

# The activities of International Social Service and their legal bases

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## International Social Service

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## About ISS

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International Social Service (ISS) was founded in 1924 following the large scale migration from Europe and the Middle East towards the Americas in the wake of World War I. It was originally set up to provide a service for families who became separated. The first offices were along the migration routes. Today, the ISS network provides its services in more than 140 countries. ISS employees understand local customs as well as languages, and work within the law, administration and regulations of their own countries. As part of an international network their work is guided by common principles and an agreed methodology. They strive to use the possibilities of mediation in order to find agreed solutions to the conflicts that hurt more and more families worldwide.

Much of the work of International Social Service is concerned with the protection of children and families involving two or more countries. Services are offered directly to individuals who encounter problems related to migration as well as to government and voluntary agencies dealing with such people.

ISS is a non-governmental, not-for-profit organisation. It disregards all considerations of race, gender or religion.

## About this brochure

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This brochure is directed at clients and users of ISS, as well as partners, friends and sponsors. The brochure describes the services provided by the ISS network and refers to the legal bases in international law on which they may be provided. Indeed, the activities of ISS are legitimated by a range of important international legal instruments mentioned in this publication.

Firstly, this brochure aims at underlining the fact that, although international Conventions set forth minimum standards for international cooperation and protection, these standards must be optimised with the help of professional socio-legal services that, like ISS, are active in the relevant domains (the Hague Conventions mention «other organisms» or «intermediaries»). Indeed, although these rules denote considerable advances, empirical practice reveals that international cooperation systems are lacking in the management of trans-national family conflicts, due to the different political, legal, cultural or diplomatic positions of the various actors.

Furthermore, the broad institutional and legal framework set up by these Conventions addresses only a limited, generally legal or judicial, part of the overall conflict, whereas in the sensitive field of children's and families' Rights, what is especially needed is a personalised and down-to-earth (psycho-)social follow-up process.

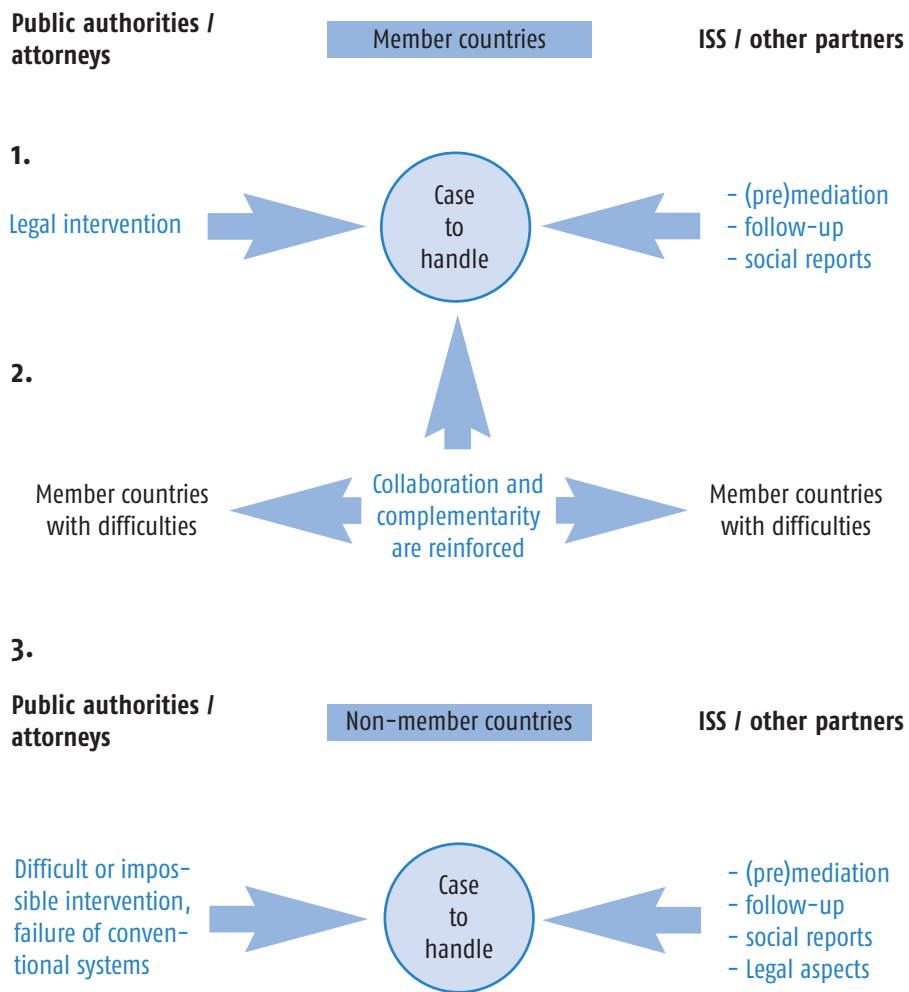
Finally, these conventional mechanisms are active only in situations involving countries which have ratified the applicable Conventions. In all other situations, trans-national socio-legal bodies like ISS are the only solution for children and families who cannot benefit from this international support. But, it must be recalled that Child protection must not be limited to member-countries. Indeed, following the principle of equal treatment – guaranteed by the Convention<sup>1)</sup> –, the States must refrain from treating children differently according to whether the relevant country is a member or not of the Conventions. Thus the ISS international network acts as an essential partner for the authorities and other bodies or persons involved (lawyers, doctors, psychologists, mediators, etc) when the country is not a member of the relevant Convention.

