

September 28, 2006

HOLT CONFERENCE
NEEDS OF CHILDREN PANEL

NOTES FOR AN ADDRESS

International Guidelines for
Alternative Care for Children Deprived of Parental Care

INTRODUCTION

The remarks of many of the distinguished panellists have touched on the international aspect of the needs of children deprived of a family. I have been asked to tell you in such detail as time permits what is currently going on in relation to this facet of the subject matter. What can the international community do to address the needs of children deprived of parental care?

There is one initiative which is particularly relevant and timely. I propose to tell you a little bit about international Guidelines which are now being developed and in relation to which ISS has a major role. Those Guidelines address the very problem and the constituency with which we are presently concerned – the protection of children deprived of parental care.

There are two broad aspects to this which I should like to review with you to-day. They by no means cover the entire spectrum of the

recommendations of the draft Guidelines but I believe they are at the core of the emerging document.

- (a) what are the needs of children deprived of a family who require protection and assistance; and
- (b) what are some of the practical situations and the related avenues available for addressing these needs

I know that many of you are involved in aspects of intercountry adoption – as I have been in the past in relation to the 1993 Hague Convention. Most of you, as I, have a continuing close interest in that subject matter. So, I hope to touch on the role of intercountry adoption in the broader picture particularly how it is situated in the spectrum of measures to assist children who otherwise would have no family support. Of course, here, too, ISS has played and continues to play an important role.

INTERNATIONAL SOCIAL SERVICE

It may be helpful for those of you unfamiliar with the work of ISS for me to stop but a moment to make you aware of the role that it has been playing with respect to children lacking families. As many of you will know, ISS was established in Geneva in 1924. It is a social service agency with an international focus. Its aims, still relevant today, and particularly so in relation to our subject matter here, are:

- (a) To assist those who, as a result of voluntary or forced migration or other social problems or an international

character, have to overcome personal or family difficulties, the solution of which requires coordinated actions in several countries or, in some cases, action only in the country of residence of the persons concerned;

- (b) To study from an international standpoint the conditions and consequences of migration in relation to individual and family life, and as a result of these studies to make recommendations or undertake any other appropriate action;
- (c) To contribute to the prevention of social problems linked to migration or intercountry mobility;
- (d) To inform professionals and the public of the needs of migrant individuals and families; and
- (e) To develop and maintain an international network of national bodies able to meet the needs of individuals and families who required the services of ISS.

The main features of its current efforts in the area of support for children without parental care, what I would term the three pillars of its child focussed efforts, are:

1. Its international case work for and on behalf of families and children
2. Its International Reference Centre for the Rights of Children Deprived of their Family
3. Its participation in the Development of Guidelines for Alternative Care of Children without Parental Care.

Let me very quickly review these:

- (a) The mandate of ISS, carried on throughout its 80 year history, is to provide a practical social service link or activity to persons in need of assistance and involved or caught up in transborder situations. This is its case work. Children accompanied and unaccompanied have always been part of this core ISS function which relies on and works through its network of branches and correspondents throughout the world to meet the problems of this constituency.
- (b) Following the adoption of the 1993 Intercountry Adoption Convention, ISS, encouraged by the Hague Conference, established an International Reference Centre initially to collate the adoption laws and practices of participant states, but now with an extended role and title, the International Reference Centre for the Rights of Children Deprived of Their Family, incorporating the very subject matter with which we are here concerned, that sees it produce studies, develop information exchanges, equipping professionals worldwide and otherwise lubricate the international mechanisms already in place with the oil of practical experience, study and effective action.
- (c) Expanding and building on these twin roles, ISS has played, with UNICEF and other like-minded organizations, a key developmental role in the preparation of draft UN Guidelines for the Protection and Alternative Care of

Children without Parental Care. This is a document that will be submitted to the UN General Assembly in September next year in the hope and expectation that a formal UN resolution will result providing an internationally recognized and coherent approach to the problem

The Guidelines initiative flows from the work not only among others of UNICEF and ISS but also of the NGO Group on the Convention on the Rights of the Child as well as the Better Care Network. The project was taken up by the UN Committee on the Rights of the Child in 2005 which recommended a set of international standards on the subject for reference to the UN General Assembly. Currently the Guidelines project, financed by UNICEF, has already been reviewed by an international meeting in Brazil where it was agreed on the necessity of a text and was decided that that state would have overall responsibility, with ISS serving as secretary, for the follow-up by a group of governments. You can find the Guidelines on various websites - one being the International Social Service, General Secretariat in Geneva - www.iss-ssi.org.

