' (to use the vernacular of the day) were shipped from the London area to Virginia, their passage arranged by London's City fathers. There they were forced to work on tobacco plantations under what must have been shocking conditions. Arguably, this was the first example of state-sponsored child migration.

Through to current times, where in 2001, a 15 year old girl in Benin City, Nigeria, hypothetically named Sarah, is forced to take part in “voodoo” cult rituals. Terrified, Sarah agrees to go to London where she is compelled to work as a prostitute under slave-like conditions, until luckily, she is rescued by British police; incidentally this incredible story is really true.

So, this snapshot covering several thousand years shows that child migration is not new.

Lamentably, these examples demonstrate that if anything, conditions are now as bad as they ever were, despite international legal mechanisms designed to protect separated children.

Categories of Separated child movement

When one looks at different child movements throughout history one can distinguish four different categories of child movement:

- State sponsored migration
- Refugee
- Humanitarian
- Trafficking

State Sponsored Child Migration

I have already referred you to the seventeenth century example of British children sent to Virginia. The migration of these so-called “Orphans of the Empire” ultimately numbering 130,000 trafficked by their own government was mercifully halted in 1967.

The Canada Home Children scheme, from 1869 until the last arrival in 1948, involved 100,000 unaccompanied children sent to Canada from Britain.

Once Canada stopped its program, the Australian government escalated its own, which had been temporarily suspended during the Second World War.

From 1947 to 1967, around 3,000 children from Britain and Malta (under British jurisdiction) were forcibly sent to Australia

and put into the care of charitable organisations – Dr Barnardo’s Homes, the Catholic Church, Salvation Army, YMCA, Boy Scouts Association and so on.

Whatever the intention – settling the Empire with “good British stock” or “rescuing” children from poverty – the facts speak for themselves. From Catholic agencies alone, 87% of those children came to Australia without parental consent and 96% of them had one or both parents alive in Britain. In May 2002, the Australian government announced a “benefits package” of US\$2m for the former child migrants, along with a statement of regret.

Whatever the “humanitarian” motives behind such policies, it is now universally agreed that the negative effects flowing from these large scale government-sponsored activities far outweighed the alleged positives. Accordingly the practice may be deemed to have ceased.

Child Refugee Movement

The separated children of today may be seeking asylum because of fear of persecution or lack of protection due to human rights violations in their country.

In other words, children who fulfil the classical definition of “refugee” under the *Refugee Convention*. For instance in Austria in the first half of 1999, 265 applications for asylum by separated children were received in Vienna alone, while Sweden received 137 such applications in the same period. In Australia, the most obvious recent examples of this category would be the group of young unaccompanied Afghans in the period 2000 – 2002.

Child Humanitarian Movement

Examples could also include children caught outside their home country because of circumstances of war or civil unrest who may not qualify as refugees.

For instance, in 1939, 20 children from the Vienna Boys Choir were touring in Western Australia when WWII broke out. Rather than being interned by the Australian government, the boys were given safe haven for the duration of the war, with Melbourne families. The foster care was arranged by the Archbishop of Melbourne. After the war, all the boys except one chose to stay in Australia and take citizenship.

There are other historical examples of creative efforts to save children in times of war.

These include the 1944 exodus of Polish children from Stalin's forced labour camps through what was then Persia to New Zealand. The New Zealand government invited 733 children to migrate there, and paid for their care and education. Most were unaccompanied but some came with their mothers.

Among several thousand Holocaust survivors who came to Australia after the war, 300 of them were orphans, brought to Australia by the Australian Jewish Welfare Society between 1947 and 1950.

Official resettlement programs are another example. In 2002-03 Australia's Department of Immigration accepted 388 unaccompanied humanitarian minors (UHMs). However some of these were accompanied by adults, who provided the Department with undertakings they would be responsible for 'their' children in Australia. The rest, not so covered, became wards (the legal responsibility) of the Immigration Minister and received state welfare assistance.