ISS provides a complementary solution in the following situations:

1. member-countries / 2. member countries where the implementation of the Conventions poses serious problems / 3. non-member countries

<sup>1)</sup> See art. 2 CRC

## Fields of intervention



In this context, it is worth noting that ISS is an official, professional body, with proven efficiency in the field of trans-national protection of children and families. The child, not the separate interests of each parent, is at the heart of our actions. This gives ISS the impartiality which is necessary in every agreed conflict resolution process.

In his final report on the 1980 Convention, W. DUNCAN<sup>2)</sup> gave this same explanation for the difficulties encountered in the implementation of an efficient and coherent inter-State system for international mediation. As a solution for these issues, he mentioned ISS as an organisation providing international mediation services: *«There is little evidence of mediation facilities which have been developed with the special requirements of international cases in mind. The services of the International Social Service may sometimes be invoked.»* It should also be noted that the situation has greatly improved in certain countries, as professional mediators have organised themselves so as to better handle the specificities of trans-national cases. Thus, the ISS collaborates more and more often with these specialists. It adds to the possibilities of intervention offered to those who are confronted to trans-national family conflicts.

Similarly, Paul LAGARDE, in his Explanatory report on the 1996 Convention, mentions in note 140 (art. 31) that the Central Authority «would have recourse to bodies of such untested competence as that of International Social Service»<sup>3)</sup>.

Of course, the national units of ISS adapt their services to the needs and requirements of their countries. Although the main activities described in this brochure may be expected to be generally available in the network the extent of the service available in any one country, and the conditions involved in giving it, should always be clarified with the relevant unit of ISS.

Nevertheless, faced with the growing need in professional trans-national interventions, it is vital that ISS provide services that are unified on the thematic as well as intervention levels, to the eyes of direct beneficiaries and partners as well as of the authorities and sponsors. This brochure's objectives are, on the one hand, to underline the usefulness and modernity of the mission of ISS and, on the other hand, to contribute to the standardisation of our services in all countries in the network.

<sup>2)</sup> W. DUNCAN, Deputy Secretary General, Final report, Transfrontier Access/ Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, preliminary document No 5 of July 2002, p. 56. [http://hcch.e-vision.nl/upload/abd2002\\_pd05e.pdf](http://hcch.e-vision.nl/upload/abd2002_pd05e.pdf)

<sup>3)</sup> <http://hcch.e-vision.nl/upload/exp134.pdf>

## General principles of international law

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At the international level, most states are party to the Convention on the Rights of the Child (CRC) of 20 November 1989, and to the two Covenants of the United Nations (UN) of 1966 relative to human rights. These states therefore have the duty to take the necessary measures to implement those instruments at national level. Here are some general examples:

### **Article 3 of the CRC:**

1. *«In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of laws, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration.»*
2. *«States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures».*

### **Article 4 of the CRC:**

*«States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention».*

### **Article 24 of the Covenant on Civil and Political Rights, 1966:**

*«Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State».*

### **Article 23, 1 of the Covenant on Civil and Political Rights, 1966:**

*«The family is the natural and fundamental group unit of society and is entitled to protection by society and the State».*

### **Section 10 of the Covenant on Economic, Social and Cultural Rights, 1966:**

- Art. 10.1: *«Protection and assistance should be accorded to the family which is the natural and fundamental group unit of society (...).»*
- Art. 10.3: *«Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions».*

These general obligations towards children and families are specified in numerous international legal instruments, including those created by the Hague Conference. There is no need to stress that it is also a natural duty for the States to protect and assist their citizens.

