



DIRECTORATE GENERAL FOR INTERNAL
POLICIES

POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



LEGAL AFFAIRS

**Potential & challenges of
private international law in
the current migratory context**

Authors of the study

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Aim of the studies

- Two studies:
 - Overview of interactions between private international law (PIL) and migration law
 - Improve protection of unaccompanied and separated children by a better coordination of migration law and PIL
- Draw attention and raise awareness
- Presentation of action points for the EU
- Call for further research in this field

In-depth but incomplete studies

- Scope very broad
- Time very short
- Result: several key findings ≠ concrete legislative proposals
 - PIL in a context of increasing international mobility: 17 key findings
 - Children on the move: 22 key findings

Sources of information

- Literature
- Case law
- Interviews (Belgium, France, Germany, Italy, Netherlands)
 - National Red Cross Services
 - Guardianship Services
 - Central Authorities
 - Asylum and migration authorities



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Presentation of Study

**Private international law in
a context of increasing
international mobility**

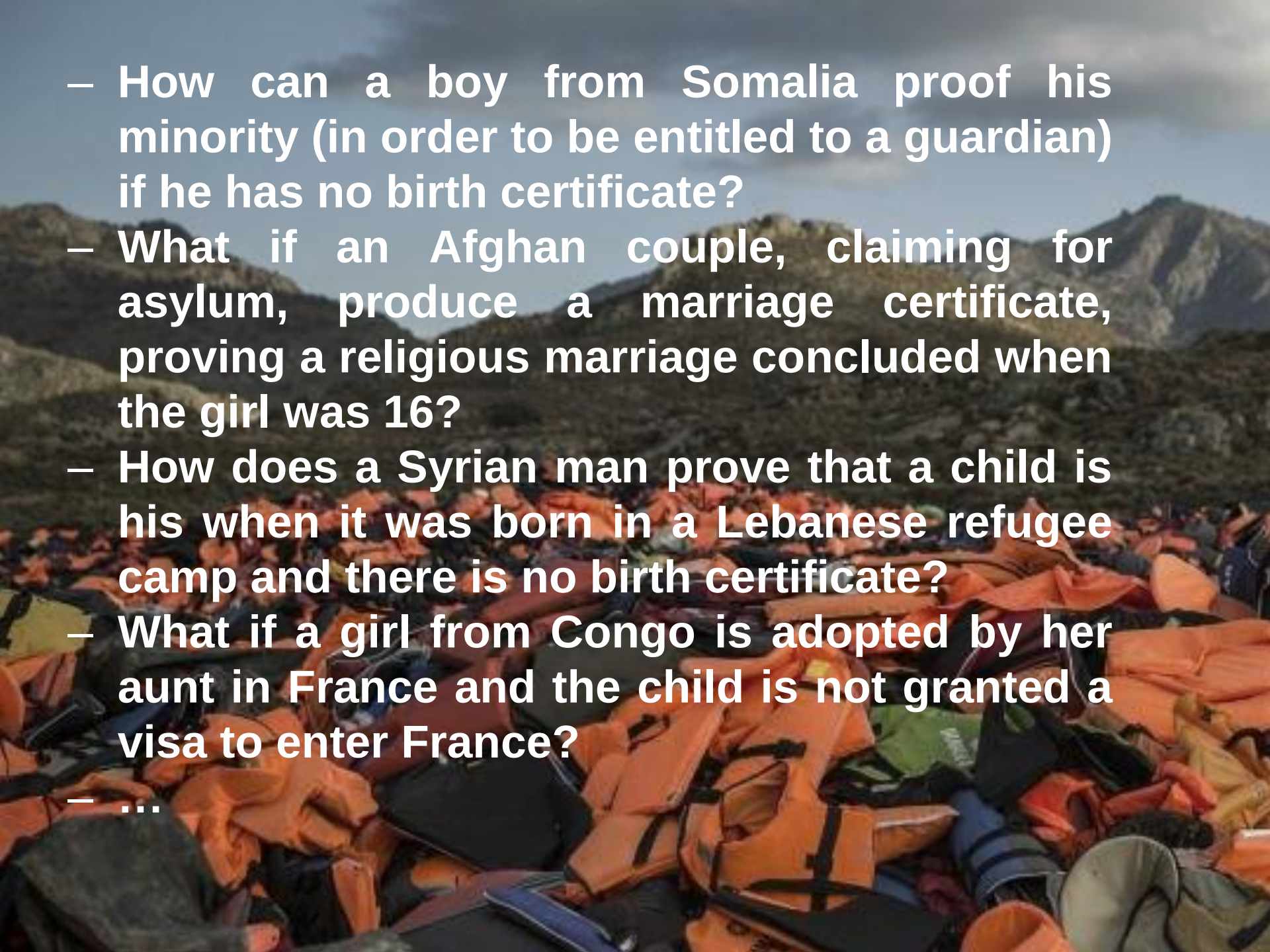
PIL in a context of increasing international mobility