This small UHM intake varies from year to year. Other mainstream industrialised nations have similar, limited programs. Its existence permits a medium to long-term response to either man-made or natural catastrophes – the recent Tsunami Disaster is a case in point; ultimately some of those children,

established as orphaned, may well form part of a future UHM intake. This point is more fully articulated in the UNHCR's January 2005's "*Unaccompanied and Separated Children in the Tsunami-Affected Countries – Guiding Principles*".

Or, they may be separated children who travel internationally, seeking to escape conditions of serious hardship, for a better life. Typically, they would qualify for humanitarian protection, by virtue of their special vulnerability as separated children.

This paper focuses on separated children crossing international boundaries in the absence of either State or UN sponsorship.

Trafficking

Or, they may be the victims of trafficking.

It is important upfront to note the essential difference between trafficking and smuggling.

Trafficking is moving children without their informed consent; it applies whether a child was taken forcibly or voluntarily. The US Government defines it as:

“all acts involved in the transport, harbouring, or sale of persons within national or across international borders

through coercion, force, kidnapping, deception or fraud, for purposes of placing persons in situations of forced labour or services, such as forced prostitution, domestic servitude, debt bondage or other slavery-like practices”.

Smuggling, on the other hand, is where the child or parents knowingly buy the service of a people smuggler to move them illegally to another country. This often results in an application for protection under either the refugee or humanitarian categories within the target country. For example, most of the Afghan unaccompanied minors (UAMs) in Australia would fit into this category.

The child victims of trafficking are overwhelmingly girls, whereas unaccompanied smuggled children may be of either sex but are usually boys. This distinction might require the international community to look at “gender specific” solutions that recognise the subtle, but important, variations at work here.

3. Current trends

Today, the annual figures of separated children crossing international borders dwarf all historical figures of child migration.

Child – Refugees and Humanitarian Claimants

The globalisation of the world economy, including much improved communication and transportation, has increased flows of people across borders. Transnational organised criminals have taken advantage of the freer movement to open new markets for their trade. So today, children can literally travel across the world undetected.

At this point I should add that there are many different sources of figures and comparisons are difficult to make. But the key reality is that the figures are large; very large!

In 2003, the most recent year for which UNHCR has some numbers on this, a little under 13,000 (data from 28 industrialised countries, but excludes some important countries - USA, Canada, Australia, France and Italy) separated children applied for asylum.

This figure is estimated to be a welcome reduction of about 11% from the 2001 peak (20,000).

But this may be just the tip of the iceberg; in Sandy Ruxton's year 2000 work: "*Separated Children Seeking Asylum in Europe: A Program for Action*", he estimates that there may be

as many as 100,000 separated children in Europe alone, hidden from official view because they have not applied for asylum!

Incidentally, to deviate even further for a second, an article in the March 2004 edition of the *ABA Journal* by Margaret Graham Tebo, sheds some light on the current separated children figures in the USA. The article quotes officials as asserting that approximately 5,000 UAMs a year end up in the Unaccompanied Minors Program, which is overseen by the US Office of Refugee Settlement within the Department of Health and Human Services.

But back to the big picture: considering the total refugee figures it is not surprising that separated children figures are also high. In June 2004, UNHCR estimated that at the end of 2003, there were 38 different “protracted situations” accounting for some 6.2 million refugees in total (a protracted refugee situation is one in which refugees find themselves in a long-lasting and intractable state of limbo).

This represents a substantial increase since 1993, when the total stood at 27, although the absolute number of refugees living in protracted situations has fallen since 1993 from 7.9 to 6.2 million.

To amplify, separated children crossing borders may be refugees, humanitarian asylum seekers, trafficked girls like Sarah forced to work as prostitutes, or simply children lost in the aftermath of war or natural disaster. Their relatives may have paid a people smuggler to transport them to a place where they believed the child would be safe.

They can be from all corners of the world, but in general, the flows are from south to north and from east to west; from the poorer to the wealthier states.

The majority of unaccompanied refugee and humanitarian asylum seeker children who make it to the west go to Western Europe (especially the Netherlands, the Nordic countries and Switzerland), the USA and Canada. A small number end up in Australia and New Zealand.

