

The activities of International Social Service and their legal bases :



**Bridging families
and agencies around the world**

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. Originally it was set up to provide a service for families who became separated. The first offices were along the migration routes. Today, ISS provides a service in more than 120 countries. ISS staff understands the local customs as well as language 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.

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 body. It is a non-profit, non-political, non-sectarian organization.

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 and informal.

It is clear that, through its activities which vary in the different countries of the network, ISS fulfills 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.

Because it works on a case by case basis ISS is able to use the experience derived from handling cross-border family situations 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 transnational service offered through the ISS network can definitely constitute for them an adequate and highly specialized answer to these new needs and that ISS truly deserves their full support.



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)

This brochure is directed at clients and users of ISS, as well as partners, friends and sponsors. The brochure describes the services that may be expected from 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.

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.

General principles of international law

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 examples :

- Article 3 of the CRC :-

« 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.

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, color, 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. There is no need to stress that it is also a natural duty for the States to protect and assist their citizens.

Chronological list of relevant Conventions

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)

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 orientating 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.

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

1. Parental responsibilities (custody and visiting rights)
2. International child abduction
3. Child neglect, child abuse
4. Foster or institutional child placement
5. Intercountry adoption
6. Search for roots
7. Maintenance obligations claims
8. Asylum seekers, unaccompanied and separated minors
9. Complementary activities such as : counseling for migrants in the receiving country and orientation for nationals planning to migrate to other countries.

A list of relevant international conventions is included on pages 19 and 20.

Parental responsibilities

(Custody and visiting rights)

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 transnational 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,
- restoration of visiting rights through amicable agreements between the parents.

ISS may also assist with :

- the formulation of proposals for arriving at decisions for child custody,
- the return of a child to a parent who has custody.

Relevant international conventions (pages 19 - 20) : nr. 9,14,18.

Asylum seekers - Unaccompanied minors

Level of intervention

Depending on special mandates ISS provides different services for persons who apply for asylum in a given country if they correspond to the definition of refugee as per the 1951 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 defense 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 asylum applicant in the country of origin.

Specific role of ISS

The services of ISS to asylum seekers or unaccompanied minors is most likely to 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
- counseling 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-operating in skills training to facilitate the young person's 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 19 - 20) : nr. 2, 18.

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 and 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 »³.
- 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 19 - 20): nr. 3, 4, 5, 11, 12.

³ C. JACOTTET, *le recouvrement des pensions alimentaires à l'étranger, in droit de la filiation et de l'adoption*, Berne, 1981, p. 120

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 intervene abroad via the ISS network helping to find an amicable solution, informing the abducting parent of the need to maintain contacts between the child and the other parent and, if possible, arranging visits and/or providing reports on the living conditions of the child.

In this area, major difficulties arise when child abductions occur in countries that have not ratified the two main Conventions applicable in this matter¹ (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.

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

- counseling 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,

¹ *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)*

International child abduction

- 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,
- 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,
- 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.

Art. 11 of the Convention on the Rights of the Child:

“State parties shall take measures to combat the illicit transfer and non-return of children abroad.”

Relevant international conventions (page 20): nr. 14, 15, 17.

Search for roots

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.

Art. 7 of the Convention on the Rights of the Child:

“The child... shall have... as far as possible... the right to know... his or her parents.”

Relevant international conventions (page 20): nr. 18

Intercountry adoption

- 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 :

- 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.

Art. 21 of the Convention on the Rights of the Child :

“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.”

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

Protective measures against child neglect or abuse

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 child².

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.

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.

Art. 19 of the Convention of 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...”

Relevant international conventions (pages 19 - 20): nr. 6, 9, 18, 20, 21.

² 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; the Hague Convention on Jurisdiction, Applicable law, Recognition, Enforcement and Measures for the Protection of Children, October 19, 1996.

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.

Art. 20 of the Convention on the Rights of the Child:

“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.”

Relevant international conventions (pages 19 - 20) : nr. 6, 18, 21.

Level of intervention

ISS provides information on questions related to intercountry 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.)
- information on legal questions (national and foreign legislation, international conventions, etc.)
- 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 (approved) 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.