

**Meeting of the Working Party on Mediation
Embassy of Canada, The Hague
Monday, 13 March 2017**

Background

On the margins of the annual meeting of the Council on General Affairs and Policy of the Hague Conference on Private International Law (HCCH), the Working Party on Mediation held an in-person meeting in The Hague on 13 March 2017. The objective of the meeting was to discuss the past and future activities of the Working Party.

Summary of Discussions

Ms. Beatrice Maillé (Canada) welcomed participants and expressed regrets on behalf of Working Party members from Australia, Senegal, Malaysia and Germany. Following a *tour de table* and an overview of the agenda, Ms. Maillé reviewed the significant activities of the Working Party over the course of previous years.

Ms. Maillé thanked the Working Party members who had participated in the March 2016 Gulf Regional Seminar held in Doha, Qatar in co-operation with the Doha International Family Institute. She underlined the importance of the seminar for exchanging knowledge and promoting further discussion of issues relating to the rights of the child in transnational family disputes and of mediation as a mechanism to resolve such disputes. Ms. Maillé also emphasised the importance of engaging regional organisations such as the Arab League, the Gulf Cooperation Council and the Organisation of Islamic Cooperation.

HCCH Secretary General Mr. Christophe Bernasconi reported on the successful 2016 Fourth Malta Conference ("Malta IV"), noting that a record 34 states participated (up from 23 attending "Malta III"). He identified Pakistan's accession to the 1980 Child Abduction Convention as a recent tangible result of the Malta Process, and commended India for reconsidering its position on the Convention. He emphasised the importance of encouraging participating States to join the 1980 Child Abduction Convention, the 1996 Child Protection Convention, and the 2007 Child Support Convention, and to make designations to the International Hague Network of Judges (IHNJ). Mr. Bernasconi explained that it was necessary to wait for further developments in the field before organising the Fifth Malta Conference. Concerning the 7th Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions in October 2017, Mr. Bernasconi explained that discussion would focus on, among other things, Article 13(1)(b), the merits of a model travel consent form for children, and the procedural aspects of Article 15.

Ms. Maillé proceeded to invite members of the Working Party to report on any recent domestic developments. Ms. Marie Riendeau (Canada) reported that during the Malta IV Conference, Canada announced the designation of its Central Contact Point for International Family Mediation. She explained that the federal Central Authority for the 1980 Hague Convention would deal with incoming cases to Canada, while the Vulnerable Children's Consular Unit at Global Affairs Canada would be responsible for outgoing cases. She noted that contact details for the Central Contact Point would be published on the Hague Conference website shortly.

Mr. Faraz Zaidi (Pakistan) reported that Pakistan was in the process of implementing the 1980 Child Abduction Convention with domestic legislation. He stated that a Central Authority had been designated, but explained that subordinate Central Authorities would be established in the future in order to deal with the anticipated large number of cases. He welcomed members to share their experience and expertise with Pakistan on the implementation of the 1980 Hague Convention.

Ms. Susan Jacobs (United States of America) noted the benefits of including academics in the discussions at the Gulf Regional Seminar and the success of "break out groups" during Malta IV. She suggested it would be useful to promote the work of the HCCH in Asia through ASEAN.

Justice Hassan Brahimi (Morocco) thanked the Permanent Bureau for their collaborative efforts in arranging regional seminars and activities, noting they helped to raise awareness among judges and stakeholders and to implement the 1980 Child Abduction Convention. Justice Brahimi emphasised the importance of training judges and lawyers on the application of the 1980 Child Protection Convention, and to continuously exchange knowledge to promote best practices. On the latter point, Mr. Bernasconi drew attention to the excellent work of Justice Brahimi in translating eight of the Hague Conventions into Arabic.

Justice Brahimi also provided statistics which illustrated the number of Moroccan cases that involved the application of the 1980 Child Abduction Convention or a bi-lateral treaty. Mr. Bernasconi noted that cases between Morocco and Spain may apply the relevant bilateral treaty more than the Convention. Justice Brahimi explained that if the citizenship of the parent is Moroccan or Spanish, the case would automatically fall within the scope of application of the bilateral treaty. Justice Brahimi concluded by stating that mediation has been used domestically for a number of legal issues, including child abduction. He remarked that in roughly 50% of cases, child abduction related disputes were resolved by mediation.