Trafficked Children

The majority of trafficking victims, on the other hand, are sent to Western Europe, the Middle East, Thailand and India – and also to the US. According to the US Congressional Research Service and the State Department, between 245,000 and 700,000 children are trafficked each year through international borders. It is estimated this figure could rise to as high as one million this year.

Mostly they are girls, trapped in debt bondage and forced to work as unpaid prostitutes.

Every year, 300,000 women and girls are trafficked into Thailand alone, to be exploited in the commercial sex trade. They come from Burma, Laos, Cambodia and southern China (reputedly a major element of Triad commerce).

Every year, between 5,000 and 7,000 Nepali girls are trafficked to India. Most of them are deceived into a life as sex workers. According to UNICEF, approximately 200,000 Nepali women, most of them girls under 18, work in Indian cities.

Child trafficking from the former Soviet Union has reached epidemic proportions.

From Ukraine alone, in the first decade after the collapse of communism, 400,000 women and girls were trafficked into international commercial sex markets (Western Europe, Israel, the US). That is the Ukrainian Interior Ministry estimate; NGOs and independent researchers believe the number could be much higher.

From the African continent, children are trafficked to Western Europe and the Middle East to be sold as sex slaves. They are also trafficked to neighbouring countries.

In the mid-90s in Uganda, for example, the “Lord's Resistance Army”, a heavily-armed rebel group that was fighting the Ugandan government, systematically abducted between 6,000 and 8,000 children. Most were between the ages of 10 and 17, and were marched to southern Sudan. They were forced to take part in combat, carry heavy loads, act as personal servants to the rebels, and, in the case of girls, serve as “wives” to rebel commanders. Roughly half the children escaped but the remainder probably died in captivity.

As an aside, it should be noted that UNHCR remains committed to resolving this hotspot. The September 2004 report of the *‘Inter-Agency Internal Displacement Division Mission to Uganda’*, gives a graphic account of the challenges faced in permanently resolving these issues.

Finally, with regard to the last point, time does not permit here, but a whole speech could be devoted to the terrible practice of inducting children to serve as ‘child soldiers’. In some parts of the world it is endemic.

I think this little snapshot unhappily demonstrates the extent of “cultural pluralism” at work here!!!

4. The difference between the past and current movements

There are significant differences between the past movements of children across borders and current migration. One common theme, however, is that the parents (and children) often have no idea of what really awaits their children at the end of their journey.

One key difference between the past and today is the sponsorship of this mass movement of children.

State Sponsorship

In the past it was dominated by state sponsorship, with very heavy NGO involvement, such as the Catholic Church or Barnardo's.

Now, transnational criminal syndicates, and small-time people smugglers such as fishermen and truck drivers, dominate this market.

Heavy Costs

So, a second difference is that the children (or their families) now bear the cost of their own movement. They incur huge debts that must be repaid. Many of you here would be familiar with the use of children as ‘anchors’. This is where the family is prepared to pay a high price to send a child, via people smuggler to a target country, in the hope that once ‘anchored’, they can sponsor the rest under family reunion visa conditions.

Dangerous transport methods

A third difference is that in the past, children were moved in relatively large groups and by secure transportation. Now, they come in small groups, under inherently dangerous transportation, either crammed into trucks or leaky boats, or walking alone for thousands of kilometres over dangerous terrain.

Different ‘push-factor’ motives

Perhaps the key to these differences lies in the fact that the motives for sending children across borders are also very different now from previously.

Britain’s motivation for sending its children abroad was perhaps as much about empire-building as about securing the best interests of the child. There is no doubt, however, that most

people believed they were saving children from poverty by sending them to the open air and spaces of the colonies.

Nowadays, any government placement of “at risk” children into alternative care is done purely with a child protection motive, and always within the broadly defined local community. No western government today would allow export of its “at risk” children overseas.

Parents - not governments - now send their children away in an attempt to save their lives or to earn money.

Poverty

For instance, extreme poverty can force desperate parents to sell their daughters to traffickers to avoid paying a future dowry. Or the child’s parents may have died forcing them to leave the country in order to survive.

