INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES

Tunis Conference

23 October 2014

SUFFER THE LITTLE CHILDREN

The Honourable Mr Justice Bernard McCloskey

Supreme Court of Judicature of Northern Ireland

President, United Kingdom Upper Tribunal, Immigration and Asylum Chamber

Outline of Presentation

- The Constitution of the Tunisian Republic [26/01/14].
- An independent judiciary and the rule of law.
- Children and the refugee law judge ascertainment of the relevant legal rules and measures of protection giving best effect to same.
- Refugee crises in the contemporary world.
- The Geneva Declaration of the Rights of the Child (1924).
- The Universal Declaration of Human Rights (1948).
- The Statute of the Council of Europe (1949).
- The European Convention on Human Rights and Fundamental Freedoms (1953).
- The Treaty of Rome (1957).
- The UN Declaration of the Rights of the Child (1959).
- The UN Convention on the Rights of the Child, 1989 ("UNCRC").
- Glittering cocktails of real and effective access to justice- fact v fiction – expectation v event.
- Article 38 of UNCRC: rhetorical aspiration or what?
- Limited progress in the dualist theory states of the world.

- Dublin III (Regulation 604/2013) operational from 01 January 2014 –
 designation of the responsible Member State increased emphasis on
 the protection of children and respect for family life concrete and
 specific measures of protection incorporation of the best interests
 principle a notable menu of procedural rights and obligations best
 quality decisions close judicial scrutiny.
- The underlying purposes of procedural rights of this *genre* .
- United Kingdom Law compare and contrast section 55 of the Borders, Citizenship and Immigration Act 2009 juxtaposition with the comparable/related Dublin III rights and protections.
- Stop press! The Council of Europe Article 8 ECHR <u>Jeunesse v The Netherlands</u> [12738/10, 14/10/14] the balancing of state and personal interests essentials for a properly prepared and conducted balancing exercise evidence and information gathering by the domestic authorities procedural rights.
- Compare orthodox public law dogma in the United Kingdom the
 Padfield principle the Tameside principle the duties on every
 public authority to take into account all material facts and factors the
 need to formulate the correct questions.
- Three basic judicial duties to discover the applicable legal rules to interpret and apply them and to ensure due process in every case.

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