It is enough to quote the Hague Convention of 19 October 1996 where it applies to competence, applicable law, recognition, execution and cooperation as regards parental responsibility and child protection measures. This is not only a major Convention in that it normalises and groups together all aspects of child protection; it is also innovative in that it clearly intends to promote and favour agreed solutions to family problems. In this respect, it is worth quoting the following dispositions:

Art. 30 (par. 2)

«Central Authorities shall, in connection with the application of the Convention, take appropriate steps to **provide information as to the laws of, and services available in, their States relating to the protection of children.**

Art. 31 (lit. b)

The Central Authority of a Contracting State, either directly or **through public authorities or other bodies**, shall take all appropriate steps to:

b facilitate, by **mediation, conciliation or similar means, agreed solutions** for the protection of the person or property of the child in situations to which the Convention applies;

Art. 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or **through public authorities or other bodies**,  
a provide a report on the situation of the child;

b request the competent authority of its State to **consider the need to take measures for the protection of the person or property of the child.**

Art. 33

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. **To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.**

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has **consented to the placement or provision of care, taking into account the child's best interests.**



Art. 34

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information **relevant to the protection of the child** to communicate such information.

2 **A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.**

Art. 35

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in **securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.**

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, **gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised.** An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

Art. 36

*In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where **measures for the protection of the child** have been taken or are under consideration, if they are **informed that the child's residence has changed to, or that the child is present in another State**, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.»*

A list of all international conventions related to issues addressed by ISS is included on pages 25 and 26.

## The main activities of ISS

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The main areas in which ISS intervenes or has a role have a common denominator: they concern children or families who, following a voluntary or forced migration, or because of other social problems of international character, are having personal or familial problems requiring a coordinated intervention in at least two countries.

The objectives of this intervention are:

- To improve communication within the family;
- To reduce the conflicts between the parties;
- To find agreed solutions;
- To ensure continued personal relations between parents and children;
- To reduce the social and financial costs of separation and divorce for the parties and for the State
- To reduce the time otherwise needed to solve conflicts;
- To increase the durability of agreements;
- To give the parents a space for dialogue, in order to reach agreed solutions;
- To give parents a sense of responsibility towards their child's well-being («co-parenthood»).

ISS actions aim to promoting the tightest collaboration between State institutions and the other bodies and professionals active in the field of childhood and family, in order to provide efficient, complementary and synergetic interventions. Our goal is to ensure, on the local and international levels, the coordination of the various participants, in each specific, individual situation where this coordination is needed. On a more global level, ISS actively participates in the mechanisms and networks aiming to develop the collaboration between professional partners, and to make political bodies and the general public aware of the issues related to our mission.

The main areas in which ISS intervenes or has a role are discussed in the following order:

1. Parental responsibilities (custody and visiting rights)
2. International child abduction
3. Protection measures against child neglect and abuse
4. Foster or institutional child placement
5. Inter-country adoption
6. Search for origins and family
7. Maintenance obligations claims
8. Asylum seekers, unaccompanied and isolated minors
9. Complementary activities such as: counselling for migrants in the receiving country and orientation for nationals planning to migrate to other countries.

# Parental responsibilities

(Custody and visiting rights)

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## Level of intervention

ISS plays a role mainly in the following two types of cases:

- In the course of a separation or divorce procedure ISS can obtain home study reports abroad in order to provide the competent court with objective information on the situation of the family concerned.
- In cases where visiting rights are not respected, ISS collaborates with its counterparts in the other country in order to re-establish the dialogue between divorced parents and, if possible, arrive at an agreement re-establishing the visiting arrangements.

## Particular role of ISS

The assistance of ISS may be useful for authorities needing to determine the best interests of children and the rights and responsibilities of parents in trans-national cases of divorce or family separation.