Official greeting on arrival

A key feature of today’s arrival, at a particular country, by a child is the lack of official “meet and greet”. Past movements were the opposite, although subsequent “abuse” in institutional care, especially religious, is sadly well documented. In

Australia, official parliamentary inquiries about an institution in Western Australia, revealed shocking abuse.

International Conventions

Finally, a key difference is that, in the past, there were no international legal protections specifically for children. Since the mid-1980s, a sizable body of international children's rights instruments (treaties, guidelines, rules) have developed.

Now I will briefly examine the various relevant international instruments, such as the Convention on the Rights of the Child.

5. International legal instruments

In 1989, the adoption of the United Nations *Convention on the Rights of the Child (CRC)* formally established children's legal rights to special protection and assistance.

The genesis of this treaty was recognition by the world community that the existing legal framework failed to adequately recognise child-specific human rights. The adoption of the CRC was a watershed in UN-inspired painstaking negotiation.

It became the most ratified human rights treaty in history.

Its subject matter is wide, covering everything from the child's right to protection from sexual exploitation to the right to play.

It covers the child's civil, political, economic, social and cultural rights.

The principles articulated in *Article 20 of the CRC* apply to all unaccompanied children.

Article 20(1) states:

“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.”

Article 20(3) provides guidance on long-term solutions for unaccompanied children over whom a state has assumed care:

“...When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious and linguistic background.”

Article 22 and especially sub-section (2) is also relevant due to its positioning the UN, via its various agencies, as the key focal point, especially with regard to refugee children.

In addition, the UNHCR has developed a set of *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.

Finally, the ongoing work of the *Committee on the Rights of the Child*, in developing ‘general comments’ that will further assist member states, in how their policies should evolve to appropriately discharge their obligations to separated children, in connection with the CRC, is also instructive.

But let us now examine how these fine principles are applied in practice.

6. Government reactions to the unlawful child arrivals

Some western countries have established systems or programs for the safe return of unaccompanied children to their home country, pursuant to these international Conventions, but most have not.

The UNHCR points out that western governments:

“...vacillate between stringent control measures, including locking children up in jail, x-raying them to assess their age or shipping them back to ‘safe’ third countries, and serious efforts to care for the youngsters in the spirit of

...the *Convention on the Rights of the Child* which requires signatories to provide adequate protection and assistance to children, whether alone or with their families.”

Let us look for example at what Australia does.

Australia’s Domestic Laws unhelpful to child refugees

There have been a number of important court cases where HREOC has used its intervention power to argue for either common law remedies or applicability of relevant international conventions, to assist child asylum seekers in Australia.

The high water mark in this respect was the High Court decision in *Teoh* in 1995, where the court held that visa applicants could entertain a reasonable expectation that immigration officials would apply relevant international conventions when considering their application.

Unfortunately it has been downhill since then, in a human rights/international convention sense.

In 2002 the Federal Court found against two child asylum seekers *Odhiambo and Martizi*, in their argument that there was an irreconcilable conflict of interest between the Minister for

Immigration acting as both the determining visa authority and their legal guardian.

Re Wooley; Ex parte Applicants M27/2003 by their next friend GS [2004] 49 has upheld the operation of the immigration detention regime in relation to children, notwithstanding that it contravenes basic requirements of the *Convention on the Rights of the Child* and attracts the consequences revealed in the HREOC Report ‘*A last resort?*’

Interestingly in this case the High Court also found that children could not rely on the writs of habeas corpus and prohibition to effect their release from (the arguably) adverse immigration detention camp conditions.

While in *B and B* the High Court absolutely found that the protective child custody provisions of the *Family Law Act* (regulating all divorce issues within Australia, including child custody and by extension welfare) could not be extended to include protection of children in immigration detention.

Some legal commentators in Australia even believe that when the High Court considers a *Teoh* situation again that the ‘legitimate expectation’ principle will also be overturned.

But the biggest difficulty is the operation of the *Migration Act 1958* (Cth). This was examined in detail by HREOC over two and a half years, in relation to its compliance with international conventions, like the *CRC* and child asylum seekers.

