

**Belgian Presidency Conference on
Unaccompanied Children at the External Border of the EU
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Experiences of Children & Challenges for Actors at the Border
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Save the Children thanks the Belgian Presidency for the invitation to participate in this conference. We appreciate the opportunity to share thoughts with this gathering of actors and experts on the important and challenging issue of unaccompanied children crossing land, sea and air borders.

As background into our perspectives, let me first say a few words on Save the Children. Save the Children is a leading global independent child rights organization. Responding to the issue of children in migration is one of our global priorities. We work on the issue of unaccompanied children in Europe from both a policy and advocacy perspective, as well as through research and programmes. Directly relevant for the border discussion here is Save the Children Italy's experience working in the centres in Lampedusa and Sicily to which migrants crossing the Mediterranean in boats were brought in the past. In Brussels, Save the Children has been focusing on the revision of the EU asylum and trafficking legislation, the implementation of the EU Return Directive and the EU Action Plan on Unaccompanied Minors, all of which have implications for children at the border. We also work with the Separated Children in Europe Programme, which has a network of 30 NGOs across Europe working with separated children.

A rapid preliminary word on terminology: we often use the word "separated", rather than "unaccompanied children" to emphasise that we are not only talking about children travelling alone but also talking about children who are travelling with adults but those adults are neither their parents nor primary caregivers. The EU recognizes this distinction and defines unaccompanied children to include both. I will use the conference term "unaccompanied" in this presentation.

1. What We Will Explore in this Session

For this conference we are invited to consider what happens to unaccompanied children at the border, so I will not address here the *general* rights and situation of unaccompanied children in Europe. I will simply refer to the application of the UN Convention on the Rights of the Child, as well as the European Charter of Fundamental Rights and the European Convention of Human Rights. States have a clear obligation to provide special protection and assistance to all unaccompanied children.

More specifically from the perspective of the border, the UN Convention applies to all children within the jurisdiction of the State, *including children attempting to enter the State*. So protection and assistance begins at the border and the best interests of the child is a primary consideration in all actions from the border on.

What does this mean for procedures and practices at the border crossing? These traditionally and primarily focus on migration control. But it is clear that these procedures must also fulfill the obligation of the State to ensure special protection and assistance to unaccompanied children. And actors at the border are in a unique position to examine the circumstances of these children as they cross the border. They can immediately refer these children where they are at risk to services that will be able to engage properly in their situation at the earliest possible moment.

But let's also be clear on one point from the outset. Do child protection safeguards like this effectively mean that unaccompanied children have a right to migrate to and stay in a country? My answer would be no. In fact, the State's ultimate obligation is to find a durable solution for each child, based on their individual circumstances and taking their best interests as a primary consideration. This could mean return to a country of origin, transfer to a third country (for example for family reunification) or integration in the host country. Of course, effective tools and procedures, and agreements with third countries, are essential to finding durable solutions.

3. Challenges for Actors Involved in Border Crossing

Let's first say a word about the actors involved in border crossing which play such an important role in addressing the situation of children. They include carriers, border guards, border authorities including port authorities, police, guardians, child protection services, NGOs, IGOs, lawyers and the judicial authorities who have ultimate oversight.

In basic terms, what processes should they engage in at the border? The workshops tomorrow will provide an opportunity to discuss these phases in more detail. We are looking forward to the exchange of perspectives and experience. I will try to be very brief here.

- **First: Identification. Actors at the border need to ensure that unaccompanied children crossing the border are identified both as children and as unaccompanied.** Identifying the age of a child that does not have proper or indeed any documentation can clearly be challenging. And as we know, unaccompanied children do not mean children travelling alone, so the task is more difficult; it can mean identifying children that are accompanied by adults but those adults are neither their parents nor other adults responsible for their care.
- **Second: Detection of Risk. Actors at the border need to detect where the circumstances of unaccompanied children suggest that they are at risk of travelling into situations of inadequate care or potential harm or indeed travelling from very difficult situations.** It is important to note that child protection procedures at the border should be triggered in any case where it seems that there is an unaccompanied child at risk of inadequate care or potential harm. It should not rely on a claim by the child for international protection, nor should it focus on suspected trafficking situations. Often these elements take centre stage at border crossing, precisely because the relationship of migration concerns and asylum, as well as protection from trafficking, is relatively clear. But child protection issues are broader.