In this context, through its worldwide network, ISS may be able to provide:

- Guidance and information on the steps to be taken and how to refer to the appropriate official authorities;
- information on relevant local legislation and that of other countries involved;
- the compilation and the transmission, to the authority concerned, of reliable social reports on the family situation abroad, in order to enable that authority to make a decision that is in the best interest of the child;
- exploration into the possibility of re-establishing or maintaining contact between members of separated families:
- arrangements for meetings between children and parents from whom they have been separated;
- implementation of a mediation process favouring the restoration of visiting rights and, more generally, of amicable agreements between the parents;
- support in the case of children returning to live with the parent who has custody;
- follow-up on children after their return with the guardian parent, specially with a view to maintaining and facilitating contacts with the other parent.

Relevant international conventions (pages 25-26): nr. 9, 14, 18.

In particular, it is worth quoting the following dispositions of the Convention on the Rights of the Child:

Article 8 par. 1: «States Parties undertake to respect the right of the child to preserve his or her identity (...) and family relations as recognized by law without unlawful interference.»

Article 9 par. 3: «States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests».

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## International child abduction

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### Level of intervention

ISS plays a role on two levels:

- Preventively, to inform a parent who fears for the abduction of his/her child and to refer him/her to the appropriate authorities;
- If an abduction has taken place,,
  - to provide information on the legal procedures and on the roles of the Authority concerned with the abduction of children,
  - to ensure coordination between the various participants, in the country and abroad
  - to intervene abroad via the ISS network, to help find an agreed solution, inform the abducting parent of the need to maintain contacts between the child and the other parent and, if possible, arrange visits and/or provide reports on the living conditions of the child, organise and – if necessary – ensure the return of the child to the guardian parent, etc.

In this area, major difficulties arise when child abductions occur in countries that have not ratified the two main Conventions applicable in this matter<sup>4)</sup> (non-conventional cases). In these cases there are few possibilities to intervene effectively. In some cases, however, ISS can offer its network and its know-how to attempt to restore contacts and develop long term solutions in the child's best interest.

<sup>4)</sup> The European Convention on Recognition and enforcement of Decisions concerning Custody of children and Restoration of Custody of Children, May 20, 1980, and the Convention on the Civil Aspects of International Abduction of Children, October 25, 1980 (The Hague)

### Particular role of ISS

In case of fear of abduction, or at the time of the actual abduction, ISS, through its network, is able to provide:

Preventively

- counselling for the couples with dual nationality considering a separation, including the question of the exercise of visiting rights,
- legal and practical information for the parent who fears an abduction.

In case of an actual international child abduction

- provide information on possible courses of action,
- provide appropriate referral to the official authorities,
- mediate in order to secure the voluntary return of the child or an amicable solution,
- follow-up in order to ensure the restoration or the maintenance of contacts between members of the separated family,
- arrange meetings between the child and the other parent,
- negotiate an amicable agreement between the two parents on the restoration of contact visits, thus avoiding having recourse to a legal process,
- obtain and transmit reliable social reports on the situation of the child and of the family, in order to allow the authority concerned to make a decision consistent with the child's best interest, in particular, as regards ongoing direct and personal contacts, and also as regards custody rights, for non-conventional cases only,
- formulate recommendations centred on the child's superior interest, to the competent legal, social or administrative authorities
- if necessary, make available and evaluate the elements that may or may not justify initiating or withdrawing a penal complaint.

ISS may also contribute to:

- following up on the care given to the child,
- arranging the safe return of the child and any follow-up action,
- following up on the contacts between the child and the other parent, after the child's return
- as required, supporting individuals in their contacts with the authorities.

At all times

- a telephone help-line,
- information on the applicable foreign law,
- psychosocial support to the parent deprived of his/her child.

As indicated previously, when the conditions for a Central Authority to intervene are no longer fulfilled (minor over the age of sixteen for example) and in non convention cases, in addition to its role as described above, ISS often represents the only immediate resort for persons who are faced with an international child abduction.

Relevant international conventions (pages 25-26): nr. 14, 15, 17.

In particular, art. 11 of the Convention on the Rights of the Child states that: «*State parties shall take measures to combat the illicit transfer and non-return of children abroad.*» (see also art. 8 par. 1 et 9 par. 3)

## Protective measures against child neglect or abuse

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### Level of intervention

ISS plays a role, mainly on the request from authorities or individuals, to investigate cases of alleged child neglect or child abuse, thus enabling them to take the protective measures provided for in the legislation of the state of residence of the minor child.<sup>5)</sup>

### Specific role of ISS

In this area, ISS plays a role at the request of national or foreign authorities or individuals:

- to inform the competent national or foreign authorities of any proven or suspected case of abuse or neglect concerning a child, when the case has some cross country ramifications and to ensure that adequate protective measures are implemented as soon as possible;
- to establish or to transmit to the competent authority reliable social reports on the family situation abroad in order to enable that authority to make a decision consistent with the interest of the child.