“A last resort?”

In Australia, since 1992 the *Migration Act* has imposed a regime of mandatory immigration detention for all unlawful non-citizens, including children, whether accompanied or unaccompanied.

My inquiry into this regime vis a vis compliance with *CRC* found the following:

First – we found that the mandatory detention policy itself breaches the *Convention on the Rights of the Child* because it makes detention the first and only resort, not the last resort.

The policy also fails to ensure that there is an individual assessment of the need to detain and there is no effective review of detention in the courts.

Second – we found that children have been in detention for long periods of time. The longest a child has been in detention is five years, five months and 20 days.

Third – we found that children in detention for long periods are at high risk of serious traumatisation or even mental illness.

Fourth – we found that the conditions in detention centres:

- failed to provide sufficient protection from physical and mental violence;
- failed to provide the appropriate standard of physical and mental health;
- failed to provide adequate education until late 2002;
- failed to provide appropriate care for children with disabilities; and
- failed to give unaccompanied children the special protection that they needed.

This directly relates to the fact that the Minister for Immigration is both the guardian and jailer of unaccompanied children.

Key Inquiry Recommendations

Having found these breaches of human rights the question is:

Where do we go from here and what should be done in the future to avoid ongoing breaches?

Recommendation 1: Release

The Inquiry said that the first step is to get the children who are in detention centres and residential housing projects out of there.

While many of the children who were the subject of my Inquiry have been released, unfortunately as I stand before you today there are still children in immigration detention.

Some of these children and their parents have serious mental health issues and need specialised, on-going medical help - help they cannot get and are not getting in the detention environment.

For example, some children have been diagnosed with clinical depression, post traumatic stress disorder and developmental delays. Many children have showed symptoms like nightmares, bed-wetting, muteness, lost appetite and suicidal ideation – the list goes on.

The Inquiry found that the Department's failure to implement the repeated recommendations of mental health professionals to release children with mental problems amounts to cruel and inhumane treatment under *article 37(a) of the Convention on the Rights of the Child*.

This is the most serious finding that the Inquiry made. But releasing the children who are in detention now, only solves the

immediate problem. We need to make sure that asylum seekers who arrive in the future don't end up suffering under this same system again.

Unless Australia's laws change, children will continue to be locked up in places for indefinite periods of time. That is why we went on to make a second recommendation.

Recommendation 2: Change the law

So what kind of laws do we need?

We need new laws that make detention of children the last resort - NOT the first and only resort.

We need new laws that make detention of children for the shortest appropriate period of time - NOT for indefinite periods of time.

And we need new laws that make the best interests of the child a primary consideration - NOT laws that force a choice between family separation or indefinite detention. This is a false dichotomy.

Overseas Experience

Many countries immediately deport children, simply turning them around at the border, especially if the child has not explicitly sought asylum. Trafficked children are deported to their countries of origin, sometimes literally dumped over the border with no assistance.

There is a particular unwillingness to offer protection to young boys over 13 who are often deemed by officials as “adult” or simply too difficult to handle.

Some countries detain unaccompanied children while their circumstances are investigated. For instance, police raid a city’s brothels, arrest and detain girls and women, possibly subjecting them to human rights abuses in detention. Trafficked girls in these countries under this scenario are often not treated as children in need of protection, but as criminals. They do not get support, health care or the opportunity to testify against their traffickers – they are just quickly deported.

On the other hand there are countries whose laws and practices are more supportive of child migrants:

In Canada, unaccompanied minors are treated as children in need of protection and are looked after by provincial social services.

In Denmark, unaccompanied children stay at one of the Red Cross children's centres while the authorities process their claim.

Other countries presumptively give unaccompanied children permission to stay. In the UK, any child is entitled to protection under the *Children Act 1989*. If the child is unaccompanied, the immigration authorities have the power to grant temporary admission ("exceptional leave to remain").

In America, referring again to the *Tebo* article, the situation also seems positive for UAMs. After a difficult period post 9/11, the ORR's (Office of Refugee Resettlement) goal is to ensure that every child in the Unaccompanied Minors Program is in a placement that reflects the needs and circumstances of that child.