- Is it possible to detect when children at the border are at risk? **There need to be criteria in place by which suspicions are raised, including criteria for examining documents and indicators and risk profiles on unaccompanied children in migration, including but not limited to information on trafficking.** This needs to be accompanied by dedicated training for border staff.
- **Third: Immediate Enquiries:** Where there is a suspicion that the child is at risk, the border authorities should begin **immediate enquiries into their circumstances.**
- In these cases, unaccompanied children should immediately be given **information** about their situation to help them understand the situation they are in, in a manner and language that they can understand. They should be provided with special protection and assistance from the outset. The **appointment of an independent guardian** who seeks to ensure that their best interests are pursued is a key safeguard, as well as the assistance of a lawyer or interpreter where necessary.
- **Fourth: Referral from the Border to Child Protection** Where enquiries into the circumstances of the child continue to show a risk, the border authorities should **refer the child onwards from the border to child protection services and actors, including NGOs and IGOs.** These actors should work together in an interdisciplinary and collaborative way to determine and meet the reception and assistance needs of the child. The child should continue to benefit from the assistance of a guardian. Transnational mechanisms – with appropriate safeguards - should be in place to ensure any necessary contact between actors in different countries can take place with a view to establishing the circumstances of the child.
- **And so the process for finding a durable solution begins.**

These are all positive obligations. There are also a **few things that should not happen at the border.** An unaccompanied child should not be pushed back from the border or summarily deported. Unaccompanied children should not be detained at the border, including in a transit zone. They should not be the subject of any special border procedures concerning asylum or durable solutions.

Do some of the points I outlined above sound unrealistic? Some may question whether providing assistance and protection creates a pull factor and facilitates traffickers. Let's also bear in mind that there can be perceptions that some unaccompanied children are simply opportunistic youths who do not need and should not get special protection and assistance. They may be seen as part of a family strategy for remittances or as "anchor children" for a subsequent abuse of the family reunification system.

And we can certainly acknowledge that there are cases where some of those perceptions are, in the end, correct. But we also know that there are all kinds of cases and often a range of entangled reasons for children arriving in Europe. Many of the people in this room will know that better than anyone else.

And perhaps we can agree that the border is the wrong place to expect those with the difficult task of taking initial decisions on entry to untangle all this complexity. It is crucial to have in place a proper procedure - which includes a genuine opportunity to avail of safeguards - that applies in all cases and that addresses child protection as the first issue. Migration issues remain a relevant dimension of the child's situation; but migration control concerns should not override the best interests of the child.

It would take several conferences to discuss fully what "best interests" should mean. Suffice it to say here that there are certainly circumstances when return of children is in their best interests and is exactly the right choice. However, with the greatest respect for those actually at borders and the pressures that they work under, best interests is a complex assessment and requires a thorough, careful and process-based assessment. It also requires time. And proper reception and assistance of a child are vital elements to finding a solution that is successful and sustainable.

So, in the end, the process at the border should be quite simple: identify a child at risk at the earliest possible moment, provide immediate protection and assistance and refer the case on so that a durable solution can be found.

4. Experiences of children

And I would submit that this system should not be viewed as a luxury that cannot be afforded. Perhaps we can consider some practices and experiences of children where child protection failed at the border. These are drawn from Save the Children's experiences, reports from the border, including those of Human Rights Watch and news reports. They highlight the problems where key safeguards are missing.

Let me give five examples.

Age assessment

Trying to identify the age of someone at dawn on a pier at Lampedusa, when they have just been rescued from a boat at sea for several days, was obviously a difficult exercise. But this type of initial screening typically was followed only by a simple registration process, where the age issue did not necessarily receive much attention. Where an individual claimed to be a child or in cases of doubt, there was no systematic call for documentation from relevant consulates or onward referral to some kind of assessment. Where an age assessment method was subsequently applied, a wrist x-ray alone was used. Medical certificates did not indicate a margin of error (usually 2 years), and in this way there was no possibility for a legal application of the benefit of the doubt as to the child's age. In short, practices to ensure that special protection and assistance to children were triggered were inadequate. And the consequence of course was that those found to be over 18 years of age simply received deportation orders from the border or were immediately returned.

Failure to identify trafficking indicators

A 16-year-old Guinean girl traveled from Conakry to Dubai via a European airport but was refused entry in Dubai and returned to the airport in Europe. The border police tried immediately to send her back to Conakry. The girl refused to board the plane and was placed in detention. The girl traveled with an authentic diplomatic passport, which was not hers. A judge reviewed her detention after four days and the girl gave a range of contradictory statements about her parents' whereabouts, names and the purpose of her travel to Dubai. The judge ultimately released her and she was put into local authority care. In this case we can see that, despite these possible indications of trafficking, the border police do not appear to have made sufficient efforts to enquire into her situation. Was there perhaps a tendency, from a border control perspective, to think that we are just a transit point and thereby refuse to take any responsibility towards the child?

Deportation from the border to countries of transit

Border police sought to deport an unaccompanied five-year-old Comorian boy to Yemen, his last country of transit, and hand him over to local police. According to court documents, they had no agreement with Yemeni police to take care of him, nor was there any guarantee that the boy would be safe while in the custody of Yemeni officials or that local officials would safely reunite him with his family, whose whereabouts remained unknown at that time. The liberty and detention judge released him following the police's explanation of how he would be returned, and he was referred to local authority care.