<sup>5)</sup> See for example the Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of minors, October 5, 1961

In this way, ISS is able

- to help facilitate consultation and exchange of information within the framework of the measures to be taken in applying the Convention of 1961,
- to promote amicable solutions.

Relevant international conventions (pages 25-26): nr. 6, 9, 18, 20, 21.

Art. 19 of the Convention on the Rights of the Child:

*«States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse...»*

## Foster or institutional child placement

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### Level of intervention

ISS plays a role in two main areas:

- to help national or foreign specialized institutions find adequate solutions for the placement of children,
- to facilitate the maintenance or the restoration of family ties between the minor child under placement and the members of his/her family who live in another country.

### Specific role of ISS

In a case where a placement is actually made or when steps of this type are being considered, ISS may:

- obtain a report on the child's situation,
- verify the possibilities and conditions of placement locally or abroad,
- provide a link between the child in placement and his/her family in another country,
- encourage contact between the minor child's birth parents and the foster family or specialized children's home concerned.

Relevant international conventions (pages 25-26): nr. 6, 18, 21.

In particular, art. 20 of the Convention on the Rights of the Child states that:

Article 20:

*«A child temporarily or permanently deprived of his or her family environment (...) shall be entitled to special protection and assistance provided by the state. State parties shall (...) ensure alternative care for such a child.»*

Article 19:

*«1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore (...).»*



## Inter-country adoption

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### Level of intervention

ISS provides information on questions related to international adoption and intervenes, as required, in the child's interest. Its main areas of activity in this matter are:

- general information (about procedures, referral, etc.) for individuals and authorities alike
- information on legal questions (national and foreign legislation, international conventions, etc.) through our International reference centre for the rights of children deprived of their families
- verification of circumstances of the adoption of a child in his/her country of origin (obtaining information on the living conditions of the child prior to adoption, on the circumstances of his/her abandonment, verification of the consent to the adoption in the country of origin, etc.), obtaining home studies in view of adoption
- helping adoptive persons in accessing their birth information

### Specific role of ISS

ISS may provide the following services:

- Inform prospective adoptive parents about:
  - the law and procedures concerning adoption,
  - the legislation, procedures and the adoption situation in the child's country of origin,
  - the existing bilateral and international conventions related to adoption,
  - the competent authorities, the associations of adoptive parents and the recognized adoption agencies,
  - the existence of trafficking in, and abduction of children,
  - the required steps towards completing an adoption and towards the recognition of an adoption order, at home and abroad.
- Obtain information on the situation of the child and his/her family as well as on the prospective adoptive parents
  - information on the birth conditions and the circumstances surrounding the abandonment
  - verify that the consent to adoption has been given in full knowledge of its meaning
  - verify whether the child was legally free for adoption

- identify the agencies that can provide home studies on the prospective adoptive parents including their motivation to adopt, and are able to provide post placement and post adoption follow-up
- In cases where the adoption procedures are unclear or doubtful ISS can document the background and the conditions of the adoption to enable the competent authorities to form an opinion.

In addition, ISS may be able to provide assistance in:

- arranging the safe return of the child to his/her birth parents and the required follow-up,
- liaising between the authorities and individuals.

When a Central Authority for adoption matters exists in a given country, ISS 'may have a role when the adoption involves a non-convention country. It may be the only direct link between the competent authorities in the state which is not party to the Convention.

Relevant international conventions (pages 25-26): nr. 7, 10, 18, 19, 20

In particular, art. 21 of the Convention on the Rights of the Child stipulates that:

*«State parties that recognize and/or permit the system of adoption shall ensure that the best interest of the child shall be the paramount consideration, and they shall:*

- a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;*
- b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it.»*

## Search for origins and family

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### Level of intervention

ISS seeks to trace and locate persons in cases where family ties have been broken. In particular, the search is conducted to locate biological parents of adopted persons, the natural father of a child born out of wedlock or a parent whose whereabouts became unknown following a divorce. Some branches are approved by their governments to provide counseling to people who have been adopted and are in the process of trying to find their birth parents.