However, the trouble is countries are not sufficiently sharing their experiences of dealing with children in a way that systematically protects and assists them.

7. Need for Best Practice Model for Refugees or other Separated Children

So with that in mind, it is worth spending a little time examining some more key principles that should apply to separated children:

1. Do not turn them around at the point of arrival.

Provide appropriate time to establish their circumstances. The Danish model is a good example, where in practice no child under the age 15 arriving at the airport is refused entry to the country. 15 to 18 year olds and land border arrivals are assessed on a case-by-case basis.

2. Do not detain them for longer than absolutely necessary.

Although international law prohibits the detention of children except as the last resort and even then only for the shortest period of time, few governments enact laws that ensure this. However, in the UK, it is government policy not to detain any unaccompanied child unless in exceptional circumstances, and then only overnight before they can be collected by a social worker in the morning.

3. Appoint a guardian for each child.

In Sweden, all separated children are appointed a guardian known in Swedish as ‘the good man’. The guardian ensures that all decisions are in the child’s best interests, and that he or she has suitable care, legal assistance, interpreters etc.

4. Provide a lawyer for each child.

In Austria, the Minister of Interior issued instructions in October 2000 to improve the conditions of detention, by mandating that unaccompanied children receive legal assistance.

5. Processing should occur in child-friendly accommodation.

Unaccompanied children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs. For instance, in Finland, provision is made for children to be placed with private families or residential centres, supported by specialised professional help as necessary.

When processing unaccompanied children, countries should be motivated by child protection principles, not migration or crime control measures.

Time does not permit me to provide you with more than an overview of these key issues in regard to child migrants in either the refugee or humanitarian category. For additional ideas in this area the October 2004: '*Separated Children in Europe Program (SCEP) – Statement of Good Practice*' a joint venture of UNHCR and International Save the Children Alliance provides a comprehensive list of good practice procedures.

8. What about Trafficking?

The current deficiencies with regard to treatment of child refugees pale into insignificance when compared with the problems evident in trying to deal with trafficking of children. However, there has been a recent attempt to improve the situation.

In November 2000, the UN General Assembly adopted the *Convention on Transnational Organized Crime (CTOC)*. This included a *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Trafficking Protocol)*.

In Australia there is currently a bill before Parliament titled the: *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004*.

My Commission has welcomed this legislation as a significant step in meeting some of the obligations Australia will assume when it eventually ratifies the *Trafficking Protocol* (although further domestic law amendment would then be required for Australia to be fully compliant). At this point Australia has only '*signed the Protocol*' (11 December 2002).

Unfortunately, however neither the *Convention on Transnational Organized Crime* nor its protocols have entered into force, because not enough countries have ratified them.

Ratification would require countries to undertake in-depth measures to combat the buying and selling of women and children for sexual exploitation or sweat shop labour.

Countries would have to treat separated children as victims in need of protection like any other homeless child, rather than as criminals.

But even if they do ratify, we know from experience with the *Convention on the Rights of the Child* that governments must improve their domestic laws in order to breathe life into the treaty.

It is all very well to set up an international protection system for separated children, but it is largely ineffectual unless countries enforce it via their domestic laws and policies. Unless a country has done this, or submitted itself to the jurisdiction of an external court (e.g. Britain is bound by decisions of the European Court of Justice in Strasbourg), the rights enshrined in the treaty cannot actually be legally enforced.

This is the reality at the heart of the international treaty system: there is no international enforcement method, no “international crimes against children tribunal” to make findings on violations of international treaties to which a country is a party.

9. How effective are governments’ current policies in managing the migration of separated children?

At present, the world’s response to separated children who cross borders uninvited, ranges from the humanitarian to the highly inappropriate. But either way, the numbers keep growing.

Try as they might, most governments are not able to control their borders effectively.

Their response to this problem is the creation of more and more sophisticated methods of detecting and repelling illegal entrants. Some argue that this acts as an effective deterrent; others say it is the “push factor” (war, poverty), not the “pull factor” (peace, prosperity) that counts.

