

The Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention – October 2017

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| Document | Preliminary Document <input type="checkbox"/> Procedural Document <input type="checkbox"/> Information Document <input checked="" type="checkbox"/> | No 8 of October 2017 |
| Title | Seminars of the Working Party on Mediation within the context of the Malta Process – <i>available in English only</i> | |
| Author | Permanent Bureau | |
| Agenda item | No 9 | |
| Mandate(s) | | |
| Objective | | |
| Action to be taken | For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/> | |
| Annexes | N/A | |
| Related documents | | |

Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children

Monday 7 April 2014, The Hague, the Netherlands



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada



INTERNATIONAL SEMINAR

Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children

Monday 7 April 2014, The Hague, the Netherlands

On 7 April 2014, representatives from States, as well as judges, representatives from regional and non-governmental organisations and experts from academia met at The Hague for the seminar "Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children". The seminar was organised by the Government of Canada and the Permanent Bureau of the Hague Conference on Private International Law, and hosted by the Netherlands Ministry of Foreign Affairs.

The objective of the seminar was to further encourage international dialogue on cross-border family disputes in order to secure better protection mechanisms for children in situations where the relevant Hague Children's Conventions do not apply.

The seminar also marked the tenth anniversary of the Malta Process that was launched at a first so-called "Malta Conference" held in St. Julian's, Malta in 2004.

The Malta Process is a dialogue between Contracting States to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the 1980 Child Abduction Convention) and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (the 1996 Child Protection Convention) and non-Contracting States with Sharia-based or influenced legal systems.

The Malta Process aims at improving State co-operation in order to assist with resolving difficult cross-border family law disputes in situations where the relevant international legal framework is not applicable. It seeks in particular to improve child protection between the relevant States by ensuring that the child's right to have continuing contact with both parents is supported (even though they live in different States) and by combating international child abduction.

In 2009, following a recommendation by the participants at the third Malta Conference, the Working Party on Mediation was established to promote the development of mediation structures. The objective was to give individuals involved in cases to which no international legal framework applies some assistance, in the interim, by encouraging the use of mediation.

The Working Party on Mediation developed the "Principles for the establishment of mediation structures in the context of the Malta Process" (the Principles) that call, among others, for the establishment of a Central Contact Point for international family mediation in each State. This Central Contact Point is intended to facilitate the provision of information on available mediation services in the respective jurisdictions, access to mediation, and information regarding other important related issues, such as relevant legal information. Some States have already taken measures to implement the Principles in their jurisdictions and have designated Central Contact Points (Australia, France, Germany, Pakistan, Slovakia and the United States of America).

The discussions in the Malta Process and in the Working Party on Mediation are guided by the relevant international legal framework, in particular the *United Nations Convention on the Rights of the Child* of 1989 (the UNCRC), the 1980 Child Abduction Convention, the 1996 Child Protection Convention, as well as relevant regional instruments, such as the Organisation of the Islamic Cooperation's Covenant on the Rights of the Child in Islam.

The 1980 Child Abduction and the 1996 Child Protection Conventions enshrine the same fundamental principles set out or implicit in the UNCRC, such as:

- the best interests of the child as a primary consideration in all actions concerning children;
- the right of a child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents;
- the obligation of States to take measures to combat the illicit transfer and non-return of children abroad;
- the opportunity for a child to learn, to know and respect the culture and tradition of both parents.

It has been noted that all of these principles are also underlying principles of Sharia law.

An overview of the Islamic perspective on how to solve cross-border family disputes involving children was explained in particular in the keynote speech given by Professor Zaleha Kamaruddin from Malaysia [...] as well as by Judge Mohammad Al Natsheh, from Jordan and Dr Arik Jeop, from Malaysia in the following panel session.

The value of alternative dispute resolution mechanisms, in particular mediation, in solving international family conflicts was elaborated in the keynote speech given by Judge Annette Olland [...] from the Netherlands and discussed in the panel that followed with Alison Shalaby (Reunite, UK), Dr Umar Oseni, Malaysia and Ms Els Prins (International Child Abduction Center, Netherlands). These speakers presented the efforts their States or organisation has undertaken to promote and facilitate mediation in international family conflicts, such as international child abduction cases.