THE NEEDS OF CHILDREN AS ELABORATED IN THE DRAFT GUIDELINES

What are the problems which the Guidelines seek to address? This is the first of the two facets of the enquiry as to how the international community can address the needs of children lacking parental or alternative care. There are many thousands, indeed millions,

of children who are now in, who need or will need, alternative care. They find themselves in that situation for a variety of reasons. Broadly speaking the Guidelines recognize the following:

- Unintentional: parents who cannot be immediately traced, usually in the context of armed conflict or natural disaster,
- Decided by the parents: relinquishment or abandonment for economic or other reasons,
- Decided by the authorities: in the child's best interests (place of safety),
- Decided by the child: the child's own initiative to leave home
- Imposed by others: child trafficking
- Permanent: the death of both parents, relinquishment or abandonment,
- Temporary: temporary incapacity of the parents (e.g. due to imprisonment, illness...), boarding for education, medical treatment and other specialised care

It would be quite impossible for me to summarize the lengthy and detailed recommendations on this aspect let alone the entire document which constitutes the draft Guidelines. Suffice it to say at this point there are currently in the draft some 168 paragraphs setting out

individual guidelines and specific observations with respect thereto. They touch on local, state and international responsibilities. At this stage I confine myself to a cursory review of the broad array of alternatives, both domestic and international, that could be available to deal with the problem of children without parental care as they discussed in the draft Guidelines.

We should not, in looking at these alternatives, lose sight of the current overarching fabric of law, both domestic and international, which provides a structure upon which the Guidelines will build and in some domestic law cases seek to expand or even alter. Hopefully they will provide a coherent pathway to dealing with the problem currently under review. Such seminal international documents such as the 1989 U.N. *Convention on the Rights of the Child* and the 1993 and 1996 *Hague Conventions on Intercountry Adoption and Protection of Children*, which, while certainly not exhaustive, provide the basic international legal warp and woof of the present regime.

WHAT KINDS OF CARE ARE AVAILABLE

The various kinds of care constitute the second of the two facets I suggested at the beginning of my remarks that underly the problem and the Guidelines. They are the practical answers that may be available to address the problem of children without parental care and in need of assistance and protection. They break down into a series of domestic and international alternatives, most of which are very familiar to you.

They bear cataloguing if only to put the problem addressed by the proposed Guidelines in perspective.

But bear in mind that these alternatives come into consideration against a backdrop of a broad and too common an occurrence – children with no care whatsoever. These include children living in the street often with other non-related children and in other cases children who are not reachable by government or other non-state actors. Child soldiers come to mind.

Informal Care

The most prevalent form of alternative care in many societies is the informal placement of children by their parents or the spontaneous offer by others to care for children without parents. The caregiver may be a grandparent or other relative (informal kinship care) or a friend or acquaintance (informal foster care or “private fostering”).

Formal Foster Care

This is a far less widespread practice than informal care. Here too, it may concern relatives (under “kinship foster care” or “formal kinship care”) as well as non-related carers. It results from decisions of the courts or an administrative authority (such as a child welfare or social service agency), and has been developed more especially in the industrialised countries.

A particular form of foster care in countries with a legal system based on Islamic Law is the practice of *kafala* (see art. 20 of the

Convention on the Rights of the Child). States which operate in accordance with Islamic Law do not recognize adoption, as they consider that filiation can only be based on blood ties. Instead, those countries may foresee some other means for a family to take care of a child which is not theirs biologically, the most known being the *kafala*. Its specificities may vary from one country to another, but in general, foster parents have an obligation of maintenance towards the child, while the latter usually don't bear the foster family's name and have no right of inheritance.

Residential Care

These are living facilities for groups of children staffed by remunerated care givers. Here too, various possibilities: they range from small, community based group homes housing 10 or fewer children to much larger facilities. They may be designed to provide anything from general care to specialised support, treatment and therapy, such as for children with disabilities or who are recovering from trauma or exploitation. Also, facilities for separated immigrant children and residential establishments with an educational focus, such as boarding schools.

Transit Centres

These facilities provide residential care to children in emergency situations when they have become separated from their parents or customary caregivers. Such centres are usually intended to be temporary in nature, to be used while a child's family is being traced and pending reunification.

