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INTERNATIONALE RECHTLICHE
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International Family Law, Legal Co-operation and Commerce: Promoting the Rule of Law and Cross-Border Trade in MENA Countries

A regional seminar for Bahrain, Jordan, Morocco and Tunisia

8–9 December 2015, Landmark Hotel, Amman, Hashemite Kingdom of Jordan

Conclusions & Recommendations

On 8 and 9 December 2015, approximately 45 experts from Bahrain, Jordan, Morocco and Tunisia, as well as Germany, Canada and the United Kingdom and members of the Permanent Bureau of the Hague Conference on Private International Law (HCCH), met in Amman, Jordan. The experts included government officials, members of the judiciary, academics and legal practitioners.

The experts discussed the relevance of a number of Hague Conventions and one Hague instrument to the States of the Middle East and North Africa (MENA) Region, focusing in particular on the Hague Conventions and the Hague instrument that facilitate the cross-border protection of children, international co-operation in civil and commercial matters, as well as cross-border trade, commerce and foreign direct investment.

The experts thanked the Ministry of Justice of the Hashemite Kingdom of Jordan for its excellent hospitality and very generous support for the regional seminar. They also thanked the *Deutsche Stiftung für Rechtliche Zusammenarbeit* (IRZ) and the Permanent Bureau of the HCCH for jointly organising this event.

Cognizant that they do not represent the official views of the participating States, the experts unanimously adopted the following non-binding Conclusions & Recommendations:

General Conclusions & Recommendations

1. The experts agreed that the seminar provided an excellent opportunity to understand better:
 - a. the Hague Conventions and instrument discussed at the meeting, and their potential value for each State in the MENA region, and for the MENA region on the whole;
 - b. the role these Conventions and instrument play in furthering international co-operation among the different legal systems, both within the MENA region and globally;
 - c. that the Hague Conventions do not interfere with domestic substantive law, but build bridges between different legal systems;
 - d. the importance of providing, in co-operation with the Permanent Bureau of the HCCH and relevant national, regional and international bodies, training and information to judges, government officials and legal practitioners, to secure the effective operation of the Hague Conventions.
2. The experts recognised that, with a view to potentially becoming Contracting States, further consideration of the Hague Conventions discussed, is merited.
3. The experts acknowledged the benefits of membership of the HCCH, particularly highlighting:
 - a. the ability to partake in the decision-making process relating to the work programme of the HCCH;
 - b. the priority access to technical assistance enjoyed by Members; and
 - c. the important role of designated National Organs, which significantly simplify communications with the Permanent Bureau and among the Members.
4. The experts encouraged those States which are presently non-Member States, to consider the possibility of becoming Members of the HCCH.

Specific Conclusions & Recommendations

The Hague International Child Protection Conventions

5. The experts recognised that the 1980 Child Abduction Convention, the 1996 Child Protection Convention and the 2007 Child Support Convention are essential to effectively implementing a number of key principles expressed or implied in the 1989 UN Convention on the Rights of the Child, including:
 - a. the best interests of the child as a primary consideration in all actions concerning children;
 - b. the right of a child whose parents reside in different States, to maintain on a regular basis personal relations and direct contacts with the parents, which can only be limited in exceptional circumstances;

- c. the obligations of States to take measures to combat the illicit transfer and non-return of children abroad;
 - d. the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; and
 - e. the obligations of States to take all appropriate measures to secure the effective recovery of maintenance obligations from abroad.
6. The experts also agreed that all these principles equally underlie the Shari'a.
7. The experts recognised that the 1980 Child Abduction Convention is not about child custody, but rather about the prompt and safe return of the child to the forum to which it belongs and to which it has the closest connection (the forum of the child's habitual residence). The experts also acknowledged that the 1996 Child Protection Convention and the 1980 Child Abduction Convention complement each other.
8. The experts recognised the benefits the International Hague Network of Judges (IHNJ) can offer to judges from Contracting and non-Contracting States, and they encouraged all States in the MENA region to appoint judges to the IHNJ.
9. The experts acknowledged the great benefits mediation can offer in cross-border family matters and they encouraged the promotion of good practices in mediation and other processes to bring about the agreed resolution of international family disputes concerning children which fall within the scope of the 1980 Child Abduction Convention and the 1996 Child Protection Convention.
10. The experts welcomed an update on the progress of the "Malta Process", and the activities of the Working Group on Mediation.
11. The experts recognised the value of the 2007 Child Support Convention and its Protocol on Applicable Law, as the appropriate administrative and legal framework for the cross-border recovery of child support and other forms of family maintenance.

The Hague Legal Co-operation and Litigation Conventions

12. The experts acknowledged the great success the 1961 Apostille Convention enjoys in creating a globally-recognised method of authenticating the origin of public documents, recognising:
 - a. the Convention's great benefit to individuals and commercial entities engaged in cross-border trade and foreign investment activities; and
 - b. the additional benefits that can be derived from the use of technology, in particular through the electronic Apostille Program (e-APP).
13. The experts recognised the importance of the 1965 Service Convention and 1970 Evidence Convention to cross-border litigation, both of which offer

simplified and expeditious procedures that greatly enhance the access to, and improve the administration of, justice.

14. The experts emphasised the importance of party autonomy to invigorating trade and investment activity in each State within the MENA region and globally, and recognised that such activity can contribute greatly to the economic prosperity of States. They also:
 - a. recognised the importance, and welcomed the entry into force, of the 2005 Choice of Court Convention and the adoption of the 2015 Principles on the Choice of Law in International Commercial Contracts in that regard; and
 - b. acknowledged the significance of the free circulation of domestic judgments, noting in particular the simple, predictable and cost-effective recognition and enforcement mechanism established by the 2005 Choice of Court Convention, and commending the HCCH for making significant progress towards developing a future global Convention on the recognition and enforcement of judgments in civil and commercial matters.
15. With respect to the 2005 Choice of Court Convention, the experts also recognised that the Convention provides efficient, certain and predictable processes that reinforce the international litigation system, creating a genuine and cost-effective alternative to the international arbitration system, in particular the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards.
16. The Permanent Bureau encouraged all States in the MENA region to consider becoming a Contracting State to the Hague Conventions as discussed, as a means to promoting trade, commerce and investment within the region.

Action Items

17. The experts agreed to share the information obtained during this regional seminar with the responsible authorities in their respective States.