At the end of the seminar, Mr William Crosbie, Canada summed up the discussion and reflected on the Way Forward including in the Malta Process and its Working Party on Mediation.

He emphasised the value of the Malta Process as a unique process to bring together Contracting States to selected Hague Family Law Conventions and non-Contracting States whose legal systems are based on or influenced by Sharia. The Working Party on Mediation will continue to promote practical solutions through the creation of Central Contact Points and the use of mediation to facilitate the resolution of difficult cross-border family conflicts involving children.

It is hoped that more countries will support the work of the Working Party on Mediation and undertake efforts to implement the Principles. The ultimate goal is that these practical measures will yield solutions in difficult cross-border family conflicts involving children, including disputes about custody and access.

The Working Party on Mediation will continue to organise regional seminars, including in South East Asia, in the Gulf Region and the Maghreb.

First Regional Seminar of the Working Party on Mediation in Southeast Asia

International Islamic University Malaysia (IIUM)

28-29 November 2014



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada

First Regional Seminar of the Working Party on Mediation in Southeast Asia

*International Islamic University Malaysia (IIUM)
28-29 November 2014*

Background

On 28-29 November 2014, high ranking government representatives, judges and academic and child rights experts from Australia, Canada, Egypt, Indonesia, Japan, Malaysia¹, Pakistan, Philippines, Qatar, Saudi Arabia², Singapore, Thailand, Turkey, the United States of America, the Secretary General of the Hague Conference on Private International Law (HCCH), a representative of the UNICEF East Asia and Pacific Regional Office and a member of the UN Committee on the Rights of the Child³ participated in the first Regional Seminar of the Working Party on Mediation in Southeast Asia held in Malaysia.

The regional seminar was organised by Canada, co-Chair of the Working Party, in cooperation with the Permanent Bureau of the HCCH, and hosted by the International Islamic University Malaysia.

The aim of the seminar was to:

- explore regional perspectives on children's rights in the context of family disputes involving the wrongful removal of a child across international borders and to inform about relevant Hague Conventions;
- examine existing dispute resolution mechanisms, including family mediation, of Shari'a-based or Shari'a-influenced legal systems and other legal systems in addressing such disputes; and
- further strengthen international legal co-operation in the search for solutions in these complex cases which are in the best interests of the child.

Summary of Discussion

The seminar was formally opened with keynote presentations from Dato Sri' Professor Zaleha Kamaruddin, Rector of the International Islamic University Malaysia (IIUM), Mr. William Crosbie, Assistant Deputy Minister and Legal Adviser, Department of Foreign Affairs, Trade and Development Canada (co-Chair of the Working Party), Chief Justice (ret'd) Tassaduq Hussain Jilani of Pakistan (co-Chair of the Working Party) and Secretary General Dr. Christophe Bernasconi of the HCCH. In setting the stage, the presenters discussed the background to the Malta Process and the Working Party on Mediation, the objectives and significance of hosting the first Southeast Asia Regional Seminar in Malaysia. It was noted in particular that the Malta Process is a dialogue between Contracting States to the 1980 Hague Convention and non-Contracting States with Shari'a-based or influenced legal systems. Established in the context of the Malta Process in 2009, the Working Party on Mediation aims to promote the development of

¹This report does not include the views of Malaysia's Attorney General's Chambers representatives attending the seminar.

²The representative of Saudi Arabia was not present at the final session of the seminar.

³The Geneva based UN Committee on the Rights of the Child is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child (CRC) by its States Parties.

international family mediation structures to help resolve cross-border child abduction disputes involving States that are not party to 1980 Hague Convention.⁴

The discussions in the Malta Process and the Working Party on Mediation are guided by the principles set out in the *United Nations Convention on the Rights of the Child* of 1989 (UNCRC), the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*, as well as relevant regional instruments, such as the Organisation of the Islamic Cooperation's Covenant on the Rights of the Child in Islam.