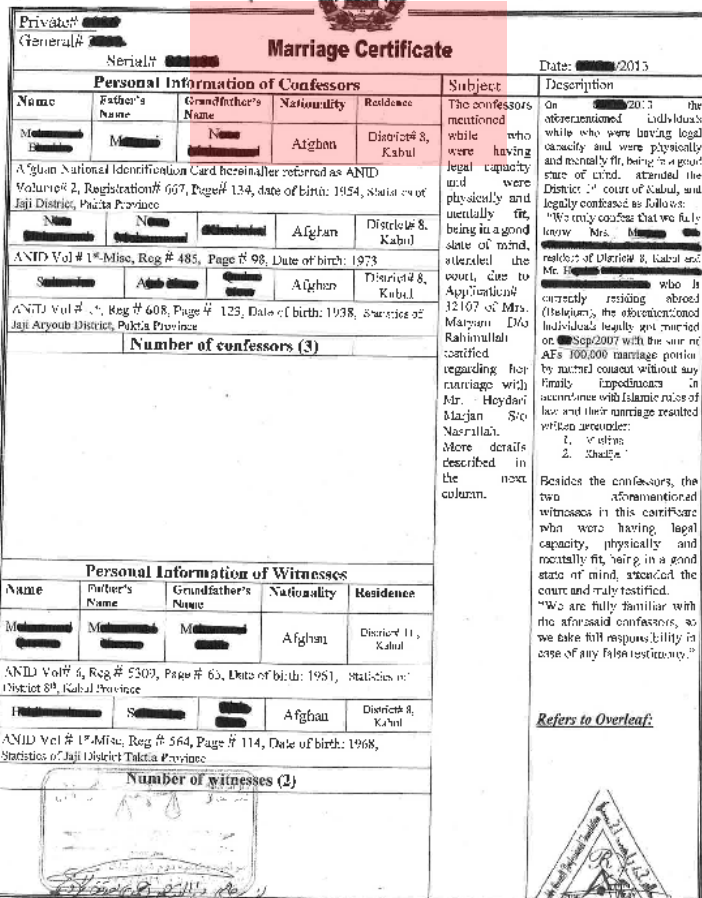
- PIL → private relations between persons coming from or living in different States
- Migration law → flow of people between States
- Ineffective interplay between these two sets of rules
- This study just first exploration – urgent need for further in-depth research

PIL in a context of increasing international mobility

- **Chapter 1:** Recognition of personal status acquired abroad
- **Chapter 2:** Application of foreign law
- **Chapter 3:** Article 12 Geneva Refugee Convention



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- How can a boy from Somalia prove his minority (in order to be entitled to a guardian) if he has no birth certificate?
 - What if an Afghan couple, claiming for asylum, produce a marriage certificate, proving a religious marriage concluded when the girl was 16?
 - How does a Syrian man prove that a child is his when it was born in a Lebanese refugee camp and there is no birth certificate?
 - What if a girl from Congo is adopted by her aunt in France and the child is not granted a visa to enter France?
 - ...



Human Resources Department of Supreme Court
 T. authenticity of seal and signature of Mr. Saifuddin Qasbi "Haseeq" Director of Khy. Appeal Court is attested
 signed & sealed by Director of Human Resources Department of Supreme Court.
 Ghulam Hussain "Sagid"
 Director of Human Resources Department of Supreme Court
 (Sealed & signed)

Signed by the Confessor(s)

Date	Time	Place	Signature
18/6/15	14:30	Tehran	M. J. ...