Mr. Emile Ajavon (France) informed the Working Party of the development of a mandatory mediation process for abduction cases, based on the rationale that parents reaching an agreement on how best to resolve their dispute is more favorable than a judge imposing a decision upon them. He explained that three training sessions had been conducted in France in 2016 to provide mediators with the necessary skills for dealing with transnational family disputes. He also reported that delegations from Guinea and Tunisia had visited France to discuss international family dispute mediation, with the view to training mediators and social workers in their home countries.

Judge Salah-Eddin Shwayyat (Jordan) explained that mediation is an integral aspect of domestic civil procedure in Jordan, and that judges and lawyers are trained in alternative dispute resolution mechanisms. He reported that the Amman Family Office is facilitating the development of a mandatory mediation scheme for all international child abduction cases with the goal of resolving disputes within one month. Judge Shwayyat further noted the magnitude of such cases, given the large refugee population in Jordan, and remarked that officials were working quickly to integrate the mediation program.

Dr. Kajal Bhat (India) asked how the 1980 Child Abduction Convention could be effectively implemented domestically given the great diversity of courts and jurisdictions in the Indian federal legal system. Several members of the Working Party provided answers to this question. Ms. Maillé explained that the 1980 Child Abduction Convention complements and is in agreement with Shari'a law principles, and therefore the Convention can be applied by courts with a jurisdictional basis founded in Islamic legal tradition. Mr. Bernasconi echoed Ms. Maillé's comment and noted that the Convention is about the swift return of a child and is process-oriented, and not about a substantive custody decision. Mr. Faraz Zaidi (Pakistan) remarked that Dr. Bhat's (India) concern had been closely considered by Pakistan. He explained that acceding to the Convention should not be a problem in this respect, because the applicable custody laws and the jurisdiction of various national courts to decide upon custody issues is determined at the domestic level. He emphasised the importance of the role

of Central Authorities to create a channel of communication between the parties. It was suggested that the examples of Japan and Singapore may provide useful experiences in the implementation the Convention.

Ms. Maillé directed the Working Party to consider its mandate and suggested that it ought to be renewed by the Council on General Affairs and Policy. Ms. Jacobs suggested to add “encouraging further accessions to the 1980 Child Abduction Convention” to the mandate. Agreeing with the principle, Mr. Bernasconi noted that this was inherent as part of the overall goal of the Malta Process. He suggested that if additional words were added, that encouraging accession to all three Conventions should be stated. It was suggested by a member from Canada to add the words “in the broader context of the Malta Process, to facilitate the accession to the 1980 Child Abduction Convention, the 1996 Child Protection Convention, and the 2007 Child Support Convention”. Mr. Ajavon suggested that the members of the Working Party designate Central Contact Points (following Canada’s lead) to provide model examples for other countries. Following a question from Dr. Bhat, Ms. Maillé explained that non-Contracting States could still designate Central Contact Points. She encouraged members to make such designations before the Fifth Malta Conference.

Ms. Maillé directed the Working Party to consider the issue of membership. In particular, she explained that it was important to increase the number of members from non-Contracting States. Ms. Jacobs agreed, but stated that the invitation must be accompanied with an explanation that membership involves a level of responsibility and a commitment to engage with the dialogue of the Working Party. It was agreed that those non-Contracting States who attended the 2016 Gulf Regional Seminar or Malta IV would be invited, bringing the potential number of Working Party members to 26. Ms. Maillé expressed the willingness of Canada to continue to act as co-Chair, and suggested that a co-Chair from a non-Contracting State be appointed. Ms. Jacobs supported Canada’s role to continue as co-Chair. Germany, in its written comments, also supported Canada’s co-Chair role. Other members reiterated their support and thanked Canada for its leadership. Mr. Bernasconi remarked that current non-Contracting States of the Working Party should be invited to assume the role of the second co-Chair. If no current member is able to assume the second co-Chair role, it could be offered to the newly invited non-Contracting members of the Working Party.

Ms. Jacobs suggested that the Working Party could convene another meeting with new members on the margins of the Seventh Special Commission in October. The members of the Working Party agreed. The Secretary General agreed and indicated that many of the non-Contracting States members of the Working Party will be invited as observers to the Special Commission.