Specifically, the recognition that the 1980 Child Abduction and the 1996 Child Protection Conventions enshrine the same fundamental principles set out or implicit in the UNCRC, including:

- the best interests of the child as a primary consideration in all actions concerning children;
- the right of a child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents;
- the obligation of States to take measures to combat the illicit transfer and non- return of children abroad;
- the opportunity for a child to learn, to know and respect the culture and tradition of both parents.

It has been noted that all of these principles are also underlying principles of Shari'a.⁵

The seminar objectives were explored in three plenary sessions. At the first plenary, presenters from both Contracting States and non-Contracting States provided an overview of domestic responses and challenges in addressing the wrongful removal and retention of children across international borders. The presentations from the Contracting States Australia, Japan, Thailand and Singapore focused on the domestic judicial and administrative mechanisms and experiences to date in implementing and operating the 1980 Hague Convention. The presentations from the non-contracting States Malaysia, Indonesia and the Philippines examined the existing mechanisms and challenges in responding to cases of wrongful removal and retention of children across international borders. Non-contracting States were encouraged to nominate liaison judges to the international Hague network in order to further judicial dialogue and practice in this area. Overall, there was a general recognition of the importance of international co-operation for the protection of children in cross-border family disputes in the region and in ensuring the best interests and welfare of the children.

In highlighting the legal remedies and judicial experiences in protecting the best interests of the child in abduction situations, expert panellists in plenary two focused on domestic experiences of Malaysia, Indonesia and the Philippines concerning mediation, precedent setting cases, and the judicial and jurisdictional diversity in the region, including the commonalities and challenges of dual Shari'a and civil legal systems in the region. The presentations highlighted the value of the best interests of the child and its entrenchment in the domestic jurisdictions of the region.

⁴ Co-Chaired by Canada and Pakistan, the Working Party is comprised of 8 Member Contracting States (Australia, Canada, France, Germany, Morocco, South Africa, UK and the US) and 5 (non-) Member non- Contracting States (Egypt, India, Jordan, Malaysia, Pakistan and Senegal [Senegal is not a Member of the HCCH]). Bangladesh, Indonesia and Qatar have also been invited to formally join the Working Party.

⁵ See for example, the Conclusions and Recommendations of the First Gulf Judicial Seminar on Cross-Frontier Legal Co-operation in Civil and Commercial Matters Doha, Qatar (June 2011); International Conference on Cross Border Co-operation in Civil and Commercial Matters through Hague Conventions, Tunis, Tunisia (October 2013) and International Seminar on Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children, The Hague (April 2014).

Mediation, including court-annexed and mandated, is increasingly used in family disputes, including in child custody matters. It was noted that children benefit from observing parents resolve conflicts amicably and effectively. There was a broad appreciation that the unilateral and illicit removal of a child from a parent across international borders is not condoned in the domestic contexts of non-Contracting States. However, lacking institutional and jurisdictional mandates, finding an amicable resolution in such cases remains a challenge.

The Philippines is gradually moving towards the ratification of the 1980 Hague Convention. Prevention efforts by States were also highlighted as a means through which parents can stop the illicit removals of the child from their habitual residence. In addition to the benefits of using mediation in family dispute resolution, a number of challenges were also highlighted. These include, for instance, the voluntary nature of the mediation process; enforcement issues; varying standards/processes/techniques; and the lack of knowledge about family mediation services in other countries.

In his keynote address to the seminar, The Right Honourable Dato' Lela Negara Tun Arifin bin Zakaria, Chief Justice of Malaysia, delivered by the Federal Court Judge YA Tan Sri Ahmad Bin Haji Maarop, welcomed the hosting of the regional seminar in Malaysia. This is the first such event held in Malaysia to examine international parental child abductions. The Chief Justice pointed out the 25 year anniversary of the adoption of the UN Convention on the Rights of the Child and its significance in promoting and entrenching child rights globally. His presentation underscored the significance of the use of mediation in resolution of family disputes, such as the enactment of the court-annexed mediation rules in Malaysia, and the utility of such measures in finding amicable resolution in cross-border child abduction situations.