Child-headed Households

These are situations where children have spontaneously created their own “households” on the death of their parents. They tend to be composed of children from one family, where the eldest takes on responsibility for the welfare of his or her siblings, but other forms – a mix of family and non-family children, or even a group of unrelated children as noted above - are not unknown. Typically, these households are formed in response to a specific emergency situation, such as armed conflict or HIV/AIDS, but they may also be set up for other reasons.

Placements Abroad

Children may be placed abroad on a short or long term basis for many of the reasons, and in many of the care situations, described above. In all types of informal care, in the context of formal foster care of kafala, and in various kinds of residential facilities. In addition, children who have moved outside their country of origin or habitual residence may be placed in informal or formal care including various kinds of residential facility such as group homes, safe houses and closed “protective” facilities, in the country where they find themselves.

Risks and Problems

Time does not permit me to catalogue as well the risks and problems associated with alternative care. Indeed, most of you will be much more familiar than I with these. Inappropriate decisions, overburdened foster care systems, lack of protection, recourse to and conditions in residential care, inadequate permanency planning,

children with HIV/AIDS are but a few of the difficulties that arise. The Guidelines attempt to address these and others focusing on domestic laws and administration.

Other Considerations

Alternative care also varies according to legal responsibility. In some cases parents will retain full responsibility. In others, parental responsibility will be shared or delegated, e.g. to a court-appointed or approved guardian.

Indeed, there can in some cases be competing alternatives either because of availability or perhaps the wishes of persons involved in the process. This includes not only those of an extended family but also governmental officials with a perceived stake in the matter at hand.

Finally, there is the particular domestic law which even in fairly homogeneous systems can vary considerably.

ADOPTION

Adoption is also recognized as a form of alternative care under Article 20 of the *Convention on the Rights of the Child*. It is the transfer of “potestas” over a child from one person to another – ad potestas - adoption. It is different from other forms of alternative care. It has its own specificities. The creation of new filiation ties, is a permanent form of care. Children here are not “without parental care” anymore, since adoption provides the child with new parents. Therefore, a specific

provision is dedicated to adoption in the *Convention of the Rights of the Child*: Article 21.

That provision also addresses specifically intercountry adoption as an alternative means of a child's care if the child cannot be cared for in a suitable manner in the child's country of origin and sets out certain basic modalities which are to govern it. This basic structure is fleshed out, as you know, in *The Hague Convention on Intercountry Adoption*. The Guidelines (paragraph 140) specifically encourage states to ratify or accede to the Convention.

I know that many of you here present are connected in some way with that subject and Hans van Loon will be addressing you later in the programme on it. It is relevant however, that I underline one point about it that flows directly from the *UN* and *Hague Conventions* and the catalogue of alternatives that I have just outlined. It is a default option. It arises only when other forms of suitable alternative care are not available or not practical. That does not, of course, mean that it is unimportant. Simply put, it is found in the catalogue of means of alternative care in a place where other options are not available or are inappropriate. But such is the tenor of our times that, as we all know, it occupies a large residual segment of the domain of alternative care of children without parental care and, as such, demands close and constant attention to the observance of the legal norms that are designed to protect the welfare of children.

CONCLUSION

There is underway an exercise, the development of Guidelines for the protection and alternative care of children without parental care. These are designed to address from a very broad perspective, both national and international, the very problem that is at the heart of the matters before this Conference.

The Guidelines will not provide a cure-all. They will not constitute binding rules. They will establish goals. They will, when adopted, constitute but one element, albeit an important one, in the catalogue of initiatives that are required to be taken to protect, care for and nurture the most vulnerable of the world's population.

It is most important at this juncture to support and push forward this initiative. Through your interventions and those of others it will be crucial to secure and maintain the traction that the project, led by Brazil, now has so that it will come before the UN General Assembly and be approved next year.

Back at the beginning of the 19th century one of the first Canadian novelists, Thomas Chandler Haliburton, wrote a book about Sam Slick, the Yankee trader who came up to Nova Scotia to sell clocks to the settlers. He was extremely successful with these simple folk. He used a combination of what he called "soft solder" and "human nature".

Well you have much "soft solder" available in the form of children without families and without a voice, save yours. And I venture to

suggest that the “human nature” of public servants and politicians predisposes them to look with favour on calls for support for the vulnerable and voiceless to the protection of which the Guidelines are directed.

I therefore invite your active support for the project within the UN member states from which you come. For its part, ISS will remain in the forefront of the process and will contribute its energies and experience to addressing this vital matter in the solution of which we all have a stake on behalf of the multitude of children at risk.