With respect to the future activities of the Working Party, Ms. Maillé suggested to organise a regional meeting of experts on the role of mediation in resolving family transnational disputes involving children and the Hague Conventions. This event could be held either in the Gulf Cooperation Council region, Indonesia or Africa. Members could also undertake outreach activities to encourage participation of non-Contracting State members as observers to the Seventh Special Commission and to circulate an inventory of international family mediation training opportunities and curricula.

In concluding the meeting, Ms. Maillé thanked the participants and the Secretary General for his continued support to the Working Party. Ms. Maillé noted that a report on the future direction of the Working Party, its new mandate and desire to expand membership will be presented by Canada as co-Chair to the 2017 Council on General Affairs and Policy meeting of the Hague Conference. Members who were unable to attend will be invited to share written comments on the draft concept note on the renewal of the Working Party. These will be incorporated into one document and shared with the members of the Working Party along with this meeting report.

Participants thanked Canada for its hospitality and hosting the Working Party members.

MEETING OF THE WORKING PARTY ON MEDIATION
Embassy of Canada, The Hague, March 13, 2017

List of Participants*

Canada

1. Ms. Béatrice MAILLÉ, Director General, Consular Policy Bureau, Global Affairs
2. Mr. Ajmal PASHTOONYAR, Policy Advisor, Children's Issues, Consular Policy Bureau, Global Affairs
3. Ms. Laurie WRIGHT, Assistant Deputy Minister, Public Law and Legislative Services Sector, DoJ
4. Ms. Kathryn SABO, General Counsel, Constitutional, Administrative and International Law Section, DoJ
5. Ms. Marie RIENDEAU, Counsel, Constitutional, Administrative and International Law Section, DoJ

France

6. M. Emile AJAVON, Médiateur familial diplômé d'État, Intervenant social, Cellule de médiation familiale internationale, Bureau du droit de l'Union du droit international privé et de l'entraide civile, Ministère de la Justice, Paris

India

7. Dr. Kajal BHAT, First Secretary (Legal), Embassy of India, The Hague

Jordan

8. Judge Salah-Eddin SHWAYYAT, Head of the Central Office for Family Mediation & Reconciliation, Supreme Judge Department, Reconciliation Directorate, Amman

Morocco

9. M. Hassan BRAHIMI, Magistrat détaché à la Direction des affaires civiles, Chef de service des affaires familiales, Ministère de la justice et des libertés

Pakistan

10. Mr. Faraz ZAIDI, Legal Counsellor, Embassy of Pakistan in The Hague

South Africa

11. Mr. Andre STEMMET, Legal Counsellor, Embassy of South Africa in The Hague

United States of America

12. Ambassador Susan JACOBS, Special Advisor for Children's Issues, US Department of State
13. Ms. Monica GAW, Senior Policy Analyst, Office of Legal Affairs, U.S. Department of State
14. Mr. Nathan GEORGE, Country Officer, Incoming Abductions, US Central Authority for the 1980 Hague Child Abduction Convention

Permanent Bureau of the Hague Conference (HCCH)

15. Dr. Christophe BERNASCONI, Secretary General
16. Ms. Maja GROFF, Senior Legal Officer
17. Mr. Andreas SHERBORNE, Legal Assistant-Intern

**Note: Representatives of Australia, Germany, Malaysia, Senegal and the United Kingdom could not participate in the meeting. Written comments were provided by Australia, Germany and Malaysia.*

Meeting of the Working Party on Mediation of the "Malta Process"

Embassy of Canada, Sophialaan 7, The Hague

Monday, 13 March 2017

PROGRAM

- 11.30-12.00 Arrival and Registration
- 12.00-13.00 Lunch
- 13.00-13.15 **Introductions and Welcome Remarks**
Ms. Beatrice Maille, Director General, Consular Policy, Global Affairs Canada

Dr. Christophe Bernasconi, Secretary General, Hague Conference on Private International Law
- 13.15-13.30 **Recent Activities with Relevance to the Working Party**
 - *Gulf Regional Seminar, March 2016*
 - *Malta IV Conference, May 2016*
- 13.30-14.00 **Update from Working Party Members**
 - *Developments in Family Mediation, Central Contact Points, 1980 Hague Convention*
- 13.30-13.45 Coffee Break
- 13.45-15.15 **Discussion on Mandate Renewal and Plan of Action of the Working Party**
- 15.15-15.30 Next Steps and Closing Remarks