Plenary three focused on identifying solutions, common legal principles and strengthening international legal co-operation with presentations from Egypt and the UNICEF East Asia and Pacific Regional Office (EAPRO). An overview of the Egyptian law pertaining to family matters was discussed, including the process of enforcing foreign child custody orders in domestic Egyptian jurisdiction. The role of the "Good Offices Committee" within the Egyptian Ministry of Justice was also highlighted. It plays a mediation role between the parties of a cross-border family conflict and attempts to resolve the conflicts amicably.

UNICEF EAPRO presented on the best interests of the child as highlighted in the CRC General Comment No 13. UNICEF EAPRO emphasized on the opportunities for international cooperation in child protection especially in terms of advocating for the ratification of international instruments such as the Hague Children's Conventions and strengthening the child protection systems (justice and social welfare), including through the ASEAN mechanisms. It was noted that UNICEF EAPRO and ASEAN will sign a formal agreement of cooperation in December 2014 in Jakarta, Indonesia, which among other things, will further strengthen strategic and technical cooperation in the area of child protection in the region.

Conclusions and Recommendations

At the end of the seminar plenaries, participants discussed options on how best to address cross-border child abduction issues in the region. The following conclusions and recommendations suggested during the course of the seminar were endorsed:

1. It was recognized that the 1980 Hague Convention is not about child custody. The Convention operates as a forum selection treaty, the underlying premise of which is that it is in the best interests of a child to have his or her parenting arrangements resolved in the jurisdiction to which he or she belongs and is most closely related, that is the State of "habitual residence".

2. It was recommended that Malaysia and Indonesia further research, with the support of the academic institutions present at the regional seminar, the 1980 Hague Convention with a view to possibly acceding to it. This research will be assisted by Contracting States sharing their relevant expertise; in assessing a possible accession to the Convention, consideration should be given to the advantages of a concentration of jurisdictions for child abduction cases.
3. It was recommended that issues of cross-border child abduction be considered in the broader context of children's rights and child protection in the ASEAN region, including during Malaysia's chairmanship of ASEAN in 2015, and in taking into account UNICEF EAPRO's work with ASEAN.
4. It was recommended that the Working Party continue its dialogue and engagements with non-Contracting States, and organizations, such as the League of Arab States and the United Nations bodies, such as UNICEF and the Committee on the Rights of the Child in Geneva.
5. It was recommended that the judicial and academic experts continue the ongoing dialogue on sharing expertise in mediation, and in the resolution of cases, if any, between the Contracting and non-Contracting States of the region.
6. It was recommended that the non-Contracting States consider the designation of a Judge or an alternative authority to participate in the International Network of Hague Judges.

At the conclusion of the seminar, participants thanked Canada, the International Islamic University Malaysia and HCCH for their financial and other support in relation to organizing the regional seminar, and to all esteemed presenters and participants for their role in promoting and providing an ideal setting for a successful regional dialogue. As hosts of the seminar, the IIUM staff and volunteers were also thanked for their exceptional professionalism and generous hospitality it offered to the organisers, participants and speakers.

28-29 November 2014

Gulf Regional Seminar
Protecting the Best Interests of the Child in Cross-Border Family Disputes
Doha, Qatar, 29-30 March 2016



ندوة خليجية حول "حماية مصالح الطفل الفضلى في النزاعات الاسرية عبر الحدود" الدوحة، قطر

Gulf Regional Seminar Protecting the Best Interests of the Child in Cross-Border Family Disputes Doha, Qatar, 29-30 March 2016

Background

On 29 – 30 March 2016, government representatives, judges, civil society, academic and child rights experts from Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, ,Canada, Germany, Pakistan, and the United States of America, the Secretary General of the Hague Conference on Private International Law (HCCH), the Doha International Family Institute (DIFI), member of Qatar Foundation for Education, Science and Community Development, the Organization of Islamic Cooperation (OIC), Vice Chairperson of the UN Committee on the Rights of the Child from Bahrain, and UNICEF participated in the first Gulf Regional Seminar on "Protecting the Best Interests of the Child in Cross-Border Family Disputes" held in Doha, Qatar.