Conditions in detention areas at airports

Looking into an application lodged by an asylum seeking fifteen year old unaccompanied girl, national judges recently visited the area in which she was being held at the airport. They found that the area had a punitive character, essentially corresponding to detention conditions. Nor were there specific facilities for children. The Court concluded that the child was not being given the protection and assistance that was her right, that the custodial conditions were not appropriate, and that there are alternatives to the border guards holding the child. They found that detention of the girl was not justified to avoid creating pull factors. They ordered the State to pay compensation to the child.

Stowaways

I must highlight one situation where children are in particularly precarious situations at the European border. And it is not a very visible problem. It is the situation of children who have hidden on cargo ships coming to Europe – stowaways. These children may hide on board ships, for example, leaving Africa, and travel for weeks and sometimes months. They are often found by crew or they get sick or hungry and come out of hiding. They are typically a very unwanted nuisance to the captain and crew - they may be locked up or physically or sexually abused by the crew; there is anecdotal evidence of children simply being thrown overboard. But when the ship comes into an European port, the captain must notify any stowaways to the port authorities. Under the Chicago Convention, the carrier is liable for the transportation of stowaways back to their countries. Sometimes it is cheaper or more convenient – avoiding

expensive delays in cargo delivery - simply to keep the children on board for the months it might take to return. There are very limited instances of European authorities actively addressing the inhumane situation in which the children find themselves.

5. Practices We have Seen

But whilst highlighting the problems which emphasise the *necessity* for proper child protection procedures at the border, it is good also to highlight a range of practices across Europe which demonstrate the *possibility* of having and implementing good child protection practices.

Let me talk about four examples.

Again, let's turn to **Lampedusa** in Italy. Since May 2008 up until the closure of the Mediterranean routes, Save the Children, in partnership with UNHCR, IOM and the Italian Red Cross, worked in Lampedusa within the framework of the "Praesidium III[1]" project, implemented in cooperation with the Italian Ministry of Interior (Moi).

The project had as its aim (within each organization's respective domain):

- providing legal information to migrants upon arrival and while on Lampedusa,
- monitoring the compliance of the services provided therein with existing international and national standards, in order to ensure the protection and promotion of migrant's rights.

This model was built on inter-agency cooperation and the active provision of information, follow up and monitoring. It worked well. It is no longer in operation but the practices built up remain relevant to situations of large inflows at the border.

The **DRIVE** project led by ICMC, with the cooperation of a number of actors, including Save the Children, concerns once more boat arrivals in Greece, Italy, Malta and Spain on a regional level.

It aims to build up the capacity of engaged stakeholders to identify and refer those in need of protection within mixed maritime flows (including specifically children) to protection-sensitive processes through the elaboration of good practices, training and mechanisms for differentiation and referral.

It brings together NGOs, local service providers, international institutions to survey existing procedures, processes, services and challenges. It will provide training. It will lead to the publication of the DRIVE referral Manual (which would include survey findings, good practices and recommendations)

The project will address the feasibility of setting a transnational roster of multi-disciplinary experts in various fields relating to arrivals in the context of mixed migration flows to be taken up by the European Asylum Support Office or other organisations and agencies.

The third example concerns the involvement of guardians in the situation of unaccompanied children. Let me return to the situation of stowaways. In Belgium, when a ship notifies the port authority of a child stowaway on board, Belgium has the excellent practice of sending a guardian to the boat to examine the situation of the child on the boat. Under the current laws, the

guardian's role is largely to see whether the circumstances are such that the child can safely stay on the ship. It's not an ideal system but the involvement of a guardian is already a good practice. The guardian can talk to the child, talk to the captain. The guardian may seek for the child to be taken off the boat. Where this does not happen, the guardian is at minimum a witness. If transnational mechanisms were in place between guardians at different European ports, it would at least allow some monitoring of the situation, from Antwerp to Rotterdam, into German or Swedish ports.

And the final example I have already mentioned. A good system of judicial oversight is a key element. Think of the judges going to spend considerable time in the lounge of an airport to see for themselves first hand whether conditions were appropriate for a child.

6. Thoughts for the Future

We wanted to leave you with some thoughts and questions about future practical actions that might help support proper procedures. And we focus on those of a transnational character which will help leverage resources and perhaps effectively draw on EBF resources. Here are just a few:

- Creating regional training modules for actors at the borders from a child rights and child protection perspective – FRA/EASO?
- Regional age assessment guidelines in relation to the border;
- National and transnational mechanisms to create and maintain up to date profiles and indicators of trafficking situations;
- Guidance on the role of actors at the borders, including guardians, also allowing for transnational mechanisms for guardians; the nascent European Network of Guardianship Institutions could be an important actor in this regard.
- Exploring better ways to address carrier liability within Europe
- It would be remiss not to talk about a key point so let me end with it. We have seen onward referral is essential. Surely this must mean showing regional solidarity for border countries facing the greatest influx of arrivals, including Greece, precisely to allow for better referral. Human Rights Watch issued a press release earlier this week on the situation of children at the European border. It makes for grim reading. There are European countries which are highly conscious of the situation and interested to find a response. We would encourage them in their efforts.

Thank you for your attention.