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ISS Interim Paper

responding to consultations by the Permanent Bureau of The Hague Conference
concerning the desirability and feasibility of a protocol to the
1980 Convention on Child Abduction

❖ ISS and defence of the Rights of the Child

ISS stands internationally for defence of the best interests of children and their families. ISS handles cases of international child abduction in both Hague and non-Hague States as a core activity. Evidence gathered from its casework shows that, from the perspective of child protection, the practical application of the 1980 Convention on Child Abduction results in a number of problems and limitations. These can be summarised as follows (NB: a more detailed briefing document will be drafted by ISS in preparation for PART II of the Special Commission Meeting):

- Provisions in favour of the place and the protection of the child (as well as the interests of families) are foreseen in the Convention but are far too seldom utilised;
- The minor emphasis given to the child in legal proceedings under the Convention, despite universal legal instruments upholding the rights of the child (e.g. UN Convention on the Rights of the Child and other international treaties) is problematic, as the child is today more and more considered a subject of law;
- If this international instrument is not effective in addressing the growing numbers of abductions, as its mechanisms no longer concur with today's reality or with universal values, what is the future of the Convention?

ISS believes further development of the Convention is needed to ensure a better resolution of child abduction cases. The most important aspects of such an "update" will result from application of the Convention at an operational level. Therefore, the debate should chiefly address two questions related to the place of the child in Convention proceedings:

- 1) How to focus better on the child's interests during and after proceedings (hearing of the child's views and child's representation);
- 2) How to offer and facilitate access to amicable dispute resolution, namely mediation, and to promote this option by sensitising administrative and legal authorities, as well as families party to disputes, to the benefits and risks of such processes (which are informal yet within the scope of legal proceedings).

❖ Facts

International Social Service

has worked in the field of cross-border family relations since its foundation in 1924. Transnational family conflicts and cases of child abduction are core business activities for ISS's social workers throughout the world. The ISS approach when handling such cases seeks to avoid a complete interruption of relations and to maintain direct dialogue between parents and relatives.

The Permanent Bureau of The Hague Conference on Private International Law

is seeking opinions on whether to initiate a process to develop an additional protocol to the 1980 Convention on Child Abduction. The questionnaire addressed to States in this regard highlights a number of topics for possible inclusion in a future protocol.

Of the 11 topics referred to, 6 are directly related to ISS's research and social work on cross-border protection of children and families:

1. Mediation, conciliation and other AMCR to promote the amicable resolution of cases under the 1980 Convention
2. The safe return of the child
3. Allegations of domestic violence
4. The views of the child
5. Access / contact
6. International relocation of the child

The International Social Service – General Secretariat (ISS-GS)

is currently investing resources in creating facilities and tools that will bring together legal procedures and process-based practices for the resolution of cross-border family conflicts. As a specialised worldwide network, ISS's objective is to facilitate transnational and trans-cultural cooperation for the efficient handling and resolution of international cases.

❖ ISS-GS Recommendation & support proposal

If **The Hague Conference Council on General Affairs and Policy** is in favour of developing an additional protocol to consolidate child protection in the handling of international child abduction cases, ISS stands ready to offer support in drafting such a protocol by sharing its longstanding expertise in IPCA casework and mediation practice.

More particularly, **ISS offers its support in:**

- Ensuring coherence between judicial measures and new measures in favour of negotiated settlements (i.e. coherence between points 1, 3 and 7 of the questionnaire);
- Helping to build bridges between legal procedures and amicable conflict resolution processes, by highlighting features central to practices rooted in social work and the defence of child rights;
- Discussing, within the framework and restrictions of the Convention, possibilities for facilitating a case by case handling of such matters when necessary or appropriate.

ISS-GS believes it is crucial for Hague and non-Hague States to interact in a more coordinated manner in handling child abduction cases, including extending cooperation to a wider range of actors involved in those issues.

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