Co-hosted by Canada and the Doha International Family Institute, with the support of the Ministry of Justice in Qatar and the Permanent Bureau of the Hague Conference the seminar objective was to further promote dialogue and engagement between regional government officials, judges, independent experts and other stakeholders on emerging cross-border family disputes involving children.

Guided by the principles of the United Nations Convention on the Rights of the Child, the seminar aimed to: explore regional perspectives on children's rights in the context of cross-border family disputes, particularly when it results in the wrongful removal of a child across international borders; provide information on relevant child protection conventions adopted under the auspices of the Hague Conference; examine dispute resolution mechanisms, including family mediation, in the region available to address cross-border family disputes; and to strengthen international legal co-operation in the search for solutions in the best interests of the child to resolve these complex cases.

Summary of Discussion

Ms. Noor Al Malki Al Jehani, Executive Director of the Doha International Family Institute (DIFI), formally opened the Gulf regional seminar by thanking the the Ministry of Justice in Qatar for providing full support in organizing this seminar and Canada for partnering with DIFI in organizing this important dialogue in the region where increasing number of families engage in child custody disputes of an international character. Ms. Al Jehani emphasised the need for raising awareness of the cross-border family disputes in child custody matters in Qatar and the region, especially in light of increasing rates of mixed marriages in the region.

Justice Tassaduq Hussain Jilani (ret'd), co-Chair of the Working Party on Mediation from Pakistan, and Ms. Beatrice Maille, Director General, Consular Policy Global Affairs Canada, in set the stage for the seminar objectives through their respective opening remarks. They highlighted the need for dialogue and cooperation on international child abduction issues. It was noted that international family disputes are more common in today's globalized world as families are increasingly transnational and mobile. Child custody disputes, once primarily domestic family matters, are now a global issue of concern for States, including in the Gulf region.

Ms. Najat Al Khalaf, Director of International Conventions and Cooperation, Ministry of Justice in Qatar, presented keynote remarks on behalf of the Minister of Justice. She outlined the importance the Qatar attaches to the rights of children and implementing the UN Convention on the Rights of the Child. Qatar's Constitution recognizes the critical role of the family in the society and the need to protect and strengthen families, including childhood. She noted that the 2006 Family Law of Qatar and the national child protection strategy further underscore the importance Qatar attaches to children.

Secretary General Dr. Christophe Bernasconi provided an overview of the Hague Conference and outlined the scope and jurisdiction of the three Hague Children Conventions.¹ Concerning the work of the Hague Conference, Dr. Bernasconi noted that the Conference works towards the unification of private international law and builds bridges between various legal systems. Dr. Bernasconi encouraged participation of Gulf countries in the Hague Conference and recognized the membership submission of the Kingdom of Saudi Arabia, the first GCC country to join the Conference. In addressing some of the common misconceptions concerning the Hague Child Abduction Convention, Dr. Bernasconi noted that the 1980 Convention is not about child custody or domestic rules concerning child custody matters. The Convention is a civil treaty and does not deal with criminal matters. It provides a framework to States in addressing the wrongful removal or retention of a child from their habitual residence.

The UN Committee on the Rights of the Child (CRC) Vice-Chair from Bahrain, Ms. Amal Aldoseri recalled that child rights are emphasised in various international human rights instruments such as CEDAW.² Referring to the concept of the child's best interest, Ms. Aldoseri noted that this right is "individual based" and all encompassing, including in situations of child abductions. She noted that CRC does not specifically define the best interests of the child. The UN Committee through its General Comment No 14 issued in 2013 provides very useful guidance to member States concerning child right. In situations of child abductions, one should consider whether such an act is in the child's best interest? Ms. Aldoseri noted that the Committee has encouraged States to consider accession/ratification of the Hague Conventions.