Signed by the certifier(s)

1. Recognition of personal status acquired abroad: key findings

Need for

- more **cooperation** between national authorities responsible for **civil law** matters and **migration** authorities
- innovative approaches allowing MS to **combat fraud** relating to personal status documents without depriving migrants of their **right to family life**
- bilateral negotiations between EU and **third States** regarding authenticity of **personal status documents**
- EU support to MS for development of **alternative** methods to **replace missing documents**
- more **uniformity of age assessment** across the EU
- **case-by-case based approach** to recognition of child marriages
- increasing awareness of **1996 Hague Convention** and the obligations it imposes on MS in respect of migrant children

1. Recognition of personal status acquired abroad

- Recognition of personal status under PIL as a precondition for migration status
 - Illustration: missing (authentic) documents → alternative methods to prove personal status and family ties
- No migration status despite recognition of personal status under PIL
 - Illustration: *kafala* and adoption

1. Recognition of personal status acquired abroad: key findings

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- **case-by-case based approach** to recognition of child marriages
- increasing awareness of **1996 Hague Convention** and the obligations it imposes on MS in respect of migrant children

2. Application of foreign law: key findings

Need for:

- more attention for specific **migration**-related issues:
 - Assessment of foreign law by **non-judicial** authorities
 - Application and understanding of foreign law in the context of **recognition of personal statuses** acquired abroad
- further empirical research on issues relating to **applying foreign laws**;
- further action - EU initiative for improving **access to and treatment of foreign law at a global level**, both for administrative and judicial authorities



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Presentation of Study

Children on the move:

**A Private International Law
Perspective**

Scope of the study



All unaccompanied and separated **children**:

- who claim asylum;
- whose asylum application was rejected;
- who do not claim asylum (and do not qualify for it)

Starting point:

Lack of coordination

- **Rules** on the protection of children **exist**
 - A major concern in all EU legislation and policies, including
 - EU migration law
 - EU private international law (PIL)
- **But they are uncoordinated** and operate in different universes.

Aim of the study

Improving the protection of unaccompanied and separated children by a better coordination of :

- Migration law
- Private international law

Structure of the study

- **Chapter 1:** Interactions between private international law and migration law
- **Chapter 2:** Cross-border cooperation mechanisms
- **Chapter 3:** Cross-cutting issues relevant to all migrant children

1. Interactions PIL/Migration law

Key finding N° 3

- **Brussels IIa and the CEAS instruments should be better coordinated:**
 - In the context of the revision of Brussels IIa, attention should be paid to the needs of unaccompanied minors, and to the special rules set in the frame of CEAS instruments.
 - In the context of the revision of CEAS instruments, attention should be paid to the instruments available for the protection of children under civil law, in particular Brussels IIa and the 1996 Hague Convention.
 - Cross-references should be inserted in the relevant instruments (in Brussels IIa and in CEAS instruments), to highlight their interaction.

Brussels IIa - Article ~~13~~ 11 (Commission's proposal)

Jurisdiction based on the child's presence

1. Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article ~~12~~ 10, the ~~courts~~ ☒ authorities ☐ of the Member State where the **child is present** shall have jurisdiction.
2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

2. Cross-border cooperation mechanisms

- Obtain information on the child's background;
- See if family members can be located;
- Where appropriate:
 - Assist in transferring court jurisdiction to another State;
 - Place children in a foster family or institutional care in another State;
 - Ensure the safe return of the child.

2. Cross-border cooperation

Key finding N° 4

- The Commission's proposals on Brussels IIa Recast specifying areas of cooperation between Central Authorities should be strongly supported.

2. Cross-border cooperation

Key finding N° 3

- The EU should urgently **identify** those third States with which cooperation regarding migrant, and in particular unaccompanied, children is necessary and possible, **encourage** them to **join** the **1996 Hague Convention**, and provide **assistance**, where needed, to implement the convention.

Conclusion

- Tools exist / are currently being discussed on both sides:
 - migration law
 - private international law
- But, they are
 - **operating** in different universes
 - not used to their full potential
- Need for
 - intervention of the EU legislator
 - further **in-depth** research