Whoever is right, the perceived “pull factor” produces policy responses that are mostly ad hoc and frequently draconian. Instead of nurturing children as victims of trafficking or smuggling, they are often criminalised.

When law enforcement officers raid a brothel, you can be sure that the best interests of the child prostitute are not of paramount importance in all subsequent actions and decisions concerning the child. When immigration officials detain “illegal entrants”, there is no legal requirement to house separated children in foster care as a matter of course.

Separated children who arrive uninvited are not treated in the same way as citizen children who are wards of the host country. They are not even treated at the level of invited refugee children – that is, those who are chosen from refugee camps as part of a country’s official migration program. Such discrimination goes to the heart of what the *Convention on the Rights of the Child* is about.

It is also uneconomic; consider again Australia’s mandatory immigration detention policy. 93% of the children so detained are ultimately released into the Australian community with some form of visa. Because of the length of detention, some of the mental problems suffered by some children will be exacerbated. In the medium to long term the general Australian community will foot the bill for treatment of those problems.

Arguably, there will always be movement of children across borders, clandestine or otherwise.

Combating trafficking and smuggling through better detection and policing methods will not stop children trying to enter western countries. Only the elimination of the “push factors” such as religious persecution, war, famine and poverty could possibly achieve this. Unfortunately, this outcome does not look likely in the immediate or even distant future. So where do we go from here?

10. Where do we go from here? – International Co-ordinated action under UNHCR/UNICEF mandate.

The long-term strategy has to be a reduction in the “push factors” such as war, poverty and famine, which I freely acknowledge will not be easily achieved and is outside the scope of what I am trying to say today.

In the meantime, mainstream industrialised countries must develop short-term strategies that acknowledge the reality of this continuing flow of separated children, and treat them as the children they are.

Some countries must be prepared to show leadership and a co-ordinated international response must be developed. It is not good enough for first world countries to use their domestic laws to try and shift the problem on to other countries, by denying children refugee status. Interestingly, there is an Australian precedent.

In 1979 the Fraser Government was at the forefront of diplomatic efforts to solve the Vietnamese boat people crisis. In the aftermath of North Vietnam's victory in 1975 more than half a million Vietnamese boat people left the country, many of whom perished at sea.

Recognising the potential scale of the disaster the Australian Government assisted with brokering an agreement – the 'comprehensive plan of action (CPA)' whereby 65 nations established orderly departure points inside Vietnam with legal, organised queues. South East Asian nations were designated as countries of first asylum and Western nations, such as Australia, guaranteed to more than double their refugee intakes. Time does not permit a comprehensive analysis of the strengths and weaknesses of the CPA, and it should be noted that the UNHCR did not consider the Vietnamese exodus, resolved until the mid to late 1990s – however it is a good template to start with.

This is the kind of international response I'm talking about, under the auspices of the UNHCR/UNICEF. Only then can we truly say with regard to child migration that the *CRC* has meaning! It is also the direction in which the European Commission is moving.

In the limited time available to me today, I have attempted to outline what constitutes the best implementation of that Convention, and other applicable international instruments, in this regard.

For those of you who are overwhelmed by the magnitude of this problem, let us take heart from one of the good lessons that history provides us.

I refer here to Wilberforce's eighteenth century campaign to abolish the slave trade which led to the abolition of slavery itself in British overseas possessions.

That campaign surmounted hurdles similar to those we now face: the immensity of the slave trade, the substantial economic interests that were dependent on its continuation, its international nature, and the difficulty confronting existing resources (transport, communications) to effect its abolition.

Surely the success of that campaign is an inspiration to us all.

Even the biggest international challenges can be successfully tackled if sufficient numbers of people work towards the desired outcome.

The movement of separated children is a reality that cannot be swept under the carpet. If we are to learn anything from the past, it is that separated children must not be allowed to become someone else's problem. They are the world's children and we all share collective responsibility for their care and protection.

As a symbolic first step in this direction I call on the United Nations to establish an “*International Child Migrants Day*”.

Thank you.