Mr. Peter Gross of UNICEF underscored that the Hague Children's Conventions complement and serve to implement the Convention on the Rights of the Child. The Hague instruments ensure further protection of child rights by establishing clear frameworks to address cross-border issues that affect children. Children, Mr. Gross asserted, are innocent party in international family disputes that implicates their rights and best interests. Mr. Gross also emphasized the recognition of taking into account the individual child's opinion and views in each and every matter that concerns them. This right is enshrined in both Convention on the Rights of the Child and Covenant on the Rights of the Child in Islam.³

Dr. Fadila Grine, Executive Director of the Department of Family Affairs in the Division of Cultural, Social and Family Issues at the Organization of Islamic Cooperation (OIC), provided an overview of the OIC, which currently boasts 57 member States and is the second largest international body after the UN. Children and Family issues are a priority for the OIC and the organization has organized four Ministerial Conferences on Childhood since 2007.⁴ Dr. Grine emphasised that Islam establishes the best interests of the child as a primary consideration in actions and decisions concerning children; accordingly the principles of Sharia place corresponding obligations on the family, on society and on the State.

Referring to the 2004 OIC Covenant on the Rights of the Child, Dr. Grine noted that the Covenant is not currently in force and is only signed by 6 OIC member States.⁵

She highlighted specific articles of the Covenant that addresses child custody matters, including the unequivocal affirmation that no child shall be separated from his/her parents against their will; the importance of child's access to both parents and ensuring the views of the child are heard in domestic judicial process. Dr. Grine noted that international family disputes in child custody matters within OIC member countries is an emerging issue that will be examined by her office to identify and recommend solutions to the OIC member States.

¹ 1980 Child Abduction Convention, 1996 Child Protection Convention, 2007 Child Maintenance Convention .

² UN Convention on the Elimination of Discrimination Against Women.

³ See CRC Article 12 and Article 9 of the Covenant.

⁴ The 5th Ministerial Conference for Childhood is scheduled to take place in 2016 in UAE (Abu Dhabi).

⁵ The ratification of 15 OIC member States is required for the instrument to be in force.

Professor Anver Emon of the University of Toronto presented key findings of the research study on “*Islamic Law, Private International Law and Cross-Border Child Abduction*”. The research focuses on the classical Islamic jurisprudence on child custody (sharia rules) and historic analogs to contemporary views on jurisdiction and private international law in the Muslim world.⁶ Addressing the common misconception that Sharia and the Hague Child Abduction Convention are incompatible, Professor Emon pointed out that the lack of acceptance of the Muslim majority countries of private international law instrument (such as the Hague Convention) on a presumed conflict with Sharia is based a false premise.

Professor Emon argued that the real issue of States not joining these instruments is the lack of vibrant private international law in historical Islamic law and its implications for modern Muslim majority states with Personal Status laws drawn from Islamic legal doctrines. The major challenge according to the research study is how to overcome Sharia’s silence on conflicts between domestic law and its foreign “legal other”. The research study proposes the creation of jurisdictional rules in Muslim majority countries that legally recognize foreign parties and foreign law, exempting them from domestic personal law rules of the State, and instead bringing them under a different regime created in regard to international comity of the modern state system.

Justice Jillani provided a brief overview of the Malta Process initiated in 2004 under the auspicious of the Hague Conference on cross-frontier family law issues involving non-Contracting States to the Hague Conventions whose family laws were based on or influenced by sharia. By recognizing the need for identifying common legal principles between diverse legal systems in family matters, Justice Jillani noted that the Malta Process is a unique dialogue between States to discuss how to secure better protection for the right of contact and access of parents and their children in situations where the Hague Conventions are inapplicable.

Ms. Beatrice Maille presented on the Working Party on Mediation of the Malta Process that promotes international family mediation structures to resolve cross-border disputes concerning custody of, or contact with, children. Guided by the UN CRC, in particular the right of the child to maintain on a regular basis personal relations and direct contact with both parents”, the Working Party has developed mediation principles and the structure for a Central Contact Point for international family mediation. Ms. Maille noted that Canada, as co-Chair of the Working Party, attaches great importance to collaboration with non-Contracting States in addressing international child abduction issues and to assist families overcome these complex disputes through amicable solutions.