### Specific role of ISS

Regarding the search for relatives, ISS can provide the following services:

- for persons who want to locate a birth parent, provide information on the legal feasibility – under national or foreign law – and on the practical aspects of such search as well as on the steps to be taken,
- if needed, help locate the person through the ISS network,
- establish contact between the two parties, provided that the person who is the object of the search agrees to the restoration of contact,
- participate in arranging meetings and follow-up, as required.

Relevant international conventions (page 26): nr. 18

In particular, art. 7 of the Convention on the Rights of the Child states that:

*«The child (...) shall have (...) as far as possible (...) the right to know (...) his or her parents.»*

## Maintenance obligation claims

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### Level of intervention

ISS provides information on the legal and administrative provisions to recover maintenance payments abroad (for example, existing bilateral or international conventions). ISS may also intervene, via its network, in order to evaluate, in regard to the debtor's situation, the practical feasibility of a recovery. In this area also, ISS pursues mediation as a first objective, with the intent to re-establish the emotional ties between the child and the debtor and to sensitize the latter about his/her maintenance obligations.

### Specific role of ISS

The conventions, which are intended essentially to simplify procedures and to remove formal obstacles toward the recovery of maintenance payments, cannot provide personal contacts between creditors and debtors any more than they can solve the fundamental human problems which are exacerbated by geographical distances.

In this context, when the debtor or the creditor live in different countries, ISS may be able to:

- *«make contact without initiating a full judicial process. Because ISS's role focuses on the psycho-social as well as the material needs of the child its intervention may embrace more than the strict enforcement of a judgment and the remittance of maintenance contributions owing, including arrears and interests. It will consider the problems in the relationships influencing the contacts between the persons concerned. Bearing in mind the child's interest who, in spite of the separation, retains the right to have two parents, ISS will attempt to bring the father closer to his children, its aim will be to bring about, more satisfactory relationships for all parties».*<sup>6)</sup>
- Conduct investigations through its global network for the purpose of evaluating, by examining the debtor's financial and personal situation, the practical feasibility of a recovery.
- Provide information on possible recourses in case of unpaid maintenance payments by a foreign debtor when the creditor's request is based solely on financial grounds.

Relevant international conventions (page 25): nr. 3, 4, 5, 11, 12.

<sup>6)</sup> C. JACOTTET, *le recouvrement des pensions alimentaires à l'étranger*, in *droit de la filiation et de l'adoption*, Berne, 1981, p. 120

In particular, it is worth quoting art. 27, par. 4 of the Convention on the Rights of the Child:

*4. «States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad.»*

## Asylum seekers

### Unaccompanied and isolated minors

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#### Level of intervention

Depending on special mandates, ISS provides different services for persons who apply for asylum or protection in a given country if they correspond to the definition of refugee as per the UN Convention and especially when it is about a minor who is not accompanied by an adult legally responsible for him/her.

This type of intervention may have two aspects:

- Information and orientation on the legal defence of the interests of the person concerned as regards the law governing the rights of foreigners and asylum procedures in the receiving country
- Investigation of the family and personal situation of the applicant in the country of origin.

#### Specific role of ISS

The services of ISS to unaccompanied minor asylum seekers or isolated minors generally include:

- Linking with migration lawyers
- Investigating and obtaining information in the country of origin...in particular, background social reports, consideration of the future prospects for the applicant should the application fail. (This is particularly important regarding unaccompanied minors)
- Tracing family members in other countries
- Family reunification in the home country or in a third country
- Counselling through the naturalization process

Regarding unaccompanied minors, ISS may specifically participate in:

- providing objective information including details of any possible problems related to plans concerning the guardianship and custody of the minor in case a return to his/her country of origin was decided,
- co-operate in skills training to facilitate the young persons working potential
- working towards maintaining or re-establishing family contacts
- where appropriate arranging the child's return to the parents and the following-up after the return.

Relevant international conventions (pages 25-26): nr. 2, 18.

Specifically, it is worth quoting the following dispositions of the Convention on the Rights of the Child:

#### Article 10

«1. *In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.*

2. *A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.»*

#### Article 22

«1. *States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.»

Article 27

«1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.»

