Session 1: International Law Framework

Daniel Steinbock, University of Toledo – Legal Framework affecting UAM in Developing Countries

➢ Noted 5 changes in this area:
   1. There is greater awareness of the issue in the world
   2. Growth of body of law protecting Unaccompanied Alien Minors (UAM)
   3. There is an increased globalization of the problem
   4. More attention to Individualized Movement vs. earlier focus on large-scale events
   5. Greater breakdown of the family has contributed to UAM issues

➢ Two questions we must ask:
   1. **Who is Responsible?**
      - The state acts according to its own laws, but influenced by international norms
      - International Organizations (IO) & NGOs
         o Only have such jurisdiction as the host state allows
         o Role could be significant where state is unwilling or unable to take full responsibility
         o IOs & NGOs are more likely to look directly to international norms when forming policy with reference to UAMs.
         o Enhanced by guidelines created by international organizations, child welfare organizations

   2. **What law applies?**
      - 2 separate bodies of domestic law (can be in tension)
         2. Immigration, Asylum & Refugee Law
      - International Law
         o Convention on Rights of Child
            “Best Interests of Child” Art. 3 of CRC — provides the central principle, but CRC does not answer some difficult questions such as the one presented in case study 6, an conflict between two values reflected in Art. 20 of CRC: continuity of upbringing vs. continuity of cultural background.

➢ Child’s displaced status may stand in way of “best interests” determination (e.g., it may be in a child’s best interest to remain in a country where it is not possible for the child to get legal status, or for other family members to gain admission.)
   - Options for placement are limited by resources. See case study 2
Conclusion: The law has evolved in this area, but it still does not answer certain questions. Human beings must wisely use discretion as we interpret the laws.