Drawing on his expertise, Professor Dr. Mohamed Mattar, observed a number of issues in the context of the GCC and the Hague Conventions and proposed certain solutions. In recognizing of the emerging trends in cross-border family disputes in the region, Professor Mattar suggested that the GCC and the League of Arab States might consider developing a non-binding model law that could be used by all Arab and GGC countries in cross-border child custody disputes. Citing the benefit of the Hague Child Abduction Convention, Professor Mattar noted that this private international law instrument only deals with the wrongful removal or retention of the child from their habitual residence. However, the challenge is the lack of subject expertise, training and curricula in the regional legal institutions on private international law, conflict of laws and the Hague Conventions. He also noted the need for collection of key legal decisions, interpretation of child laws that would further enrich the work of judicial and legal practitioners in the region.

Dr. Lena Mollar of the Max Planck Research Group on Family and Succession Law in Islamic Countries presented a comparative assessment of the parental care regimes currently operating in selected GCC countries (Bahrain, Qatar, and the UAE). Her research demonstrates that the vast majority of cross-border custody disputes adjudicated in the region concern cases in which the divorced parents who claim custody reside in two different Gulf States. Dr. Moller noted that the recent codification of family law in the GCC countries (Bahrain, Qatar and the UAE) has awarded the best interests of the child standard (*maṣlaḥat al-tifl, maṣlaḥat al-maḥdūn*) a prominent position and that the new family codes define custody and parental care in very

⁶ The full report of the research study on “*Islamic Law, Private International Law and Cross-Border Child Abduction*” can be requested from the authors, Professor Anver Emon, Faculty of Law, University of Toronto (anver.emon@utoronto.ca) and Professor Urfan Khaiq, Cardiff Law School, UK (khaliq@cardiff.ac.uk).

similar terms to the related Hague Conventions. According to Dr. Mollar, this is a highly important development with regard to international family disputes. For one, the new family codes challenge deeply held, but oftentimes distorted presumptions about Muslim custody law as expressed in European courts.

Judge Muhsin Mahmoud Mustafa presented on Qatari judicial experiences in family disputes and child custody matters. He stressed that family should not be looked at from the individual's perspective but in its collective, sometimes involving broader family interests. For the State of Qatar, the concept of marriage and family are fundamental; it is foundational element of the society and requires solid structure. Concerning custody disputes, Judge Muhsin noted that the courts have jurisdiction over these matters in accordance with the law and the State has established family conciliation courts to offer parties a way to resolve their domestic disputes in an amicable way. He further noted that the Court has the power to introduce mediation in the best interest of the child and can appoint arbitrators. Judge Muhsin noted that there are very few cases of child abductions before Qatari courts are practically nil. While domestic law would apply to these situations, there can be a travel ban imposed on removal of a child from Qatari jurisdiction.

Noting the developments Saudi Arabia, Ambassador Dr. Mohamed Al-Shmmeri, Saudi Arabia Ministry of Foreign Affairs referred to the establishment of a Saudi special committee on child custody issues that have a foreign element. The committee is comprised of various Saudi government ministries. According to Ambassador Al-Shmmeri, private international law is of interest to Saudi Arabia and it is joined the Hague Conference to further engage in this area of law. Ambassador Al Shimmri also indicated that a review of the Hague Conventions may be undertaken by Saudi Arabia with interventions from various other government entities to ensure all stakeholders properly review the Convention with their respective mandates. Justice Sa'ad Al-Haqbani, Ministry of Justice Riyadh also presented on how the Saudi courts engage in child custody matters. He underscored the discretionary authority of the judge in adjudicating cases that draws from Hanbali jurisprudence and rules. This authority is stipulated in Saudi law.