## Complementary activities: Counselling migrants in the receiving country

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### Level of intervention

Another objective of ISS is to provide social and legal aid to persons who come across problems related to their personal status in the receiving country following their arrival. Consequently, some branches have developed specialized consultative services for immigrants and their family. These services may be available in the following areas:

#### **Consultation for couples with dual nationality**

The purpose is to provide information to the future spouses of different nationalities on all questions related to bi-national marriages: formalities within the country or abroad, family law especially aspects governing marriage and divorce, the status of children and their education, and aspects about customs, religion and culture of the other (will-be) spouse.

#### **Legal consultation concerning the rights of foreigners**

This consultation is intended for individuals and families of foreign origin or for nationals who have direct ties with the latter, or for organizations that hire foreign staff. It seeks to provide any useful information concerning work permits, asylum, statelessness, naturalization, or family reunification.

**Consultation or orientation concerning social welfare provision /insurance**

This consultation aims at informing and orienting immigrants concerning the rules governing social insurance in the different countries involved and about possible conflicts of laws among them. The consultation is also intended to provide information to the immigrants on the procedures to be followed in case a change of the domicile is contemplated, in order to protect their interests.

**Consultation and introduction to the general mores of the host countries**

The aim is to assist the migrant to integrate successfully in the new society, through the provision of language classes, group activities some skills training, at the same time as helping them maintain their identification with their country of origin.



## Chronological list of relevant Conventions

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In this section conventions which are relevant to ISS' activities are listed. The list of conventions is neither in itself complete nor does it comprise international law which is laid down in bilateral conventions or in acts of supranational structures like the European Union.

Not all states in which ISS is active are party to the conventions listed below. Even if they are not legally binding in a given situation the ethical principles and professional standards on which these documents are based are an important background to ISS' work.

1. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome – November 4, 1950 (Council of Europe)
2. Convention relating to the Status of Refugees, Geneva, July 28, 1951 (UN)
3. Convention on the law applicable in respect of maintenance obligations of October 24, 1956 (The Hague)
4. Convention on the recovery abroad of maintenance, New York, June 20, 1956 (UN)
5. Convention on the Recognition and Enforcement of decisions concerning maintenance obligations, April 15, 1958 (The Hague)
6. Convention concerning the powers of authorities and the law applicable in respect of the protection of minors, October 5, 1961 (The Hague)
7. Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption, November 15, 1965 (The Hague)
8. International Covenant on Economic, Social and Cultural Rights, December 16, 1966 (UN)
9. International Covenant on Civil and Political Rights, December 16, 1966 (UN)
10. European Convention on the Adoption of Children, Strasbourg, April 24, 1967
11. Convention on the Law Applicable to Maintenance Obligations, October 2, 1973 (The Hague)

12. Convention of the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, October 2, 1973 (The Hague)
13. ILO Convention Number 102 concerning minimum social security standards
14. European Convention on Recognition and Enforcement of decisions concerning Custody of Children and on Restoration of Custody of Children, May 25, 1980 Luxembourg (Council of Europe)
15. Convention on the Civil Aspects of International Child Abduction, October 25, 1980 (The Hague)
16. Convention on Judicial Jurisdiction and Enforcement of Decisions in Civil and Commercial Matters, September 16, 1988 (Lugano)
17. Inter-American Convention on the International Return of Children, Montevideo, July 15, 1989 (OAS)
18. Convention on the Rights of the Child; November 20, 1989
19. Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, May 29, 1993 (The Hague)
20. Inter-American Convention on International Traffic in Minors, Mexico, March 18, 1994 (OAS)
21. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Measures for the Protection of Children, October 19, 1996 (The Hague)

## Conclusion

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As regards the areas of activity examined above, ISS provides information, orientation, advice, direct intervention and socio-legal follow-up, both to nationals and foreigners. Thus, when they are faced with social problems requiring a coordinated intervention between two countries, ISS is able to offer socio-legal services which are at the same time specialized, informal, and centred on the child.

It is clear that, through its activities which vary in the different countries of the network, ISS fulfils a role which is legitimated by a number of international legal instruments which have often been incorporated in the internal laws of the countries concerned.

Furthermore, as it works on a case by case basis, ISS is able to use the experience derived from handling cross-border situations involving families or children to inform international as well as national bodies responsible for the development of family law of gaps in the provisions and anomalies needing to be addressed through international agreements and conventions.

The need for the specific services provided by ISS will increase with the increasing mixing of the world's population. The social policies of the States must take good account of these mutations. They must also realize that the trans-national service offered through the ISS network can definitely constitute for them an adequate and highly specialized answer to these new needs.