Ms. Eman Al Saleh, Department of Family Consultations Ministry of Justice Kuwait, presented on the various Kuwaiti government institutions that would have jurisdiction over matters addressed in the seminar. She noted that the Department of Children's Right and Care would be engaged in child custody disputes and the courts would have overall jurisdiction over these cases. She also noted that Kuwait Ministry of Justice operates family conciliation offices that also assist parties address their family disputes. She also highlighted the right of visitation for both parents notwithstanding if the custody of the child is only with one parent.

Judge Hassan Brahimi, Ministry of Justice and Liberties presented on Morocco's experience since signing the 1980 Hague Child Abduction Convention. He referred to the reforms in the Moroccan family law that allowed for the ratification of the Convention by Morocco. He also noted that given Morocco's experience in addressing cross-border child custody disputes through bilateral arrangements with a number of European countries also assisted the authorities in establishing a Central Authority required for the implementation of the Hague Convention and its coordinative and administrative role with different organs of the State, including with the judiciary.

Professor Lotfi Chedly, Dean Faculty of Legal, Political and Social Sciences, Tunis presented on the legislative and administrative developments in Tunisia to accede to the Hague Convention. Like Morocco, Tunisia has a large diaspora community in Europe and transnational mobility and residence of its nationals, including situations of marriages and divorce, are fairly common. Tunisia had signed a number of bilateral agreements with European countries to address cross-border child custody disputes, including situations where a child was wrongfully removed and brought to Tunisia. Professor Chedly also underscored highlighted the recent political developments in Tunisia that precipitated the need for legal reforms.

The presentations followed engaging question and answer sessions between the participants. These ensuing discussions further informed participants of various developments in the area of child rights, domestic child custody and family laws and the Hague Conventions. Participants also discussed a list of draft recommendations:

Recommendations

The following recommendations were made during the course of the seminar.

- Encourage the consideration of joining the Hague Conference as a member, noting that membership does not require ratification of or accession to a Hague convention, similar to attaining membership within the United Nations.
- Recognize the continuing need of dialogue and co-operation between stakeholders on cross-border family disputes involving children.
- Call for the follow up of the activities of the Malta process and the working party on mediation, which has been established in the framework of this process, while noting that the fourth Malta conference will take place in May 2016 in Malta.
- Encourage the engagement of the Organization of Islamic Cooperation (OIC), the League of Arab States (LAS) and the Gulf Cooperation Council (GCC) to further study cross-border family disputes involving children with a view to informing regional and global developments in addressing these issues.
- Encourage the exchange of expertise, as well as further research and training on judicial matters related to cross-border family disputes involving children.
- Recognize the importance of enhancing the capacities of family consulting services and centers to amicably solve cross-border family disputes involving children, specifically, with regards to their role in raising awareness and legitimizing their status within the national legal systems.
- Encourage regional countries to undergo further research on the 1980 and 1996 Hague Conventions.
- Consider drafting a model law on the protection of children in cases of illicit transfer and non-return of children abroad, based on the objectives and principles of the 1980 Hague Convention, by utilizing the model law mechanism of the league of Arab States and the Gulf Cooperation Council⁷.
- Encourage countries to incorporate a course on international private law including particular information on the Hague Conventions, within the curriculum of law colleges in the Arab region.
- Recognize the importance of setting up a regional database that compiles case law on cross-border family disputes involving children.
- Encourage the establishment of a centralized entity to coordinate domestic procedures and offer services, such as mediation or conciliation, in the resolution of cross-border family disputes involving children⁸.
- Encourage the regular review of family legislations taking into consideration the demographic and legal context of each country.
- Recognizing the importance of the role of the state and non-governmental institutions, in raising awareness on the various issues related to families and the best interests of the child.
- Encourage the preparation, in collaboration with the Hague Conference, of an Arabic guide that provides clarifications on and enhances the understanding of the different provisions of the Hague conventions.

⁷ The model law will provide guiding principles based on the Hague Convention and the Convention on the Rights of the Child. It is not designed to substitute the Hague Convention, but to provide guidance for its implementation.

⁸ The Central Authority will function as a coordinating body between relevant governmental and non-governmental institutions